

CASE NO. 70083

**IN THE
SUPREME COURT OF NEVADA**

**VALLEY HEALTH SYSTEM, LLC, a Nevada limited liability company,
d/b/a CENTENNIAL HILLS HOSPITAL MEDICAL CENTER; AND
UNIVERSAL HEALTH SERVICES, INC., a Delaware corporation,**

Appellants,

vs.

**ESTATE OF JANE DOE, BY AND THROUGH ITS SPECIAL
ADMINISTRATOR, MISTY PETERSON,**

Respondent.

**APPEAL FROM THE EIGHTH JUDICIAL DISTRICT COURT, CLARK
COUNTY, NEVADA
HONORABLE JUDGE RICHARD SCOTTI, CASE NO. A-09-595780-C**

APPELLANTS' APPENDIX TO OPENING BRIEF

VOLUME IV of XVII

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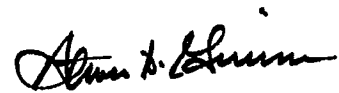
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TAB 17


CLERK OF THE COURT

RTRAN

DISTRICT COURT
CLARK COUNTY, NEVADA

ESTATE OF JANE DOE, ET AL.,

Plaintiffs,

vs.

VALLEY HEALTH SYSTEM LLC, ET
AL.,

Defendants.

CASE NO. A595780

DEPT. II

BEFORE THE HONORABLE BONNIE A. BULLA, DISCOVERY COMMISSIONER
WEDNESDAY, JUNE 3, 2015

RECORDER'S TRANSCRIPT OF PROCEEDINGS
PLAINTIFFS' MOTION FOR NRCP 37 SANCTIONS AGAINST VALLEY HEALTH
SYSTEM LLC d/b/a CENTENNIAL HILLS HOSPITAL MEDICAL CENTER AND
UNIVERSAL HEALTH SERVICES

RECORDED BY: FRANCESCA HAAK, COURT RECORDER



1 **APPEARANCES:**

2 For the Plaintiffs:

ROBERT E. MURDOCK, ESQ.

3
4 For the Defendants:

5 For Steven Farmer:

HEATHER S. HALL, ESQ.

6 For American Nursing:

AMANDA J. BROOKHYSER, ESQ.,
7 JAMES P. C. SILVESTRI, ESQ.

8 For Universal Health/Valley Health:

JOHN F. BEMIS, ESQ.

1 Las Vegas, Nevada - Wednesday, June 3, 2015, 9:11 a.m.

2 * * * * *

3 DISCOVERY COMMISSIONER: Estate of Jane Doe.

4 MR. MURDOCK: Good morning, Your Honor. Rob Murdock, on behalf of Plaintiff.

5 DISCOVERY COMMISSIONER: Good morning.

6 MR. SILVESTRI: Good morning, Your Honor. Jim Silvestri, here on behalf of
7 American Nursing Service.

8 MS. HALL: Good morning, Your Honor. Heather Hall, on behalf of Steven Farmer.

9 MS. BROOKHYSER: Good morning, Your Honor. Amanda Brookhyser, also on
10 behalf of American Nursing Services.

11 MR. BEMIS: Good morning, Your Honor. John Bemis, on behalf of Valley Health
12 System and UHS.

13 DISCOVERY COMMISSIONER: Good morning. So I do have some preliminary
14 questions, but before we start, let me tell you what this motion is not going to be about today,
15 or what this hearing is not going to be about today. It's not going to be about whether Mr.
16 Bemis and his firm should be disqualified because that's an appropriate motion to be made
17 before the District Court Judge. It's not going to be about whether the nurses should or
18 should not have answered questions during depositions because I don't have a motion to
19 compel in front of me.

20 The issue that concerns me in this particular case is the failure to disclose and
21 whether or not the failure to disclose the identity of the nurses who had information about
22 Mr. Farmer prior to this case being filed is at such a level to warrant Rule 37 sanctions, and,
23 of course, in order to determine that, there are some issues I need to have answered. But we
24 also need to look at whether or not it was prejudicial to the Plaintiff.

25 What concerns me -- and when I looked at everything and I read things several

1 times, I went back and I looked at the original joint case conference report and the
2 disclosures. What concerns me in this particular case is the opposition I received from the
3 hospital doesn't even deal with the issue. It deals with a -- what I really perceive, with all
4 due respect, is a nonissue. The nurse's deposition was taken. There was difficulty
5 scheduling it. If I impose Rule 37 sanctions for every time a Plaintiff doesn't show up or a
6 party doesn't show up at a deposition, Barbara Buckley might appreciate me, but the reality
7 is that that's not what we do. That's not what I do. That's not what we're supposed to do.
8 We're actually supposed to look at what happened and try to figure out if sanctions are
9 warranted under the facts and circumstances of this case.

10 So having said that, there are three nurses, hospital employees, either former or
11 current -- not quite sure on the status of all of these individuals, but the three that I came up
12 with were Christine Murray, and that's a C-H, Margaret Wolfe, W-O-L-F-E, Renado
13 Sumera, S-U-M-E-R-A. Those are the three that, at least to my -- from my review, were the
14 three that were not disclosed initially as part of the initial disclosures. And are there any
15 other nurses that I'm missing?

16 MR. MURDOCK: I don't know yet 'cause I keep finding things out seemingly daily.

17 DISCOVERY COMMISSIONER: Okay. But those three --

18 MR. MURDOCK: I don't know. Those three, yeah.

19 DISCOVERY COMMISSIONER: -- are the ones that I --

20 MR. MURDOCK: Oh, yeah. They're the --

21 DISCOVERY COMMISSIONER: -- I am presuming from the basis of your motion.

22 MR. MURDOCK: Absolutely.

23 DISCOVERY COMMISSIONER: So reading through everything, I don't know
24 about Mr. Sumera, but Ms. Wolfe and Ms. Murray gave statements to Metro, is that right?

25 MR. MURDOCK: That's correct.

1 DISCOVERY COMMISSIONER: Okay. And the statements that they gave to Metro
2 were made on or about May 30th of 2008, is that correct?

3 MR. MURDOCK: Ms. Wolfe was May 30th. I believe Ms. Murray was several days
4 before. I think it was -- might have been --

5 DISCOVERY COMMISSIONER: So on or about --

6 MR. MURDOCK: Yeah.

7 DISCOVERY COMMISSIONER: -- a little earlier than May 30th?

8 MR. MURDOCK: Yeah, yeah. I think it might have been the 16th or 17th.

9 DISCOVERY COMMISSIONER: Okay. And that would be 2008.

10 MR. BEMIS: That is correct.

11 DISCOVERY COMMISSIONER: Just checking.

12 MR. MURDOCK: Yeah.

13 DISCOVERY COMMISSIONER: And even though their statements were taken at
14 the end of May in 2008, from my review of the materials, it appears that their knowledge of
15 events involving Mr. Farmer were from the months of February and March of 2008 or
16 thereabouts.

17 MR. MURDOCK: Well, I would say --

18 MR. BEMIS: Sometime prior to --

19 MR. MURDOCK: Yeah.

20 MR. BEMIS: -- May 16th --

21 MR. MURDOCK: Right.

22 MR. BEMIS: -- of 2008.

23 MR. MURDOCK: Right.

24 DISCOVERY COMMISSIONER: Yeah, sometime prior to the date of May 16th,
25 2008, which is the date of this event. I mean, the statements were made after, but the events

1 and the knowledge --

2 MR. MURDOCK: Well before.

3 DISCOVERY COMMISSIONER: -- the nurses had about Mr. Farmer were before
4 the events that gave rise to this lawsuit, correct, and that's not in dispute.

5 MR. BEMIS: Well --

6 MR. MURDOCK: That is correct.

7 MR. BEMIS: -- that's not -- it's not completely correct, but it's very close because
8 it's the --

9 DISCOVERY COMMISSIONER: Okay. Tell me how it's incorrect.

10 MR. BEMIS: It's a companion case that it gave rise to, the events that give rise to.

11 DISCOVERY COMMISSIONER: Oh, okay.

12 MR. BEMIS: Because this came at months after, a month or two after this is the
13 allegation that came forward.

14 DISCOVERY COMMISSIONER: Okay. Well --

15 MR. BEMIS: I mean, it's splitting hairs.

16 DISCOVERY COMMISSIONER: -- that's not helpful to you. Let me tell you why.
17 This is a notice issue.

18 Does your client understand that they are not being sued for the acts of Mr.
19 Farmer? They're being sued for their own acts.

20 MR. BEMIS: They do, Your Honor.

21 DISCOVERY COMMISSIONER: Okay. And what do those acts consist of?
22 Whether or not they had knowledge that a reasonable person would not have kept on -- Mr.
23 Farmer on the payroll or kept him in the hospital? I understand he was actually employed
24 through an independent nursing agency that went into bankruptcy. But having said that,
25 that's really the issue, right?

1 MR. BEMIS: That is correct.

2 DISCOVERY COMMISSIONER: Okay. So the hospital has to look at its own
3 alleged negligence in this case. What did we do that perhaps was improper, giving rise to
4 this lawsuit? That has to be what you're thinking.

5 MR. BEMIS: Sure.

6 DISCOVERY COMMISSIONER: So we have an employee, right? It's Mr. Farmer,
7 or I understand there's a dispute there, but Mr. Farmer's working at Centennial.

8 MR. BEMIS: Correct.

9 DISCOVERY COMMISSIONER: He is the one whose conduct is at issue, right?

10 MR. BEMIS: That is correct.

11 DISCOVERY COMMISSIONER: And the three statements -- or two statements at
12 least that were given -- I apologize -- Ms. Murray and Ms. Wolfe, their statements concern
13 Mr. Farmer, right?

14 MR. BEMIS: That is correct.

15 MR. MURDOCK: Yes.

16 DISCOVERY COMMISSIONER: Okay. They just concerned a different patient.

17 MR. MURDOCK: Well --

18 DISCOVERY COMMISSIONER: Allegedly, right? Well, we don't know?

19 MR. MURDOCK: Well, they concerned multiple patients.

20 DISCOVERY COMMISSIONER: Right.

21 MR. MURDOCK: Yes.

22 DISCOVERY COMMISSIONER: Okay. That's right because there was an elderly
23 woman as well as the --

24 MR. MURDOCK: Right.

25 DISCOVERY COMMISSIONER: -- patient in the other lawsuit.

1 MR. MURDOCK: Right, and Ms. Wolfe was talking about a bunch of other patients,
2 and Mr. Sumera told her to watch out 'cause he was overly attentive with female patients.

3 DISCOVERY COMMISSIONER: So sometime prior to the events that gave rise in
4 this case the nurses who were, in fact, employees of the hospital had information about Mr.
5 Farmer.

6 MR. MURDOCK: Yes.

7 DISCOVERY COMMISSIONER: And I believe, if I read your caption correctly, that
8 Mr. Farmer is a Defendant in this case.

9 MR. MURDOCK: Yes.

10 DISCOVERY COMMISSIONER: And since we're concerned about the acts of Mr.
11 Farmer, and from a logical prospective, of course those acts wouldn't involve this Plaintiff
12 because those acts happened before, right?

13 MR. MURDOCK: Yes.

14 DISCOVERY COMMISSIONER: Notice. It's notice. That's the problem.

15 Now, then the issue is, well, what's the prejudice? I didn't see that articulated
16 very well. I know you think -- Mr. Murdock, you're looking at me, like, well, of course you
17 should understand that. Well, why don't you articulate it? What's the prejudice?

18 MR. MURDOCK: Let me articulate it. First of all, we've been litigating this case
19 since 2009.

20 DISCOVERY COMMISSIONER: I understand. What's the prejudice for the
21 delayed disclosure? Come on. I can -- I know what it is. Articulate it. What is it?

22 MR. MURDOCK: Well, we've taken all these depositions. I wouldn't have had to
23 do that.

24 DISCOVERY COMMISSIONER: Maybe.

25 MR. MURDOCK: We filed motions for summary judgment. They misled the Court

1 about that, so we had to --

2 DISCOVERY COMMISSIONER: Well, let me tell you --

3 MR. MURDOCK: -- file yet another motion for summary judgment.

4 DISCOVERY COMMISSIONER: All right. Okay. So you had to do motion work.

5 You had to take --

6 MR. MURDOCK: Yeah.

7 DISCOVERY COMMISSIONER: -- depositions that you might not otherwise have
8 taken because --

9 MR. MURDOCK: Right.

10 DISCOVERY COMMISSIONER: -- you would be able to what -- get a ruling as a
11 matter of law --

12 MR. MURDOCK: Right, but also --

13 DISCOVERY COMMISSIONER: -- that they had notice?

14 MR. MURDOCK: -- memories fade. Mr. Sumera --

15 DISCOVERY COMMISSIONER: That's right.

16 MR. MURDOCK: Mr. Sumera developed amnesia at his deposition.

17 DISCOVERY COMMISSIONER: That's the problem.

18 MR. MURDOCK: Yeah.

19 DISCOVERY COMMISSIONER: That's the prejudice. Everybody understand that?
20 That's why late disclosure of a witness -- in this case like seven years late or more -- is a
21 problem. And it may not even be the substance of the testimony that's the problem. It's the
22 fact that memories fade, and now we have a situation where we can't go back in time, unless
23 someone's developed a time machine, and find out exactly what they knew, the details of
24 their observations, which we don't have, and, of course, details help you with credibility, to
25 know what happened. So that's the prejudice, and it's significant. It's a significant

1 prejudice.

2 Now, these nurses were not identified in the 16.1.

3 MR. MURDOCK: No, they weren't.

4 DISCOVERY COMMISSIONER: This case was filed more than a year later, so
5 August 2009 --

6 MR. MURDOCK: Yes, it was.

7 DISCOVERY COMMISSIONER: -- I think, something like that.

8 MR. MURDOCK: It was.

9 DISCOVERY COMMISSIONER: Okay. So the statements, the identity of the
10 nurses, were all known prior to that time?

11 MR. BEMIS: The statements were not known, Your Honor, because those were
12 given to the police, and we did not have access to the police file.

13 DISCOVERY COMMISSIONER: Did you know that the nurses, your employees,
14 gave statements to the police, even though you didn't know the substance of those
15 statements?

16 MR. BEMIS: We knew certain ones did. Certain ones we did not know.

17 DISCOVERY COMMISSIONER: Okay.

18 MR. BEMIS: We did not know Ms. Wolfe's because she went and contacted the
19 police herself, as she testified to.

20 DISCOVERY COMMISSIONER: Did you know about Ms. Murray?

21 MR. BEMIS: I don't recall that. I can take a look, but I do believe that Ms.
22 Murray's -- the substance of her statement -- was different than information she had
23 provided.

24 DISCOVERY COMMISSIONER: Well, I'm not sure --

25 MR. MURDOCK: She testified that she --

1 DISCOVERY COMMISSIONER: -- that's the Plaintiffs' problem. So --

2 MR. MURDOCK: And he -- just --

3 DISCOVERY COMMISSIONER: -- you were never told by Metro prior to August
4 of 2009 as to who gave statements, not the substance of their statements, but who gave
5 statements to them?

6 MR. BEMIS: It was --

7 DISCOVERY COMMISSIONER: Be really careful how you answer this question.

8 MR. BEMIS: It was an ongoing investigation from everything that we were
9 prevented from getting from Metro with --

10 DISCOVERY COMMISSIONER: That's not --

11 MR. BEMIS: -- both cases --

12 DISCOVERY COMMISSIONER: That's not my question. Was the hospital aware,
13 prior to 2009, who the nurses were that gave statements to Metro?

14 MR. BEMIS: Not all of 'em, no.

15 DISCOVERY COMMISSIONER: Okay. But you were aware that some statements
16 were given by your nursing staff.

17 MR. BEMIS: That is correct.

18 MR. MURDOCK: Well, and, Your Honor, he also met with Mr. Sumera virtually, I
19 think, within a week of the incident. Mr. -- that's what Mr. Sumera testified to, that he met
20 with Mr. Bemis and one other or two other unknown or unidentified people. I don't know
21 about that conversation. I don't know what Mr. Sumera told him. If Mr. Sumera told him
22 everything that Ms. Wolfe said that Mr. Sumera said, clearly they have knowledge.

23 DISCOVERY COMMISSIONER: Prior to August of 2009 did the hospital staff
24 either independently and/or in the presence of counsel meet with Ms. Murray, Ms. Wolfe,
25 or -- and Mr. Sumera?

1 MR. BEMIS: I have to look at that because that was -- predates my time at the firm.

2 DISCOVERY COMMISSIONER: Okay. But Mr. Murdock just said that the hospital
3 did meet with Mr. Sumera.

4 MR. BEMIS: That, to my understanding, that's probably correct.

5 MR. MURDOCK: Well, and Ms. Murray testified that she met with the director of
6 nursing who had the statement, who had her police statement, and they went over it together.

7 DISCOVERY COMMISSIONER: Okay. But I think Ms. Wolfe also indicated she
8 complained to --

9 MR. MURDOCK: She did.

10 DISCOVERY COMMISSIONER: -- someone at the -- her temporary -- well, wasn't
11 it Mr. Sumera too?

12 MR. MURDOCK: Yeah. Well, Mr. Sumera came to her, and then that night of the
13 incident, she went back to Sumera, and then she also told her other -- I guess the on call or
14 whatever they call that above her that night as well.

15 DISCOVERY COMMISSIONER: Was there a quality assurance meeting on this
16 issue?

17 MR. BEMIS: I believe so, Your Honor.

18 DISCOVERY COMMISSIONER: Do you know when it happened?

19 MR. BEMIS: I believe it happened shortly after the --

20 DISCOVERY COMMISSIONER: Incident?

21 MR. BEMIS: Think so.

22 DISCOVERY COMMISSIONER: So sometime in 2008 --

23 MR. BEMIS: That is correct.

24 DISCOVERY COMMISSIONER: -- prior to August of 2009.

25 MR. BEMIS: That is correct.

1 DISCOVERY COMMISSIONER: Do you know if these individuals had any input
2 into that meeting?

3 MR. BEMIS: I do not know that.

4 DISCOVERY COMMISSIONER: Do you have a way of finding out?

5 MR. BEMIS: I do.

6 DISCOVERY COMMISSIONER: See, here's the problem. Mr. Murdock, I know
7 the Rule 37 solution that you want, but, quite candidly, I think it's probably cleaner just to
8 strike an answer, but in order to do that, you'd have to have an evidentiary hearing to
9 determine whether or not it's intentional. And, quite candidly, that's a hearing I'm going to
10 defer to the District Court Judge because of the facts and circumstances of the case since it
11 may, in fact, require almost a mini trial, and I don't want to be in the position of doing that
12 and then having the Judge have to redo it.

13 MR. MURDOCK: I understand.

14 DISCOVERY COMMISSIONER: However, having said that, I am dismayed when I
15 look back at the 16.1 disclosure and I see the identity of multiple nurses, and these
16 individuals are not listed; why not?

17 MR. BEMIS: I can't give you a good answer, Your Honor. The only answer I can
18 give you is at that time not all the identities were known.

19 DISCOVERY COMMISSIONER: Okay. Even though they talked to the charge
20 nurses, even though you indicated to me that Ms. Murray's statement was different than what
21 she told you all, which I'm assuming was prior to 2009?

22 MR. BEMIS: That is correct.

23 DISCOVERY COMMISSIONER: Unless you can find some information for me that
24 suggests that the identity of Ms. Murray, Ms. Wolfe, and Mr. Sumera were not known at the
25 time that you made your initial disclosures, there is a significant problem here.

1 MR. BEMIS: Understood, Your Honor.

2 DISCOVERY COMMISSIONER: So there is also the issue I guess of the CD from
3 the Public Defender's Office that had the statements contained on that CD, is that right?

4 MR. MURDOCK: That's correct.

5 DISCOVERY COMMISSIONER: And that CD was initially given I think many
6 years ago to someone, was it not? Was it given to Mr. Farmer's counsel?

7 MR. MURDOCK: It was, Your Honor.

8 DISCOVERY COMMISSIONER: And that's the one Ms. Hall just found --

9 MR. MURDOCK: Yes.

10 DISCOVERY COMMISSIONER: -- in her materials?

11 MR. MURDOCK: Yes.

12 DISCOVERY COMMISSIONER: And the statements are on there, is that right?

13 MR. MURDOCK: They are.

14 DISCOVERY COMMISSIONER: Have we -- I mean, I think you indicated that
15 there may be more nurses and individuals that you come across.

16 MR. MURDOCK: Sure.

17 DISCOVERY COMMISSIONER: But have you been able to depose, Mr. Murdock,
18 all the nurses that you know of right now --

19 MR. MURDOCK: Yes. And --

20 DISCOVERY COMMISSIONER: -- that had some knowledge of Mr. Farmer?

21 MR. MURDOCK: Well, let me put it this way. Yes, and I've noticed a whole bunch
22 of other depositions, so those should -- they're proceeding here within the next month.

23 DISCOVERY COMMISSIONER: When you deposed Ms. Murray and Ms. Wolfe --
24 and I did look at the depositions, but I just want to make sure it's clear -- did both of them
25 indicate that they had spoken to hospital personnel, or officials, or their supervisors at least,

1 prior to August of 2009?

2 MR. MURDOCK: Oh, yeah. Oh, yeah, absolutely.

3 [The Commissioner and the Clerk conferring off record - not transcribed]

4 DISCOVERY COMMISSIONER: Mr. Murdock, we're having difficulties with our
5 sound system.

6 MR. MURDOCK: Absolutely.

7 DISCOVERY COMMISSIONER: The -- if you can just speak up a little bit, that
8 would be very helpful for us.

9 MR. MURDOCK: Absolutely.

10 DISCOVERY COMMISSIONER: Thank you so much.

11 THE CLERK: Are your speakers on as well 'cause it doesn't sound like --

12 DISCOVERY COMMISSIONER: It doesn't sound like mine are on either?

13 THE CLERK: -- it did the other day.

14 THE MARSHAL: The lights are on.

15 [The Commissioner and the Clerk conferring off record - not transcribed]

16 DISCOVERY COMMISSIONER: Well, isn't this lovely. All right. So can everyone
17 hear now?

18 THE RECORDER: I can't hear you.

19 DISCOVERY COMMISSIONER: You cannot hear me at all?

20 THE RECORDER: I can hear you, but --

21 DISCOVERY COMMISSIONER: Not with those?

22 THE RECORDER: -- the recording won't hear you if I can't hear through this.

23 DISCOVERY COMMISSIONER: You know, there's one case that's always a
24 problem, and no matter how hard we try, and no matter who touches the case, it seems like
25 the problems keep increasing. I hope we can get a recording of today's hearing. Don't think

1 so? You're all witnesses out there. We may have to take a break. Sorry about that. We
2 may have to call IT.

3 THE CLERK: I think it -- they should be checked. I don't know. You don't sound
4 the same as you did the other day. There was kinda like an echo that --

5 DISCOVERY COMMISSIONER: Okay.

6 THE CLERK: -- we could tell the speaker was on, and I don't hear that today, so.

7 DISCOVERY COMMISSIONER: I really apologize. Why don't you gentlemen
8 have a seat. I'm going to see if we can get IT here to check our recording system because I
9 have to get a transcript.

10 [Proceeding recessed at 9:29 a.m.]

11 [Proceeding resumed at 9:32 a.m.]

12 DISCOVERY COMMISSIONER: We're going to proceed. We believe we have a
13 recording.

14 MR. MURDOCK: Okay.

15 DISCOVERY COMMISSIONER: And as soon as IT comes, then we'll give them
16 the opportunity to try to figure it out. I'd just like everyone to speak as loudly as possible
17 into the mics. I'll try to do the same.

18 MR. MURDOCK: Okay.

19 DISCOVERY COMMISSIONER: All right. So where were we? We had --

20 MR. MURDOCK: Strike their answer.

21 DISCOVERY COMMISSIONER: I'm about ready to strike their answer, okay, well,
22 see, it's good that I had the opportunity to step off the bench for a minute. I can't strike an
23 answer without an evidentiary hearing.

24 MR. MURDOCK: I understand.

25 DISCOVERY COMMISSIONER: But I don't have a good explanation as to why the

1 names of those nurses were not disclosed because I think a monetary sanction is appropriate.
2 The other sanction that I think is appropriate, without being able to do more because I have
3 to defer the further sanctions, including you want some ruling on foreseeability, but I do
4 think just striking the answer is cleaner probably, but that would -- that requires an
5 evidentiary hearing and one that I cannot -- that I am choosing to defer to the Judge.

6 MR. MURDOCK: I understand.

7 DISCOVERY COMMISSIONER: But what I am contemplating doing is providing
8 monetary sanctions for the late disclosure as well as I would recommend to the District Court
9 Judge that they admit the statements of the nurses without -- that he admits those statements
10 without the necessity of foundation, that they come in fully, that the hearsay cannot be an
11 objection, and there can't be any objections to the recorded statements because those
12 statements are the best information we have at or near the time of the events.

13 MR. MURDOCK: The only issue -- I have no problem with that. The only problem
14 is the Mr. Sumera issue.

15 DISCOVERY COMMISSIONER: Okay.

16 MR. MURDOCK: And that's the --

17 DISCOVERY COMMISSIONER: Talk about that.

18 MR. MURDOCK: -- that's the one -- he's the guy that had amnesia and doesn't
19 remember anything. Now, he testified that, you know, it's possible he told Nurse Wolfe this,
20 but he's not sure, things like that. So, you know, that's really where the prejudice to us lies,
21 and what we would request is that Your Honor recommend striking the answer or at least
22 recommend having an evidentiary hearing regarding striking the answer in addition to what
23 Your Honor has already done.

24 DISCOVERY COMMISSIONER: The problem is I really would like some
25 confirmation, and maybe I have enough. Maybe I have enough, but I don't really have a

1 good explanation as to why those names weren't disclosed, and I'm pretty confident that they
2 were known.

3 Mr. Bemis.

4 MR. BEMIS: I don't believe that all of them were known at that time, but I do
5 believe that there were some that were known.

6 DISCOVERY COMMISSIONER: How about the three that we're worried about
7 today -- Murray, Wolfe, and Sumera?

8 MR. BEMIS: Murray for sure, Wolfe is a possibility, and Sumera is a possibility as
9 well. I think Sumera was known at the time I believe.

10 DISCOVERY COMMISSIONER: And there's actual knowledge and there's should
11 have known, and clearly you're giving information to -- the nurses gave information to their
12 superiors, so.

13 MR. MURDOCK: They did.

14 DISCOVERY COMMISSIONER: Yeah. There was a approximately -- what --
15 seven-year delay?

16 MR. MURDOCK: Six-year.

17 DISCOVERY COMMISSIONER: Six-year delay. We're talking the three of them.

18 MR. MURDOCK: Yes.

19 DISCOVERY COMMISSIONER: We don't know exactly what they knew, but the
20 hospital did know that it involved Mr. Farmer, correct?

21 MR. MURDOCK: Yes.

22 MR. BEMIS: That would be correct, that they had some sort of interaction with him.

23 DISCOVERY COMMISSIONER: Some sort of inappropriate interaction?

24 MR. BEMIS: Interaction as in they worked with him, and I know that --

25 DISCOVERY COMMISSIONER: Well, it couldn't have been positive if he was

1 taken off to jail, right, and arrested?

2 MR. BEMIS: That's an assumption that could be made.

3 DISCOVERY COMMISSIONER: Is it an assumption that could be made or is it a
4 fact that was known by the hospital?

5 MR. MURDOCK: It's a fact.

6 MR. BEMIS: I disagree with saying that it's a fact that they knew that Mr. Farmer
7 had done inappropriate things other than the statement that Ms. Wolfe made, which was not
8 known to the facility at the time.

9 DISCOVERY COMMISSIONER: Okay. I'm going to do a thousand dollars a year
10 for six years for each; that's \$18,000 sanction, and half of it will be to Barbara Buckley's
11 Legal Aid Center, and half of it will go to the Plaintiffs in the form of attorney's fees and
12 costs to offset the additional work that had to be done to figure out these witnesses as well as
13 to proceed forward. The intentional conduct and whether or not more progressive sanctions
14 are warranted or required under Rule 37 I'm deferring to the District Court Judge. I will
15 indicate, and my recommendation will be, that an evidentiary hearing be conducted to
16 determine if case terminating sanctions are appropriate based on the conduct of failing to
17 disclose the witnesses and whether or not that was intentional to be able to thwart the
18 discovery process in this case and hinder the Plaintiff in discovering the facts that are
19 relevant.

20 MR. MURDOCK: Thank you.

21 DISCOVERY COMMISSIONER: As well as what I would consider to be a failure to
22 let the Court know what was going on in the case, a failure to disclose witnesses. It's a
23 pretty serious issue. I'm just not sure that really sunk in completely.

24 And, finally, I'm going to recommend that the witness statements that were
25 taken at or near the time of the events be admitted into evidence without restriction, both as

1 to substance and as to form, so the jury can read those statements, and I believe they are
2 recorded, so there should be recordings as well.

3 MR. MURDOCK: There should be, Your Honor.

4 DISCOVERY COMMISSIONER: And so I would ensure that that covers both.

5 MR. MURDOCK: Okay.

6 DISCOVERY COMMISSIONER: Okay?

7 MR. MURDOCK: Thank you, Your Honor.

8 DISCOVERY COMMISSIONER: Mr. Murdock is going to prepare my Report and
9 Recommendations. He's going to run it by all counsel to approve as to form and content. I
10 will have one little caveat here. If the hospital can prove to me sufficiently -- because these
11 are -- this is actually a question that should have been answered in the brief. I don't know
12 what was answered in that opposition, nothing that was really germane today. But if they
13 can prove to me, with a degree of probability, that they did not have knowledge of Ms.
14 Wolfe or Mr. Sumera prior to the filing of the case conference report --

15 MR. MURDOCK: Ms. Murray --

16 DISCOVERY COMMISSIONER: -- in two thousand -- I'm sorry. Ms. Murray?
17 I'm sorry.

18 MR. MURDOCK: Wolfe, Sumera, and Murray.

19 DISCOVERY COMMISSIONER: Yeah, well, they knew about Murray. They've
20 already admitted that.

21 MR. MURDOCK: Okay. Okay.

22 DISCOVERY COMMISSIONER: So it's Wolfe or Sumera.

23 MR. MURDOCK: Okay. Thank you.

24 DISCOVERY COMMISSIONER: If they can prove to me that they had absolutely
25 no knowledge about these two nurses from whatever sources you can confirm and look at,

1 then I may reconsider reducing that amount, but I wouldn't hold my breath because I think
2 it's clear from what I have been able to review that this information was known to the
3 hospital, maybe not the actual substance of the statements, but that's not the test. And read
4 Rule 16.1, it's have knowledge about, and clearly these individuals had knowledge about Mr.
5 Farmer, and clearly that was known before the filing of the case conference report;
6 sufficiently they should have been disclosed. And this is not a Fifth Amendment issue. It's
7 not a privileged issue. It's none of that. These nurses should have been disclosed.

8 All right. That's all for today.

9 MR. MURDOCK: Thank you, Your Honor.

10 DISCOVERY COMMISSIONER: Nothing further. I do need my Report and
11 Recommendation in ten days.

12 MR. MURDOCK: Will do.

13 DISCOVERY COMMISSIONER: And the status check for that will be?

14 THE CLERK: June 26 at 11.

15 MR. MURDOCK: Thank you, Your Honor.

16 DISCOVERY COMMISSIONER: Thank you.

17 [Proceeding concluded at 9:41 a.m.]

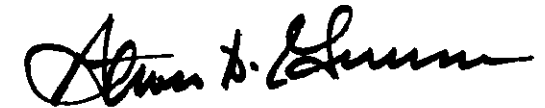
18 * * *

19 ATTEST: I do hereby certify that I have truly and correctly transcribed the audio-
20 video recording of this proceeding in the above-entitled case.

21 

22 FRANCESCA HAAK
23 Court Recorder/Transcriber
24
25

TAB 18



CLERK OF THE COURT

1 **ORDR**

2
3 **DISTRICT COURT**
4 **CLARK COUNTY, NEVADA**

5
6 ESTATE OF JANE DOE, by and through its
Special Administrator, Misty Petersen,

7 Plaintiff,

8 vs.

9 VALLEY HEALTH SYSTEM, LLC, a Nevada
10 limited liability company, d/b/a CENTENNIAL
HILLS HOSPITAL MEDICAL CENTER;
11 UNIVERSAL HEALTH SERVICES, INC., a
Delaware corporation; AMERICAN NURSING
12 SERVICE, INC., a Louisiana corporation;
STEVEN DALE FARMER, an individual;
13 DOES I through X, inclusive; and ROE
CORPORATIONS I through X, inclusive,

14 Defendants.
15

Case No.: 09-A-595780-C
Dept. No.: II

Date: August 28, 2015
Time: 9:00 a.m.

**ORDER SETTING EVIDENTIARY
HEARING**

16
17 In accordance with the Discovery Commissioner's Report and Recommendations
18 dated July 14, 2015, the Court hereby Orders and sets on Evidentiary Hearing for Friday,
19 August 28, 2015 at 9:00 a.m. The parties must comply with the following protocol for this
20 Evidentiary Hearing:

21 1. By close of business on Tuesday, August 25, 2015, each side shall produce the
22 names of the witnesses it plans to call at the Evidentiary Hearing, and the order in which it
23 intends to call such persons;

24 2. Each side will get 10 minutes for opening statements, and 10 minutes for closing
25 argument;

26 3. Each party may submit to the Court no later than Wednesday, August 26, 2015,
27 briefs in support of their respective positions, no longer than ten (10) pages, not counting
28 exhibits, for which there is no limit;

Richard F. Scotti
District Judge

Department Two
Las Vegas, NV 89155

1 4. Each side is limited to a total of three (3) hours of examination time (counting
2 both direct and cross-examination, which the Court will monitor). The Court will grant more
3 time if a written request is filed and served no later than Friday, August 14, 2015, explaining
4 the grounds therefore and the amount of extra time needed;

5 5. The date of the Evidentiary Hearing may be moved to any future date upon
6 checking with the Court's JEA, if both sides stipulate to the new date. Absent stipulation, the
7 Evidentiary Hearing shall be moved only upon written request upon good cause shown, filed
8 no later than Friday, August 14, 2015;

9 6. The purpose of the evidentiary Hearing shall be to determine (1) if case
10 terminating sanctions are appropriate based on the conduct of failing to disclose witnesses; (2)
11 whether or not that was intention to thwart the discovery process in this case, and hinder
12 Plaintiff to discovery the relevant facts, and (3) a failure to let the Court know what was going
13 on in the case and whether the UHS Defendants misled the Court.

14 DATED this 3rd day of August, 2015.

15
16
17 
18 RICHARD F. SCOTTI
19 DISTRICT COURT JUDGE
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28

CERTIFICATE OF SERVICE

I hereby certify that on or about the date filed, a copy of this Order was electronically served, mailed or placed in the attorney's folder on the first floor of the Regional Justice Center as follows:

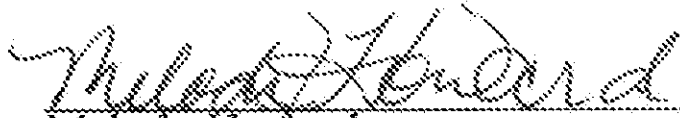
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Heather S. Hall, Esq.
CARROLL, KELLY, TROTTER,
FRANZEN, McKENNA & PEABODY
Attorneys for Defendant Steven Farmer

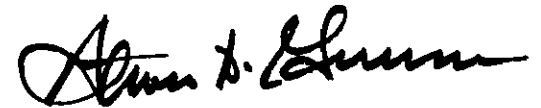
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Michael E. Prangle, Esq.
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Attorneys for Valley Health System LLC

James P.C. Silvestri, Esq.
PYATT SILVESTRI
Attorneys for Defendant American Nursing Services, Inc.


Melody Howard
Judicial Executive Assistant

TAB 19



CLERK OF THE COURT

DCRR

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Attorneys for Plaintiff

**DISTRICT COURT
CLARK COUNTY, NEVADA**

ESTATE OF JANE DOE, by and through its)
Special Administrator, Misty Petersen,)
)
Plaintiff,)
)
vs.)
)
VALLEY HEALTH SYSTEM LLC, a Nevada)
limited liability company, d/b/a CENTENNIAL)
HILLS HOSPITAL MEDICAL CENTER;)
UNIVERSAL HEALTH SERVICES, INC., a)
Delaware corporation; AMERICAN NURSING)
SERVICES, INC., a Louisiana corporation;)
STEVEN DALE FARMER, an individual; DOES I)
through X, inclusive; and ROE CORPORATIONS)
I through X, inclusive,)
)
Defendants.)

CASE NO. 09-A-595780-C
DEPT. NO. II

**DISCOVERY COMMISSIONER'S
REPORT AND
RECOMMENDATIONS**

**HEARING DATE: June 3, 2015
HEARING TIME: 9:00 a.m.**

APPEARANCES:

Plaintiff:

Robert E. Murdock, Esq.
Murdock & Associates, Chtd.
Attorney for Estate of Jane Doe

1
2 Defendants:

John F. Bemis, Esq.
Hall Prangle & Schoonveld, LLC
*Attorney for Valley Health System, LLC d/b/a
Centennial Hills Hospital Medical Center and
Universal Health Services, Inc.*

5 Amanda J. Brookhyser, Esq.
6 Lewis Brisbois Bisgaard & Smith, LLP
7 *And*
8 James P.C. Silvestri, Esq.
Pyatt Silvestri
Attorneys for American Nursing Services, Inc.

9 Heather S. Hall, Esq.
10 Carroll, Kelly, Trotter, Franzen, McKenna &
11 Peabody
Attorney for Steven Dale Farmer

12 I.

13 **FINDINGS**

14 This matter came before the Discovery Commissioner Bonnie Bulla on June 3, 2015, on
15 Plaintiff's Motion for NRCP 37 Sanctions Against Valley Health System LLC dba Centennial
16 Hills Hospital Medical Center and Universal Health Services, LLC (hereinafter "UHS
17 Defendants").

18 The Discovery Commissioner read, reviewed and considered the moving papers,
19 opposition thereto and the arguments of counsel.

20 The Court first noted that she would not address whether or not Mr. Bemis or his Firm
21 should be disqualified as that would be up to the District Court Judge, and she would not address
22 whether the nurses should or should not have answered questions at depositions (Motion to
23 Compel not before Commissioner). However, what is at issue is the failure to disclose witnesses,
24 whether or not failure to disclose identities of nurses who had information about Mr. Farmer prior
25 to this case being filed is at a level to warrant Rule 37 Sanctions and, whether the failures
26 prejudiced Plaintiff.

27 The basis of the Motion involves three nurses, Christine Murray, Margaret Wolfe, and
28 Renato Sumera. Ms. Murray and Ms. Wolfe each gave statements to the LVMPD around the time

1 of the sexual assault that resulted in the arrest of Mr. Farmer. Mr. Sumera met with Risk
2 Management afterwards. Mr. Bemis confirmed that a Quality Assurance meeting was held shortly
3 after the incident but did not know at the Hearing whether or not any of the individuals appeared.

4 None of the nurses were identified at the initial 16.1. The Nurses should have been
5 identified as they were clearly known to Defendants. The nurses should have been identified per
6 NRCP 16.1 as the nurses were certainly likely to have information discoverable under Rule 26(b).
7 The Court queried Mr. Bemis as to why the nurses were not identified but Mr. Bemis could not
8 answer the question

9 The witnesses were certainly important to the matter because they provide evidence of
10 "notice" regarding Mr. Farmer and his proclivities.

11 While there is no doubt but that Plaintiff was prejudiced by the delay in terms of filing
12 motions, the Court is more concerned with the issues of memories that fade. The delay in this
13 matter was not for a short period—this was for 6 or more years. Mr. Murdock stated that Nurse
14 Sumera had a substantial memory lapse and Mr. Bemis did not dispute this. Accordingly, the
15 Court finds that the failure to identify these three nurses has resulted in substantial prejudice
16 sufficient to warrant NRCP 37 sanctions.

17 Based upon the foregoing, the Discovery Commissioner finds that the Motion should be
18 granted in part and makes the following recommendations:

19 **II.**

20 **RECOMMENDATIONS**

21 **IT IS THEREFORE RECOMMENDED THAT** Plaintiff's Motion for NRCP 37
22 Sanctions against Valley Health System, LLC d/b/a Centennial Hills Hospital Medical Center and
23 Universal Health Services, Inc., is granted in Part..

24 **IT IS FURTHER RECOMMENDED THAT** full admission of the nurses' LVMPD
25 statements without the necessity of foundation, and without restriction both as to substance and
26 form; ^{is granted} hearsay cannot be an objection, and there cannot be objections to recorded statements as the
27 statements are the best information at or near the time of events.

28 **IT IS FURTHER RECOMMENDED THAT** NRCP 37 sanctions against the UHS
Defendants are warranted as follows:

1 The UHS Defendants are sanctioned in the amount of One Thousand Dollars and No/100
2 (\$1000.00) per unidentified nurse (3) for each year not identified (6) for a total of Eighteen
3 Thousand Dollars and No/100 (\$18,000.00). Half of that amount, or Nine Thousand Dollars and
4 No/100 (\$9000.00), shall be paid to Barbara Buckley's Legal Aid Center of Southern Nevada, and
5 the other half shall be paid to Plaintiff in attorney's fees and costs to offset additional work done
6 to figure out witnesses to proceed forward.

7 **IT IS FURTHER RECOMMENDED THAT** because of the time length involved in
8 UHS' failure to identify the nurses, and the memory issues that arise as a result, additional
9 sanctions are warranted. However, the District Court should determine those via an evidentiary
10 hearing and this Court defers the evidentiary hearing to the District Court. As such, an evidentiary
11 hearing before the District Court should be conducted to determine (1) if case terminating
12 sanctions are appropriate based on the conduct of failing to disclose witnesses, (2) whether or not
13 that was intention to thwart the discovery process in this case, and hinder Plaintiff to discover the
14 relevant facts, and (3) a failure to let the Court know what was going on in the case and whether
15 the UHS Defendants misled the Court.

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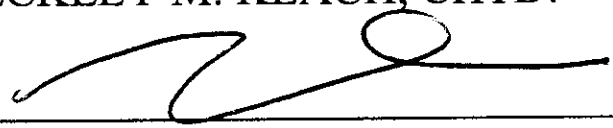
1 **IT IS FURTHER RECOMMENDED THAT** this Court may reconsider reducing the
2 amount of sanctions if the UHS Defendants were to sufficiently prove with a degree of probability
3 that the hospital had no knowledge of Sumera or Wolfe until just recently.

4 DATED this 14 day of ^{July, 2015}~~June~~ 2015

5 
6 DISCOVERY COMMISSIONER

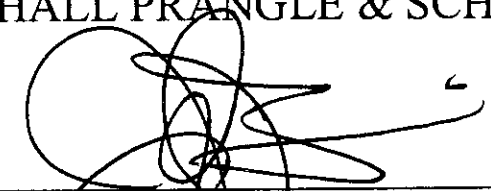
7 Submitted by:

8 MURDOCK & ASSOCIATES, CHTD.
9 ECKLEY M. KEACH, CHTD.


10 
11 Robert E. Murdock, Esq.
12 Nevada Bar No. 4013
13 Eckley M. Keach, Esq.
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15 521 South Third Street
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Attorneys for Plaintiff

16 Approved as to form and content:

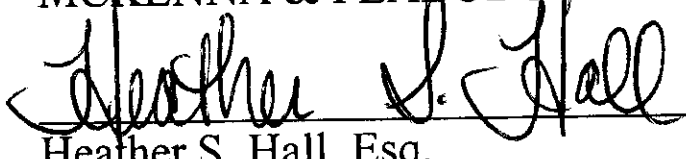
17 HALL PRANGLE & SCHOONVELD, LLC


18 
19 John F. Bemis, Esq.
20 1160 N. Town Center Drive, Ste. 200
21 Las Vegas, Nevada 89144
22 *Attorney for Valley Health System, LLC d/b/a*
23 *Centennial Hills Hospital Medical Center and*
Universal Health Services, Inc.

LEWIS BRISBOIS BISGAARD & SMITH,
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28 *Attorney for American Nursing Services, Inc.*

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3 
4 Heather S. Hall, Esq.
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6 Las Vegas, Nevada 89113
7 Attorney for Steven Dale Farmer

8 
9 James P.C. Silvestri, Esq.
10 701 Bridger Avenue, Suite 600
11 Las Vegas, NV 89101
12 Attorney for American Nursing Services, Inc.

13 **NOTICE**

14 Pursuant to NRCP 16.1(d)(2), you are hereby notified you have five (5) days from the date
15 you receive this document within which to file written objections.

16 [Pursuant to E.D.C.R. 2.34(f) an objection must be filed and served no more than five (5)
17 days after receipt of the Discovery Commissioner's Report. The Commissioner's Report is
18 deemed received when signed and dated by a party, his attorney or his attorney's
19 employee, or three (3) days after mailing to a party or his attorney, or three (3) days after
20 the clerk of the court deposits a copy of the Report in a folder of a party's lawyer in the
21 clerk's office. See E.D.C.R. 2.34(f)]

22 A copy of the foregoing Discovery Commissioner's Report was:

23 _____ Mailed to Plaintiff(s)/Defendant(s) at the following address on the _____
24 day of _____, 2015:

25 X Placed in the folder of the Plaintiffs'/Defendants' counsel in the Clerk's
26 office on the 20 day of July, 2015.

27 STEVEN D. GRIERSON

28 By 
Deputy Clerk

ORDER

The Court, having reviewed the above Report and Recommendations prepared by the
Discovery Commissioner and,

- ☐ The parties having waived the right to object thereto,
- ☐ No timely objection having been received in the office of the Discovery
Commissioner pursuant to E.D.C.R. 2.34(f),
- ☒ Having received the objections thereto and the written arguments in support of said
objections, and good cause appearing,

* * *

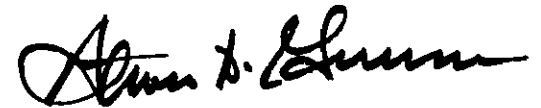
AND

- ☐ IT IS HEREBY ORDERED the Discovery Commissioner's Report and
Recommendations are affirmed and adopted.
- ☐ IT IS HEREBY ORDERED the Discovery Commissioner's Report and
Recommendations are affirmed and adopted as modified in the following manner.
(Attached hereto.)
- ☒ IT IS HEREBY ORDERED that ^{an evidentiary hearing} ~~a hearing~~ on the Discovery Commissioner's
Report and Recommendations is set for August 28, 2015 at 9:00 a.m. in
District Court Department II.

Dated this 17th day of August, 2015.


DISTRICT COURT JUDGE 

TAB 20



CLERK OF THE COURT

BREF

MICHAEL E. PRANGLE, ESQ.
Nevada Bar No. 8619
JOHN F. BEMIS, ESQ.
Nevada Bar No. 9509
HALL PRANGLE & SCHOONVELD, LLC
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Email: efile@hpslaw.com
Attorneys for Defendants
Valley Health System, LLC d/b/a
Centennial Hills Hospital and
Universal Health Services, Inc.

**DISTRICT COURT
CLARK COUNTY, NEVADA**

MISTY PETERSON, AS SPECIAL
ADMINISTRATOR OF THE ESTATE OF
JANE DOE,

Plaintiff,

vs.

VALLEY HEALTH SYSTEM LLC, a Nevada
limited liability company, d/b/a CENTENNIAL
HILLS HOSPITAL MEDICAL CENTER;
UNIVERSAL HEALTH SERVICES, INC., a
Delaware corporation; AMERICAN NURSING
SERVICES, INC., a Louisiana corporation;
STEVEN DALE FARMER, an individual; DOES I
through X, inclusive; and ROE CORPORATIONS I
through X, inclusive,

Defendants.

CASE NO. A595780
DEPT NO. II

**DEFENDANTS VALLEY
HEALTH SYSTEM LLC d/b/a
CENTENNIAL HILLS HOSPITAL
MEDICAL CENTER AND
UNIVERSAL HEALTH
SERVICES, INC.'S BRIEF IN
SUPPORT OF THEIR POSITION
RE: EVIDENTIARY HEARING**

**HEARING DATE: August 28, 2015
HEARING TIME: 9:00 a.m.**

COME NOW, Defendants, VALLEY HEALTH SYSTEMS, LLC d/b/a CENTENNIAL
HILLS HOSPITAL MEDICAL CENTER AND UHS OF DELAWARE, INC., (hereinafter
“Hospital Defendants”) by and through their attorneys, HALL PRANGLE & SCHOONVELD,
LLC, and hereby file their Brief In Support of Their Position Concerning the Court’s Evidentiary

HALL PRANGLE & SCHOONVELD, LLC
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SUITE 200
LAS VEGAS, NEVADA 89144
TELEPHONE: 702-889-6400 FACSIMILE: 702-384-6025

Hearing and Potential Case Terminating Sanctions.

This Brief is made and based on the papers and pleadings on file herein, the Points and Authorities attached hereto and such argument of counsel which may be adduced at the time of the evidentiary hearing.

DATED this 26th day of August, 2015.

HALL PRANGLE & SCHOONVELD, LLC

/s/: John Bemis

MICHAEL E. PRANGLE, ESQ.

Nevada Bar No.: 8619

JOHN F. BEMIS, ESQ.

Nevada Bar No. 9509

1160 North Town Center Drive, Suite 200

Las Vegas, NV 89144

Attorneys for Defendants

Valley Health System, LLC d/b/a

Centennial Hills Hospital and

Universal Health Services, Inc.

POINTS AND AUTHORITIES

I.

INTRODUCTION

On July 14, 2015, the Discovery Commissioner entered an order recommending various sanctions against the Hospital Defendants for failing to timely disclose three witnesses (Nurse Margaret Wolfe, Nurse Ray Sumera, and Nurse Christine Murray) in their NRCP 16.1 disclosures, including evidentiary sanctions in the form of the unrestricted admission into evidence at trial of these witnesses' statements to the Las Vegas Metropolitan Police Department and monetary sanctions totaling \$18,000. See the Discovery Commissioner's Report and Recommendations related to the June 3, 2015 hearing, attached hereto as **Exhibit A**. In addition, the Discovery Commissioner also recommended that the Court hold an evidentiary hearing to

determine (1) if case terminating sanctions are appropriate based on Hospital Defendants' failure to disclose these witnesses, (2) whether Hospital Defendants intended to "thwart the discovery process" and hinder Plaintiff's ability to discover relevant facts, and (3) whether the Hospital Defendants failed to let the Court know what was going on in the case or otherwise misled the Court. *See Exhibit A.* Lastly, the Discovery Commissioner recommended that the Court consider reducing the amount of sanctions if the Hospital Defendants "sufficiently prove with a degree of probability that the hospital had no knowledge of Sumera or Wolfe until just recently." *Id.* The Hospital Defendants filed an Objection to the Discovery Commissioner's Report and Recommendations (hereinafter "Objection"), requesting that this Court reject the recommended sanctions, or, in the alternative and in accordance with the Discovery Commissioner's final recommendation, reduce the sanctions awarded. *See Hospital Defendants Objection to Discovery Commissioner Report and Recommendation*, attached hereto as **Exhibit B**.

For the reasons stated in their Objection and below, case terminating sanctions are not appropriate and should not be issued here because the Hospital Defendants did not willfully fail to disclose these witnesses, intentionally thwart the discovery process, or otherwise deliberately mislead the Court. On the contrary, the Hospital Defendants did not have knowledge that any of these three persons had information relevant to *this* Plaintiff's claims (or knowledge of the substance of either Nurse Wolfe's or Nurse Murray's 2008 statements to the LVMPD) until after the Hospital Defendants received an audio of Murray's statement in **February 2013** and a copy of Farmer's police file in **May 2013** – documentation the Hospital Defendants were thereafter precluded from disclosing pursuant to a Protective Order until **November 12, 2014**. Indeed, until the Hospital Defendants received this audio and Farmer's police file – more than three years after Plaintiff filed her complaint – they reasonably did not believe any of the subject

witnesses had information relevant to Plaintiff's claims because Nurse Murray was assigned to another complaining witness (Cagnina) and did not provide any care or treatment to Ms. Doe, while Nurse Wolfe and Nurse Sumera were emergency room nurses who also did not provide any care or treatment to Ms. Doe, and did not work on the same floor as Ms. Doe's hospital room.

Furthermore, while in retrospect the Hospital Defendants could and should have filed supplemental NRCP 16.1 disclosures identifying these three additional witnesses after receiving Farmer's police file in May 2013, this oversight did not thwart the discovery process or hinder Plaintiff's ability to discover relevant facts, including these witnesses' identities. To the contrary, Plaintiff knew of Nurse Murray and Nurse Wolfe and that they may have information relevant to the instant case, as early as **March 17, 2010**, when she disclosed them as part of her Fifth Supplement to Case Conference Disclosures pursuant to NRCP 16.1. Likewise, Plaintiff also had knowledge concerning Nurse Sumera as early as **May 13, 2010**, when she filed her Sixth Supplemental 16.1 List of Witnesses and Documents disclosing two depositions in the Cagnina case wherein Nurse Sumera was identified as an emergency room nurse who possibly interacted with Farmer prior to the Cagnina incident on May 16, 2008. Thus, Plaintiff suffered little if any prejudice, nor were her discovery efforts hindered by the Hospital Defendant's failure to disclose the identities of these witnesses in May of 2013 since she clearly knew of their existence and potential relevance to the instant case no later than May 13, 2010, less than a year after filing suit.¹

For ease of reference, the following time line sets forth the relevant events: 1) **May 14,**

¹ Much of the discovery in the instant case was delayed by Farmer's criminal trial which resulted in stay orders entered from January 26, 2011 to April 25, 2012 (455 days) and from February 19, 2014 to June 4, 2014 (105 days), attached hereto as **Exhibits L** and **M**, respectively.

1 **2008** (Doe Assault); 2) **May 16, 2008** (Alleged Cagnina Assault); 3) **May 22, 2008** (HPS
2 retained as counsel for Hospital Defendants for Cagnina incident); 4) **September 2, 2008**
3 (Cagnina Civil Complaint Filed); 5) **July 23, 2009** (Doe Complaint filed); 6) **August 3, 2009**
4 (HPS Retained as counsel for the Hospital Defendants in Doe); 7) **March 17, 2010** (Plaintiff
5 discloses Murray and Wolfe); 8) **May 13, 2010** (Plaintiff disclosed deposition identifying
6 Sumera); 9) **February 2013** (Hospital Defendants received an audio of Murray's statement from
7 Farmer's Public Defender, but no written version of her statement or anything relating to Wolfe);
8 10) **May 2013** (Hospital Defendants receive police file subject to protective order preventing
9 disclosure outside Cagnina proceedings); and 11) **May 14, 2014** (Protective Order lifted).
10

11 II.

12 LEGAL ARGUMENT

13
14 Generally, sanctions may only be imposed where there has been willful noncompliance
15 with a court order or where the adversary process has been halted by the actions of the
16 unresponsive party. *GNLV Corp. v. Service Control Corp.*, 111 Nev. 866, 870 (1995).
17 Fundamental notions of fairness and due process require that discovery sanctions be just and that
18 sanctions relate to the specific conduct at issue. *Young v. Johnny Ribeiro Bldg., Inc.*, 106 Nev.
19 88, 92 (1990). The sanction of dismissal should "only be imposed after thoughtful consideration
20 of all the factors involved in a particular case." *Id.* Ultimately, the dismissal of a case based upon
21 a discovery sanction "should be used only in extreme situations; if less drastic sanctions are
22 available, they should be utilized." *Nevada Power Co. v. Fluor Illinois*, 108 Nev. 638, 645
23 (1992). The factors that a court may consider before ordering case terminating sanctions,
24 include: (1) the degree of willfulness of the offending party; (2) the extent to which the non-
25 offending party would be prejudiced by a lesser sanction; (3) the severity of dismissal relative to
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1 the severity of the abusive conduct; (4) whether evidence has been irreparably lost; (5) the
2 feasibility and fairness of alternative and less severe sanctions; (6) the policy favoring
3 adjudication on the merits; (7) whether sanctions unfairly operate to penalize a party for the
4 misconduct of his or her attorney; and (8) the need to deter both the parties and future litigants
5 from similar abuses. *Young*, 106 Nev. at 93. Applying these factors to the instant case, case
6 terminating sanctions are wholly inappropriate for the reasons detailed below.
7

8 **A. Case Terminating Sanctions Are Not Appropriate Because The Hospital**
9 **Defendants Did Not Willfully Fail To Disclose Witnesses Or Otherwise**
10 **Deliberately Attempt to Thwart The Discovery Process.**

11 At the time Ms. Doe filed her Complaint in the instant case on July 23, 2009, the State of
12 Nevada, as of July 2, 2008, had already instituted criminal proceedings against Mr. Farmer in
13 *State v. Farmer*, No. C245739 based on another patient (Cagnina) complaint arising from an
14 incident on May 16, 2008. The *Cagnina* criminal case was later consolidated with allegations by
15 other claimants, including Doe, alleging that they too had been sexually assaulted by Mr. Farmer
16 (Case No. 08C249693). Approximately one year later, close in time to when Ms. Doe filed her
17 initial complaint in this case, Nurse Christine Murray and Nurse Margaret Wolfe were disclosed
18 as witnesses in the criminal proceedings. *See* September 28, 2009 Second Supplemental Notice
19 of Witnesses And/Or Expert Witnesses and October 16, 2009 Third Supplemental Notice of
20 Witnesses And/Or Expert Witnesses, attached hereto as **Exhibit C** and **D**, respectively. Nurses
21 Murray and Wolfe were included in these disclosures but neither were involved in the care of
22 Doe. Nurse Murray was assigned to Cagnina. Nurse Wolfe was an emergency room nurse who
23 was present in the ER during Cagnina's admission. Neither, however, provided any care or
24 treatment to Ms. Doe. While the Hospital Defendants interviewed Nurses Wolfe, Murray, and
25 Sumera with respect to the Cagnina incident, those interviews took place *before* the Hospital
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Defendants had any knowledge of the incident involving Ms. Doe and were focused solely on the Cagnina incident. Once Ms. Doe's allegations surfaced, the Hospital Defendants did not re-interview these witnesses because neither Nurse Wolfe, Nurse Murray, nor Nurse Sumera were assigned to her or provided her any care and treatment. As a result, the Hospital Defendants reasonably believed that they would not have any information relevant to Ms. Doe's claims. Thus, the Hospital Defendants, in good faith, did not include these witnesses in their NRCP 16.1 initial or supplemental disclosures in the instant case. However, each of these witnesses was disclosed in the *Cagnina* case on November 13, 2008. See Defendant Centennial Hills Hospital's Initial Early Case Conference List of Witnesses and Documents, filed in *Cagnina v. Centennial Hills Hospital*, No. A5707056, attached hereto as **Exhibit K**.

In late February 2013, the Hospital Defendants received portions of Farmer's Public Defender's file, containing the audio statement of Nurse Murray. The file, however, did not include any written statement by Murray or audio or written statement by Nurse Wolfe or Nurse Sumera. On May 6, 2013, during the course of proceedings in *Cagnina v. Centennial Hills Hospital*, No. A5707056, the Hospital Defendants, pursuant to a joint motion with the *Cagnina* plaintiff to compel, obtained a copy of the Las Vegas Metropolitan Police Department file for Steven Farmer. See May 6, 2013 Notice of Entry of Order re: Discovery Commissioner's Report and Recommendations in *Cagnina v. Centennial Hills Hospital*, No. A570756, attached hereto as **Exhibit E**. Prior to obtaining a portion of Farmer's Public Defender's file and, subsequently, the police file, the Hospital Defendants were aware that several nurses had spoken with the police, but the Hospital Defendants were not present at and were not privy to the substance of those interviews/statements. Upon obtaining a portion of Mr. Farmer's counsel file and a copy of the police file, the Hospital Defendants learned for the first time that Nurses Murray, Wolfe, and

Sumera had information that could be relevant to Ms. Doe's claims. The Hospital Defendants, however, were precluded at that time from disseminating Mr. Farmer's police file outside the confines of the *Cagnina* Proceedings due to a protective order. See **Exhibit E**, at 2, ¶2. Indeed, it was not until November 14, 2014, that the Hospital Defendants were able to produce the file when they were ordered to do so by this Court. See November 12, 2014 Discovery Commissioner's Report and Recommendation, attached hereto as **Exhibit F**.

In sum, there was no willful or deliberate attempt to hide these witnesses from Plaintiff. There was an oversight in failing to supplement Hospital Defendants' NRCP 16.1 Disclosures with the names of these three witnesses after receiving the police file in May, 2013 – but, as set forth more fully below, Plaintiff had already been aware of each of these witnesses for the prior three years.

B. Case Terminating Sanctions Are Also Not Appropriate Because Plaintiff Was Not Significantly Prejudiced If At All By The Late Disclosure – Plaintiff Had Knowledge Of The Three Nurses' Identities And Potential Relevance As Early As March And May 2010.

As discussed in greater detail, *supra*, criminal proceedings against Farmer on behalf of several complaining witnesses had already begun at the time the instant Plaintiff's Complaint was filed. In the course of those criminal proceedings, the District Attorney filed certain witness disclosures, identifying numerous staff at Centennial Hills Hospital. Specifically, on September 28, 2009, the District Attorney filed his Second Supplemental Notice of Witnesses and/or Expert Witnesses, identifying Carol Butler, *Christine Murray*, *Margaret Wolfe*, Christen Edwards, Jeanine James, Julie Montero, P. Robertson, Jackie Schumacher and Lori Wescott. See **Exhibit**

C. Three weeks later, the District Attorney filed his Third Supplemental Notice of Witnesses and/or Expert Witnesses, further identifying additional witnesses and documentation, including Kim Davis, Karen Goodhart and Sandra Pagain. See **Exhibit D**. Several of these witnesses,

1 including Christine Murray and Margaret Wolfe, were not assigned to Ms. Doe and had any
2 involvement in her care and treatment while she was a patient at Centennial Hills.

3 On March 17, 2010, Plaintiff identified and disclosed both of these witness lists in their
4 entirety as part of her Fifth Supplemental 16.1 Statement of Witnesses and Documents. See
5 Plaintiff's Fifth Supplement to Case Conference Disclosures Pursuant to NRCP 16.1, attached
6 hereto as **Exhibit G**. Shortly thereafter, on May 13, 2010, Plaintiff filed a Sixth Supplement to
7 Case Conference Disclosures Pursuant to 16.1 wherein she identified certain additional
8 documentation, including the depositions of Karen Goodhart and Amy Bochenek from the
9 *Cagnina v. Centennial Hills Hospital* civil case. See Plaintiff's Sixth Supplement to Case
10 Conference Disclosures Pursuant to NRCP 16.1, attached hereto as **Exhibit H**. The depositions
11 of Ms. Goodhart and Ms. Boechenek both identify Ray Sumera as an emergency room nurse
12 having possible interactions with Farmer prior to the *Cagnina* incident on May 16, 2008. See
13 March 10, 2010 Deposition of Amy Bochenek, RN, attached hereto as **Exhibit I**, at 33, 49, and
14 January 27, 2010 Deposition of Karen Goodhart, RN, attached hereto as **Exhibit J**, at 35, 48, 75,
15 89-90.
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17
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19 Thus, despite any delay by the Hospital Defendants in disclosing these witnesses'
20 identities, Plaintiff already had demonstrated her belief that Nurses Murray and Wolfe had
21 information relevant to her claims when she identified them as part of her supplemental NRCP
22 16.1 disclosures filed in March 2010. Similarly, Plaintiff already had knowledge, as early as
23 May 2010, of Nurse Sumera via Ms. Goodhart's and Ms. Boechenak's depositions when they
24 were disclosed as part of her supplemental NRCP 16.1 disclosures. Accordingly, Plaintiff has
25 suffered little, if any, prejudice as a result of the delayed disclosure. For this additional reason,
26 the Court should decline to issue case-terminating sanctions.
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C. The Hospital Defendants Have Not Misled The Court.

While the Discovery Commissioner was not specific on this point, Plaintiff has previously asserted that given the knowledge of Nurses Wolfe, Sumera and Murray and the content of the police file in May of 2013, the Hospital Defendants should not thereafter have argued in their court papers that Farmer's criminal sexual assaults on Ms. Doe were not reasonably foreseeable to them. The unfounded nature of this assertion is reflected in this Court's July 7, 2015 Order (**Exhibit N**), denying Plaintiff's Motion for Summary Judgment on the ground that considering the deposition testimony of these three nurses, their interactions with Farmer, and the content of the police file, a reasonable juror could conclude that Farmer's criminal sexual assaults on Ms. Doe were not reasonably foreseeable to the Hospital Defendants under the facts and circumstances of this case.

III.

CONCLUSION

Based on the foregoing, Defendants Centennial Hills Hospital and UHS respectfully request this Honorable Court decide against issuing case-terminating sanctions.

DATED this 26th day of August, 2015.

HALL PRANGLE & SCHOONVELD, LLC

/s/: John Bemis

MICHAEL E. PRANGLE, ESQ.

Nevada Bar No.: 8619

JOHN F. BEMIS, ESQ.

Nevada Bar No. 9509

1160 North Town Center Drive, Suite 200

Las Vegas, NV 89144

Attorneys for Defendants

Valley Health System, LLC d/b/a

Centennial Hills Hospital Medical Center

and Universal Health Services, Inc.

DECLARATION OF JOHN F. BEMIS, ESQ. RE LR 2.34

STATE OF NEVADA)
) SS.
COUNTY OF CLARK)

JOHN F. BEMIS, being first duly sworn deposes and says:

1. I am an attorney duly licensed to practice law in the State of Nevada and, along with Michael E. Prangle, Esq., am the attorney for Defendants Centennial Hills Hospital and Universal Health Services, Inc. in the above captioned action.
2. I have personal knowledge of the facts set forth herein and am capable and willing to testify to same if called upon to do so.
3. Attached hereto as Exhibit A is a true and correct copy of the Discovery Commissioner's Report and Recommendations related to the June 3, 2015 hearing.
4. Attached hereto as Exhibit B is a true and correct copy of Hospital Defendants Objection to Discovery Commissioner Report and Recommendation
5. Attached hereto as Exhibit C is a true and correct copy of the District Attorney's Office September 28, 2009 Second Supplemental Notice of Witnesses And/Or Expert Witnesses in *State v. Farmer*, No. C245739.
6. Attached hereto as Exhibit D is a true and correct copy of the District Attorney's Office October 16, 2009 Third Supplemental Notice of Witnesses And/Or Expert Witnesses in *State v. Farmer*, No. C245739.
7. Attached hereto as Exhibit E is a true and correct copy of May 6, 2013 Notice of Entry of Order re: Discovery Commissioner's Report and Recommendations in *Cagnina v. Centennial Hills Hospital*, No. A570756.

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TELEPHONE: 702-889-6400 FACSIMILE: 702-384-6025

- 1 8. Attached hereto as Exhibit F is a true and correct copy of the November 12, 2014
- 2 Discovery Commissioner's Report and Recommendation.
- 3 9. Attached hereto as Exhibit G is a true and correct copy of Plaintiff's Fifth Supplement to
- 4 Case Conference Disclosures Pursuant to NRCP 16.1.
- 5 10. Attached hereto as Exhibit H is a true and correct copy of Plaintiff's Sixth Supplement to
- 6 Case Conference Disclosures Pursuant to NRCP 16.1.
- 7 11. Attached hereto as Exhibit I is a true and correct copy of the March 10, 2010 Deposition
- 8 of Amy Bochenek, RN, in *Cagnina v. Centennial Hills Hospital*, No. A570756.
- 9 12. Attached hereto as Exhibit J is a true and correct copy of the January 27, 2010 Deposition
- 10 of Karen Goodhart, RN, in *Cagnina v. Centennial Hills Hospital*, No. A570756.
- 11 13. Attached hereto as Exhibit K is a true and correct copy of Defendant Centennial Hills
- 12 Hospital's Initial Early Case Conference List of Witnesses and Documents, filed in
- 13 *Cagnina v. Centennial Hills Hospital*, No. A570756.
- 14 14. Attached hereto as Exhibit L is a true and correct copy of the January 26, 2011 Notice of
- 15 Entry of Order re: Discovery Commissioner's Report and Recommendations.
- 16 15. Attached hereto as Exhibit M is a true and correct copy of the April 7, 2014 Notice of
- 17 Entry of Order re: Order Denying Plaintiff's Motion for Partial Summary Judgment as to
- 18 Defendant Steven Dale Farmer and Granting Counter-Motion for Stay of Civil Action
- 19 Pending Criminal Case.
- 20 16. Attached hereto as Exhibit N is a true and correct copy of the July 7, 2015 Order Denying
- 21 Plaintiff's Motion for Summary Judgment.
- 22
- 23
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- 28

FURTHER YOUR DECLARANT SAYETH NAUGHT.


JOHN F. BEMIS, ESQ.

HALL PRANGLE & SCHOONVELD, LLC
1160 NORTH TOWN CENTER DRIVE
SUITE 200
LAS VEGAS, NEVADA 89144
TELEPHONE: 702-889-6400 FACSIMILE: 702-384-6025

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that I am an employee of HALL PRANGLE & SCHOONVELD, LLC; that on the 26th day of August, 2015, I served a true and correct copy of the foregoing **DEFENDANTS VALLEY HEALTH SYSTEM LLC d/b/a CENTENNIAL HILLS HOSPITAL MEDICAL CENTER AND UNIVERSAL HEALTH SERVICES, INC.'S BRIEF IN SUPPORT OF THEIR POSITION RE: EVIDENTIARY HEARING** via

Electronic Service through Wiznet to the following parties at their last known address:

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-and-

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*Attorneys for Defendant
American Nursing Services, Inc.*

/s/: Diana Cox
An employee of HALL PRANGLE & SCHOONVELD, LLC

EXHIBIT A

Hall Pangle

COURTESY
COPY

1 DCRR

2 Robert E. Murdock, Esq.

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14 Attorneys for Plaintiff

11 DISTRICT COURT

12 CLARK COUNTY, NEVADA

13 ESTATE OF JANE DOE, by and through its)

14 Special Administrator, Misty Petersen,)

15 Plaintiff,)

16 vs.)

17 VALLEY HEALTH SYSTEM LLC, a Nevada)

18 limited liability company, d/b/a CENTENNIAL)

19 HILLS HOSPITAL MEDICAL CENTER;)

20 UNIVERSAL HEALTH SERVICES, INC., a)

21 Delaware corporation; AMERICAN NURSING)

22 SERVICES, INC., a Louisiana corporation;)

23 STEVEN DALE FARMER, an individual; DOES I)

24 through X, inclusive; and ROE CORPORATIONS)

25 I through X, inclusive,)

26 Defendants.)

CASE NO. 09-A-595780-C

DEPT. NO. II

DISCOVERY COMMISSIONER'S
REPORT AND
RECOMMENDATIONS

25 HEARING DATE: June 3, 2015

26 HEARING TIME: 9:00 a.m.

27 APPEARANCES:

28 Plaintiff:

Robert E. Murdock, Esq.

Murdock & Associates, Chtd.

Attorney for Estate of Jane Doe

7/30
calendared

1
2 Defendants:

John F. Bemis, Esq.

3 [REDACTED] & Schoonveld, LLC
4 *Attorney for Valley Health System, LLC d/b/a*
5 *Centennial Hills Hospital Medical Center and*
6 *Universal Health Services, Inc.*

7 Amanda J. Brookhyser, Esq.

8 Lewis Brisbois Bisgaard & Smith, LLP

9 *And*

10 James P.C. Silvestri, Esq.

11 Pyatt Silvestri

12 *Attorneys for American Nursing Services, Inc.*

13 Heather S. Hall, Esq.

14 Carroll, Kelly, Trotter, Franzen, McKenna &

15 Peabody

16 *Attorney for Steven Dale Farmer*

17 I.

18 **FINDINGS**

19 This matter came before the Discovery Commissioner Bonnie Bulla on June 3, 2015, on
20 Plaintiff's Motion for NRCP 37 Sanctions Against Valley Health System LLC dba Centennial
21 Hills Hospital Medical Center and Universal Health Services, LLC (hereinafter "UHS
22 Defendants").

23 The Discovery Commissioner read, reviewed and considered the moving papers,
24 opposition thereto and the arguments of counsel.

25 The Court first noted that she would not address whether or not Mr. Bemis or his Firm
26 should be disqualified as that would be up to the District Court Judge, and she would not address
27 whether the nurses should or should not have answered questions at depositions (Motion to
28 Compel not before Commissioner). However, what is at issue is the failure to disclose witnesses,
whether or not failure to disclose identities of nurses who had information about Mr. Farmer prior
to this case being filed is at a level to warrant Rule 37 Sanctions and, whether the failures
prejudiced Plaintiff.

The basis of the Motion involves three nurses, Christine Murray, Margaret Wolfe, and
Renato Sumera. Ms. Murray and Ms. Wolfe each gave statements to the LVMPD around the time

1 of the sexual assault that resulted in the arrest of Mr. Farmer. Mr. Sumera met with Risk
2 Management afterwards. Mr. Bemis confirmed that a Quality Assurance meeting was held shortly
3 after the incident but did not know at the Hearing whether or not any of the individuals appeared.

4 None of the nurses were identified at the initial 16.1. The Nurses should have been
5 identified as they were clearly known to Defendants. The nurses should have been identified per
6 NRCP 16.1 as the nurses were certainly likely to have information discoverable under Rule 26(b).
7 The Court queried Mr. Bemis as to why the nurses were not identified but Mr. Bemis could not
8 answer the question

9 The witnesses were certainly important to the matter because they provide evidence of
10 "notice" regarding Mr. Farmer and his proclivities.

11 While there is no doubt but that Plaintiff was prejudiced by the delay in terms of filing
12 motions, the Court is more concerned with the issues of memories that fade. The delay in this
13 matter was not for a short period—this was for 6 or more years. Mr. Murdock stated that Nurse
14 Sumera had a substantial memory lapse and Mr. Bemis did not dispute this. Accordingly, the
15 Court finds that the failure to identify these three nurses has resulted in substantial prejudice
16 sufficient to warrant NRCP 37 sanctions.

17 Based upon the foregoing, the Discovery Commissioner finds that the Motion should be
18 granted in part and makes the following recommendations:

19 **II.**

20 **RECOMMENDATIONS**

21 **IT IS THEREFORE RECOMMENDED THAT** Plaintiff's Motion for NRCP 37
22 Sanctions against Valley Health System, LLC d/b/a Centennial Hills Hospital Medical Center and
23 Universal Health Services, Inc., is granted in Part..

24 **IT IS FURTHER RECOMMENDED THAT** full admission of the nurses' LVMPD
25 statements without the necessity of foundation, and without restriction both as to substance and
26 form; hearsay cannot be an objection, and there cannot be objections to recorded statements as the
27 statements are the best information at or near the time of events.

28 **IT IS FURTHER RECOMMENDED THAT** NRCP 37 sanctions against the UHS
Defendants are warranted as follows:

1 The UHS Defendants are sanctioned in the amount of One Thousand Dollars and No/100
2 (\$1000.00) per unidentified nurse (3) for each year not identified (6) for a total of Eighteen
3 Thousand Dollars and No/100 (\$18,000.00). Half of that amount, or Nine Thousand Dollars and
4 No/100 (\$9000.00), shall be paid to Barbara Buckley's Legal Aid Center of Southern Nevada, and
5 the other half shall be paid to Plaintiff in attorney's fees and costs to offset additional work done
6 to figure out witnesses to proceed forward.

7 **IT IS FURTHER RECOMMENDED THAT** because of the time length involved in
8 UHS' failure to identify the nurses, and the memory issues that arise as a result, additional
9 sanctions are warranted. However, the District Court should determine those via an evidentiary
10 hearing and this Court defers the evidentiary hearing to the District Court. As such, an evidentiary
11 hearing before the District Court should be conducted to determine (1) if case terminating
12 sanctions are appropriate based on the conduct of failing to disclose witnesses, (2) whether or not
13 that was intention to thwart the discovery process in this case, and hinder Plaintiff to discover the
14 relevant facts, and (3) a failure to let the Court know what was going on in the case and whether
15 the UHS Defendants misled the Court.

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1 IT IS FURTHER RECOMMENDED THAT this Court may reconsider reducing the
2 amount of sanctions if the UHS Defendants were to sufficiently prove with a degree of probability
3 that the hospital had no knowledge of Sumera or Wolfe until just recently.

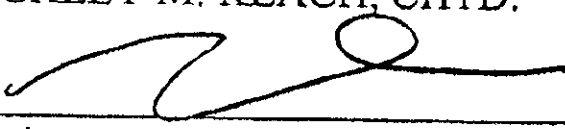
4 DATED this 14 day of ^{July, 2015.}~~June~~ 2015

5 **BONNIE A. BULLA**

6 **DISCOVERY COMMISSIONER**

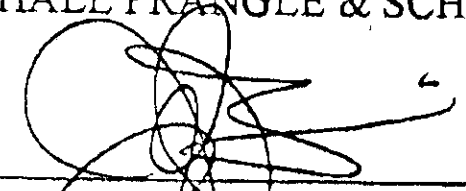
7 Submitted by:

8 MURDOCK & ASSOCIATES, CHTD.
9 ECKLEY M. KEACH, CHTD.

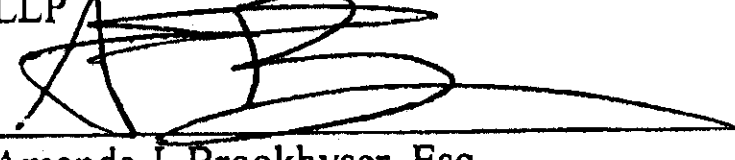
10 
11 Robert E. Murdock, Esq.
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Attorneys for Plaintiff

16 Approved as to form and content:

17 HALL PRANGLE & SCHOONVELD, LLC

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19 John F. Bennis, Esq.
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8 James P.C. Silvestri
9 James P.C. Silvestri, Esq.

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12 *Attorney for American Nursing Services, Inc.*

13 **NOTICE**

14 Pursuant to NRCP 16.1(d)(2), you are hereby notified you have five (5) days from the date
15 you receive this document within which to file written objections.

16 [Pursuant to E.D.C.R. 2.34(f) an objection must be filed and served no more than five (5)
17 days after receipt of the Discovery Commissioner's Report. The Commissioner's Report is
18 deemed received when signed and dated by a party, his attorney or his attorney's
19 employee, or three (3) days after mailing to a party or his attorney, or three (3) days after
20 the clerk of the court deposits a copy of the Report in a folder of a party's lawyer in the
21 clerk's office. See E.D.C.R. 2.34(f)]

22 A copy of the foregoing Discovery Commissioner's Report was:

23 _____ Mailed to Plaintiff(s)/Defendant(s) at the following address on the _____
24 day of _____, 2015:

25 X Placed in the folder of the Plaintiffs'/Defendants' counsel in the Clerk's
26 office on the 20 day of July, 2015.

27 STEVEN D. GRIERSON

28 By JENNIFER LOTT
Deputy Clerk

DOE v. Valley Health Systems, LLC, et al.
Case No. 09-A-595780-C
Hearing Date: March 25, 2015

ORDER

The Court, having reviewed the above Report and Recommendations prepared by the
Discovery Commissioner and,

_____ The parties having waived the right to object thereto,

_____ No timely objection having been received in the office of the Discovery
Commissioner pursuant to E.D.C.R. 2.34(f),

_____ Having received the objections thereto and the written arguments in support of said
objections, and good cause appearing,

* * *

AND

_____ IT IS HEREBY ORDERED the Discovery Commissioner's Report and
Recommendations are affirmed and adopted.

_____ IT IS HEREBY ORDERED the Discovery Commissioner's Report and
Recommendations are affirmed and adopted as modified in the following manner.
(Attached hereto.)

_____ IT IS HEREBY ORDERED that a hearing on the Discovery Commissioner's
Report and Recommendations is set for _____, 2015 at ____:____ a.m.

Dated this _____ day of _____, 201__.

DISTRICT COURT JUDGE

EXHIBIT B

HALL PRANGLE & SCHOONVELD, LLC
1160 NORTH TOWN CENTER DRIVE
SUITE 200
LAS VEGAS, NEVADA 89144
TELEPHONE: 702-889-6400 FACSIMILE: 702-384-6025

ODCR

MICHAEL E. PRANGLE, ESQ.

Nevada Bar No. 8619

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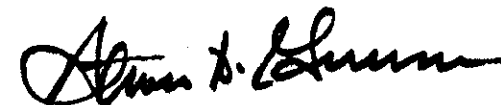
Attorneys for Defendants

Valley Health System, LLC d/b/a

Centennial Hills Hospital and

Universal Health Services, Inc.

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CLERK OF THE COURT

DISTRICT COURT
CLARK COUNTY, NEVADA

MISTY PETERSON, AS SPECIAL
ADMINISTRATOR OF THE ESTATE OF
JANE DOE,

Plaintiff,

vs.

VALLEY HEALTH SYSTEM LLC, a Nevada
limited liability company, d/b/a CENTENNIAL
HILLS HOSPITAL MEDICAL CENTER;
UNIVERSAL HEALTH SERVICES, INC., a
Delaware corporation; AMERICAN NURSING
SERVICES, INC., a Louisiana corporation;
STEVEN DALE FARMER, an individual; DOES I
through X, inclusive; and ROE CORPORATIONS I
through X, inclusive,

Defendants.

CASE NO. A595780
DEPT NO. II

**DEFENDANTS VALLEY HEALTH SYSTEM LLC d/b/a CENTENNIAL HILLS
HOSPITAL MEDICAL CENTER AND UNIVERSAL HEALTH SERVICES, INC.'S
OBJECTION TO DISCOVERY COMMISSIONER REPORT AND
RECOMMENDATION**

///

///

HALL PRANGLE & SCHOONVELD, LLC
1160 NORTH TOWN CENTER DRIVE
SUITE 200
LAS VEGAS, NEVADA 89144
TELEPHONE: 702-889-6400 FACSIMILE: 702-384-6025

COME NOW, Defendants, VALLEY HEALTH SYSTEMS, LLC d/b/a CENTENNIAL
HILLS HOSPITAL MEDICAL CENTER AND UHS OF DELAWARE, INC., (hereinafter
"Hospital Defendants") by and through their attorneys, HALL PRANGLE & SCHOONVELD,
LLC, and hereby file their Objection to the Discovery Commissioner's Report and
Recommendations that Plaintiff's Motion for NRCP 37 Sanctions.

The Discovery Commissioner's Report and Recommendations is attached hereto as
Exhibit A. This Objection is made and based on the papers and pleadings on file herein, the
Points and Authorities attached hereto and such argument of counsel which may be adduced at
the time of the hearing on said objection.

DATED this 30th day of July, 2015.

HALL PRANGLE & SCHOONVELD, LLC

/s/: John F. Bemis, Esq.

MICHAEL E. PRANGLE, ESQ.

Nevada Bar No.: 8619

JOHN F. BEMIS, ESQ.

Nevada Bar No. 9509

1160 North Town Center Drive, Suite 200

Las Vegas, NV 89144

Attorneys for Defendants

Valley Health System, LLC d/b/a

Centennial Hills Hospital and

Universal Health Services, Inc.

I.

INTRODUCTION

The matter originally came before the Discovery Commissioner on Plaintiff's Motion for
NRCP 37 Sanctions against the Hospital Defendants – seeking a finding that Farmer's sexual
assault was foreseeable as a matter of law – due to their delay in disclosing Nurse Margret Wolfe
pursuant to NRCP 16.1 and for their alleged complicity in her non-appearance at deposition on

1 April 28, 2015. At the hearing on Plaintiff's Motion, Plaintiff expanded her request for sanctions
2 to include the Hospital Defendants' delay in disclosing two additional nurses, Nurse Christine
3 Murray and Nurse Ray Sumera in their NRCP 16.1 disclosures. After entertaining argument, the
4 Discovery Commissioner determined that while Nurse Wolfe's failure to appear for her
5 deposition was a "non-issue", Plaintiff's Motion should nonetheless be granted in part. The
6 Discovery Commissioner made the following additional recommendations:
7

- 8 • That "full admission of the nurses' LVMPD statements without the
9 necessity of foundation, and without restriction both as to substance and
10 form; hearsay cannot be an objection, and there cannot be objections to
11 recorded statements as the statements are the best information at or near
12 the time of the events";
- 13 • Hospital Defendants to be sanctioned in the amount of \$1,000 per
14 unidentified nurse (3) for each year not identified (6) for a total of
15 \$18,000.00;
- 16 • Due to length of time that elapsed between filing of Plaintiff's Complaint
17 and their ultimate disclosure, an evidentiary hearing should be held by the
18 District Court to determine additional sanctions, including whether case
19 terminating sanctions are warranted, whether the Hospital Defendants
20 intended to thwart the discovery process and hinder Plaintiff's ability to
21 discover relevant facts, and whether the Hospital Defendant's misled the
22 court; and
- 23 • That the District Court "may reconsider reducing the amount of sanctions
24 if the [Hospital Defendants] were to sufficiently prove with a degree of
25 probability that the hospital had no knowledge of Sumera or Wolfe until
26 just recently." **Exhibit A.**

27 The Hospital Defendants request that the Court reject the Discovery Commissioner's
28 Recommendations and deny Plaintiff's Motion for Sanctions, or, in the alternative and in
accordance with the Discovery Commissioner's final recommendation, reduce the sanctions
awarded because the Hospital Defendants did not have knowledge that these persons had
information relevant to *this* Plaintiff's claims (or knowledge of the substance of either Nurse
Wolfe's or Nurse Murray's 2008 statements to the LVMPD) until after they received a copy of

1 Farmer's police file in **May 2013** – documentation the Hospital Defendants were precluded from
2 disclosing pursuant to a Protective Order until November 12, 2014.

3 Notwithstanding these facts explaining the Hospital Defendants' delay in disclosing these
4 witnesses and their statements, Plaintiff nonetheless knew of Nurse Murray and Nurse Wolfe,
5 and that they may have information relevant to the instant case, **as early as March 17, 2010**
6 when she disclosed them as part of her Fifth Supplement to Case Conference Disclosures
7 Pursuant to NRCP 16.1. Likewise, Plaintiff also had knowledge of Nurse Sumera **as early as**
8 **May 13, 2010**, when she filed her Sixth Supplemental 16.1 List of Witnesses and Documents
9 disclosing two depositions wherein Nurse Sumera was identified as a nurse taking care of
10 another patient and possibly in a relief charge role for the evening of the Cagnina incident (May
11 16, 2008). Thus, contrary to the Discovery Commissioner's finding, Plaintiff was not prejudiced
12 by any delay in disclosure of the identifies of these witnesses by the Hospital Defendants since
13 she clearly knew of their existence and potential relevance to the instant case no later than May
14 13, 2010, less than a year after filing suit when she included them in her own NRCP 16.1
15 disclosures.
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19 Alternatively, to the extent Plaintiff did suffer any prejudice as a result of the Hospital
20 Defendants' delay in disclosing these witnesses' identities, the Discovery Commissioner's
21 sanctions ordering the full admission of the Police Statements and \$18,000 in additional
22 sanctions far outweigh the alleged violation given the aforementioned reasons explaining the
23 delay *and* Plaintiff's possession of this information less than a year after filing suit.
24 Accordingly, for each of the aforementioned reasons, the Hospital Defendants request that this
25 Court deny Plaintiff's Motion for Sanctions, or, in the alternative, reduce the sanctions in a
26 manner it deems just and proper.
27
28

II.

LEGAL ARGUMENT

A. The Hospital Defendants Did Not Know That These Witnesses Had Information Relevant To The Incident At Issue Until May 2013 – Almost Two Years After They Had Already Been Disclosed By Plaintiff.

The Discovery Commissioner's recommendations for sanctions should not be adopted or, in the alternative, should be substantially reduced, because the Hospital Defendants did not have knowledge that either witness had information relevant to *this* Plaintiff's claims, or of the substance of Nurse Wolfe's and/or Nurse Murray's statements to the Las Vegas Metropolitan Police, until May 2013, after plaintiff had already disclosed these witnesses in her March and May 2010 Fifth and Sixth Supplemental NRCP 16.1 disclosures. Indeed, as discussed more fully below, the sequence of events following the incident in question demonstrate that there was no willful noncompliance with a court order or any attempt by the Hospital Defendants to intentionally thwart the discovery process such that sanctions would be warranted, much less the severe sanctions recommended here.

At the time Plaintiff filed her Complaint in the instant case, the State of Nevada, as of July 2, 2008, had already instituted criminal proceedings against Mr. Farmer in *State v. Farmer*, No. C245739 based on another patient (Cagnina) complaint arising from an incident on May 16, 2008. The Cagnina criminal case was later consolidated with allegations by other claimants, including Doe, alleging that they too had been sexually assaulted by Mr. Farmer (Case No. 08C249693). Approximately one year later, close in time to when Plaintiff filed her initial complaint in this case, Nurse Christine Murray and Nurse Margaret Wolfe were disclosed as witnesses in the criminal proceedings. *See* September 28, 2009 Second Supplemental Notice of Witnesses And/Or Expert Witnesses and October 16, 2009 Third Supplemental Notice of

1 Witnesses And/Or Expert Witnesses, attached hereto as **Exhibit B** and **C**, respectively. Several
2 of the witnesses named in these disclosures, including Nurses Murray and Wolfe, were neither
3 assigned to nor involved in the instant Plaintiff's treatment. Rather, Nurse Murray was assigned
4 to one of the other complaining witnesses (Cagnina) while Nurse Wolfe (and Nurse Sumera) was
5 an emergency room nurse who also did not provide any care or treatment to Plaintiff, much less
6 work on the same floor as Plaintiff's hospital room. While the Hospital Defendants interviewed
7 Nurses Wolfe, Murray, and Sumera immediately following the Cagnina incident, those
8 interviews took place *before* the Hospital Defendants had any knowledge of the incident
9 involving the instant Plaintiff. Once the instant Plaintiff's allegations surfaced, the Hospital
10 Defendants did not re-interview these witnesses because neither Nurse Wolfe, Nurse Murray, nor
11 Nurse Sumera were assigned to Plaintiff or provided her any care and treatment. As a result, the
12 Hospital Defendants reasonably believed that they would not have any information relevant to
13 Plaintiff's claims but instead, had information relevant only to the other criminal complainants –
14 the patient(s) to whom they had actually provided treatment. Thus, given this knowledge, the
15 Hospital Defendants made the decision, in good faith, not to include these witnesses in their
16 NRCP 16.1 initial or supplemental disclosures in the instant case.

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20 However, on May 6, 2013, during the course of proceedings in *Cagnina v. Centennial*
21 *Hills Hospital*, No. A5707056, the Hospital Defendants, pursuant to a joint motion with the
22 plaintiff to compel, obtained a copy of the Las Vegas Metropolitan Police Department file for
23 Steven Farmer. See May 6, 2013 Notice of Entry of Order re: Discovery Commissioner's Report
24 and Recommendations in *Cagnina v. Centennial Hills Hospital*, No. A570756, attached hereto as
25 **Exhibit F**. Prior to obtaining the police file, the Hospital Defendants were aware that several
26 nurses had spoken with the police but they neither attended nor were privy to the substance of
27
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1 those interviews/statements. Upon obtaining a copy of Mr. Farmer's file, the Hospital
2 Defendants learned for the first time that Nurses Murray, Wolfe, and Sumera had information
3 that could be relevant to Plaintiff's claims. The Hospital Defendants, however, were precluded
4 at that time from disseminating Mr. Farmer's police file outside the confines of the *Cagnina*
5 Proceedings due to a protective order. See Exhibit F, at 2, ¶2. Indeed, it was not until November
6 14, 2014, that the Hospital Defendants were able to produce the file when they were ordered to
7 do so by this Court. See November 12, 2014 Discovery Commissioner's Report and
8 Recommendation, attached hereto as Exhibit G. By that time, over *three years* had already
9 passed since Plaintiff had disclosed Nurses Murray and Wolfe in her Fifth and Sixth
10 Supplemental NRCP 16.1 Disclosures.
11

12
13 Thus, as demonstrated by this sequence of events, the Hospital Defendants did not
14 willfully withhold any information, much less know that these witnesses had information
15 relevant to the instant Plaintiff's claims until May 2013 at the earliest. Moreover, even upon
16 receiving the police file, the Hospital Defendants were prevented from disclosing or producing
17 the file until November 2014. Given these facts, and that Plaintiff had already disclosed Nurse
18 Murray and Wolfe as individuals who may have knowledge of his claims approximately *3 years*
19 *earlier*, this Court should decline to adopt the Discovery Commissioner's recommendations or,
20 in the alternative, substantially reduce the recommended sanctions.
21

22
23 **B. Plaintiff Was Not Prejudiced By The Hospital Defendants' Failure to Disclose**
24 **The Identities Of Nurses Murray, Wolfe, Or Sumera Because She Had**
25 **Knowledge Of Their Identities And Potential Relevance As Early As March and**
26 **May 2010 – Within One Year After Filing Suit.**

27 The Discovery Commissioner's recommendations should also not be adopted or, in the
28 alternative, should be substantially reduced because Plaintiff was not prejudiced – or at best only
minimally prejudiced – by the Hospital Defendants' failure to timely disclose Nurses Murray,

1 Wolfe, and Sumera.

2 As discussed *supra*, at the time of filing of Plaintiff's Complaint, criminal proceedings on
3 behalf of several complaining witnesses had already been underway against Farmer. In the
4 course of those proceedings, the District Attorney filed certain witness disclosures, identifying
5 numerous staff at Centennial Hills Hospital. Specifically, on September 28, 2009, the District
6 Attorney filed his Second Supplemental Notice of Witnesses and/or Expert Witnesses,
7 identifying Carol Butler, Christine Murray, Margaret Wolfe, Christen Edwards, Jeanine James,
8 Julie Montero, P. Robertson, Jackie Schumacher and Lori Wescott. See **Exhibit B**. Three weeks
9 later, the District Attorney filed his Third Supplemental Notice of Witnesses and/or Expert
10 Witnesses, further identifying additional witnesses and documentation, including Kim Davis,
11 Karen Goodhart and Sandra Pagain. See **Exhibit C**. Several of these witnesses, including
12 Christine Murray and Margaret Wolfe, were not assigned to Plaintiff nor had any involvement in
13 her care and treatment while a patient at Centennial Hills.
14
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16 On March 17, 2010, Plaintiff identified and disclosed both of these witness lists in their
17 entirety as part of her Fifth Supplemental 16.1 Statement of Witnesses and Documents. See
18 Plaintiff's Fifth Supplement to Case Conference Disclosures Pursuant to NRCP 16.1, attached
19 hereto as **Exhibit D**. Shortly thereafter, on May 13, 2010, Plaintiff filed a Sixth Supplement to
20 Case Conference Disclosures Pursuant to 16.1 wherein she identified certain additional
21 documentation, including the deposition of Karen Goodhart and Amy Bochenek from the
22 *Cagnina v. Centennial Hills Hospital* civil case. See Plaintiff's Sixth Supplement to Case
23 Conference Disclosures Pursuant to NRCP 16.1, attached hereto as **Exhibit E**. Notably, the
24 depositions of Ms. Goodhart and Ms. Boechenek both identify Rey Sumera as a nurse taking
25 care of the patient and possibly as a relief charge nurse for the evening of May 16, 2008. See
26
27
28

1 March 10, 2010 Deposition of Amy Bochenek, RN, attached hereto as **Exhibit H**, at 33, 49, and
2 January 27, 2010 Deposition of Karen Goodhart, RN, attached hereto as **Exhibit I**, at 35, 48, 75,
3 89-90. While Plaintiff chose to disclose these witnesses at that time, the Hospital Defendants did
4 not because, as discussed above, these witnesses were not assigned to Plaintiff and thus, they
5 reasonably believed they were included in the District Attorney's witness lists solely because
6 they were relevant to the other complaining witnesses' claims. In retrospect, the Hospital
7 Defendants could have and in fairness should have disclosed these three witnesses in a
8 supplemental NRCP 16.1 disclosure at that time. However, all of these witnesses were already
9 known to and identified by Plaintiff in her own NRCP 16.1 disclosures almost three years earlier.

10
11 Thus, despite any delay by the Hospital Defendants in disclosing these witnesses'
12 identities, Plaintiff already had demonstrated her belief that Nurses Murray and Wolfe – as early
13 as March 2010 – and Nurse Sumera via Ms. Goodhart and Ms. Bochenak's deposition – as early
14 as May 2010 – had information relevant to her claims when she identified and disclosed the
15 State's Witness Lists in their entirety in her own NRCP 16.1 disclosures. Accordingly, for this
16 additional reason, the Court should decline to adopt the Discovery Commissioner's
17 recommendations or, in the alternative, substantially reduce the recommended sanctions.
18
19

20 **C. To The Extent Sanctions Are Still Warranted, They Should Be Reduced.**

21 While the Hospital Defendants believe no sanctions are warranted given the above
22 sequence of events – especially considering Plaintiff's knowledge of these witnesses' identities
23 *less than a year after filing suit* – if sanctions are to be issued, they should be substantially
24 reduced.
25

26 Nevada law is clear that sanctions may only be imposed where there has been willful
27 noncompliance with a court order or where the adversary process has been halted by the actions
28

1 of the unresponsive party. *Fire Ins. Exchange v. Zenith Radio Corp.*, 103 Nev. 648, 651, 747
2 P.2d 911, 913 (1987). *GNLV Corp. v. Serv. Control Corp.*, 111 Nev. 866, 869, 900 P.2d 323,
3 325 (1995). Fundamental notions of due process require that the discovery sanctions for
4 discovery abuses be just and that the sanctions relate to the claims which were at issue in the
5 discovery order which is violated. *Wyle v. R.J. Reynolds Industries, Inc.*, 709 F.2d 585, 591 (9th
6 Cir.1983). *Young v. Johnny Ribeiro Bldg., Inc.*, 106 Nev. 88, 92, 787 P.2d 777, 779-80 (1990).
7 Implicit in district judge's authority to sanction parties for failure to comply with pretrial
8 conference orders is that district judge must design sanction to fit violation. Rules Civ.Proc.,
9 Rule 37(b)(2). *City of Sparks v. Second Judicial Dist. Court In and For County of Washoe*,
10 1996, 920 P.2d 1014, 112 Nev. 952.
11

12 Here, the Discovery Commissioner sanctioned Defendant \$18,000, employing a formula
13 of \$1,000 per "unidentified nurse (3) for each year not identified (6). . . ." See **Exhibit A**. In
14 addition, she recommended
15

- 16 • due to the "time length involved in UHS' failure to identify the nurses," an
17 evidentiary hearing before this Honorable Court to determine whether case
18 terminating sanctions are appropriate;
- 19 • the full admission of the nurses' Las Vegas Metropolitan Police
20 Department statements without the necessity of foundation, without the
21 restriction both as to substance and form, and barring any objections based
22 on hearsay or to recorded statements; and
- 23 • that the District Court "may reconsider reducing the amount of sanctions if
24 the [Hospital Defendants] were to sufficiently prove with a degree of
25 probability that the hospital had no knowledge of Sumera or Wolfe until
26 just recently." **Exhibit A**.

27 Given the sequence of events discussed *supra* (Points I.A. and I.B.), this Court should
28 decline to adopt the Discovery Commissioner's recommendations. Nonetheless, to the extent
this Court determines that sanctions are still warranted because of the Hospital Defendants'

HALL PRANGLE & SCHOONVELD, LLC
1160 NORTH TOWN CENTER DRIVE
SUITE 200
LAS VEGAS, NEVADA 89144
TELEPHONE: 702-889-6400 FACSIMILE: 702-384-6025

1 failure to supplement their NRCP 16.1 disclosures in May 2013 (upon receipt of the police file),
2 the recommended sanctions should be substantially reduced to a monetary fine. The reduction is
3 appropriate because the Hospital Defendants did not willfully disobey a court order or otherwise
4 attempt to thwart the discovery process. Rather, the Hospital Defendants' decision not to
5 identify Nurses Wolfe, Murray and/or Sumera in their NRCP 16.1 disclosures prior to May 2013
6 was motivated by a good faith belief that these persons did not have information relevant to the
7 instant Plaintiff's case. Thus, any monetary sanctions should instead reflect the period of time
8 between when they acquired the police file in May 2013 (and arguably knew these nurses
9 possessed potentially relevant information) and their ultimately disclosure of the file containing
10 their identities and statements in November 2014. Employing the Discovery Commissioner's
11 formula, the monetary sanctions should therefore be reduced from \$18,000 to \$3,000,
12 representing \$1,000 per "unidentified witness" for the year they knew about the witnesses and
13 their potential knowledge relevant to the instant Plaintiff's case yet failed to disclose their
14 identities.
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III.

CONCLUSION

Based on the foregoing, Defendants Centennial Hills Hospital and UHS respectfully request this Honorable Court rescind the sanctions recommended by the Discovery Commissioner, or, in the alternative, reduce the sanctions to a monetary fine of \$3,000.

DATED this 30th day of July, 2015.

HALL PRANGLE & SCHOONVELD, LLC

/s/: John F. Bemis, Esq.

MICHAEL E. PRANGLE, ESQ.

Nevada Bar No.: 8619

JOHN F. BEMIS, ESQ.

Nevada Bar No. 9509

1160 North Town Center Drive, Suite 200

Las Vegas, NV 89144

Attorneys for Defendants

Centennial Hills Hospital and

Universal Health Services, Inc.

///

///

///

DECLARATION OF JOHN F. BEMIS, ESQ. RE LR 2.34

STATE OF NEVADA)
) SS.
COUNTY OF CLARK)

JOHN F. BEMIS, being first duly sworn deposes and says:

1. I am an attorney duly licensed to practice law in the State of Nevada and, along with Michael E. Prangle, Esq., am the attorney for Defendants Centennial Hills Hospital and Universal Health Services, Inc. in the above captioned action.
2. I have personal knowledge of the facts set forth herein and am capable and willing to testify to same if called upon to do so.
3. Attached hereto as Exhibit A is a true and correct copy of the July 14, 2015 Discovery Commissioner's Report and Recommendations.
4. Attached hereto as Exhibit B is a true and correct copy of the District Attorney's Office September 28, 2009 Second Supplemental Notice of Witnesses And/Or Expert Witnesses in *State v. Farmer*, No. C245739.
5. Attached hereto as Exhibit C is a true and correct copy of the District Attorney's Office October 16, 2009 Third Supplemental Notice of Witnesses And/Or Expert Witnesses in *State v. Farmer*, No. C245739.
6. Attached hereto as Exhibit D is a true and correct copy of Plaintiff's Fifth Supplement to Case Conference Disclosures Pursuant to NRCP 16.1.
7. Attached hereto as Exhibit E is a true and correct copy of Plaintiff's Sixth Supplement to Case Conference Disclosures Pursuant to NRCP 16.1.

HALL PRANGLE & SCHOONVELD, LLC
1160 NORTH TOWN CENTER DRIVE
SUITE 200
LAS VEGAS, NEVADA 89144
TELEPHONE: 702-889-6400 FACSIMILE: 702-384-6025

- 1 8. Attached hereto as Exhibit F is a true and correct copy of the May 6, 2013 Notice of
- 2 Entry of Order re: Discovery Commissioner's Report and Recommendations in *Cagnina*
- 3 *v. Centennial Hills Hospital*, No. A570756.
- 4
- 5 9. Attached hereto as Exhibit G is a true and correct copy of this Court's November 12,
- 6 2014 Discovery Commissioner's Report and Recommendation.
- 7
- 8 10. Attached hereto as Exhibit H is a true and correct copy of the March 10, 2010 Deposition
- 9 of Amy Bochenek, RN, in *Cagnina v. Centennial Hills Hospital*, No. A570756,
- 10 specifically pages 33 and 49.
- 11
- 12 11. Attached hereto as Exhibit I is a true and correct copy of the January 27, 2010 Deposition
- 13 of Karen Goodhart, RN, in *Cagnina v. Centennial Hills Hospital*, No. A570756,
- 14 specifically pages 35, 48, 75, 89 and 90.

15 FURTHER YOUR DECLARANT SAYETH NAUGHT.

16 /s/: John F. Bemis, Esq.
17 JOHN F. BEMIS, ESQ.

HALL PRANGLE & SCHOONVELD, LLC
1160 NORTH TOWN CENTER DRIVE
SUITE 200
LAS VEGAS, NEVADA 89144
TELEPHONE: 702-889-6400 FACSIMILE: 702-384-6025

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that I am an employee of HALL PRANGLE & SCHOONVELD, LLC; that on the 30th day of July, 2015, I served a true and correct copy of the foregoing

DEFENDANTS VALLEY HEALTH SYSTEM LLC d/b/a CENTENNIAL HILLS

HOSPITAL MEDICAL CENTER AND UNIVERSAL HEALTH SERVICES, INC.'S

OPPOSITION TO PLAINTIFF'S MOTION FOR NRCP 37 SANCTIONS via Electronic

Service through Wiznet to the following parties at their last known address:

ROBERT E. MURDOCK, ESQ.
ECKLEY M. KEACH, ESQ.
KEACH MURDOCK, LTD.
521 South Third Street
Las Vegas, Nevada 89101
Attorneys for Plaintiff

S. BRENT VOGEL, ESQ.
LEWIS BRISBOIS BISGAARD & SMITH
6385 South Rainbow Blvd., Suite 600
Las Vegas, NV 89118
-and-

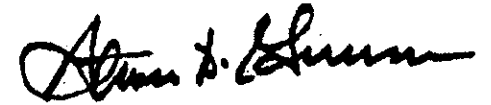
JAMES P.C. SILVESTRI, ESQ.
701 Bridger Ave., Suite 600
Las Vegas, NV 89101
Attorneys for Defendant
American Nursing Services, Inc.

ROBERT C. MCBRIDE, ESQ.
CARROLL, KELLY, TROTTER, FRANZEN,
MCKENNA & PEABODY
8329 W. Sunset Road, #260
Las Vegas, Nevada 89113
Attorneys for Defendant
Steven Dale Farmer

/s/: Audrey Ann Stephanski
An employee of HALL PRANGLE & SCHOONVELD, LLC

4824-6661-0982, v. 1

EXHIBIT C



CLERK OF THE COURT

1 NOTC
2 DAVID ROGER
3 Clark County District Attorney
4 Nevada Bar #002781
5 SUMMER C. CLARKE
6 Deputy District Attorney
7 Nevada Bar #008988
8 200 Lewis Avenue
9 Las Vegas, Nevada 89155-2212
10 (702) 671-2500
11 Attorney for Plaintiff

7 DISTRICT COURT
8 CLARK COUNTY, NEVADA
9

10 THE STATE OF NEVADA,
11 Plaintiff,

12 -vs-

13 STEVEN DALE FARMER,
14 #2679879

15 Defendant.

CASE NO: C245739

DEPT NO: I

16 **SECOND SUPPLEMENTAL NOTICE OF WITNESSES**

17 **AND/OR EXPERT WITNESSES**
18 **[NRS 174.234]**

19 TO: STEVEN DALE FARMER, Defendant; and

20 TO: PUBLIC DEFENDER, Counsel of Record:

21 YOU, AND EACH OF YOU, WILL PLEASE TAKE NOTICE that the STATE
22 OF NEVADA intends to call the following witnesses/expert witnesses in its case in chief:

23 *indicates additional witness(es) and/or modifications

24 NAME

ADDRESS

25 BAS, JENNIFER

LVMPD#09944

26 Will testify as an expert in the collection,
27 analysis and identification of DNA
28 evidence.

1	*BUTLER, CAROL or Designee	CENTENNIAL HILLS HOSPITAL
2		Will testify as an expert as to EKG
3		machines, their usage, testing procedures
4		and hospital policies.
5	CAGNINA, ROXANNE	3717 LOWER SAXON AVE.,
6		LVN 89085
7	CAGNINA, SCOTT	ADDRESS UNKNOWN
8	*CODY, LORA	LVMPD#07294
9	*DOTSON, ADA	UNK
10	EBBERT, LINDA R.N.	S.A.N.E.
11		Will testify as a medical expert as to the
12		sexual assault examination of the victim in
13		the instant case.
14	*EDWARDS, CHRISTEN R.N.	CENTENIAL HILLS HOSPITAL
15	HANNA, DENISE	7932 OLYMPUS AVE.,
16		LVN
17	*JAMES, JEANINE R.N.	CENTENIAL HILLS HOSPITAL
18	JEX, CRAIG	LVMPD #05597
19	LEHAN, TIMOTHY	5209 FIRESIDE RANCH AVE.,
20		LVN 89131
21	MILLER, RONALD	LVMPD#03233
22	*MONTERO, JULIE	CENTENIAL HILLS HOSPITAL
23	*MURRAY, CHRISTINE	CENTENIAL HILLS HOSPITAL
24	PAULETTE, KRISTINA	LVMPD# 8805
25		Will testify as an expert in the collection,
26		analysis and identification of DNA
27		evidence.
28	PENCE, MISTY	LVMPD#04950

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CERTIFICATE OF FACSIMILE TRANSMISSION

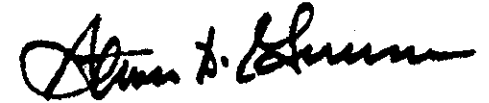
I hereby certify that service of SECOND SUPPLEMENTAL NOTICE OF WITNESSES AND/OR EXPERT WITNESSES, was made this 28th day of September, 2009, by facsimile transmission to:

PUBLIC DEFENDER
FAX #366-9370

/s/ HOWARD CONRAD
Secretary for the District Attorney's Office

hjc/SVU

EXHIBIT D



CLERK OF THE COURT

1 **NOTC**
2 DAVID ROGER
3 Clark County District Attorney
4 Nevada Bar #002781
5 W. JAKE MERBACK
6 Deputy District Attorney
7 Nevada Bar #009126
8 200 Lewis Avenue
9 Las Vegas, Nevada 89155-2212
10 (702) 671-2500
11 Attorney for Plaintiff

7 **DISTRICT COURT**
8 **CLARK COUNTY, NEVADA**

9 THE STATE OF NEVADA,
10
11 Plaintiff,

12 -vs-

13 STEVEN DALE FARMER,
14 #2679879

15 Defendant.

CASE NO: C245739

DEPT NO: I

16 **THIRD SUPPLEMENTAL NOTICE OF WITNESSES**

17 **AND/OR EXPERT WITNESSES**

[NRS 174.234]

18 **TO: STEVEN DALE FARMER, Defendant; and**

19 **TO: PUBLIC DEFENDER, Counsel of Record:**

20 **YOU, AND EACH OF YOU, WILL PLEASE TAKE NOTICE** that the STATE
21 OF NEVADA intends to call the following witnesses/expert witnesses in its case in chief:

22 *indicates additional witness(es) and/or modifications

23 **NAME**

ADDRESS

24 *ANDERSON, DEANN

RAWSON-NEAL PSYCH. HOSPITAL

25 BAS, JENNIFER or Designee

LVMPD#09944

26 Will testify as an expert in the collection,

27 analysis and identification of DNA

28 evidence.

1	*BOMER, AARON	RAWSON-NEAL PSYCH. HOSPITAL
2	*BROWN, DR. FREDRICK M.	RAWSON-NEAL PSYCH. HOSPITAL
3	or Designee	Will testify as to the examination, treatment,
4		observations and diagnosis of the victim in
5		the instant case.
6	*BUTLER, CAROL or Designee	CENTENNIAL HILLS HOSPITAL
7		Will testify as an expert as to EKG
8		machines, their usage, the scope of
9		employment and duties of a Certified
10		Nursing Assistant, and hospital procedures
11		and policies.
12	CAGNINA, ROXANNE	3717 LOWER SAXON AVE.,
13		LVN 89085
14	CAGNINA, SCOTT	ADDRESS UNKNOWN
15	*CASPER, MICHELLE	LVMPD#06549
16	CODY, LORA	LVMPD#07294
17	*COR or Designee	AMERICAN NURSING SERVICES
18	*COR or Designee	CCDC
19	*COR or Designee	CENTENIAL HILLS HOSPITAL
20	*COR or Designee	LVMPD RECORDS
21	*COR or Designee	RAWSON-NEAL PSYCH. HOSPITAL
22	*COR or Designee	VALLEY HEALTH SYSTEM
23	*DAMAJ, DR. NOUHAB or Designee	CENTENIAL HILLS HOSPITAL
24		Will testify as to the examination, treatment,
25		observations and diagnosis of the victim in
26		the instant case.
27	*DAVIS, KIMBERLY R.N.	CENTENIAL HILLS HOSPITAL
28	DOTSON, ADA	UNK

1	EBBERT, LINDA R.N. or Designee	S.A.N.E.
2		Will testify as a medical expert as to the
3		sexual assault examination of the victim in
4		the instant case.
5	EDWARDS, CHRISTEN R.N.	CENTENIAL HILLS HOSPITAL
6	*GOODHART, KAREN R.N.	CENTENIAL HILLS HOSPITAL
7	*HAIDER, DR. HAMID or Designee	CENTENIAL HILLS HOSPITAL
8		Will testify as to the examination, treatment,
9		observations and diagnosis of the victim in
10		the instant case.
11	HANNA, DENISE	7932 OLYMPUS AVE.,
12		LVN
13	*HOUSTON, DR. DARRIN	CENTENIAL HILLS HOSPITAL
14	or Designee	Will testify as to the examination, treatment,
15		observations and diagnosis of the victim in
16		the instant case.
17	JAMES, JEANINE R.N.	CENTENIAL HILLS HOSPITAL
18	JEX, CRAIG	LVMPD #05597
19	*LAJVARD, DR. ALLADIN	CENTENIAL HILLS HOSPITAL
20	or Designee	Will testify as to the examination, treatment,
21		observations and diagnosis of the victim in
22		the instant case.
23	LEHAN, TIMOTHY	5209 FIRESIDE RANCH AVE.,
24		LVN 89131
25	*MCCORMICK, RAYMOND	1841 LEONARD, LVN
26	//	
27	//	
28	//	

1	*MILFORD, DR. CHRISTOPHER	CENTENIAL HILLS HOSPITAL
2	or Designee	Will testify as to the examination, treatment,
3		observations and diagnosis of the victim in
4		the instant case.
5	MILLER, RONALD	LVMPD#03233
6	MONTERO, JULIE	CENTENIAL HILLS HOSPITAL
7	MURRAY, CHRISTINE	CENTENIAL HILLS HOSPITAL
8	*PAGAIN, SANDRA R.N.	CENTENIAL HILLS HOSPITAL
9	PAULETTE, KRISTINA or Designee	LVMPD#08805
10		Will testify as an expert in the collection,
11		analysis and identification of DNA
12		evidence.
13	PENCE, MISTY	LVMPD#04950
14	ROBERTSON, P. R.N.	CENTENIAL HILLS HOSPITAL
15	ROSE, FRANCES	2104 CLUB PACIFIC WAY, #19-102,
16		LVN 89128
17	SAUNDERS, MICHAEL	LVMPD#07294
18	SHANK, HEATHER	5209 FIRESIDE RANCH AVE.,
19		LVN 89131
20	SCHUMACHER, JACKIE R.N.	CENTENIAL HILLS HOSPITAL
21	*SHUJA, DR. AMIR or Designee	CENTENIAL HILLS HOSPITAL
22		Will testify as to the examination, treatment,
23		observations and diagnosis of the victim in
24		the instant case.
25	*SLAUGHTER, DR. KEVIN	CENTENIAL HILLS HOSPITAL
26	or Designee	Will testify as to the examination, treatment,
27		observations and diagnosis of the victim in
28		the instant case.

1 SMITH, ERNESTINE UNK
2 *SMITH, JEFFERY LVMPD#08177
3 SPURLOCK, LEDAHLIA 4408 SAN GABRIEL HILL AVE.,
4 LVN 89115
5 *WESCOTT, LORRAINE R.N. CENTENIAL HILLS HOSPITAL
6 or Designee Will testify as an expert as to EKG
7 machines, their usage, the scope of
8 employment and duties of a Certified
9 Nursing Assistant, and hospital procedures
10 and policies.
11 WOLFE, MARGARET R.N. CENTENIAL HILLS HOSPITAL
12 These witnesses are in addition to those witnesses endorsed on the Information and
13 any other witness for which a separate Notice has been filed. The substance of each expert
14 witness testimony and copy of all reports made by or at the direction of the expert witness
15 has been provided in discovery.
16 A copy of each expert witness curriculum vitae, if available, is attached hereto.
17
18 DAVID ROGER
19 DISTRICT ATTORNEY
20 Nevada Bar #002781
21
22 BY /s/ W. JAKE MERBACK
23 W. JAKE MERBACK
24 Deputy District Attorney
25 Nevada Bar #009126
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CERTIFICATE OF FACSIMILE TRANSMISSION

I hereby certify that service of THIRD SUPPLEMENTAL NOTICE OF
WITNESSES AND/OR EXPERT WITNESSES, was made this 16th day of October, 2009,
by facsimile transmission to:

PUBLIC DEFENDER
FAX #366-9370

/s/ HOWARD CONRAD
Secretary for the District Attorney's Office

hjc/SVU

EXHIBIT E

1 **NEO**
2 WILL A. LEMKUL, ESQ.
3 Nevada Bar No. 006715
4 NEAL K. HYMAN, ESQ.
5 Nevada Bar No. 005998
6 **MORRIS, SULLIVAN & LEMKUL LLP**
7 2441 W. Horizon Ridge Parkway, Suite 120
8 Henderson, NV 89052
9 Telephone: (702) 939-5234
10 Facsimile: (702) 939-5235
11 *Attorneys for Plaintiff*

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DISTRICT COURT
CLARK COUNTY, NEVADA

ROXANNE CAGNINA, an individual,
Plaintiff,

vs.

VALLEY HEALTH SYSTEM LLC dba Centennial
Hills Hospital Medical Center; a Nevada Limited
Liability Company,

Defendants.

) **NOTICE OF ENTRY OF ORDER**
) **RE: DISCOVERY**
) **COMMISSIONER'S REPORT AND**
) **RECOMMENDATIONS**

) CASE NO.: A570756
) DEPT. NO.: XXVII

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1 PLEASE TAKE NOTICE that on May 3, 2013, the Court entered an Order adopting the findings
2 of the Discovery Commissioner's Report and Recommendations which was signed on May 3, 2013. A
3 copy of the Order is attached hereto as Exhibit 1.

4 DATED this 6th day of May, 2013.

5
6 MORRIS, SULLIVAN & LEMKUL

7
8 /s/ Neal K. Hyman, Esq.

9 By: _____
10 WILL A. LEMKUL, ESQ.
11 Nevada Bar No. 006715
12 NEAL K. HYMAN, ESQ
13 Nevada Bar No. 005998
14 2441 W. Horizon Ridge Pkwy., Suite 120
15 Henderson, NV 89052
16 Attorneys for Plaintiff
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Hall Prangle & Schoonveld
Contact Email
Diana Cox dcox@hpslaw.com
John F. Bemis, Esq. jbemis@hpslaw.com

/s/ Crystal L. Marven

3

CERTIFICATE OF FACSIMILE AND MAILING

I do hereby certify that on May 6, 2013, I served a copy of the following document(s):

**NOTICE OF ENTRY OF ORDER RE: DISCOVERY COMMISSIONER'S REPORT AND
RECOMMENDATIONS** by e-mail and enclosing the same in a sealed envelope upon which
first-class postage was fully prepaid addressed to the following:

John F. Bemis, Esq.
HALL PRANGLE & SCHOONVELD, LLC
1160 North Town Center Drive, Ste. 200
Las Vegas, NV 89144
Fax (702) 384-6025
Attorneys for Valley Health System, LLC

Robert C. McBride, Esq.
MANDELBAUM, ELLERTON &
McBRIDE
2012 Hamilton Lane
Las Vegas, NV 89106
Fax: (702) 367-1978
Civil Attorney for Steven Farmer
(Dismissed Party)
Cagnina v. Valley Health System, LLC
Case No. A570756

Barter Pace, Esq.
Jaclyn Booth, Esq.
DISTRICT ATTORNEY'S OFFICE
200 E. Lewis Avenue
Las Vegas, NV 89101
Fax: (702) 477-2958
Attorneys for the State of Nevada

Philip J. Kohn, Esq.
PUBLIC DEFENDER'S OFFICE
309 S. Third Street, #226
Las Vegas, NV 89155-2610
Fax: (702) 380-3029
Criminal Attorney for Steven Farmer

Charlotte M. Bible
LAS VEGAS METROPOLITAN POLICE DEPT.
400 S. Martin Luther King Blvd.
Las Vegas, NV 89106
Fax : (702) 828-3191
Attorney for Las Vegas Metropolitan Police Dept.

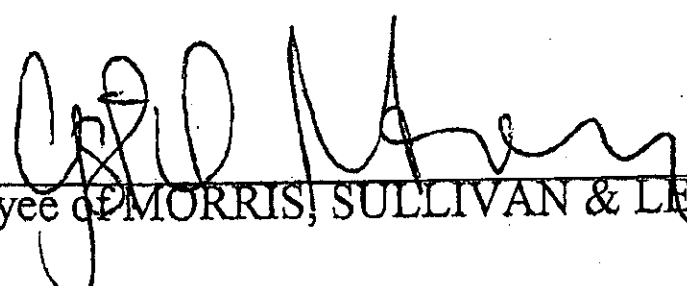

An Employee of MORRIS, SULLIVAN & LEMKUL LLP

EXHIBIT 1

ORIGINAL

1 **DCRR**

2 WILL LEMKUL, ESQ.; NV Bar No. 6715
3 NEAL K. HYMAN, ESQ.; NV Bar No. 5998
4 MORRIS, SULLIVAN & LEMKUL LLP
5 2441 W. Horizon Ridge Parkway, Suite 120
6 Las Vegas, NV 89052
7 Telephone: (702) 939-5234
8 Telecopier: (702) 939-5235
9 *Attorneys for Plaintiff*
10 *Roxanne Cagnina*

8 **DISTRICT COURT**

9 **CLARK COUNTY, NEVADA**

10 ROXANNE CAGNINA, an individual,

11 Plaintiff,

12 vs.

13 VALLEY HEALTH SYSTEM LLC dba
14 Centennial Hills Hospital Medical Center; a
15 Nevada Limited Liability Company,

16 Defendants.

Case No.: A570756
Dept. No.: XXVII

**DISCOVERY COMMISSIONER'S
REPORT AND RECOMMENDATIONS**

17 **DISCOVERY COMMISSIONER'S REPORT AND RECOMMENDATIONS**

18 HEARINGS DATE:

April 3, 2013

19 APPEARANCES:

20 1. Plaintiff:

Neal K. Hyman, Esq.
MORRIS, SULLIVAN & LEMKUL LLP

22 2. Defendant
Valley Health System LLC

John F. Bemis, Esq.
HALL PRANGLE & SCHOONVELD, LLC

24 3. Defendant
Steven Dale Farmer

Name: Heather S. Hall, Esq.
MANDELBAUM, SCHWARZ,
ELLERTON & McBRIDE

26 4. Non-Party
Las Vegas Metropolitan
Police Department

Charlotte M. Bible, Esq.
Assistant General Counsel
DOUGLAS C. GILLESPIE, SHERIFF

28 5. Non-Party
Clark County D.A.

Barter Pace
Chief Deputy D.A.
CLARK COUNTY D.A. (Criminal)

1 I.

2 FINDINGS

3 After full briefing and oral argument on April 3, 2013, Plaintiff's and Valley Health System,
4 LLC's ("Valley Health) Joint Motion to Compel Production of Documents from Las Vegas
5 Metropolitan Police Department and the Clark County District Attorney's Office on an Order
6 Shortening Time is GRANTED.

7 II.

8 RECOMMENDATIONS

9 IT IS HEREBY RECOMMENDED AND ORDERED:

10 1. Plaintiff's and Valley Health's Joint Motion to Compel Production of Documents
11 from Las Vegas Metropolitan Police Department and the Clark County District Attorney's Office
12 on an Order Shortening Time is GRANTED; and the stay of discovery related to the criminal action
13 involving Steven Farmer entitled *State v. Farmer*, Case No. C245739 ("Criminal Action") is lifted,
14 and counsel must proceed with the civil case;

15 2. All discovery concerning the Criminal Action is subject to the Protective Order
16 previously entered on September 17, 2009, which remains in full force and effect; all Las Vegas
17 Metropolitan Police Department depositions and transcripts, and Mr. Farmer's deposition and
18 transcript, must be kept under seal; and all documents relating to the Criminal Action must be kept
19 as confidential;

20 3. Las Vegas Metropolitan Police Department will promptly produce its entire criminal
21 file in the Criminal Action to Plaintiff and Valley Health; and

22 4. Mr. Farmer's deposition will proceed in this civil case and Ms. Hall will defend him;
23 Ms. Hall must be noticed of Mr. Farmer's deposition; Mr. Farmer cannot assert Fifth Amendment
24 rights in certain portions of his deposition, however, some questions must be answered, or Mr.
25 Farmer will be subject to the consequences; all counsel must review the Fifth Amendment.

26 ///

27 ///

28 ///

1 **IT IS FURTHER HEREBY RECOMMENDED AND ORDERED:**


2 Mr. Hyman will prepare the report and recommendations, and all counsel of record and with
3 an interest in this matter will approve as to form and content.

4 DATED this 18 day of April 2013.

5
6 
7 DISCOVERY COMMISSIONER

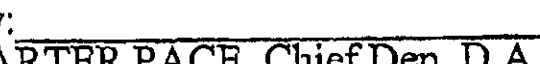
8 Respectfully submitted by

9 MORRIS, SULLIVAN & LEMKUL LLP

10
11 By: 
12 WILL A. LEMKUL, ESQ.
13 State Bar No. 006715
14 NEAL K. HYMAN, ESQ.
15 State Bar No. 005998
16 2441 W. Horizon Ridge Parkway, Suite 120
17 Henderson, NV 89052
18 *Attorneys for Plaintiff Roxanne Cagnina*

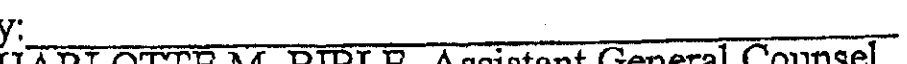
16 Approved as to form and content:

17 CLARK COUNTY D.A.'S OFFICE

19 By: 
20 BARTER PACE, Chief Dep. D.A.
21 State Bar No. 004353
22 200 E. Lewis
23 Las Vegas, NV 89101
24 *Attorneys for Non-Party State of Nevada*

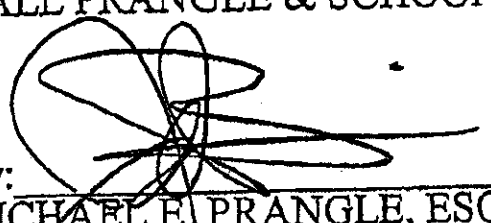
23 Approved as to form and content:

24 DOUGLAS C. GILLESPIE, SHERIFF

25 By: 
26 CHARLOTTE M. BIBLE, Assistant General Counsel
27 State Bar No. 002751
28 400 Martin Luther King Blvd.
Las Vegas, NV 89106
Attorneys for Non-Party Las Vegas Metropolitan Police Dept.


Approved as to form and content:

HALL PRANGLE & SCHOONVELD, LLC

10
11 By: 
12 MICHAEL E. PRANGLE, ESQ.
13 State Bar No. 008619
14 JOHN F. BEMIS, ESQ.
15 Nevada Bar No. 009509
16 1160 N. Town Center Drive, Ste. 200
17 Las Vegas, NV 89144
18 *Attorneys for Defendant Valley Health Sys.
19 LLC*

Approved as to form and content:

MANDELBAUM, SCHWARZ, ELLERTON
& McBRIDE

20 By: 
21 ROBERT C. McBRIDE, ESQ.
22 State Bar No. 007082
23 2012 Hamilton Lane
24 Las Vegas, NV 89106
25 *Civil Attorneys for Non-Party Steven Dale
26 Farmer*

1 **IT IS FURTHER HEREBY RECOMMENDED AND ORDERED:**

2 Mr. Hyman will prepare the report and recommendations, and all counsel of record and with
3 an interest in this matter will approve as to form and content.

4 DATED this _____ day of April 2013.

5
6 DISCOVERY COMMISSIONER

7
8 Respectfully submitted by

9 MORRIS, SULLIVAN & LEMKUL LLP

Approved as to form and content:

HALL PRANGLE & SCHOONVELD, LLC

10
11 By:

WILL A. LEMKUL, ESQ.

12 State Bar No. 006715

NEAL K. HYMAN, ESQ.

13 State Bar No. 005998

2441 W. Horizon Ridge Parkway, Suite 120

14 Henderson, NV 89052

Attorneys for Plaintiff Roxanne Cagnina

By:

MICHAEL E. PRANGLE, ESQ.

State Bar No. 008619

JOHN F. BEMIS, ESQ.

Nevada Bar No. 009509

1160 N. Town Center Drive, Ste. 200

Las Vegas, NV 89144

Attorneys for Defendant Valley Health Sys.
LLC

15
16 Approved as to form and content:

17 CLARK COUNTY D.A.'S OFFICE

Approved as to form and content:

MANDELBAUM, SCHWARZ, ELLERTON
& McBRIDE 4/16/13

18
19 By:

BARTER PACE, Chief Dep. D.A.

20 State Bar No. 004353

200 E. Lewis

21 Las Vegas, NV 89101

Attorneys for Non-Party State of Nevada

By:

ROBERT C. McBRIDE, ESQ. 4581 for

State Bar No. 007082

2012 Hamilton Lane

Las Vegas, NV 89106

Civil Attorneys for Non-Party Steven Dale
Farmer

22 Approved as to form and content:

23 DOUGLAS C. GILLESPIE, SHERIFF

24
25 By:

CHARLOTTE M. BIBLE, Assistant General Counsel

26 State Bar No. 002751

400 Martin Luther King Blvd.

27 Las Vegas, NV 89106

Attorneys for Non-Party Las Vegas Metropolitan Police Dept.

1 **IT IS FURTHER HEREBY RECOMMENDED AND ORDERED:**

2 Mr. Hyman will prepare the report and recommendations, and all counsel of record and with
3 an interest in this matter will approve as to form and content.

4 DATED this _____ day of April 2013.

5
6 DISCOVERY COMMISSIONER
7

8 Respectfully submitted by

9 MORRIS, SULLIVAN & LEMKUL LLP

Approved as to form and content:

HALL PRANGLE & SCHOONVELD, LLC

10
11 By:

12 WILL A. LEMKUL, ESQ.
13 State Bar No. 006715
14 NEAL K. HYMAN, ESQ.
15 State Bar No. 005998
16 2441 W. Horizon Ridge Parkway, Suite 120
17 Henderson, NV 89052
18 *Attorneys for Plaintiff Roxanne Cagnina*

By:

MICHAEL E. PRANGLE, ESQ.
State Bar No. 008619
JOHN F. BEMIS, ESQ.
Nevada Bar No. 009509
1160 N. Town Center Drive, Ste. 200
Las Vegas, NV 89144
*Attorneys for Defendant Valley Health Sys.
LLC*

16 Approved as to form and content:

17 CLARK COUNTY D.A.'S OFFICE

18
19 By:

20 BARTER PACE, Chief Dep. D.A.
21 State Bar No. 004353
22 200 E. Lewis
23 Las Vegas, NV 89101
24 *Attorneys for Non-Party State of Nevada*

Approved as to form and content:

MANDELBAUM, SCHWARZ, ELLERTON
& McBRIDE

By:

ROBERT C. McBRIDE, ESQ.
State Bar No. 007082
2012 Hamilton Lane
Las Vegas, NV 89106
*Civil Attorneys for Non-Party Steven Dale
Farmer*

22 Approved as to form and content:

23 DOUGLAS C. GILLESPIE, SHERIFF

24
25 By:

26 CHARLOTTE M. BIBLE, Assistant General Counsel
27 State Bar No. 002751
28 400 Martin Luther King Blvd.
Las Vegas, NV 89106
Attorneys for Non-Party Las Vegas Metropolitan Police Dept.

1 **IT IS FURTHER HEREBY RECOMMENDED AND ORDERED:**

2 Mr. Hyman will prepare the report and recommendations, and all counsel of record and with
3 an interest in this matter will approve as to form and content.

4 DATED this _____ day of April 2013.

5
6 DISCOVERY COMMISSIONER
7

8 Respectfully submitted by

9 MORRIS, SULLIVAN & LEMKUL LLP

Approved as to form and content:

HALL PRANGLE & SCHOONVELD, LLC

10
11 By: _____
12 WILL A. LEMKUL, ESQ.
13 State Bar No. 006715
14 NEAL K. HYMAN, ESQ.
15 State Bar No. 005998
2441 W. Horizon Ridge Parkway, Suite 120
Henderson, NV 89052
Attorneys for Plaintiff Roxanne Cagnina

By: _____
MICHAEL E. PRANGLE, ESQ.
State Bar No. 008619
JOHN F. BEMIS, ESQ.
Nevada Bar No. 009509
1160 N. Town Center Drive, Ste. 200
Las Vegas, NV 89144
*Attorneys for Defendant Valley Health Sys.
LLC*

16 Approved as to form and content:

17 CLARK COUNTY D.A.'S OFFICE

Approved as to form and content:


MANDELBAUM, SCHWARZ, ELLERTON
& McBRIDE

19 By: _____
20 BARTER PACE, Chief Dep. D.A.
21 State Bar No. 004353
200 E. Lewis
Las Vegas, NV 89101
Attorneys for Non-Party State of Nevada

By: _____
ROBERT C. McBRIDE, ESQ.
State Bar No. 007082
2012 Hamilton Lane
Las Vegas, NV 89106
*Civil Attorneys for Non-Party Steven Dale
Farmer*

22 Approved as to form and content:

23 DOUGLAS C. GILLESPIE, SHERIFF

24
25 By:  _____
26 CHARLOTTE M. BIBLE, Assistant General Counsel
27 State Bar No. 002751
400 Martin Luther King Blvd.
Las Vegas, NV 89106
Attorneys for Non-Party Las Vegas Metropolitan Police Dept.

NOTICE

Pursuant to NRCP 16.1(d)(2), you are hereby notified you have five (5) days from the date you receive this document within which to file written objections.

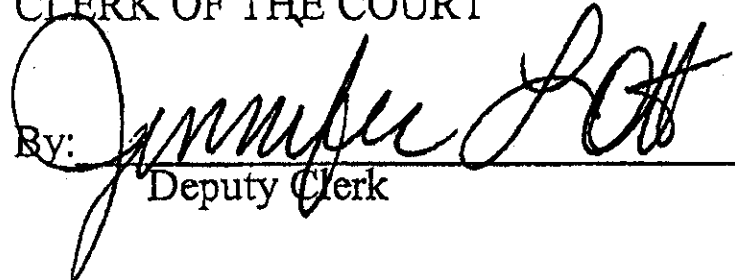
Pursuant to E.D.C.R. 2.34(f) an objection must be filed and served no more than five (5) days after receipt of the Discovery Commissioner's Report. The Commissioner's Report is deemed received when signed and dated by a party, his attorney or his attorney's employee, or three (3) days after mailing to a party or his attorney, or three (3) days after the clerk of the court deposits a copy of the Report in a folder of the party's lawyer in the Clerk's office. See E.D.C.R. 2.34(f).

A copy of the foregoing Discovery Commissioner's Report was:

_____ Mailed to Plaintiff/Defendant at the following address on the _____ day of _____, 2013.

☒ Placed in the folder of Plaintiff's/Defendant's counsel in the Clerk's office of the _____ day of April, 2013.

CLERK OF THE COURT

By: 
Deputy Clerk

Cagnina v. Valley Health System, LLC

Case No. A570756

ORDER

The Court, having reviewed the above report and recommendations prepared by the
Discovery Commissioner and,

_____ The parties having waived the right to object thereto,

^{mm}
X _____ No timely objection having been received in the office of the Discovery
Commissioner pursuant to E.D.C.R. 2.34(f),

_____ Having received the objections thereto and the written arguments in support of said
objections, and good cause appearing,

AND

X _____ IT IS HEREBY ORDERED the Discovery Commissioner's Report and
Recommendations are affirmed and adopted.

_____ IT IS HEREBY ORDERED the Discovery Commissioner's Report and
Recommendations are affirmed and adopted as modified in the following matter.
(attached hereto)

_____ IT IS HEREBY ORDERED that a hearing on the Discovery Commissioner's Report
is set for _____, 2013, at _____:_____ a.m./p.m.

DATED this 3 day of May, 2013.

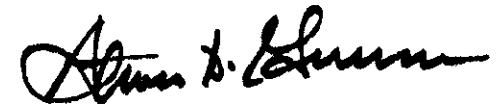
Nancy L. Allen

DISTRICT JUDGE

EXHIBIT F

ORIGINAL

Electronically Filed
11/12/2014 03:47:03 PM



CLERK OF THE COURT

DCRR

MICHAEL E. PRANGLE, ESQ.

Nevada Bar No. 8619

JOHN F. BEMIS, ESQ.

Nevada Bar No. 9509

HALL PRANGLE & SCHOONVELD, LLC

1160 North Town Center Drive, Suite 200

Las Vegas, NV 89144

702-889-6400 – Office

702-384-6025 – Facsimile

mprangle@hpslaw.com

jbemis@hpslaw.com

Attorneys for Defendant

Centennial Hills Hospital

DISTRICT COURT

CLARK COUNTY, NEVADA

MISTY PETERSON, AS SPECIAL
ADMINISTRATOR OF THE ESTATE OF
JANE DOE,

Plaintiff,

vs.

VALLEY HEALTH SYSTEM LLC, a Nevada
limited liability company, d/b/a CENTENNIAL
HILLS HOSPITAL MEDICAL CENTER;
UNIVERSAL HEALTH SERVICES, INC., a
Delaware corporation; AMERICAN NURSING
SERVICES, INC., a Louisiana corporation;
STEVEN DALE FARMER, an individual; DOES I
through X, inclusive; and ROE CORPORATIONS I
through X, inclusive,

Defendants.

CASE NO. A595780

DEPT NO. II

DISCOVERY COMMISSIONER'S REPORT AND RECOMMENDATION

DATE OF HEARING: 10/1/14
TIME OF HEARING: 9:30 a.m.

HALL PRANGLE & SCHOONVELD, LLC
1160 NORTH TOWN CENTER DRIVE
SUITE 200
LAS VEGAS, NEVADA 89144
TELEPHONE: 702-889-6400 FACSIMILE: 702-384-6025

HALL PRANGLE & SCHOONVELD, LLC

1160 NORTH TOWN CENTER DRIVE

SUITE 200

LAS VEGAS, NEVADA 89144

TELEPHONE: 702-889-6400 FACSIMILE: 702-384-6025

APPEARANCES:

Plaintiff:

Robert Murdock, Esq.
MURDOCK & ASSOCIATES

Defendant:

Centennial Hills Hospital

John F. Bemis, Esq.
HALL PRANGLE & SCHOONVELD, LLC

Defendant:

American Nursing Services, Inc.

Amanda Brookhyser, Esq.
LEWIS BRISBOIS BISGAARD & SMITH
-and-
Richard Pyatt, Esq.
PYATT SILVESTRI

Defendant:

Steven Dale Farmer

Sean Kelly, Esq.
CARROLL, KELLY, TROTTER, FRANZEN,
MECKENNA & PEABODY

Non-Party Petitioner:

Amy Feliciano, Esq.

Laura Rehfeldt, Esq.
DEPUTY DISTRICT ATTORNEY
CIVIL DIVISION

I.

FINDINGS

This matter having come on for hearing before the Honorable Discovery Commissioner, Bonnie Bulla on Clark County's Motion for Protective Order Quashing Subpoena and Notice of Taking Deposition of Clark County Deputy Public Defender Amy A. Feliciano, Esq.

The Honorable Discovery Commissioner is granting Clark County's Motion. The Discovery Commissioner finds that the information could potentially be privileged as work product, and it is not relevant. Finally, the information sought is not crucial to the preparation of the case by Plaintiff's counsel in the civil case. However, the Discovery Commissioner is granting alternative relief. Clark County will disclose any documents disclosed to Defendants' counsel related to Steven Farmer to all parties. Defendants' will disclose the criminal file received from Las Vegas Metropolitan Police. The documents disclosed pursuant to this

HALL PRANGLE & SCHOONVELD, LLC
1160 NORTH TOWN CENTER DRIVE
SUITE 200
LAS VEGAS, NEVADA 89144
TELEPHONE: 702-889-6400 FACSIMILE: 702-384-6025

Recommendation remain confidential and shall be protected from dissemination. The documents disclosed pursuant to this Recommendation shall not be disclosed outside of this litigation.

II.

RECOMMENDATIONS

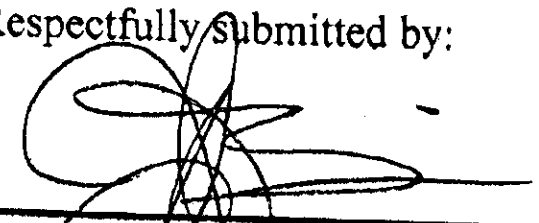
Based upon the findings above, the Honorable Discovery Commissioner recommends the following:


1. Clark County's Motion for Protective Order is GRANTED;
 2. Plaintiff is granted alternative relief;
 3. Clark County will disclose documents provided to Defendants' counsel;
 4. Clark County is granted EDCR 2.34(c) relief and the disclosures are not due until 3 business days Notice of Entry of Order by the District Court.
 5. Defendants' will disclose the Las Vegas Metropolitan Police file;
 6. The disclosures made pursuant to this Order are confidential and protected from dissemination outside of this litigation. *pursuant to NACP 26(c). AM and until such time as otherwise ordered by the district court judge. AM*
- DATED this 20 day of October, 2014.


DISCOVERY COMMISSIONER

Respectfully submitted by:

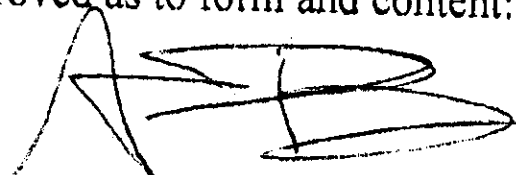
Approved as to form and content:


John F. Bemis Esq.
Hall Prangle & Schoonveld, LLC
1160 N. Town Center Dr., Ste. 200
Las Vegas, NV 89144
Attorneys for Defendant
Centennial Hills Hospital


Robert Murdock, Esq.
Murdock & Associates
521 South Third Street
Las Vegas, Nevada 89101
Attorney for Plaintiff

HALL PRANGLE & SCHOONVELD, LLC
1160 NORTH TOWN CENTER DRIVE
SUITE 200
LAS VEGAS, NEVADA 89144
TELEPHONE: 702-889-6400 FACSIMILE: 702-384-6025

1 Approved as to form and content:

2 

3 Amanda Brookhyser, Esq.
4 Lewis Brisbois Bisgaard & Smith
5 6385 South Rainbow Blvd., Suite 600
6 Las Vegas, NV 89118
7 -and-
8 Richard Pyatt, Esq.
9 701 Bridger Ave., Suite 600
10 Las Vegas, NV 89101
11 Attorneys for Defendant
12 American Nursing Services, Inc.

Approved as to form and content:



10/10/14

Robert McBride, Esq.
Sean Kelly, Esq.
Carol, Kelly, Trotter, Franzken, McKenna &
Peabody
701 North Green Valley Parkway, Suite 200
Henderson, NV 89074
Attorney for Defendant
Steven Dale Farmer

10 Approved as to form and content:

11 

12 Laura C. Rehfeldt, Esq.
13 Deputy District Attorney
14 Civil Division
15 500 S. Grand Central Pkwy
16 Box 552215
17 Las Vegas, NV 89155

HALL PRANGLE & SCHOONVELD, LLC
1160 NORTH TOWN CENTER DRIVE
SUITE 200
LAS VEGAS, NEVADA 89144
TELEPHONE: 702-889-6400 FACSIMILE: 702-384-6025

Estate of Jane Doe v. Valley Health System, LLC et al.
District Court Case No. A595780

NOTICE

Pursuant to NRCP 16.1 (d) (2), you are hereby notified you have five (5) days from the date you received this document within to file written objections.

Pursuant to E.D.C.R. 2.34(f) and objection must be filed and served no more than five (5) days after receipt of the Discovery Commissioner's Report. The Commissioner's Report is deemed received when signed and dated by a party, his attorney or his attorney's employee, or three (3) days after mailing to a party or his attorney, or three (3) days after the clerk of the court deposits a copy of the Report in a folder of a party's lawyer in the Clerk's office. See E.D.C.R. 2.34(F).

A copy of the foregoing Discovery Commissioner's Report was:

_____ Mailed to Plaintiffs/Defendant at the following address on this _____ day of _____, 2014.

X Placed in the folder of Plaintiff's/Defendant's counsel in the Clerk's office on the 23 day of Oct., 2014.

STEVEN D. GRIERSON

By: Jennifer Roth

HALL PRANGLE & SCHOONVELD, LLC
1160 NORTH TOWN CENTER DRIVE
SUITE 200
LAS VEGAS, NEVADA 89144
TELEPHONE: 702-889-6400 FACSIMILE: 702-384-6025

Estate of Jane Doe v. Valley Health System, LLC et al.
District Court Case No. A595780

ORDER

The Court, having reviewed the above report and recommendations prepared by the
Discovery Commissioner and,

The parties having waived the right to object thereto,

No timely objection having been received in the office of the Discovery
Commissioner pursuant to E.D.C.R. 2.34 (f).

Having received objections thereto and the written argument in support of said
objections, and good cause appearing.

AND

IT IS HEREBY ORDERED the Discovery Commissioner's Report and
Recommendations is affirmed and adopted,

IT IS HEREBY ORDERED the Discovery Commissioner's Report and
Recommendations are affirmed and adopted as modified in the following manner.
(attached hereto)

IT IS HEREBY ORDERED that a hearing on the Discovery Commissioner's
Report is set for _____, 2014, at ____:____ a.m.

DATED this 6th day of Nov., 2014.


DISTRICT JUDGE

EXHIBIT G

RECEIVED

MAR 18 2010

HALL PRANGLE
& SCHOONVELD

1 SECCL

2 Robert E. Murdock, Esq.

3 Nevada Bar No. 4013

4 MURDOCK & ASSOCIATES, CHTD.

5 520 South Fourth Street

6 Las Vegas, NV 89101

7 702-384-5563

8 Eckley M. Keach, Esq.

9 Nevada Bar No. 1154

10 ECKLEY M. KEACH, CHTD.

11 520 South Fourth Street

12 Las Vegas, NV 89101

13 702-384-5563

14 Attorneys for Plaintiff

11 DISTRICT COURT

12 CLARK COUNTY, NEVADA

14 JANE DOE,

15 Plaintiff,

16 vs.

18 VALLEY HEALTH SYSTEM LLC, a Nevada
19 limited liability company, d/b/a CENTENNIAL

20 HILLS HOSPITAL MEDICAL CENTER;

21 UNIVERSAL HEALTH SERVICES, INC., a

22 Delaware corporation; AMERICAN NURSING

23 SERVICES, INC., a Louisiana corporation;

24 STEVEN DALE FARMER, an individual; DOES I

25 through X, inclusive; and ROE CORPORATIONS

26 I through X, inclusive,

27 Defendants.

CASE NO. 09-A-595780

DEPT. NO. II

PLAINTIFF'S FIFTH
SUPPLEMENT TO
CASE CONFERENCE
DISCLOSURES PURSUANT
TO NRCP 16.1

26 COMES NOW Plaintiff Jane Doe, by and through her attorneys of record, Murdock &
27 Associates, Chtd. and Eckley M. Keach, Chtd., and hereby supplements her early case
28 conference disclosures pursuant to NRCP 16.1 as follows:

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DOCUMENTS

1. Recorder's Transcript Re: Calendar Call, Defendant's Motion for Discovery and Defendant's Motion to Continue Trial filed on June 9, 2009 in the case of *The State of Nevada v. Steven Dale Farmer*, Case No. C245739.

2. Supplemental Notice of Witnesses and/or Expert Witnesses [NRS 174.234] filed on September 28, 2009 in the case of *The State of Nevada v. Steven Dale Farmer*, Case No. C245739.

3. Second Supplemental Notice of Witnesses and/or Expert Witnesses [NRS 174.234] filed on September 28, 2009 in the case of *The State of Nevada v. Steven Dale Farmer*, Case No. C245739.

4. Third Supplemental Notice of Witnesses and/or Expert Witnesses [NRS 174.234] filed on October 16, 2009 in the case of *The State of Nevada v. Steven Dale Farmer*, Case No. C245739.

5. Ex Parte Order for Transport filed on October 23, 2009 with Receipt of Copy signed by Clark County Detention Center in the case of *The State of Nevada v. Steven Dale Farmer*, Case No. C245739.

6. Ex Parte Order for Transport filed on November 3, 2009 in the case of *The State of Nevada v. Steven Dale Farmer*, Case No. C245739.

7. Ex Parte Order for Transport filed on November 3, 2009 in the case of *The State of Nevada v. Steven Dale Farmer*, Case No. C245739.

8. Ex Parte Order for Transport filed on November 5, 2009 in the case of *The State of Nevada v. Steven Dale Farmer*, Case No. C245739.

The above documents will be produced upon request and at the requesting party's expense.

26
27
28

WITNESSES

Custodian of Records of the Eighth Judicial District Court, 200 Lewis Avenue, Las Vegas, Nevada 89155, is expected to testify regarding the search for and authenticity of the records produced.

1 DATED this 17th day of March, 2010.

2 MURDOCK & ASSOCIATES, CHTD.
3 ECKLEY M. KEACH, CHTD.

4
5 /s/ Robert E. Murdock
6 Robert E. Murdock Bar No. 4013
7 Eckley M. Keach Bar No. 1154
8 520 South Fourth Street
9 Las Vegas, NV 89101
10 Attorneys for Plaintiff

11 **CERTIFICATE OF MAILING**

12 The undersigned hereby declares she is an employee of Murdock & Associates, Chtd.
13 and that on March 17, 2010 she deposited a true copy of the foregoing PLAINTIFF'S FIFTH
14 SUPPLEMENT TO EARLY CASE CONFERENCE DISCLOSURES in the United States mail,
15 postage fully prepaid, addressed as follows:

16 David P. Ferrainolo, Esq.
17 Hall Prangle & Schoonveld, LLC
18 777 North Rainbow Blvd., Suite 225
19 Las Vegas, NV 89107

20 Robert C. McBride, Esq.
21 Mandelbaum, Schwarz, Ellerton & McBride
22 2012 Hamilton Lane
23 Las Vegas, NV 89106

24 S. Brent Vogel, Esq.
25 Lewis Brisbois Bisgaard & Smith
26 6385 South Rainbow Blvd., Suite 600
27 Las Vegas, NV 89118

28 /s/ Karen A. Kilmartin
An employee of Murdock & Associates, Chtd.

EXHIBIT H

1 Robert E. Murdock, Esq.
2 Nevada Bar No. 4013
3 MURDOCK & ASSOCIATES, CHTD.
4 520 South Fourth Street
5 Las Vegas, NV 89101
6 702-384-5563

7 Eckley M. Keach, Esq.
8 Nevada Bar No. 1154
9 ECKLEY M. KEACH, CHTD.
10 520 South Fourth Street
11 Las Vegas, NV 89101
12 702-384-5563
13 Attorneys for Plaintiff

11 DISTRICT COURT
12 CLARK COUNTY, NEVADA

13 JANE DOE,
14
15 Plaintiff,
16
17 vs.
18 VALLEY HEALTH SYSTEM LLC, a Nevada
19 limited liability company, d/b/a CENTENNIAL
20 HILLS HOSPITAL MEDICAL CENTER;
21 UNIVERSAL HEALTH SERVICES, INC., a
22 Delaware corporation; AMERICAN NURSING
23 SERVICES, INC., a Louisiana corporation;
24 STEVEN DALE FARMER, an individual; DOES I
through X, inclusive; and ROE CORPORATIONS
I through X, inclusive,
Defendants.

CASE NO. 09-A-595780
DEPT. NO. II

PLAINTIFF'S SIXTH
SUPPLEMENT TO
CASE CONFERENCE
DISCLOSURES PURSUANT
TO NRCP 16.1

26 COMES NOW Plaintiff Jane Doe, by and through her attorneys of record, Murdock &
27 Associates, Chtd. and Eckley M. Keach, Chtd., and hereby supplements her early case
28 conference disclosures pursuant to NRCP 16.1 as follows:

1
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DOCUMENTS

1. Deposition transcript of Christine Murray taken on January 27, 2010 in the case of *Cagnina v. Centennial Hills Hospital Medical Center, et al.*

2. Deposition transcript of Karen Sue Goodhart taken on January 27, 2010 in the case of *Cagnina v. Centennial Hills Hospital Medical Center, et al.*

3. Deposition transcript of Lisa Doty taken on February 2, 2010 in the case of *Cagnina v. Centennial Hills Hospital Medical Center, et al.*

4. Deposition transcript of Harold Collins Suto taken on February 3, 2010 in the case of *Cagnina v. Centennial Hills Hospital Medical Center, et al.*

5. Deposition transcript of Lorraine Wescott taken on February 4, 2010 in the case of *Cagnina v. Centennial Hills Hospital Medical Center, et al.*

6. Deposition transcript of Carine Antoinette Brown taken on February 8, 2010 in the case of *Cagnina v. Centennial Hills Hospital Medical Center, et al.*

7. Deposition transcript of Amy Bochenek taken on March 10, 2010 in the case of *Cagnina v. Centennial Hills Hospital Medical Center, et al.*

8. Deposition transcript of Douglas Nichols taken on March 24, 2010 in the case of *Cagnina v. Centennial Hills Hospital Medical Center, et al.*

9. Deposition transcript of Evette Wilson taken on April 7, 2010 in the case of *Cagnina v. Centennial Hills Hospital Medical Center, et al.*

Copies of the above deposition transcripts will made available upon request and at the requesting party's expense.

23
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25
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27
28

WITNESSES

Custodian of Records of Litigation Services, 1640 Alta Drive, Suite 4, Las Vegas, Nevada 89106, is expected to testify regarding the search for and authenticity of the transcripts produced.

//

//

//

1 DATED this 13th day of May, 2010.

2 MURDOCK & ASSOCIATES, CHTD.
3 ECKLEY M. KEACH, CHTD.
4

5 /s/ Robert E. Murdock
6 Robert E. Murdock Bar No. 4013
7 Eckley M. Keach Bar No. 1154
8 520 South Fourth Street
9 Las Vegas, NV 89101
10 Attorneys for Plaintiff

11 **CERTIFICATE OF MAILING**

12 The undersigned hereby declares she is an employee of Murdock & Associates, Chtd.
13 and that on May 13, 2010 she deposited a true copy of the foregoing PLAINTIFF'S SIXTH
14 SUPPLEMENT TO EARLY CASE CONFERENCE DISCLOSURES in the United States mail,
15 postage fully prepaid, addressed as follows:

16 David P. Ferrainolo, Esq.
17 Hall Prangle & Schoonveld, LLC
18 777 North Rainbow Blvd., Suite 225
19 Las Vegas, NV 89107

20 Robert C. McBride, Esq.
21 Mandelbaum, Schwarz, Ellerton & McBride
22 2012 Hamilton Lane
23 Las Vegas, NV 89106

24 Tracey L. Heinhold, Esq.
25 Lewis Brisbois Bisgaard & Smith
26 6385 South Rainbow Blvd., Suite 600
27 Las Vegas, NV 89118
28

/s/ Karen A. Kilmartin
An employee of Murdock & Associates, Chtd.

EXHIBIT I

DISTRICT COURT
CLARK COUNTY, NEVADA

ROXANNE CAGNINA, an individual,)
)
Plaintiff,)
)
vs.) Case No.
) A570756
CENTENNIAL HILLS HOSPITAL MEDICAL)
CENTER AUXILIARY, a Nevada)
corporation; VALLEY HEALTH SYSTEM)
LLC, Limited Liability Company;)
VALLEY HOSPITAL MEDICAL CENTER,)
INC., a Nevada corporation;)
UNIVERSAL HEALTH SERVICES)
FOUNDATION, a Pennsylvania)
corporation; AMERICAN NURSING)
SERVICES, INC., a Louisiana)
corporation; STEVEN DALE FARMER,)
an individual; DOES INDIVIDUALS)
1 through 10 and ROE BUSINESS OR)
GOVERNMENTAL ENTITIES 1 through)
10, inclusive,)
)
Defendants.)

DEPOSITION OF AMY BOCHENEK

Taken on March 10, 2010

At 9:02 A.M.

1640 West Alta Drive, Suite 4

Las Vegas, Nevada

LST 119007

Reported by: Jennifer A. Caton, RDR, CRR, CCR #422

1 Q. Is there any sort of log that, say,
2 Mr. Farmer, when he shows up, would have to sign in
3 or something?

4 A. No, not that I'm aware of.

5 Q. So how does it actually get recorded in
6 the hospital's records? Who does that?

7 MR. FERRAINOLO: Object to form.

8 THE WITNESS: A staffing coordinator
9 maintains those records.

10 BY MR. HYMAN:

11 Q. And how would they know that Mr. Farmer
12 was there on a certain day?

13 MR. FERRAINOLO: Object to form.

14 THE WITNESS: Our process is to obtain
15 agency staff and then decide where we're placing
16 them at the start of the shift. We have house
17 supervisors that are in-house 24 hours a day that
18 oversee how we place patients or how we place nurses
19 and patients. Sometimes that may change if the
20 needs on one unit decrease and the needs on another
21 unit increase.

22 If we discharge multiple patients off
23 one area and have admissions in another, they may
24 move staff, but they track that information for the
25 staffing coordinator so that we can pay

1 appropriately out of the right cost centers.

2 BY MR. HYMAN:

3 Q. Do you know where those type of records
4 would be located?

5 A. I know that we maintain a spreadsheet in
6 the staffing office, and I know that accounting
7 keeps records of their own. I can't speak to where
8 or what type.

9 Q. And based on the fact that this occurred
10 in May 2008, which was a little over a year and a
11 half ago, would those records still exist?

12 A. I believe so.

13 Q. I'll just submit to you that we've been
14 trying to get those records in this case and they
15 haven't been produced, so if there's any way you can
16 assist Mr. Ferrainolo in obtaining those, would you
17 do so?

18 A. I will try.

19 Q. I believe there's a court order
20 requiring it so --

21 So when you were, I guess, having
22 dealings or encountering Mr. Farmer, did you know
23 anything about his background?

24 A. No.

25 Q. I mean, you didn't even know, like, you

1 know, if he had been a CNA in California?

2 A. No.

3 Q. Do you recall any specific conversations
4 with him, him saying anything specific to you about
5 anything?

6 A. Most of our conversations were just
7 basic greetings in passing, hi, how was your night?
8 We didn't really have any personal conversations.

9 Q. Before May of 2008, were you ever able
10 to observe him working?

11 A. Not directly, no.

12 Q. In May of 2008, were you assigned to any
13 degree to the emergency room?

14 A. I was director of emergency services at
15 that time.

16 Q. So when Plaintiff Cagnina was brought to
17 the ER in an ambulance, I believe it was on May 15,
18 2008, were you working?

19 A. It would depend what time she came in.
20 I worked day shifts then.

21 Q. And this is from my memory, but my
22 understanding is she came in in the later evening,
23 maybe around 8:00 P.M.

24 A. So I would not be in the building at
25 that time.

1 Q. I'm not going to ask you about what an
2 attorney has talked to you about or shown you, but
3 have you reviewed any documents such as medical
4 records or something related to this case?

5 A. Not anything recently. I think I've
6 seen some parts of the medical record after the
7 incident but not anything recently.

8 Q. So sitting here just out of personal
9 knowledge, do you know which nurses were on shift in
10 the ER when Plaintiff Cagnina was admitted?

11 A. I know it involved -- with this case, I
12 recall that Karen Goodhart was there, Ray Sumara,
13 and I believe Darby Curlee was our charge.

14 Q. What was that name again for the charge
15 nurse?

16 A. Darby. His real name is Carlton Curlee,
17 C-U-R-L-E-E. He goes by Darby.

18 Q. Is that person still working at the
19 hospital?

20 A. Yes. There would be more nurses on.
21 Those are just the names that I know.

22 Q. In an emergency setting, assuming
23 Mr. Farmer was assigned to the emergency room, who
24 would supervise Mr. Farmer on any given day?

25 A. The charge nurse.

13 (Pages 46 to 49)

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1 is complete. Sometimes they may not say anything
2 until they're rolling down the hall with the
3 patient.

4 But just because this isn't an official,
5 you know, part of the record -- it's just a working
6 log for the unit coordinator to know what they have
7 open and what they have closed. So you would have
8 to talk to the people that night to find out what
9 that meant.

10 BY MR. HYMAN:

11 Q. There's a box here that says copy
12 initials AD. Do you know what that means?

13 A. Every admission, we make a copy of the
14 face sheet -- not the face sheet, the admitting
15 order, and that gets sent to admitting so they can
16 enter the status in the computer system. It's part
17 of processing the admission.

18 Q. And then you might be the first witness
19 that knows this. Do you know why there's a seven
20 under bed request?

21 A. I have no idea.

22 Q. Nobody knows.

23 A. Nobody knows. I really don't.

24 Q. Then there's a box here that says reason
25 for delay, and there's just a stamp that says Midas.

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1 A. Right. They're using that. They're not
2 using that to note delays. Midas is our ED log, and
3 that's part of the process of closing out our ED
4 log.

5 So the secretary, who it looks like is
6 Eva Degre, has stamped that they've completed the
7 Midas, so they've completed that paperwork. It's a
8 computer process, but it's, like, their closure of
9 that chart --

10 Q. Okay.

11 A. -- in the computer.

12 Q. Okay. Now, you just said Eva --

13 A. That's what those initials look like to
14 me, Eva Degre, the secretary.

15 Q. So she's the secretary that would have
16 been inputting this information?

17 A. Correct.

18 Q. Do you know if she still works at the
19 hospital?

20 A. Yes.

21 Q. How do you spell her last name?

22 A. D-E-G-R-E.

23 Q. And it's fair to say that there's
24 nothing indicated in this box showing that there was
25 a reason for delay?

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1 A. Right. They're obviously not using that
2 for that purpose.

3 Q. Okay.

4 A. Unfortunately at that time, we had -- we
5 had delays quite often, so there would have been
6 something in every box.

7 Q. Now, back to the emergency department
8 fax report we were talking about, CAG 57, would you
9 agree at the top where it says date, time, it says
10 May 16, 2008, and the time 2:45 A.M.?

11 A. Yes.

12 Q. Do you know what's the significance of
13 this 2:45 A.M.? Why is that time there?

14 A. The nurses fill this out when they know
15 a patient is being admitted. This is what gets
16 faxed to the floor so that the receiving nurse has
17 the baseline information on the patient. So that
18 tells me that this nurse started filling out report
19 at that time, and that would make sense because
20 that's when they knew the patient was being
21 admitted.

22 Q. And so is there anything from this
23 document that you can tell that this -- it was
24 actually faxed to the seventh floor?

25 A. Not on there, no.

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1 Q. Would there, on the receiving end, say
2 on the seventh floor -- I'm just trying to
3 understand how the faxes operate -- some sort of
4 confirmation sheet?

5 A. The process is that we fax the report
6 sheet and then we call the floor and ask if they've
7 received it before the patient is sent.

8 Q. So that would be the policy?

9 A. We don't have a written policy, but
10 that's our process.

11 Q. Can you think of any reason why that
12 wouldn't have occurred in this case?

13 A. I cannot.

14 Q. Do you know who would have made that
15 phone call?

16 A. It's typically the nurse that faxes it.
17 In this case, I would -- you'd have to ask. I would
18 think either Karen or Ray.

19 Q. And then when it's received, assuming it
20 was received on the seventh floor, based on your
21 testimony, you're saying someone from the ER calls
22 to confirm that they got it?

23 A. To make sure they've received it.

24 Q. And is it ever the reverse, where the
25 seventh floor calls the ER?

EXHIBIT J

1 that occurred, based on these records?
 2 A. No reason -- I'm sorry?
 3 Q. You would agree that she came in on an
 4 ambulance; correct?
 5 A. Correct, yes.
 6 Q. So can you tell anything about the
 7 circumstances there? I mean, was she wheeled in by
 8 the, you know, EMTs and brought to a certain area or
 9 something?
 10 A. Brought to Room 10.
 11 Q. And can you tell from the records who
 12 would have made initial contact with her?
 13 A. Whom being?
 14 Q. I mean, a registered nurse or --
 15 A. No, sir.
 16 Q. And so before you signed this document,
 17 I mean, the information that's on there, was it
 18 gathered by different people or --
 19 A. Yes, sir.
 20 Q. Let's start with some basics. What's
 21 the date and time of when she first was delivered to
 22 the emergency room?
 23 A. It says sign-in and triage time was
 24 8:20 P.M. on the 15th of May of '08.
 25 Q. So around 8:15 P.M.?

1 A. 8:20 P.M.
 2 Q. 8:20 P.M. Okay.
 3 Let's focus in on what you were doing.
 4 I mean, other than signing this document, were you
 5 responsible for examining her, gathering this
 6 information?
 7 A. I did an assessment on her when she came
 8 in.
 9 Q. Okay. So, I mean, you were -- was that
 10 your responsibility?
 11 A. That was -- my responsibility was to
 12 assess the patient.
 13 Q. Was it a situation where you were the RN
 14 that was assigned to her?
 15 A. No, sir. I was on orientation. It was
 16 two -- I was assigned to another nurse.
 17 Q. Okay.
 18 A. I took the patient. I took over the
 19 care of the patient.
 20 Q. Okay. Who was the original nurse that
 21 had care of her?
 22 A. Ray was whom I was orienting under.
 23 Q. And as of May 15, 2008, about how much
 24 experience did you have in the emergency room?
 25 A. Eight years.

1 Q. And just generally, do you recall
 2 anything specific about her condition or why she was
 3 being presented to the emergency room?
 4 A. Per this document, it says that she came
 5 with a seizure. She was alert, oriented to person,
 6 place, and time. She was cooperative, not having
 7 any respiratory distress.
 8 Q. And is there any notation in there about
 9 her reporting to you or others her prior medical
 10 conditions?
 11 A. We have a past medical history listed as
 12 being -- but whether she reported that or whether it
 13 was reported by -- to me or to someone from the
 14 paramedics, I cannot say.
 15 Q. Okay. And do you recall if she was
 16 still in possession of all of her personal goods and
 17 clothing?
 18 A. By this document, no, I would not be
 19 able to tell that.
 20 Q. Do you recall if at some point, you
 21 know, she was put in a gown or somehow changed?
 22 A. By this document, no. Let's see. Oh,
 23 at -- yes, actually, we did. We disrobed and gowned
 24 her. That's my initials at 8:30.
 25 Q. And when you say "we," though, I mean,

1 would that have been only you or others?
 2 A. I could not tell you that, sir. There
 3 may have been someone in the room assisting me.
 4 There may not have. I -- that's not listed on the
 5 document. I cannot remember back on that date.
 6 Q. Okay. And inevitably, we need to talk
 7 about the main issue in this case is Steven Farmer.
 8 Do you know who that is?
 9 A. I know of him, sir.
 10 Q. Okay. Was your understanding of -- in
 11 May 2008, what was his role at the hospital?
 12 A. He was working as a CNA in the emergency
 13 room.
 14 Q. Do you remember when he started or how
 15 long he was doing that?
 16 A. No, sir, I do not. It was my first day
 17 at work.
 18 Q. But you don't recall anybody ever
 19 talking about him or anything?
 20 A. In the nurses' lounge prior to starting
 21 the shift, everyone seemed to be very happy to see
 22 him, that he was a good worker.
 23 Q. And you don't have any personal
 24 knowledge about, you know, is he a certified nurse
 25 assistant or any of that?

1 type things.
2 A. There are some medical things that they
3 can do. You would have to go through the policy and
4 procedures for their job.
5 Q. And if there was a more medical-related
6 task that the CNA was doing, that would make it into
7 the medical records?
8 MR. FERRAINOLO: Object to form.
9 THE WITNESS: I would not be able to
10 answer that question. It would probably be
11 dependent on what it was.
12 BY MR. HYMAN:
13 Q. Okay. Okay. I guess, then, so to make
14 it into the medical records, would Mr. Farmer have
15 to fill something out?
16 A. If he did an EKG, he is supposed to
17 document it.
18 Q. Okay.
19 A. If he rechecked a blood pressure, he
20 should document it.
21 Q. Okay. So I think we touched on this
22 before your deposition started off the record but --
23 so from the time Roxanne Cagnina is admitted to the
24 ER, a fairly lengthy period of time goes by, would
25 you agree, before she's actually admitted?

1 MR. FERRAINOLO: Object to form.
2 THE WITNESS: I'm not sure at what time
3 she was admitted.
4 BY MR. HYMAN:
5 Q. Maybe if you could review the records
6 and see. I think it carries over into the next day,
7 even toward the later part of that next day.
8 A. I would not -- from the time she was
9 transferred to the floor, I would have to say it was
10 pretty quick.
11 Q. And actually, let me save you some time,
12 because I was able to pull out a couple things here.
13 This is from the same records you're looking at.
14 It's just a page I took out of there, CAG 000067.
15 You can probably find it in your stack if you want
16 to look at it.
17 A. Yes. That doesn't tell me when she was
18 admitted, though. Do you have any of the admission
19 form?
20 Q. Well, just follow me through on this
21 here, though. This is called emergency department
22 fax report, and it says May 16, '08, and then the
23 time is 0245. Is this the document that would be
24 filled out when she's being transferred to the
25 hospital room?

1 A. Prior to being transferred to the floor,
2 yes.
3 Q. Okay. So at least based on this date --
4 we've got May 16, '08 at 2:45 in the morning.
5 A. Correct.
6 Q. So she was originally brought in on the
7 15th at about 8:00 P.M.?
8 A. Correct, 8:20 P.M.
9 Q. So you've got maybe six hours in the ER.
10 A. Correct.
11 Q. Okay. And based on the time that she
12 came in at 8:00 P.M., is that kind of right around a
13 shift change?
14 MR. FERRAINOLO: Object to form.
15 THE WITNESS: No, sir.
16 BY MR. HYMAN:
17 Q. Okay. So based on these medical
18 records, can you tell if any other RNs were handling
19 Miss Cagnina in the ER other than yourself?
20 A. Just myself and Ray.
21 Q. And I did notice that there's some
22 pretty lengthy notes filled out by the RN. Is that
23 Ray?
24 A. No. Lengthy note -- these here?
25 Q. Actually, we need to look at the dates,

1 'cause this was actually May 17, I think.
2 A. No, sir. This is my emergency room
3 note.
4 Q. Let me see. We're talking about CAG --
5 I'm going to skip the zeros -- CAG 53, signed by
6 you. It says 2300. Is there a date on here?
7 A. No, sir.
8 Q. Is this May 15?
9 A. This would have been May 15. I did not
10 date the form.
11 Q. Okay. What I was referring to, these
12 nice legible -- not to insult you -- lengthy
13 notes -- this is CAG 88. Who prepared this?
14 A. I would not know, sir.
15 Q. The initials looks like GG or JJ.
16 A. I do not know, sir.
17 Q. This is dated May 16, '08 at 9:15. So
18 this would be the following day at 9:00 A.M.?
19 A. If I go by the time listed below where
20 the hole was punched, I would have to say that's
21 7:30 P.M.
22 Q. Can you, I mean, just take a quick read
23 of these notes. It seems to me like it's talking
24 about her being in the emergency room. I don't know
25 if somebody just got the date wrong on this.

1 Q. So if she had her purse and cell phone
2 and stuff like that, I mean, that happens? A
3 patient could keep those things?
4 A. Absolutely. We're not a prison.
5 Q. Fair to say that a certified nurse's
6 assistant or a nurse's assistant wouldn't be doing
7 vitals?
8 MR. FERRAINOLO: Object to form.
9 THE WITNESS: Nursing assistants can do
10 vital signs.
11 BY MR. HYMAN:
12 Q. Is there anything in the record -- well,
13 we don't see Mr. Farmer's name anywhere, so can we
14 assume he didn't do vitals on Mrs. Cagnina?
15 MR. FERRAINOLO: Object to the form.
16 THE WITNESS: I don't like to assume.
17 BY MR. HYMAN:
18 Q. So it's possible?
19 A. As far as I know, sir, I did the vital
20 signs, and no one else aside from --
21 Q. Were you involved at all in the decision
22 of having Mr. Farmer transport Mrs. Cagnina to the
23 seventh floor?
24 A. I was -- I started to transport the
25 patient myself, and I was told that the nurses

1 didn't transport, that that's why he was there.
2 Q. And who told you that?
3 A. By the other nurses there. That was one
4 of the reasons that they liked to really enjoy being
5 there is they actually had help.
6 Q. Okay. But would it have been your
7 charge nurse or a supervisor?
8 A. I couldn't tell who you told me that,
9 sir.
10 Q. Possible it could have been a
11 supervisor?
12 A. It could have been anyone. It could
13 have been Ray. It could have been the supervisor.
14 It could have been anyone, another nurse.
15 Q. But you have done that before. You've
16 taken a patient from the ER up to admissions?
17 MR. FERRAINOLO: Object to form.
18 THE WITNESS: Not at -- not at -- at
19 that time, not an Centennial. At other -- at
20 Summerlin, there was -- on a rare occasion, you had
21 someone else to help you, but generally, assistance
22 was not there.
23 BY MR. HYMAN:
24 Q. So at Centennial in the ER, who are the
25 possible people that could transport Mrs. Cagnina?

1 A CNA?
2 A. A CNA, a tech.
3 Q. Any other people you can think of?
4 A. Another nurse.
5 Q. A doctor?
6 A. No.
7 MR. FERRAINOLO: Well, he asked
8 possible.
9 THE WITNESS: Well --
10 BY MR. HYMAN:
11 Q. Too busy waxing the Mercedes; right?
12 A. Actually, I've been assisted by a
13 physician in the past so -- I've even had them go
14 get water.
15 Q. That was a joke, actually. I knew the
16 answer to that one.
17 A. Actually, they're pretty good. We have
18 good docs. I think Dr. Jesser has been known to
19 transport patients.
20 Q. Do you have personal knowledge -- I
21 mean, do you recall -- can you picture in your mind,
22 you know, Mr. Farmer wheeling her away to take her
23 somewhere?
24 A. Yes.
25 Q. Do you recall any discussions? Did

1 Mr. Farmer say anything to you?
2 A. No.
3 Q. Was he given any kind of instructions
4 other than just take her up there? I mean, do you
5 know?
6 A. What room she was going to. He had the
7 paperwork.
8 Q. So he would have been expected to follow
9 whatever paperwork there was, the ones we've just
10 talked about?
11 A. He's expected to take her to the floor
12 to the room that was assigned.
13 Q. And presumably, based on the two forms
14 we've been talking, about the seventh floor is
15 already aware that she's coming and should be
16 expecting her.
17 A. Correct.
18 Q. Do you know if there's a policy for,
19 say, Mr. Farmer, when he gets to the seventh floor,
20 to check in with somebody?
21 MR. FERRAINOLO: Object to form.
22 THE WITNESS: No, sir, I do not know.
23 BY MR. HYMAN:
24 Q. Do you know, I mean, anything about
25 that? Is that a common practice?

1 THE WITNESS: No, sir. I don't.
 2 Every -- every situation is different.
 3 BY MR. HYMAN:
 4 Q. But literally, his assignment was to
 5 wheel her up to the seventh floor and then come
 6 back; right?
 7 MR. FERRAINOLO: Object to form.
 8 BY MR. HYMAN:
 9 Q. He wasn't supposed to be doing something
 10 with her up there?
 11 MR. FERRAINOLO: Object to form.
 12 THE WITNESS: I'm not sure what his -- I
 13 mean, I'm not sure what the situation was upstairs
 14 when he was transferring her, if there was a nurse
 15 there to accept, if there was -- if he needed to go
 16 find an IV pole, what he had to do. He's not going
 17 to take the patient up there on the gurney and just
 18 leave her on the gurney.
 19 BY MR. HYMAN:
 20 Q. Do you recall, when Mr. Farmer came
 21 back, him saying something to you to the effect of
 22 it took me a while because I had to transfer her --
 23 transfer Mrs. Cagnina to her bed due to a condition?
 24 Do you remember him saying something like that to
 25 you?

1 A. No, sir, I do not remember.
 2 Q. But you remember him saying he had to
 3 look for an IV stand?
 4 A. That's the only thing I can remember is
 5 that he had to find an IV pole.
 6 Q. Would that be unusual? Why would you
 7 need to look for an IV pole?
 8 A. No, sir.
 9 Q. Do you have those in the ER?
 10 A. They're on the beds. They're on the
 11 gurneys, and they don't come off. And if the
 12 patient went up with an IV fluid, you just don't
 13 leave it laying on the bed or on the floor.
 14 Q. I think we've covered most of this, so
 15 we should be able to wrap up pretty quick.
 16 Do you know if Mr. Farmer had enough, I
 17 guess, experience as a CNA to work without direct
 18 supervision?
 19 MR. FERRAINOLO: Object to form.
 20 THE WITNESS: I do not know.
 21 BY MR. HYMAN:
 22 Q. I'm not sure if I already asked you
 23 this, but, I mean, do you know if -- who his direct
 24 supervisor in the ER would have been?
 25 A. No, sir, I do not.

1 Q. Was it you?
 2 A. It was not I.
 3 Q. Could it have been an RN?
 4 MR. FERRAINOLO: Object to form.
 5 THE WITNESS: When you say could it have
 6 been an RN, just --
 7 BY MR. HYMAN:
 8 Q. Meaning not -- not a director or
 9 supervisor or anything, just an RN like yourself?
 10 A. Was he assigned to a certain person in
 11 the emergency room?
 12 Q. Right, to oversee him.
 13 A. No, that -- I do not know that --
 14 Q. Okay. We're nearing the conclusion of
 15 your deposition.
 16 Other than the medical records, can you
 17 think of something else that you reviewed to prepare
 18 either for this deposition or related to this case?
 19 A. Okay. Run that by me again.
 20 Q. I mean, there's various things you could
 21 have reviewed. I mean, have you seen, like, the
 22 complaint in this case that actually says what
 23 plaintiff is alleging happened over at the hospital?
 24 A. No, sir. I've just -- I'm aware of it.
 25 Q. Have you seen any -- you know, I

1 referred to -- there's been some written discovery
 2 which are, like, answers to questions and, you know,
 3 people request documents. Have you seen any of
 4 those type of written discovery responses?
 5 A. No, sir.
 6 Q. You're not aware of being involved in
 7 providing information to answer those questions?
 8 A. I know when the incident first occurred,
 9 the police officer came to my home and spoke with
 10 me.
 11 Q. Okay. You gave a statement to the
 12 police?
 13 A. I guess that's what I was doing. I
 14 don't know, 'cause I told him I really don't know
 15 much. I know that she was a little -- not shy. I
 16 put her -- went to put her on the bedpan, she threw
 17 the sheets back like -- it's, like, whoa, let me
 18 close the door. It's like she was -- and then she
 19 was a little bit upset and crying because she wasn't
 20 being a nice patient 'cause Ray wouldn't come back
 21 in the room.
 22 Q. Okay. And the transcript won't show,
 23 but your voice fluctuation was indicating, like,
 24 condescending sort of.
 25 A. I thought it was kind of strange that

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1 she was crying because Ray wouldn't come in the room
2 and that she wasn't being a nice patient and that's
3 why he wasn't coming in the room.
4 Q. Do you typically do those sort of
5 personality assessments on patients?
6 A. You have psych patients that come in, so
7 you have to sort of figure out what's going on.
8 Basically with her, I just let it go because I
9 wasn't keeping her.
10 Q. You'd agree, though, that, I mean, all
11 patients should be entitled to equal medical
12 treatment?
13 A. Absolutely. That's why she got her pain
14 medication. That's why I cleaned her up and I put
15 her on the bedpan. I checked her vital signs. I
16 made sure her airway was patent, you know. It's,
17 like, she got very good care.
18 Q. Okay. And safe to assume you don't have
19 any sort of background or license in psychology.
20 A. No, sir. Well, you have to take a
21 psychiatric -- you take -- when you get your RN, you
22 do have to go through -- you study the psych
23 patients, and you have to take care of them and have
24 a general --
25 Q. So do you feel competent to judge

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1 whether somebody is telling the truth to you?
2 A. No, sir. I generally just assume -- I
3 generally just go by that's what they're saying. If
4 you've having pain, you're having pain. Everyone
5 feels their own thing.
6 Q. Do you -- do you know if you -- you
7 personally wrote out a statement that you might have
8 provided to the police?
9 A. No, I did not write out a statement that
10 I'm aware of that I can remember.
11 Q. You just orally told them something?
12 A. I told them I didn't think I could help
13 them much.
14 Q. And then do you know if you filled out
15 any kind of written statement for the hospital?
16 A. Not that I remember, sir.
17 Q. Do you know if you were interviewed by
18 somebody at the hospital to take down the facts of
19 this alleged incident? And not a lawyer. I mean
20 somebody with the hospital.
21 A. You know, sir, I don't remember.
22 Q. Are you aware of any written policies
23 that the ER had, say, during this May '08 time
24 period related to transporting policies? Like, did
25 they actually have that in writing?

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1 A. I would have to go check on the
2 computer, sir.
3 Q. And then sitting here today, do you know
4 if they currently have that type of policy?
5 A. I know that there is a policy, but I
6 would have to check it. I'm not sure what it says
7 right off the bat verbatim.
8 Q. Do you know if it has anything to do
9 with, like, we were -- I was asking you questions
10 about if -- when you're transporting a patient, do
11 you immediately go to the intake nurse or charge
12 nurse and report in? Is that, like, the first thing
13 you're supposed to do?
14 MR. FERRAINOLO: Object to form.
15 THE WITNESS: I don't -- really don't
16 know. I know that what I do is let the charge nurse
17 know, if she doesn't know already. Generally, the
18 physician lets somebody know that he's admitting the
19 patient. We can assume certain patients are going
20 to be admitted.
21 BY MR. HYMAN:
22 Q. If the charge nurse or intake nurse -- I
23 don't know how you refer to her -- say on the
24 seventh floor, you know, gets the fax, knows that
25 this patient from the ER is coming up there, and

Page 93

1 then sees that the patient is not coming, would they
2 follow up by calling down to the ER --
3 MR. FERRAINOLO: Object to form.
4 BY MR. HYMAN:
5 Q. -- and say where is the patient?
6 MR. FERRAINOLO: Same objection.
7 THE WITNESS: No, sir, not that I'm
8 aware of. I'm not sure what they would -- you know.
9 There's many times there is a delay in the fax going
10 up and the patient going up.
11 BY MR. HYMAN:
12 Q. So theoretically, you'd could process
13 the paperwork and something could happen to a
14 patient like they get lost or abducted, and the
15 seventh floor is just not going to know for a period
16 of hours?
17 MR. FERRAINOLO: Object to form.
18 THE WITNESS: No, sir. I don't think
19 that could happen. If the patient --
20 BY MR. HYMAN:
21 Q. So at some point, the seventh floor is
22 going to have to realize that this patient from the
23 ER didn't come and follow up on that?
24 MR. FERRAINOLO: Object to form.
25 THE WITNESS: Generally, I would -- like

EXHIBIT K

witness list updated

HALL PRANGLE & SCHOONVELD, LLC
RAINBOW CORPORATE CENTER
777 NORTH RAINBOW BLVD., STE. 225
LAS VEGAS, NEVADA 89107
TELEPHONE: 702-889-6400 FACSIMILE: 702-384-6025

1 ECC
2 MICHAEL E. PRANGLE, ESQ.
3 Nevada Bar No. 8619
4 DAVID P. FERRAINOLO, ESQ.
5 Nevada Bar No. 8452
6 HALL PRANGLE & SCHOONVELD, LLC
7 777 North Rainbow Blvd., Ste. 225
8 Las Vegas, Nevada 89107
9 Phone: 702-889-6400
10 Facsimile: 702-348-6025
11 *Attorneys for Defendant*
12 *Valley Health System, L.L.C., d/b/a Centennial Hills Hospital*

DISTRICT COURT
CLARK COUNTY, NEVADA

10 ROXANNE CAGNINA, an individual,
11
12 Plaintiff,

13 vs.

14 CENTENNIAL HILLS HOSPITAL
15 MEDICAL CENTER AUXILIARY, a
16 Nevada Corporation; VALLEY HEALTH
17 SYSTEM, LLC; a Nevada Limited Liability
18 Company, VALLEY HOSPITAL MEDICAL
19 CENTER, INC. L, a Nevada Corporation;
20 UNIVERSAL HEALTH SERVICES
21 FOUNDATION, a Pennsylvania Corporation;
22 AMERICAN NURSING SERVICES, INC., a
23 Louisiana Corporation; STEVEN DALE
24 FARMER, an individual; DOE
25 INDIVIDUALS 1 through 10 and ROE
26 BUSINESS OR GOVERNMENTAL
27 ENTITIES 1 through 10, inclusive,

28 Defendants.

CASE NO. A570756
DEPT NO. X

DEFENDANT CENTENNIAL HILLS
HOSPITAL'S INITIAL EARLY CASE
CONFERENCE LIST OF WITNESSES
AND DOCUMENTS

24 DEFENDANT VALLEY HEALTH SYSTEM, LLC, D/B/A CENTENNIAL HILLS
25 HOSPITAL (hereafter Centennial Hills Hospital), by and through its attorneys of record, the law
26 office of HALL PRANGLE & SCHOONVELD, LLC, hereby submits its NRCP 16.1 List of
27 Witnesses and Documents as follows:
28

I.
WITNESSES

1. Roxanne Cagnina
c/o Neal K. Hyman, Esq.
THE LAW OFFICES OF NEAL HYMAN
2441 W. Horizon Ridge Parkway, Ste. 120
Henderson, Nevada 89052

Plaintiff Roxanne Cagnina is expected to testify as to the facts and circumstances surrounding this matter.

2. Mr. Cagnina

Mr. Cagnina is expected to testify as to the facts and circumstances surrounding this matter.

3. Steven Dale Farmer

Mr. Farmer is expected to testify as to the facts and circumstances surrounding this matter and the allegations made against him.

4. Emergency Room Nurses:

McCarthy, J.

Framil, B.

Arvelo, S.

Zeitoun, K.

Monterio, J.

Teeples, B.

Tanedo, E.

Evenson, K.

Briones, J.

Brandenberg

Morgenstern

Tangonan, A.

Anderson, T.

Cox, J.

Curlee, D.

Sumera, R.

Wolfe, M.

Davis, K.

Fernandez, R.

Pagan, S.

Philbin, K.

Degre, A.

Goodhart, K.

HALL PRANGLE & SCHOONVELD, LLC
RAINBOW CORPORATE CENTER
777 NORTH RAINBOW BLVD., STE. 225
LAS VEGAS, NEVADA 89107
TELEPHONE: 702-889-6400 FACSIMILE: 702-384-6025

7th Floor Nurses:

Freital, M.
Cronister, R.
Schuele, A.
Stringer, V.
Andaya, Y.
Curtis, G.
Spahr, G.
Mc Neal, T.
Martinelli, R.
Tagligatos, S.
Abdul, L.
Angeles, R.
Murray, C.
Cortez, E.
Simmons, D.
Diggs, M.
Brown, C.
Madrial, B.
Scisney, R.

c/o David P. Ferrainolo, Esq.
HALL PRANGLE & SCHOONVELD, LLC
777 North Rainbow Blvd., Ste. 225
Las Vegas, NV 89107

The above identified nurses are expected to testify as to the care and treatment rendered as well as the facts and circumstances surrounding this matter.

5. Tracy Farmer
145 ½ Aeva Caliente
Sonoma, California 95476

Tracy Farmer is expected to testify as to the facts and circumstances surrounding this matter and the allegations made against his brother.

6. Sandra Farmer

Sandra Farmer is expected to testify as to the facts and circumstances surrounding this matter and the allegations made against her brother.

7. Person Most Knowledgeable
Nevada State Board of Nursing
2500 W. Sahara Ave., Suite 207
Las Vegas, Nevada 89102

1 The Person Most Knowledgeable from the Nevada State Board of Nursing is expected to
2 testify regarding Steven D. Farmer and all background checks and information maintained by the
Nevada State Board of Nursing.

- 3 8. D. Nichols
4 c/o David P. Ferrainolo, Esq.
5 HALL PRANGLE & SCHOONVELD, LLC
6 777 North Rainbow Blvd., Ste. 225
Las Vegas, NV 89107

7 Centennial Hills Security Guard D. Nichols is expected to testify regarding the report he
8 took from Ms. Cagnina and the facts and circumstances surrounding the alleged incident.

- 9 9. Defendant reserves the right to supplement its list of witnesses.
10 10. Defendant reserves the right to call any witnesses identified by any other parties
11 in this litigation.

12 **II.**
DOCUMENTS

- 13 1. Las Vegas Metropolitan Police Report Incident Report
14 Bates Numbered LVMPD Report 00001 (Attached as Exhibit A)
15 2. Clark County Detention Center In-Custody Stats May 20, 2008
16 Bates Numbered CCDC In Custody Status 00001 – 00002
17 (Attached as Exhibit B)
18 3. Floor Plan Level One
19 Bates Numbered CHH LVL 1 00001 (Attached as Exhibit C)
20 4. Floor Plan 7th Floor
21 Bates Numbered CHH 7th Floor 00001 (Attached as Exhibit D)
22 5. Centennial Hills Employment File for Steven D. Farmer
23 Bates Numbered Farmer Employee File 00001 – 00040
24 (Attached as Exhibit E)
25 6. Emergency Department Transport Log
26 Bates Numbered ED Trnsprt Log 00001 (Attached as Exhibit F)
27 7. Centennial Hills Security Department Incident Report
28 Bates Numbered CHH Incident Report 00001 - 00002 (Attached as Exhibit G)
8. Emergency Department Schedule for May 15, 2008
Bates Numbered ED 5-15-08 Schedule 00001 (Attached as Exhibit H)

HALL PRANGLE & SCHOONVELD, LLC
RAINBOW CORPORATE CENTER
777 NORTH RAINBOW BLVD., STE. 225
LAS VEGAS, NEVADA 89107
TELEPHONE: 702-889-6400 FACSIMILE: 702-384-6025

9. 7th Floor Schedule for May 15, 2008
Bates Numbered 7th Floor 5-15-08 Schedule 00001
(Attached as Exhibit I)
10. Centennial Hills Hospital Job Description for RN I
Bates Numbered RN I Med/Surg 1 – 7 (Attached as Exhibit J)
11. Centennial Hills Hospital Job Description for CNA
Bates Numbered Unit Coord/C N A – 1 -8 (Attached as Exhibit K)
12. Centennial Hills Hospital Job Description for RN III
Bates Numbered RN II ER-1 – 7 (Attached as Exhibit L)
13. Centennial Hills Hospital Job Description for RN III Emergency Department
Bates Numbered RN II ER-1 – 7 (Attached as Exhibit M)
14. Centennial Hills Hospital Job Description for Unit Coordinator/ED Tech
Bates Numbered Unit Coord/ED Tech-1 – 8 (Attached as Exhibit N)
15. Centennial Hills Medical Records for Plaintiff
Bates Numbered CHH00001 – 00073 (Attached as Exhibit O)
16. Defendant reserves the right to supplement this list of documents.
17. Defendant reserves the right to utilize any document utilized or identified by any other party to this litigation.

DATED this 13th day of November, 2008.

HALL PRANGLE & SCHOONVELD, LLC


MICHAEL E. PRANGLE, ESQ.

Nevada Bar No.: 8619

DAVID P. FERRAINOLO, ESQ.

Nevada Bar No.: 8452

777 North Rainbow Blvd., Ste. 225

Las Vegas, NV 89107

Attorneys for Defendant

Valley Health System, L.L.C.,

d/b/a Centennial Hills Hospital

HALL PRANGLE & SCHOONVELD, LLC
RAINBOW CORPORATE CENTER
777 NORTH RAINBOW BLVD., STE. 225
LAS VEGAS, NEVADA 89107
TELEPHONE: 702-889-6400 FACSIMILE: 702-384-6025

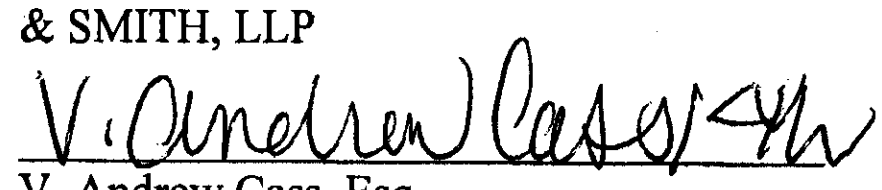
RECEIPT OF COPY

RECEIPT OF A COPY of the foregoing **DEFENDANT CENTENNIAL HILLS
HOSPITAL'S INITIAL EARLY CASE CONFERENCE LIST OF WITNESSES AND
DOCUMENTS** is hereby acknowledged this 13 day of November, 2008.

THE LAW OFFICES OF NEAL HYMAN

LEWIS BRISBOIS BISGAARD
& SMITH, LLP


Neal K. Hyman, Esq.


V. Andrew Cass, Esq.

Nevada Bar No. 5998

Nevada Bar No. 5246

2441 W. Horizon Ridge Parkway, Ste. 120

Keith A. Weaver, Esq.

Henderson, Nevada 89052

Nevada Bar No. 10271

Attorneys for Plaintiffs

400 South Fourth Street, Ste. 500

Las Vegas, Nevada 89101

Attorneys for American Nursing Services, Inc.

EXHIBIT L

RECEIVED

JAN 27 2011

HALL PRANGLE
& SCHOONVELD

Robert E. Murdock, Esq.
Nevada Bar No. 4013
MURDOCK & ASSOCIATES, CHTD.
520 South Fourth Street
Las Vegas, NV 89101
702-384-5563

Eckley M. Keach, Esq.
Nevada Bar No. 1154
ECKLEY M. KEACH, CHTD.
520 South Fourth Street
Las Vegas, NV 89101
702-384-5563
Attorneys for Plaintiff

DISTRICT COURT
CLARK COUNTY, NEVADA

JANE DOE,

Plaintiff,

vs.

VALLEY HEALTH SYSTEM LLC, a Nevada
limited liability company, d/b/a CENTENNIAL
HILLS HOSPITAL MEDICAL CENTER;
UNIVERSAL HEALTH SERVICES, INC., a
Delaware corporation; AMERICAN NURSING
SERVICES, INC., a Louisiana corporation;
STEVEN DALE FARMER, an individual; DOES I
through X, inclusive; and ROE CORPORATIONS
I through X, inclusive,

Defendants.

CASE NO. 09-A-595780
DEPT. NO. II

NOTICE OF ENTRY OF
DISCOVERY
COMMISSIONER'S
REPORT AND
RECOMMENDATIONS

TO: ALL DEFENDANTS HEREIN; and

TO: THEIR RESPECTIVE COUNSEL OF RECORD

YOU AND EACH OF YOU WILL PLEASE TAKE NOTICE that on the 21st day of
January, 2011, the Court entered Discovery Commissioner's Report and Recommendations in

1 the above-entitled action. A copy of said Discovery Commissioner's Report and
2 Recommendations is attached hereto.

3 DATED this 26th day of January, 2011.

4 MURDOCK & ASSOCIATES, CHTD.
5 ECKLEY M. KEACH, CHTD.

6
7 /s/ Robert E. Murdock
8 Robert E. Murdock Bar No. 4013
9 Eckley M. Keach Bar No. 1154
10 520 South Fourth Street
11 Las Vegas, NV 89101
12 Attorneys for Plaintiff
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CERTIFICATE OF MAILING

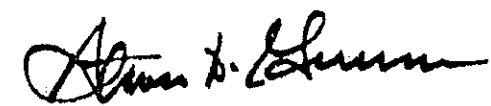
The undersigned hereby declares she is an employee of Murdock & Associates, Chtd. and that on January 26, 2011 she deposited a true copy of the foregoing NOTICE OF ENTRY OF DISCOVERY COMMISSIONER'S REPORT AND RECOMMENDATIONS and DISCOVERY COMMISSIONER'S REPORT AND RECOMMENDATIONS in the United States mail, postage fully prepaid, addressed as follows:

John F. Bemis, Esq.
Hall Prangle & Schoonveld, LLC
777 North Rainbow Blvd., Suite 225
Las Vegas, NV 89107

Robert C. McBride, Esq.
Mandelbaum, Ellerton & McBride
2012 Hamilton Lane
Las Vegas, NV 89106

S. Brent Vogel, Esq.
Lewis Brisbois Bisgaard & Smith
6385 South Rainbow Blvd., Suite 600
Las Vegas, NV 89118

/s/ Karen A. Kilmartin
An employee of Murdock & Associates, Chtd.



CLERK OF THE COURT

1 DCRR

2 Robert E. Murdock, Esq.

3 Nevada Bar No. 4013

4 MURDOCK & ASSOCIATES, CHTD.

5 520 South Fourth Street

6 Las Vegas, NV 89101

7 702-384-5563

8 Eckley M. Keach, Esq.

9 Nevada Bar No. 1154

10 ECKLEY M. KEACH, CHTD.

11 520 South Fourth Street

12 Las Vegas, NV 89101

13 702-384-5563

14 Attorneys for Plaintiff

15 DISTRICT COURT

16 CLARK COUNTY, NEVADA

17 JANE DOE,

18 Plaintiff,

19 vs.

20 VALLEY HEALTH SYSTEM LLC, a Nevada
21 limited liability company, d/b/a CENTENNIAL
22 HILLS HOSPITAL MEDICAL CENTER;
23 UNIVERSAL HEALTH SERVICES, INC., a
24 Delaware corporation; AMERICAN NURSING
25 SERVICES, INC., a Louisiana corporation;
26 STEVEN DALE FARMER, an individual; DOES I
27 through X, inclusive; and ROE CORPORATIONS
28 I through X, inclusive,

Defendants.

CASE NO. 09-A-595780

DEPT. NO. II

DISCOVERY
COMMISSIONER'S REPORT
AND RECOMMENDATIONS

DISPUTE RESOLUTION CONFERENCE DATE: December 15, 2010

APPEARANCES:

Plaintiff:

Robert E. Murdock
Murdock & Associates, Chtd.

1 Defendants: Steven Dale Farmer Robert C. McBride
2 Mandelbaum, Ellerton & McBride
3 Centennial Hills Hospital John F. Bemis
4 Hall, Prangle & Schoonveld, LLC
5 American Nursing Services S. Brent Vogel
6 Lewis Brisbois Bisgaard & Smith

7 I.

8 FINDINGS

9 This matter came before the Discovery Commissioner Bonnie Bulla on December 15,
10 2010 on Plaintiff's Motion for Protective Order. Plaintiff was represented by Robert E.
11 Murdock, Esq. of Murdock & Associates, Chtd. Robert C. McBride of Mandelbaum, Ellerton
12 & McBride appeared on behalf of Defendant Steven Dale Farmer. John F. Bemis of Hall,
13 Prangle & Schoonveld, LLC appeared on behalf of Valley Health System d/b/a Centennial Hills
14 Hospital.

15 The Discovery Commissioner read, reviewed and considered the moving papers and
16 opposition thereto and the arguments of counsel.

17 Based upon the foregoing, the Discovery Commissioner makes the following
18 recommendations:

19 II.

20 RECOMMENDATIONS

21 1. Plaintiff's Motion for Protective Order is granted. This case is stayed until the
22 conclusion of the criminal case of *State of Nevada v. Steven Dale Farmer*, Case No. C249693.
23 All dates set in the Scheduling Order are vacated, and an Amended Scheduling Order will be
24 issued at such time as the criminal case against Steven Dale Farmer is concluded.

25 //

26 //

27 //

28 //

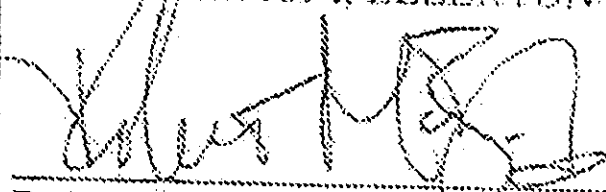
1
2 2. A status check is set for May 18, 2011 at 9:00 a.m. before the Discovery
3 Commissioner.

4 DATED this 29 day of December, 2010.

5
6 
7 DISCOVERY COMMISSIONER
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1 Approve/Disapprove:

2 MANDELBAUM, ELLERTON & McBRIDE

3 
4 Robert C. McBride Bar No. 7082

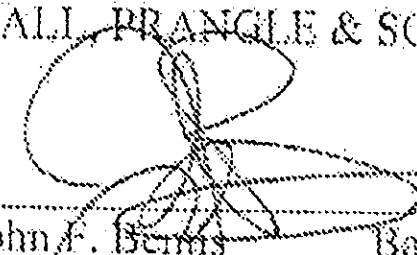
5 2012 Hamilton Lane

6 Las Vegas, NV 89106

7 Attorneys for Defendant

8 Steven Dale Farmer

9 HALL, PRANGLE & SCHOONVELD, LLC

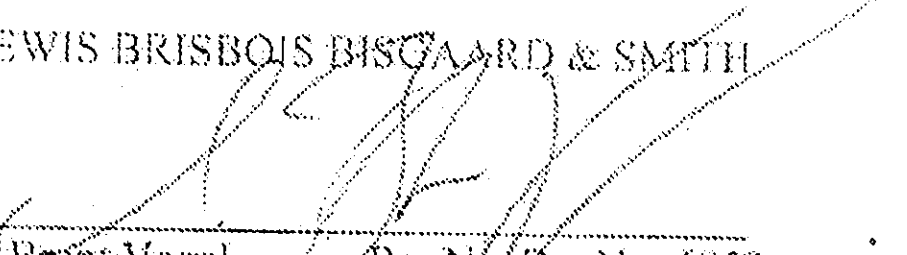
10 
11 John F. Bennis Bar No. 9509

12 777 North Rainbow Blvd., Suite 225

13 Las Vegas, NV 89107

14 Attorneys for Defendant Valley Health
15 System d/b/a Centennial Hills Hospital

16 LEWIS BRISBOIS DISCAARD & SMITH

17 
18 S. Brent Vogel Bar No. Bar No. 6858

19 6385 South Rainbow Blvd., Suite 600

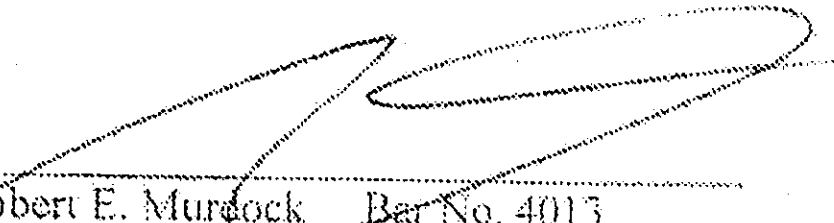
20 Las Vegas, NV 89118

21 Attorneys for Defendant American
22 Nursing Services, Inc.

23 Submitted by:

24 MURDOCK & ASSOCIATES, CHTD.

25 ECKLEY M. KEACH, CHTD.

26 
27 Robert E. Murdock Bar No. 4013

28 Eckley M. Keach Bar No. 1154

520 South Fourth Street

Las Vegas, NV 89101

Attorneys for Plaintiff

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NOTICE

Pursuant to NRCP 16.1(d)(2), you are hereby notified you have five (5) days from the date you receive this document within which to file written objections.

[Pursuant to E.D.C.R. 2.34(f) an objection must be filed and served no more than five (5) days after receipt of the Discovery Commissioner's Report. The Commissioner's Report is deemed received when signed and dated by a party, his attorney or his attorney's employee, or three (3) days after mailing to a party or his attorney, or three (3) days after the clerk of the court deposits a copy of the Report in a folder of a party's lawyer in the clerk's office. See E.D.C.R. 2.34(f)

A copy of the foregoing Discovery Commissioner's Report was:

_____ Mailed to Plaintiff/Defendant at the following address on the _____ day
of _____, 20____.

☒ Placed in the folder of the plaintiffs'/defendant's counsel in the clerk's
office on the 4 day of Jan, 2011.

STEVEN D. GRIERSON

By 

Deputy Clerk

CASE NAME: Jane Doe vs. Centennial Hills Hospital, et al.
CASE NUMBER: A595780

ORDER

The Court, having reviewed the above report and recommendations prepared by the
Discovery Commissioner and,

_____ The parties having waived the right to object thereto,

X ^{mm}
_____ No timely objection having been received in the office of the Discovery
Commissioner pursuant to E.D.C.R. 2.34 (f).

_____ Having received objections thereto and the written argument in support of said
objections, and good cause appearing.

AND

X
_____ IT IS HEREBY ORDERED the Discovery Commissioner's Report and
Recommendations is affirmed and adopted,

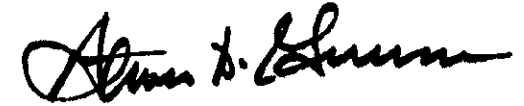
_____ IT IS HEREBY ORDERED the Discovery Commissioner's Report and
Recommendations are affirmed and adopted as modified in the following manner.
(attached hereto)

_____ IT IS HEREBY ORDERED that a hearing on the Discovery Commissioner's
Report is set for _____, 2010, at _____: _____ a.m.

DATED this 18th day of January, 2011.

K. W. [Signature]
DISTRICT JUDGE

EXHIBIT M



CLERK OF THE COURT

1 NOTC

2 ROBERT C. McBRIDE, ESQ.

3 Nevada Bar No.: 007082

4 HEATHER S. HALL, ESQ.

5 Nevada Bar No.: 010608

6 CARROLL, KELLY, TROTTER, FRANZEN, McKENNA & PEABODY

7 701 N. Green Valley Pkwy, Suite 200

8 Henderson, NV 89074

9 Telephone: (702) 792-5855

10 Facsimile: (702) 796-5855

11 Attorneys for Defendant STEVEN DALE FARMER

12 **DISTRICT COURT**

13 **CLARK COUNTY, NEVADA**

14 ESTATE OF JANE DOE, by and through its
15 Special Administrator MISTY PETERSEN,

16 Plaintiffs,

17 vs.

18 VALLEY HEALTH SYSTEM, LLC, a Nevada
19 Limited Liability Company dba CENTENNIAL
20 HILLS HOSPITAL MEDICAL CENTER;
21 UNIVERSAL HEALTH SERVICES, INC., a
22 Delaware Corporation; AMERICAN NURSING
23 SERVICES, INC., a Louisiana Corporation;
24 STEVEN DALE FARMER, an individual; DOES
25 I through X, inclusive; and ROE BUSINESS
26 ENTITIES, I through X, inclusive,

27 Defendants.

CASE NO.: A595780
DEPT. NO.: II

**NOTICE OF ENTRY OF ORDER RE:
ORDER DENYING PLAINTIFF'S MOTION
FOR PARTIAL SUMMARY JUDGMENT
AS TO DEFENDANT STEVEN DALE
FARMER AND GRANTING COUNTER-
MOTION FOR STAY OF CIVIL ACTION
PENDING CRIMINAL CASE**

28 PLEASE TAKE NOTICE an Order was entered on the 4th day of April, 2014, a copy of which
is attached hereto.

Dated this 7th day of April, 2014.

CARROLL, KELLY, TROTTER, FRANZEN,
McKENNA & PEABODY

By: 

ROBERT C. McBRIDE, ESQ.

Nevada Bar No.: 007082

HEATHER S. HALL, ESQ.

Nevada Bar No.: 010608

701 N. Green Valley Pkwy, Suite 200

Henderson, NV 89074

Attorneys for Defendant STEVEN DALE FARMER

CERTIFICATE OF SERVICE

I here by certify that on this 7 day of April, 2014, service of a true correct copy of **NOTICE OF ENTRY OF ORDER RE: ORDER DENYING PLAINTIFF'S MOTION FOR PARTIAL SUMMARY JUDGMENT AS TO DEFENDANT STEVEN DALE FARMER AND GRANTING COUNTER-MOTION FOR STAY OF CIVIL ACTION PENDING CRIMINAL CASE** as made as indicated below:

☒ By first class mail, postage prepaid from Las Vegas, Nevada pursuant to N.R.C.P. 5(b) addressed as follows below:

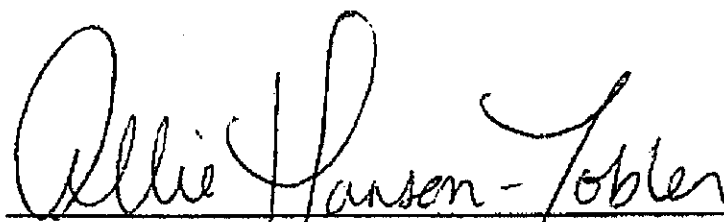
☐ By facsimile, pursuant to EDCR 7.26 (as amended):

☐ By receipt of copy as indicated below:

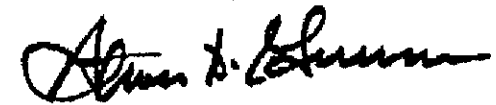
Robert E. Murdock
Eckley M. Keach
Keach Murdock, Ltd.
520 South Fourth Street, 2nd Floor
Las Vegas, NV 89101
Attorneys for Plaintiff

S. Brent Vogel, Esq.
Lewis, Brisbois, Bisgaard & Smith
6385 S. Rainbow Blvd, Suite 600
Las Vegas, NV 89118
Attorneys for Defendants
American Nursing Services, Inc.

John F. Bemis, Esq.
Hall Prangle Schoonveld, LLC
1160 N. Town Center Drive, Suite 200
Las Vegas, NV 89144
Attorneys for Defendants
Centennial Hills Hospital



An employee of CARROLL, KELLY, TROTTER,
FRANZEN, McKENNA & PEABODY



CLERK OF THE COURT

ORDER

ROBERT C. MCBRIDE, ESQ.
Nevada Bar No.: 007082
HEATHER S. HALL, ESQ.
Nevada Bar No.: 010608
MANDELBAUM, ELLERTON & MCBRIDE
2012 Hamilton Lane
Las Vegas, Nevada 89106
Telephone: (702) 367-1234
Fax No.: (702) 367-1978
E-mail: filing@memlaw.net
Attorneys for Defendant
Steven Dale Farmer

**DISTRICT COURT
CLARK COUNTY, NEVADA**

* * * *

ESTATE OF JANE DOE, by and through its
Special Administrator MISTY PETERSEN,

Plaintiff,

vs.

VALLEY HEALTH SYSTEM LLC, a Nevada
limited liability company, dba CENTENNIAL
HILLS HOSPITAL MEDICAL CENTER;
UNIVERSAL HEALTH SERVICES, INC., a
Delaware corporation; AMERICAN NURSING
SERVICES, INC., a Louisiana corporation;
STEVEN DALE FARMER, an individual;
DOES I through X, inclusive; and ROE
CORPORATIONS I through X, inclusive,

Defendants.

CASE NO.: A595780
DEPT. NO.: II

DATE OF HEARING: 2/19/14
TIME OF HEARING: 9:00 a.m.

**ORDER DENYING PLAINTIFF'S MOTION FOR PARTIAL SUMMARY JUDGMENT AS
TO DEFENDANT STEVEN DALE FARMER AND GRANTING COUNTER-MOTION FOR
STAY OF CIVIL ACTION PENDING CRIMINAL CASE**

Plaintiff, ESTATE OF JANE DOE, by and through its Special Administrator MISTY
PETERSEN's Motion for Partial Summary Judgment as to Defendant Steven Dale Farmer having come
on for hearing on February 19, 2014, before this Honorable Court, Plaintiff appearing through Robert E.
Murdock, Esq., Plaintiff's counsel of record; Defendant Steven Dale Farmer appearing by and through
his counsel of record Robert C. McBride, Esq. of the law firm of Mandelbaum, Ellerton & McBride;

1 Defendant American Nursing Services, Inc. appearing through its counsel of record Amanda Brookhyser,
2 Esq. and James Silvestri, Esq.; and Defendants Valley Health System, LLC.; and Defendant Centennial
3 Hills Hospital appearing through their counsel John Bemis, Esq. and the Court having considered the
4 Motion, Opposition, Joinders and Reply thereto, and the argument of counsel, and for good cause
5 appearing, the Court makes the following Findings of Fact and Conclusions of Law:

6 **FINDINGS OF FACT**

7 1. This case involves allegations by Plaintiff Jane Doe that she was sexually assaulted by
8 Defendant Steven Dale Farmer, who was an employee of Defendant American Nursing Services, Inc.,
9 while she was a patient at Defendant Centennial Hills Hospital Medical Center in or around May of 2008.

10 2. Plaintiff filed her Complaint on July 24, 2009 and followed with an Amended Complaint
11 filed on August 24, 2009. The Amended Complaint alleges the following causes of action:
12 (1) Negligence/Corporate Negligence; (2) Punitive Damages; and (3) Attorney's fees.

13 3. Discovery Commissioner Bulla issued a Stay on All Discovery pending resolution of
14 Steven Farmer's criminal trial.

15 4. Subsequently, Plaintiff's counsel filed a Motion to Completely Lift the Stay on March 5,
16 2013. The Discovery Commissioner heard the Motion on April 10, 2013 and granted it. The
17 Commissioner's ruling included a finding that Defendants were permitted to take the deposition of Jane
18 Doe. However, as requested by Plaintiff's counsel, the Discovery Commissioner's ruling was that Mr.
19 Farmer's deposition must proceed first before defense counsel could take any depositions. Plaintiff Jane
20 Doe took her life on or about July 13, 2013.

21 5. Mr. Farmer's deposition was not noticed until September 25, 2013. Plaintiff's counsel
22 filed his Notice to Take Mr. Farmer's Deposition on September 10, 2013. That same day, counsel for
23 Defendant ANS filed a Suggestion of Death on the Record, and subsequently, Plaintiff's counsel
24 substituted Jane Doe's Estate. Following the substitution, Plaintiff's counsel re-noticed the deposition
25 of Steven Farmer.

26 6. Mr. Farmer's deposition took place on December 17, 2013. Mr. Farmer, on the advice of
27 counsel, asserted his Fifth Amendment privilege not to testify to questions posed by Plaintiff's counsel
28 due to his pending criminal case.

1 9. The Court further finds that the prior Stipulation and Order Regarding the Five Year Rule
2 inadvertently failed to include Universal Health Services, Inc. as a named Defendant. An Errata to the
3 Stipulation and Order is to be circulated for signatures of all counsel. An in chamber status check on the
4 Errata will be set for two weeks.

5 DATED this _____ day of _____, 2014.

6
7 See 4a
8 _____
9 DISTRICT COURT JUDGE

10 Submitted by:

11 MANDELBAUM, ELLERTON & McBRIDE

12 By:

13 See 4a
14 ROBERT C. McBRIDE, ESQ.
15 Nevada Bar No.: 007082
16 HEATHER S. HALL, ESQ.
17 Nevada Bar No.: 010608
2012 Hamilton Lane
Las Vegas, Nevada 89106
Attorneys for Defendant
Steven Dale Farmer

18 APPROVED AS TO FORM AND CONTENT:

19 By:

20 [Signature]
21 S. Brent Vogel, Esq.
22 LEWIS BRISBOIS BISGAARD & SMITH
23 6385 S. Rainbow Blvd., Suite 600
24 Las Vegas, NV 89118
25 Attorneys for Defendants
26 American Nursing Services, Inc.

27 By:

28 See 4(a)
John F. Bemis, Esq.
HALL, PRANGLE, SCHOONVELD, LLC
1160 N. Town Center Drive, Suite 200
Las Vegas, NV 89144
Attorneys for Defendants
Centennial Hills Hospital

9. The Court further finds that the prior Stipulation and Order Regarding the Five Year Rule inadvertently failed to include Universal Health Services, Inc. as a named Defendant. An Errata to the Stipulation and Order is to be circulated for signatures of all counsel. An in chamber status check on the Errata will be set for two weeks.

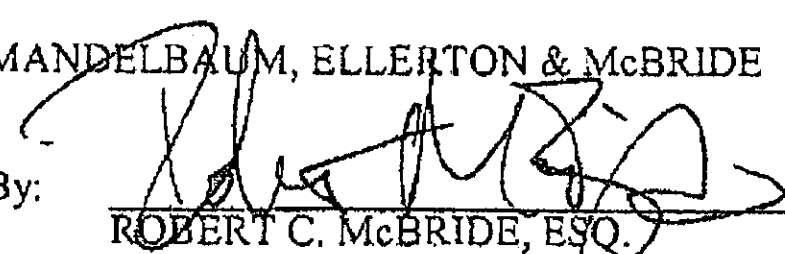
DATED this 2nd day of April, 2014.


DISTRICT COURT JUDGE 

Submitted by:

MANDELBAUM, ELLERTON & McBRIDE

By:


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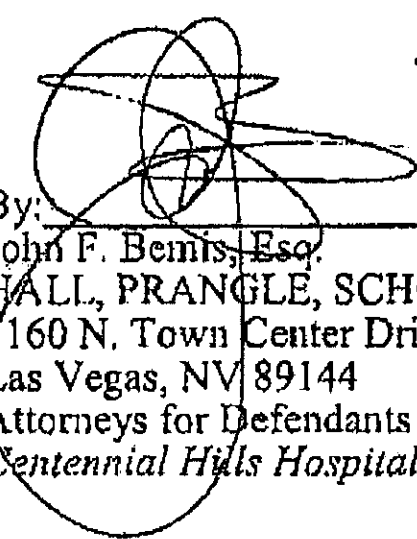
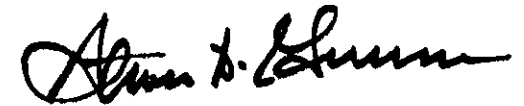

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EXHIBIT N



CLERK OF THE COURT

1 **ORDR**

2
3 **DISTRICT COURT**
4 **CLARK COUNTY, NEVADA**

5
6 ESTATE OF JANE DOE, by and through its
7 Special Administrator, Misty Petersen,

8 Plaintiff,

9 vs.

10 VALLEY HEALTH SYSTEM, LLC, a Nevada
11 limited liability company, d/b/a CENTENNIAL
12 HILLS HOSPITAL MEDICAL CETER;
13 UNIVERSAL HEALTH SERVICES, INC., a
14 Delaware corporation; AMERICAN NURSING
15 SERVICE, INC., a Louisiana corporation;
16 STEVEN DALE FARMER, an individual;
17 DOES I through X, inclusive; and ROE
18 CORPORATIONS I through X, inclusive,

19 Defendants.

Case No.: 09-A-595780-C

Dept. No.: II

Date: July 1, 2015

Time: 9:00 a.m.

**ORDER DENYING PLAINTIFF'S
MOTION FOR SUMMARY
JUDGMENT**

16
17 The plaintiff (Estate of Jane Doe, by and through its Special Administrator, Misty
18 Petersen) seeks summary judgment on the grounds that it was reasonably foreseeable to the
19 defendants (Valley Health System, LLC, Centennial Hills Hospital Medical Center, and
20 Universal Health Services, Inc.), as a matter of law, that CNA Steven Farmer would sexually
21 assault a patient. Plaintiff asks this Court not to let the particular defendants have a jury trial,
22 and impose liability as a matter of law on the defendants.

23 Certainly any caring person would be greatly troubled if a health care facility does not
24 have proper training, procedures, supervision, *and/or* warning systems in place to prevent
25 foreseeable sexual assaults on its patients. A person admitted into a health care facility
26 expects, and is entitled to expect, to receive lawful and safe care, commensurate with the
27 applicable standard of care and good conduct under Nevada law. The event that occurred here
28 casts legitimate fear in future patients and may tend to demean the health care profession.

Richard F. Scotti
District Judge

Department Two
Las Vegas, NV 89155

1 More importantly, it inflicted despicable harm and terror on the victim. Public policy
2 demands that society and individuals take all reasonable steps to prevent such tragedies
3 whenever they are reasonably foreseeable and such harm is reasonably preventable.

4 However, the Court believes the evidence is not so one-sided that reasonable minds
5 could not differ on the foreseeable nature of the wrongful conduct and harm committed by Mr.
6 Farmer. A body of reasonable men and women, comprising a jury, is well-suited to examine
7 the totality of facts and circumstances in this case and decide if liability should be imposed on
8 the defendants.

9 Nevada law under NRCP 56 does not permit the Court to grant the plaintiff's request
10 for summary judgment. There are disputed material questions of fact to be decided before
11 liability under NRS 41.745 may be determined.

12 NRS 41.745 governs employer liability for intentional torts by an employee. It
13 provides, as follows:

14 An employer is not liable for harm or injury caused by the
15 intentional conduct of an employee if the conduct of the employer:

16 (a) Was a truly independent venture of the employee;

17 (b) Was not committed in the course of the very task
assigned to the employee; and

18 (c) Was not reasonably foreseeable under the facts and
19 circumstances of the case considering the nature and scope of his
or her employment.

20 For purposes of this subsection, conduct of an employee is
21 reasonably foreseeable if a person of ordinary intelligence and
prudence could have reasonably anticipated the conduct and the
22 probability of injury.

23 NRS 41.745.

24 As an initial matter, the plaintiff argued that the defendants' failure to present any
25 affidavits opposing the facts alleged by the plaintiff is "fatal to their case." (Plaintiff's Reply
26 at p. 4, line 3). The plaintiff is wrong. A party opposing a motion for summary judgment is
27 entitled to establish a genuine issue of material fact through deposition testimony provided
28 under oath, as did defendants here.

1 Plaintiff also complained that the defendants failed to present any affidavit to
2 authenticate the exhibits attached to the defendants' opposition brief. However, the plaintiff
3 did not identify any exhibit that it believed to be unauthentic. Plaintiff did not present a
4 formal objection, and did not ask the Court to rule on the authenticity of any of the
5 defendants' exhibits. So for purposes of resolving the instant motion, the Court assumes that
6 the defendants' exhibits are authentic. However, the court does caution the defendants to
7 follow the plaintiff's lead in making sure on future briefs that exhibits are properly
8 authenticated.

9 An equal warning is due to the plaintiff, because the plaintiff's briefs are replete with
10 purported factual statements without proper citation to authority. For example, in plaintiff's
11 motion, the plaintiff alleged as supposed "uncontested facts," ¶¶s 38, 39, 40, 41, 42, 43, 44,
12 45, and 46, but fails to provide citation to authority.

13 On another preliminary issue, the plaintiff rebuked Nurse Sumera for supposedly
14 calling himself a "Relief" Charge Nurse. The plaintiff argued: "Sumera himself injected an
15 issue of his being a 'relief' Charge Nurse in an attempt to mislead." (Plaintiff's Reply at p. 7,
16 lines 25-26). Apparently the plaintiff is worried the Court may not view Nurse Sumera as a
17 management-level employee if he only serves periodically as a Charge Nurse in relief of the
18 regular Charge Nurse. The Court notes that NAC 632.033 states that a "Charge Nurse" has
19 the "authority to function as a manager of other nurses." But plaintiff did not cite to any
20 evidence, such as deposition testimony, to provide proof that Nurse Sumera actually possessed
21 the management-level authority that ordinarily attaches to a person with the title "Charge
22 Nurse."

23 The plaintiff also took issue with the defendants' discussion of the applicable burden
24 of proof in making and opposing a motion for summary judgment. Plaintiff argued that
25 defendants cited the "wrong case law" (Plaintiffs' Reply at p. 2, line 18) and "must not have
26 realized that the Nevada Supreme Court changed the summary judgment analysis in 2005."
27 (Plaintiff's Reply at p. 5, line 5). Specifically, the plaintiffs argued that the "slightest doubt"
28 standard was rejected in Nevada by *Wood v. Safeway*, 121 Nev. 724, 121 P.3d 1026 (2005),

1 and the "Centennial Hills Defendants must have missed that." (Plaintiff's Reply at p. 5,
2 line 8). The Court has studied the defendants' brief and does not find any indication that the
3 defendants seek to apply a "slightest doubt" standard," or otherwise misunderstood the
4 applicable burden of proof. Moreover, the defendants were aware of, and did seem to
5 understand, *Wood v. Safeway*, 121 Nev. 724 (2005) in their opposition brief. The defendants
6 cited to *Wood v. Safeway*, 121 Nev. at 740-41, for the proposition that a defendant is not liable
7 for its employee's unforeseeable sexual assault and may seek summary judgment where there
8 are no genuine issues of fact for trial.

9 "Summary judgment is appropriate under NRCP 56 when the pleadings, depositions,
10 answers to interrogatories, admissions, and affidavits, if any, that are properly before the
11 court, demonstrate that no genuine issue of material fact exists, and the moving party is
12 entitled to judgment as a matter of law." *Wood*, 121 Nev. at 731.

13 "While the pleadings and other proof must be construed in a light most favorable to the
14 nonmoving party, that party bears the burden to 'do more than simply show that there is some
15 metaphysical doubt' as to the operative facts in order to avoid summary judgment being
16 entered in the moving party's favor." *Id.*

17 "The nonmoving party 'must, by affidavit or otherwise, set forth specific facts
18 demonstrating the existence of a genuine issue for trial or have summary judgment entered
19 against him.'" *Id.*

20 The defendants properly noted in their opposition brief (p. 6, lines 23-24) that "the
21 pleadings and documentary evidence must be construed in the light most favorable to the party
22 against whom the motion for summary judgment is directed," which remains an applicable
23 part of the burden of proof based on *Wood*, 121 Nev. at 731.

24 The plaintiff presented the following evidence to try to persuade this Court that it was
25 reasonably foreseeable to defendants that Mr. Farmer would sexually assault a patient:

26 1. Nurse Wolfe testified that Charge Nurse Ray Sumera told her, a few weeks before
27 the incident at issue in this case to "watch [Mr. Farmer] around [Nurse Wolfe's] female
28 patients." (Wolfe depo. p. 52) (Wolfe Stat. to LVMPD).

1 2. According to Nurse Wolfe, Nurse Sumera warned her that: "[Mr. Farmer] was
2 very overly attentive with female patients and very anxious to connect them to the [heart]
3 monitors and disconnect them from the monitors which would require him to reach into their
4 clothing." (Wolfe Stat. to LVMPD).

5 3. Charge Nurse Sumera "had a little bit of authority, being that he was a relief
6 charge nurse." (Wolfe depo. at p.23, lines 13-14, referenced in Plaintiff's Motion at p. 13,
7 line 26).

8 4. According to Nurse Wolfe, she observed Mr. Farmer "expose a patient" when he
9 checked her (Wolfe depo. pp. 33-34), and that this happened in "one situation." (Wolfe depo.
10 p. 35, line 7).

11 5. Nurse Wolfe also testified that she felt "[Mr. Farmer] was just very suspicious in
12 his activities," and he was "going into rooms with doors closed with female patients when he
13 was not asked to." He did this "multiple times." Nurse Wolfe said this was "inappropriate"
14 conduct. (Wolfe depo. p. 24, lines 5-13).

15 6. Nurse Wolfe asked Charge Nurse Sumera to talk to Mr. Farmer about these
16 matters, and Mr. Sumera supposedly did so. (Sumera depo. p. 73, lines 8-24; p. 90,
17 lines 8-18).

18 7. Nurse Wolfe also testified that it was "common knowledge" that Mr. Farmer was
19 "overly attentive with female patients." (Wolfe depo. at p. 30, lines 5-16).

20 8. Nurse Sumera in his deposition could not recall the substance of his conversations
21 with Nurse Wolfe about Mr. Farmer, but did not dispute the accuracy of Nurse Wolfe's
22 recollection. (Sumera depo. at p. 137).

23 9. Nurse Sumera did recall that Nurse Wolfe told him Mr. Farmer was not respecting
24 the privacy of patients. (Sumera depo. p. 129, lines 10-13).

25 10. Nurse Wolfe said she was not "surprised" that Mr. Farmer had been arrested.
26 (Wolfe depo. p. 42, lines 3-5).

27 From these facts the plaintiff argued that defendants "had specific notice about
28 Farmer." (Plaintiff's Reply, at p. 18, line 6) (emphasis added), and that Mr. Farmer was

1 known to be "acting inappropriately with female patients." (Plaintiff's Reply at p. 18,
2 line 13). It appears to the Court that the plaintiff highlighted to term "specific" because the
3 suspicions that Nurse Wolfe and Nurse Sumera seemed to have about Mr. Farmer were
4 carefully defined but narrowly limited to the issue of him eagerly adjusting heart leads on
5 patients and going into rooms with closed doors. The "inappropriate" conduct was going into
6 rooms with closed doors. The plaintiff insists that the only reasonable conclusion from such
7 "specific notice" about eagerly adjusting heart leads, and the "inappropriate" conduct about
8 the closed doors, is that Mr. Farmer would commit a sexual assault on a patient.

9 Defendants dispute plaintiff's theory of the case, and instead argue that, based on the
10 totality of facts and circumstances, a reasonable person could conclude that it was not
11 reasonably foreseeable that Mr. Farmer would sexually assault a patient.

12 Defendants have presented competent evidence that tends to support the following
13 facts, which may or may not be disputed by the plaintiffs:

14 1. Mr. Farmer was certified as a CNA in Nevada, and had several years of
15 experience working in and around medical patients in Nevada, prior to the incident in
16 question. (Def. Opp. at Exh. E).

17 2. Mr. Farmer passed a criminal background test before working for defendants.
18 (*Id.*).

19 3. Mr. Farmer's pre-incident drug tests were negative. (*Id.*).

20 4. Mr. Farmer's personnel files did not indicate any improper or bad conduct before
21 working at Centennial Hills. (*Id.*).

22 5. Mr. Farmer had provided three personnel references to the defendants prior to
23 working at Centennial Hills. (*Id.*).

24 6. Centennial Hills' personnel file for Mr. Farmer had described Mr. Farmer as an
25 "excellent worker." (*Id.*).

26 7. There is no evidence in the record presented to the Court that any Centennial
27 Hills' employee had ever observed Mr. Farmer commit any criminal act before the incident.

28

1 8. There is no evidence that any Centennial hills' employee had ever observed Mr.
2 Farmer improperly touch a female patient before the incident. There was "not anything
3 concrete." (Wolfe depo. p. 34, lines 22-25) (Murray depo. p. 67, lines 21-24).

4 9. There is no evidence in the record presented to the Court that any female patient
5 had ever complained of any improper sexual conduct or assault by Mr. Farmer before the
6 incident. (See Defendants' Opposition, p. 9, lines 24-25).

7 10. Male CNA's, such as Mr. Farmer, were permitted at Centennial Hills to connect
8 heart leads female patients if instructed to do so by a nurse. (Sumera depo. p. 53, lines 17-20)
9 (Christine Murray depo. pp. 47-48).

10 11. CNA's at Centennial Hills were permitted to go into a patient's room alone to
11 adjust a heart monitor lead if directed by a nurse. (Sumera depo. p. 102, lines 7-11).

12 12. Although "unusual," it was "not against protocol" for Mr. Farmer to go into
13 rooms with female patients and close the door. (Wolfe Stat. to LVMPD, p. 9).

14 13. It was "not [] abnormal" to have to remind a CNA, like Nurse Sumera did with
15 Mr. Farmer, to knock before entering a patient's room. (Sumera depo. p. 93, lines 1-9).

16 14. It was a "normal request" to also have to remind a CNA, like Nurse Sumera did
17 with Mr. Farmer, to check with the nurse first to find out if a heart monitor needed to be
18 adjusted. (Sumera depo. p. 93, lines 10-13).

19 15. Nurse Sumera was "surprised that Mr. Farmer had been arrested. (Sumera depo.
20 p. 60, lines 5-8).

21 16. Nurse Sumera could not remember Mr. Farmer being "too attentive" (Sumera
22 depo. p. 134, lines 5-7) or "overly attentive to female patients." (Sumera depo. at p. 124, lines
23 19-22).

24 17. Nurse Wolfe, in testifying why she never went to talk to any patients about her
25 concerns about Mr. Farmer, explained: "I didn't want to accuse somebody falsely of
26 something and I didn't want to raise any red flags with patients." (Wolfe depo. p. 23, lines
27 20-22). A reasonable juror could infer from this statement that Nurse Wolfe was concerned
28 that if she accused Mr. Farmer of any wrongdoing, that might be a "false" accusation. A

1 further reasonable inference is that Nurse Wolfe did not have sufficient information to accuse
2 Mr. Farmer of specific wrongdoing.

3 Given all of the deposition testimony to date in this case presented to the Court for
4 review, and drawing all reasonable inferences in favor of the non-moving party, the Court
5 finds that there exist genuine issues of material fact as follows:

6 1. Whether the sexual assault by Steven Farmer was reasonably foreseeable under
7 the facts and circumstances of the case considering the nature and scope of his employment;

8 2. Whether the sexual assault by Steven Farmer was a truly independent venture;
9 and

10 3. Whether the sexual assault by Steven Farmer was committed in the course of the
11 very task assigned to him as an employee.

12 Accordingly, plaintiff's motion for summary judgment is denied pursuant to NRCP 56
13 and *Wood v. Safeway*, 121 Nev. 724, 121 P.3d 1026 (2005).

14
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16 
17 RICHARD F. SCOTTI
18 DISTRICT COURT JUDGE
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Richard F. Scotti
District Judge

Department Two
Las Vegas, NV 89155

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CERTIFICATE OF SERVICE

I hereby certify that on or about the date filed, a copy of this Order was electronically served, mailed or placed in the attorney's folder on the first floor of the Regional Justice Center as follows:


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Melody Howard
Judicial Executive Assistant

Richard F. Scotti
District Judge

Department Two
Las Vegas, NV 89155

CASE NO. 70083

**IN THE
SUPREME COURT OF NEVADA**

**VALLEY HEALTH SYSTEM, LLC, a Nevada limited liability company,
d/b/a CENTENNIAL HILLS HOSPITAL MEDICAL CENTER; AND
UNIVERSAL HEALTH SERVICES, INC., a Delaware corporation,**

Appellants,

vs.

**ESTATE OF JANE DOE, BY AND THROUGH ITS SPECIAL
ADMINISTRATOR, MISTY PETERSON,**

Respondent.

**APPEAL FROM THE EIGHTH JUDICIAL DISTRICT COURT, CLARK
COUNTY, NEVADA
HONORABLE JUDGE RICHARD SCOTTI, CASE NO. A-09-595780-C**

APPELLANTS' APPENDIX TO OPENING BRIEF

VOLUME III of XVII

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APPENDIX TO APPELLANTS' OPENING BRIEF

VOLUME III of XVII

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11	Plaintiff's Exhibit 19 – Petitioners Valley Health System, LLC, d/b/a Centennial Hills Medical Center's and Universal Health Services, Inc.'s Petition for Writ of Mandamus and/or Writ of Prohibition filed April 29, 2015	AA0363- AA0406
12	Plaintiff's Motion for NRCP 37 Sanctions Against Valley Health System LLC, d/b/a Centennial Hills Hospital Medical Center and Universal Health Services, LLC filed April 29, 2015	AA0407- AA0468
13	Defendants Valley Health System LLC d/b/a Centennial Hills Hospital Medical Center and Universal Health Services, Inc.'s Opposition to Plaintiff's Motion for NRCP 37 Sanctions filed May 13, 2015	AA0469- AA0487
14	Order Denying Petition for Writ of Mandamus or Prohibition filed May 20, 2015	AA0488- AA0489
15	Reply to Defendant Valley Health System, LLC d/b/a Centennial Hills Hospital Medical Center and Universal Health Services, Inc.'s Opposition to Plaintiff's Motion for NRCP 37 Sanctions filed May 21, 2015	AA0490- AA0565
16	Plaintiff's Exhibit 15 - Defendants Valley Health System LLC d/b/a Centennial Hills Hospital Medical Center and Universal Health Services, Inc.'s Objection to Discovery Commissioner Report and Recommendation filed July 30, 2015	AA0566- AA0580

APPENDIX TO APPELLANTS' OPENING BRIEF

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Order on Plaintiff's Motion for Summary Judgment Re: Liability filed February 27, 2015	III	9	AA0344-AA0351
Order Setting Evidentiary Hearing filed August 4, 2015	IV	18	AA0602-AA0604
Order Striking Answer of Defendant Valley Health System LLC as Sanction for Discovery Misconduct filed November 4, 2015	VII	23	AA1309-AA1347
Plaintiff's Exhibit 1 – Defendant Centennial Hills Hospital and Universal Health Services, Inc.'s Initial Early Case Conference List of Witnesses and Documents dated November 24, 2009	XI	37	AA2250-AA2254
Plaintiff's Exhibit 1 – Photo of Universal Health Services Address with Vault Exhibit Form	XI	38	AA2255-AA2256
Plaintiff's Exhibit 1a – Defendant Centennial Hills Hospital and Universal Health Services, Inc.'s First Supplement to Its Initial Early Case Conference List of Witnesses and Documents dated April 16, 2010	XI	39	AA2257-AA2262

<u>Document Title:</u>	<u>Volume No.:</u>	<u>Tab No.:</u>	<u>Page Nos.:</u>
Plaintiff's Exhibit 1b – Defendant Valley Health System, LLC d/b/a Centennial Hills Hospital Medical Center's Second Supplement to Its Initial Early Case Conference List of Witnesses and Documents dated February 12, 2013	XI	40	AA2263-AA2269
Plaintiff's Exhibit 1c – Defendant Valley Health System, LLC d/b/a Centennial Hills Hospital Medical Center's Third Supplement to Its Initial Early Case Conference List of Witnesses and Documents dated March 11, 2013	XI	41	AA2270-AA2275
Plaintiff's Exhibit 1d – Defendant Valley Health System, LLC d/b/a Centennial Hills Hospital Medical Center's Fourth Supplement to Its Initial Early Case Conference List of Witnesses and Documents dated March 12, 2013	XI	42	AA2276-AA2281
Plaintiff's Exhibit 1e – Defendant Valley Health System, LLC d/b/a Centennial Hills Hospital Medical Center's Fifth Supplement to Its Initial Early Case Conference List of Witnesses and Documents dated March 18, 2013	XI	43	AA2282-AA2288
Plaintiff's Exhibit 1f – Defendant Valley Health System, LLC d/b/a Centennial Hills Hospital Medical Center's Sixth Supplement to Its Initial Early Case Conference List of Witnesses and Documents dated June 7, 2013	XI	44	AA2289-AA2296
Plaintiff's Exhibit 1g – Defendant Valley Health System, LLC d/b/a Centennial Hills Hospital Medical Center's Seventh Supplement to Its Initial Early Case Conference List of Witnesses and Documents dated October 27, 2014	XII	45	AA2297-AA2304

<u>Document Title:</u>	<u>Volume No.:</u>	<u>Tab No.:</u>	<u>Page Nos.:</u>
Plaintiff's Exhibit 1h – Defendant Valley Health System, LLC d/b/a Centennial Hills Hospital Medical Center's Eighth Supplement to Its Initial Early Case Conference List of Witnesses and Documents dated April 22, 2015	XII	46	AA2305-AA2315
Plaintiff's Exhibit 1i – Defendant Valley Health System, LLC d/b/a Centennial Hills Hospital Medical Center's Ninth Supplement to Its Initial Early Case Conference List of Witnesses and Documents dated June 10, 2015	XII	47	AA2316-AA2326
Plaintiff's Exhibit 1j – Defendant Valley Health System, LLC d/b/a Centennial Hills Hospital Medical Center's Tenth Supplement to Its Initial Early Case Conference List of Witnesses and Documents dated June 16, 2015	XII	48	AA2327-AA2340
Plaintiff's Exhibit 1k – Defendant Valley Health System, LLC d/b/a Centennial Hills Hospital Medical Center's Eleventh Supplement to Its Initial Early Case Conference List of Witnesses and Documents dated June 17, 2015	XII	49	AA2341-AA2354
Plaintiff's Exhibit 1l – Defendant Valley Health System, LLC d/b/a Centennial Hills Hospital Medical Center's Twelfth Supplement to Its Initial Early Case Conference List of Witnesses and Documents dated July 10, 2015	XII	50	AA2355-AA2369
Plaintiff's Exhibit 1m – Defendant Valley Health System, LLC d/b/a Centennial Hills Hospital Medical Center's Thirteenth Supplement to Its Initial Early Case Conference List of Witnesses and Documents dated July 13, 2015	XII	51	AA2370-AA2384

<u>Document Title:</u>	<u>Volume No.:</u>	<u>Tab No.:</u>	<u>Page Nos.:</u>
Plaintiff's Exhibit 1n – Defendant Valley Health System, LLC d/b/a Centennial Hills Hospital Medical Center's Fourteenth Supplement to Its Initial Early Case Conference List of Witnesses and Documents dated July 20, 2015	XII	52	AA2385-AA2399
Plaintiff's Exhibit 2 – Centennial Security Daily Activity Logs May 14-16, 2008	XII	53	AA2400-AA2421
Plaintiff's Exhibit 3 – Deposition Transcript of Renato Sumera, RN taken on May 1, 2015	XII	54	AA2422-AA2461
Plaintiff's Exhibit 4 – Universal Health Services Incident Report dated May 15, 2008	XII	55	AA2462-AA2464
Plaintiff's Exhibit 5 – Complaint for Money Damages, Cagnina v. Centennial Hills Hospital Medical Center, et al., Case No. A570756, filed September 2, 2008 and First Amended Complaint for Money Damages, Cagnina v. Centennial Hills Hospital Medical Center, et al., Case No. A570756, filed April 28, 2010	XII	56	AA2465-AA2489
Plaintiff's Exhibit 6 – Deposition Transcript of Christine Murray dated January 27, 2010	XIII	57	AA2490-AA2566
Plaintiff's Exhibit 7 – Deposition Transcript of Amy Bochenek dated March 10, 2010	XIII	58	AA2567-AA2589
Plaintiff's Exhibit 8 – Deposition Transcript of Amy Blasing, MSN, RN dated July 28, 2015	XIII	59	AA2590-AA2621
Plaintiff's Exhibit 9 – Rule 16.1 Mandatory Pretrial Discovery Requirements	XIII	60	AA2622
Plaintiff's Exhibit 10 – Public Defender's Office E-mails	XIV	61	AA2623-AA2757
Plaintiff's Exhibit 10a – Chronology of Public Defender's Office E-mails	XIV	62	AA2758-AA2790

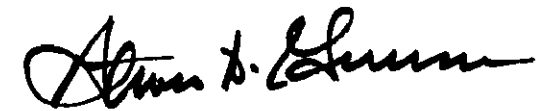
<u>Document Title:</u>	<u>Volume No.:</u>	<u>Tab No.:</u>	<u>Page Nos.:</u>
Plaintiff's Exhibit 11 – Letter from Amy Feliciano to McBride, Bemis & Vogel dated January 31, 2013	XIV	63	AA2791
Plaintiff's Exhibit 12 – Notice of Entry of Order Re: Discovery Commissioner's Report and Recommendations dated May 6, 2013	XIV	64	AA2792-AA2804
Plaintiff's Exhibit 13 – Christine Murray Voluntary Statement to Las Vegas Metropolitan Police Department dated June 13, 2008	XIV	65	AA2805-AA2820
Plaintiff's Exhibit 14 – Margaret Wolfe Voluntary Statement to Las Vegas Metropolitan Police Department dated May 30, 2008	XIV	66	AA2821-AA2834
Plaintiff's Exhibit 15 - Defendants Valley Health System LLC d/b/a Centennial Hills Hospital Medical Center and Universal Health Services, Inc.'s Objection to Discovery Commissioner Report and Recommendation filed July 30, 2015	III	16	AA0566-AA0580
Plaintiff's Exhibit 16 – Defendant Valley Health Systems, LLC d/b/a Centennial Hills Hospital Medical Center's Motion for Protective Order filed June 19, 2013	XIV	67	AA2835-AA2850
Plaintiff's Exhibit 17 – Discovery Commissioner's Report and Recommendation filed September 4, 2013	XIV	68	AA2851-AA2856
Plaintiff's Exhibit 18 – Defendants Centennial Hills Hospital and Universal Health Services, Inc.'s Opposition to Plaintiff's Motion for Summary Judgment Re: Liability and Joinder to Defendant Steven Dale Farmer's Limited Opposition filed October 14, 2014	I	6	AA0099-AA0112

<u>Document Title:</u>	<u>Volume No.:</u>	<u>Tab No.:</u>	<u>Page Nos.:</u>
Plaintiff's Exhibit 19 – Petitioners Valley Health System, LLC, d/b/a Centennial Hills Medical Center's and Universal Health Services, Inc.'s Petition for Writ of Mandamus and/or Writ of Prohibition filed April 29, 2015	III	11	AA0363-AA0406
Plaintiff's Exhibit 20 – Rule 3.3 Candor Toward Tribunal	XIV	69	AA2857
Plaintiff's Exhibit 21 – Recorder's Transcript of Proceedings – Plaintiff's Motion for NRCP 37 Sanctions Against Valley Health System LLC d/b/a Centennial Hills Hospital Medical Center and Universal Health Services filed August 4, 2015	IV	17	AA0581-AA0601
Plaintiff's Exhibit 22 – Deposition Transcript of Christine Murray dated January 8, 2015	XV	70	AA2858-AA2880
Plaintiff's Exhibit 23 – Deposition Transcript of Sajit Pullarkat dated August 7, 2015	XV	71	AA2881-AA2896
Plaintiff's Exhibit 24 – Deposition Transcript of PMK of Centennial Hills Hospital (Sajit Pullarkat) dated August 7, 2015	XV	72	AA2897-AA2908
Plaintiff's Exhibit 25 – Deposition Transcript of Janet Calliham dated August 18, 2015	XV	73	AA2909-AA2964
Plaintiff's Exhibit 26 – Deposition Transcript of Margaret Wolfe, RN dated May 5, 2015	XV	74	AA2965-AA2984
Plaintiff's Exhibit 27 – Defendant Valley Health System, LLC's Responses to Plaintiff's Eleventh Set of Interrogatories dated June 12, 2015	XV	75	AA2985-AA2989

<u>Document Title:</u>	<u>Volume No.:</u>	<u>Tab No.:</u>	<u>Page Nos.:</u>
Plaintiff's Exhibit 28 – Defendant Valley Health System, LLC's Responses to Plaintiff's Tenth Set of Interrogatories dated June 10, 2015	XV	76	AA2990-AA2993
Plaintiff's Exhibit 29 – Las Vegas Metropolitan Police Department's Criminal file of Steven Dale Farmer bates labeled LVMPD00001-LVMPD00190 with Privilege Log (Exhibit W to Defendant Valley Health System, LLC d/b/a Centennial Hills Hospital Medical Center's Seventh Supplement to Its Initial Early Case Conference List of Witnesses and Documents dated October 27, 2014)	XVI	77	AA2994-AA3185
Plaintiff's Exhibit 30 – Excerpts of Deposition of Carol Butler dated June 9, 2015	XVII	78	AA3186-AA3201
Plaintiff's Exhibit 31 – Excerpts of Deposition of Renato Sumera, RN dated May 1, 2015	XVII	79	AA3202-AA3213
Plaintiff's Exhibit 32 – Excerpts of Deposition of Margaret Wolfe, RN dated May 5, 2015	XVII	80	AA3214-AA3221
Plaintiff's Exhibit 33 – Excerpts of Deposition of Amy Blasing, MSN, RN dated July 28, 2015	XVII	81	AA3222-AA3246
Plaintiff's Exhibit 34 – Excerpts of Deposition of Christine Murray, RN dated January 8, 2015	XVII	82	AA3247-AA3251
Plaintiff's Exhibit List from Vault	X	34	AA1864-AA1866
Plaintiff's Motion for NRCP 37 Sanctions Against Valley Health System LLC, d/b/a Centennial Hills Hospital Medical Center and Universal Health Services, LLC filed April 29, 2015	III	12	AA0407-AA0468

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Plaintiff's Motion for Summary Judgment Re: Liability filed September 29, 2014	I	4	AA0022-AA0093
Plaintiff's Opposition to Defendant's Valley Health System LLC d/b/a Centennial Hills Hospital Medical Center and Universal Health Services, Inc.'s Motion for Reconsideration of this Court's November 4, 2015 Order filed December 2, 2015	IX	26	AA1590-AA1821
Reply in Support of Motion for Reconsideration filed December 4, 2015	X	28	AA1825-AA1838
Reply to Defendant Valley Health System, LLC d/b/a Centennial Hills Hospital Medical Center and Universal Health Services, Inc.'s Opposition to Plaintiff's Motion for NRCP 37 Sanctions filed May 21, 2015	III	15	AA0490-AA0565
Reply to Defendants' Oppositions to Plaintiff's Motion for Summary Judgment Re: Liability filed November 21, 2014	II	8	AA0117-AA0343
Reporter's Transcript of Evidentiary Hearing and Motions held on August 28, 2015	VI & VII	22	AA0949-AA1175
Stipulation and Order for Dismissal with Prejudice filed February 29, 2016	X	31	AA1848-AA1853
Transcript of Proceedings – Defendant Valley Health System LLC d/b/a Centennial Hills Hospital Medical Center and Universal Health Services, Inc.'s Motion for Reconsideration of this Court's November 4, 2015 Order	XVII	83	AA3252-AA3305

TAB 9



CLERK OF THE COURT

1 **ORDR**

2
3 **DISTRICT COURT**
4 **CLARK COUNTY, NEVADA**

5
6 ESTATE OF JANE DOE, by and through its
7 Special Administrator, Misty Petersen,

8 Plaintiff,

9 vs.

10 VALLEY HEALTH SYSTEM, LLC, a Nevada
11 limited liability company, d/b/a CENTENNIAL
12 HILLS HOSPITAL MEDICAL CETER;
13 UNIVERSAL HEALTH SERVICES, INC., a
14 Delaware corporation; AMERICAN NURSING
15 SERVICE, INC., a Louisiana corporation;
16 STEVEN DALE FARMER, an individual;
17 DOES I through X, inclusive; and ROE
18 CORPORATIONS I through X, inclusive,

19 Defendants.

Case No.: 09-A-595780-C
Dept. No.: II

Date: December 17, 2014

**ORDER ON PLAINTIFF'S MOTION
FOR SUMMARY JUDGMENT RE:
LIABILITY**

20 This matter came before the Court on December 17, 2014 on Plaintiff's Motion for
21 Summary Judgment Re: Liability.

22 Appearing on behalf of Plaintiff, Estate of Jane Doe, by and through its Special
23 Administrator, Misty Petersen, were its attorneys Robert E. Murdock, Esq. and Eckley M.
24 Keach, Esq.

25 Appearing on behalf of Defendants, Valley Health System LLC d/b/a Centennial Hills
26 Hospital Medical Center and Universal Health Services, Inc. (hereinafter, "Centennial/UHS"),
27 was their attorney Michael E. Prangle, Esq.

28 Appearing on behalf of Defendant American Nursing Services, Inc. (hereinafter,
"ANS"), was its attorney James P.C. Silvestri, Esq.

Appearing on behalf of Defendant Steven Dale Farmer (hereinafter, "Farmer") was his
attorney Heather S. Hall, Esq.

1 Having read and reviewed all of the pleadings and papers on file herein regarding
2 relevant issues, having read the transcript of the proceedings in this matter, and good cause
3 appearing therefor, the Court adopts and makes the following Findings of Fact and
4 Conclusions of Law:

5 **FINDINGS OF FACT**

6 1. In May of 2008, Jane Doe was a patient at Centennial Hills Hospital Medical
7 Center.

8 2. In May of 2008, Centennial/UHS had a contractual agreement whereby ANS
9 would provide certain hospital staff, which included Certified Nursing Assistants (hereinafter,
10 "CNA").

11 3. In May of 2008, Farmer was an agency CNA working at Centennial/UHS
12 through ANS.

13 4. On May 14, 2008, ANS sent Farmer to Centennial/UHS to work there as a
14 CNA.

15 5. On May 14, 2008 Farmer originally was told to work in the Emergency Room
16 by Centennial/UHS.

17 6. In May of 2008, Farmer wore an employee badge that had his name, ANS,
18 Centennial/UHS, and contract staff written on it.

19 7. At around 21:30 hours on May 14, 2008, while Farmer was working at
20 Centennial Hills Hospital Medical Center, Farmer was moved from the Emergency Room to
21 the Sixth Floor by Centennial/UHS to work.

22 8. On May 14, 2008, Jane Doe was on the Sixth Floor in Room 614 at
23 Centennial/UHS.

24 9. On May 14, 2008, in the course and scope of his employment with ANS and
25 Centennial/UHS as a CNA, and in the course and scope of working at Centennial/UHS, it was
26 expected that Farmer would enter patients' rooms on the Sixth Floor of Centennial/UHS as
27 part of his tasks.

28 . . .

1 10. In addition, Farmer was expected to give bed baths, cleanup stool, cleanup
2 urine, and check monitor leads.

3 11. On May 14, 2008, Farmer entered Jane Doe's room, Room 614 at
4 Centennial/UHS.

5 12. On May 14, 2008, having contact with a patient in the patient's room on the
6 Sixth Floor of Centennial/UHS was in the course and scope of Farmer's employment with
7 ANS and Centennial/UHS as a CNA.

8 13. Farmer had contact with Jane Doe in her room on the Sixth Floor of
9 Centennial/UHS.

10 14. On May 14, 2008, Jane Doe awoke to find Steven Farmer pinching and
11 rubbing her nipples telling her that he was fixing her EKG leads.

12 15. Farmer lifted up Jane Doe's hospital gown.

13 16. Farmer sexually assaulted her by digitally penetrating her anus.

14 17. Farmer digitally penetrated Jane Doe's anus, vagina, and pinched and rubbed
15 her nipples against the will of Jane Doe.

16 18. Farmer was convicted in the Eighth Judicial District Court, Clark County,
17 Nevada, in Case Number 08C245739, in Count 10 of Sexual Assault (Felony -- Category A) in
18 violation of NRS 200.364 & 200.366 for the digital penetration, by inserting his finger(s) into
19 the anal opening of Jane Doe, against her will or under conditions in which Farmer knew, or
20 should have known, that Jane Doe was mentally or physically incapable of resisting or
21 understanding the nature of Farmer's conduct.

22 19. Farmer was convicted in the Eighth Judicial District Court, Clark County,
23 Nevada, in Case Number 08C245739, in Count 12 of Sexual Assault (Felony -- Category A) in
24 violation of NRS 200.364 & 200.366 for the digital penetration, by inserting his finger(s) into
25 the genital opening of Jane Doe, against her will or under conditions in which Farmer knew,
26 or should have known, that Jane Doe was mentally or physically incapable of resisting or
27 understanding the nature of Farmer's conduct.

28 ...

1 20. Farmer was convicted in the Eighth Judicial District Court, Clark County,
2 Nevada, in Case Number 08C245739, in Count 11 of Open or Gross Lewdness (Gross
3 Misdemeanor) in violation of NRS 201.210 for touching and/or rubbing the genital opening of
4 Jane Doe with his hand(s) and/or finger(s).

5 21. Farmer was convicted in the Eighth Judicial District Court, Clark County,
6 Nevada, in Case Number 08C245739, in Count 13 of Open or Gross Lewdness (Gross
7 Misdemeanor) in violation of NRS 201.210 for touching and/or rubbing and/or pinching the
8 breast(s) and/or nipple(s) of Jane Doe with his hand(s) and/or finger(s).

9 22. Farmer was convicted in the Eighth Judicial District Court, Clark County,
10 Nevada, in Case Number 08C245739, in Count 14 of Open or Gross Lewdness (Gross
11 Misdemeanor) in violation of NRS 201.210 for touching and/or rubbing and/or pinching the
12 breast(s) and/or nipple(s) of Jane Doe with his hand(s) and/or finger(s).

13 23. Farmer was convicted in the Eighth Judicial District Court, Clark County,
14 Nevada, in Case Number 08C245739, in Count 15 of Indecent Exposure (Gross
15 Misdemeanor) in violation of NRS 201.220 for deliberately lifting the hospital gown of Jane
16 Doe to look at her genital opening and/or anal opening and/or breast(s).

17 **CONCLUSIONS OF LAW**

18 1. NRS 41.133 states: "If an offender has been convicted of the crime which
19 resulted in the injury to the victim, the judgment of conviction is conclusive evidence of all
20 facts necessary to impose civil liability for the injury."

21 2. The Nevada Supreme Court has explained: "We conclude that the language
22 of NRS 41.133 establishes a conclusive presumption of liability when an offender has been
23 convicted of the crime that resulted in the injury to the victim." *Cromer v. Wilson*, 225 P.3d
24 788, 790 (Nev. 2010). "NRS 41.133 mandates that conviction of a crime resulting in injury to
25 the victim is **conclusive evidence of civil liability for the injury.**" *Langon v. Matamoros*,
26 121 Nev. 142, 143, 111 P.3d 1077, 1077 (2005) (emphasis added).

27 3. Farmer was convicted of the crime which resulted in injuries to the victim.

28 ...

1 4. As to all Defendants, the judgment of conviction is conclusive evidence of the
2 fact of the anal sexual assault of Jane Doe.

3 5. As to all Defendants, the judgment of conviction is conclusive evidence of the
4 fact of the vaginal sexual assault of Jane Doe.

5 6. As to all Defendants, the judgment of conviction is conclusive evidence of the
6 fact of the unlawful touching and/or rubbing the genital opening of Jane Doe with his hand(s)
7 and/or finger(s).

8 7. As to all Defendants, the judgment of conviction is conclusive evidence of the
9 fact of the unlawful touching and/or rubbing and/or pinching the breast(s) and/or nipple(s) of
10 Jane Doe with his hand(s) and/or finger(s).

11 8. As to all Defendants, the judgment of conviction is conclusive evidence of the
12 facts regarding his deliberately lifting of the hospital gown of Jane Doe to look at her genital
13 opening and/or anal opening and/or breast(s).

14 9. As to Farmer, the judgment of conviction results in summary judgment as to
15 liability and dismissal of any affirmative defenses related to liability. Though comparative
16 fault was alleged by Farmer, at this date, no facts have been presented as to same. However,
17 Plaintiff's Motion solely dealt with the issue of liability. Plaintiff will have to file a separate
18 motion on the issue of comparative fault should she believe that summary judgment would be
19 proper on that issue.

20 10. All affirmative defenses that relate to the criminal acts committed by Farmer
21 are dismissed as to all of the defendants.

22 11. The Court finds that Farmer is a convicted felon on criminal acts that form the
23 underlying basis for this lawsuit.

24 12. The Court finds that there is no genuine issue of material fact as to liability of
25 Farmer.

26 13. The Court GRANTS the plaintiff's Motion as to Farmer's liability pursuant to
27 NRCP 56; *Wood v. Safeway*, 121 Nev. 724 (2005); NRS 41.130; and NRS 41.133.

28 ...

1 14. Judgment and conviction on the felony crimes is conclusive evidence to
2 impose civil liability for the injuries to the plaintiff, however, the issue of damages as to
3 Farmer remains an issue for the time of trial.

4 15. Plaintiff also moved for summary judgment against ANS and Centennial/UHS
5 based upon NRS 41.130, the respondeat superior statute.

6 16. The first issue is who were Farmer's employers. The Court finds that Farmer,
7 at the time the criminal acts were committed, was the employee of American Nursing
8 Services, Inc., Universal Health Services, Inc., and Valley Health System, LLC.

9 17. With regard to negligence, the Court further finds that the plaintiff must prove
10 general foreseeability.

11 18. To refute respondeat superior liability per NRS 41.130, the defendants must
12 prove the various sections and provisions of NRS 41.745 in order to rebut a claim made under
13 NRS 41.130

14 19. NRS 41.130 states:

15 Except as otherwise provided in NRS 41.745, whenever any
16 person shall suffer personal injury by wrongful act, neglect or
17 default of another, the person causing the injury is liable to the
18 person injured for damages; and where the person causing the
19 injury is employed by another person or corporation respon-
20 sible for the conduct of the person causing the injury, that other
21 person or corporation so responsible is liable to the person
22 injured for damages.

23 20. NRS 41.745 states:

- 24 1. An employer is not liable for harm or injury caused
25 by the intentional conduct of an employee if the
26 conduct of the employee:
- 27 (a) Was a truly independent venture of the employee;
 - 28 (b) Was not committed in the course of the very task
 assigned to the employee; and
 - (c) Was not reasonably foreseeable under the facts and
 circumstances of the case considering the nature
 and scope of his or her employment.

29 ...

1 For the purposes of this subsection, conduct of an employee is reasonably
2 foreseeable if a person of ordinary intelligence and prudence could have reasonably
3 anticipated the conduct and the probability of injury.

4 21. At this time, the Court finds there is a genuine issue of material fact with
5 regard to liability, the principal one being whether the misconduct of Farmer was reasonably
6 foreseeable.

7 22. Hence, the Court denies Plaintiff's Motion for Partial Summary Judgment
8 without prejudice, pursuant to NRCP 56, *Wood v. Safeway*, 121 Nev. 724 (2005); *Prell Hotel*
9 *Corporation v. Antonacci*, 86 Nev. 390 (1970); and NRS 41.745.

10 Accordingly,

11 **IT IS HEREBY ORDERED** that, as explained above, Plaintiffs' Motion for
12 Summary Judgment Re: Liability is GRANTED IN PART as to Farmer's liability pursuant to
13 NRCP 56; *Wood v. Safeway*, 121 Nev. 724 (2005); NRS 41.130; and NRS 41.133.

14 **IT IS FURTHER ORDERED** that, as explained above, Plaintiffs' Motion for
15 Summary Judgment Re: Liability is DENIED in part WITHOUT PREJUDICE as to the
16 liability of ANS and Centennial/UHS as there is a genuine issue of material fact as to liability
17 pursuant to NRCP 56, *Wood v. Safeway*, 121 Nev. 724 (2005); *Prell Hotel Corporation v.*
18 *Antonacci*, 86 Nev. 390 (1970); and NRS 41.745.

19 **IT IS SO ORDERED.**

20 DATED this 27th day of February, 2015.

21
22
23 
24 RICHARD F. SCOTTI
25 DISTRICT COURT JUDGE
26
27
28

CERTIFICATE OF SERVICE

I hereby certify that on or about the date filed, a copy of this Order was electronically served, mailed or placed in the attorney's folder on the first floor of the Regional Justice Center as follows:

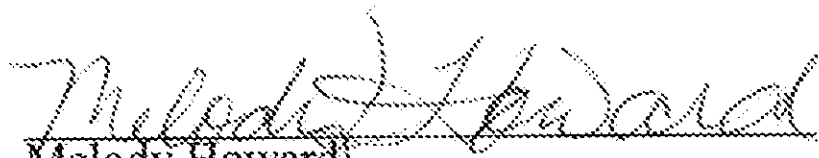
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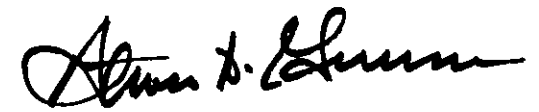
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Melody Howard
Judicial Executive Assistant

TAB 10



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DISTRICT COURT
CLARK COUNTY, NEVADA

ESTATE OF JANE DOE, by and through its
Special Administrator, Misty Petersen,

Plaintiff,

vs.

VALLEY HEALTH SYSTEM LLC, a Nevada
limited liability company, d/b/a CENTENNIAL
HILLS HOSPITAL MEDICAL CENTER;
UNIVERSAL HEALTH SERVICES, INC., a
Delaware corporation; AMERICAN NURSING
SERVICES, INC., a Louisiana corporation;
STEVEN DALE FARMER, an individual; DOES I
through X, inclusive; and ROE CORPORATIONS
I through X, inclusive,

Defendants.

CASE NO. 09-A-595780-C
DEPT. NO. II

**NOTICE OF ENTRY OF
ORDER ON PLAINTIFF'S
MOTION FOR SUMMARY
JUDGMENT RE: LIABILITY**

TO: ALL DEFENDANTS HEREIN; and

TO: THEIR RESPECTIVE COUNSEL OF RECORD

YOU AND EACH OF YOU WILL PLEASE TAKE NOTICE that on the 27th day of

///

1 February, 2015, the Court entered an Order on Plaintiff's Motion for Summary Judgment Re:
2 Liability in the above-entitled action. A copy of said Order is attached hereto.

3 DATED this 2nd day of March, 2015.

4 MURDOCK & ASSOCIATES, CHTD.
5 ECKLEY M. KEACH, CHTD.

6
7 /s/ Robert E. Murdock
8 Robert E. Murdock Bar No. 4013
9 Eckley M. Keach Bar No. 1154
10 521 South Third Street
11 Las Vegas, NV 89101
12 Attorneys for Plaintiff
13
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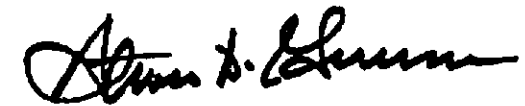
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3

1 **ORDR**



CLERK OF THE COURT

2
3 **DISTRICT COURT**
4 **CLARK COUNTY, NEVADA**

5
6 **ESTATE OF JANE DOE, by and through its**
7 **Special Administrator, Misty Petersen,**

8 **Plaintiff,**

9 **vs.**

10 **VALLEY HEALTH SYSTEM, LLC, a Nevada**
11 **limited liability company, d/b/a CENTENNIAL**
12 **HILLS HOSPITAL MEDICAL CETER;**
13 **UNIVERSAL HEALTH SERVICES, INC., a**
14 **Delaware corporation; AMERICAN NURSING**
15 **SERVICE, INC., a Louisiana corporation;**
16 **STEVEN DALE FARMER, an individual;**
17 **DOES I through X, inclusive; and ROE**
18 **CORPORATIONS I through X, inclusive,**

19 **Defendants.**

Case No.: 09-A-595780-C
Dept. No.: II

Date: December 17, 2014

**ORDER ON PLAINTIFF'S MOTION
FOR SUMMARY JUDGMENT RE:
LIABILITY**

20 This matter came before the Court on December 17, 2014 on Plaintiff's Motion for
21 Summary Judgment Re: Liability.

22 Appearing on behalf of Plaintiff, Estate of Jane Doe, by and through its Special
23 Administrator, Misty Petersen, were its attorneys Robert E. Murdock, Esq. and Eckley M.
24 Keach, Esq.

25 Appearing on behalf of Defendants, Valley Health System LLC d/b/a Centennial Hills
26 Hospital Medical Center and Universal Health Services, Inc. (hereinafter, "Centennial/UHS"),
27 was their attorney Michael E. Prangle, Esq.

28 Appearing on behalf of Defendant American Nursing Services, Inc. (hereinafter,
"ANS"), was its attorney James P.C. Silvestri, Esq.

Appearing on behalf of Defendant Steven Dale Farmer (hereinafter, "Farmer") was his
attorney Heather S. Hall, Esq.

Having read and reviewed all of the pleadings and papers on file herein regarding relevant issues, having read the transcript of the proceedings in this matter, and good cause appearing therefor, the Court adopts and makes the following Findings of Fact and Conclusions of Law:

FINDINGS OF FACT

1. In May of 2008, Jane Doe was a patient at Centennial Hills Hospital Medical Center.

2. In May of 2008, Centennial/UHS had a contractual agreement whereby ANS would provide certain hospital staff, which included Certified Nursing Assistants (hereinafter, "CNA").

3. In May of 2008, Farmer was an agency CNA working at Centennial/UHS through ANS.

4. On May 14, 2008, ANS sent Farmer to Centennial/UHS to work there as a CNA.

5. On May 14, 2008 Farmer originally was told to work in the Emergency Room by Centennial/UHS.

6. In May of 2008, Farmer wore an employee badge that had his name, ANS, Centennial/UHS, and contract staff written on it.

7. At around 21:30 hours on May 14, 2008, while Farmer was working at Centennial Hills Hospital Medical Center, Farmer was moved from the Emergency Room to the Sixth Floor by Centennial/UHS to work.

8. On May 14, 2008, Jane Doe was on the Sixth Floor in Room 614 at Centennial/UHS.

9. On May 14, 2008, in the course and scope of his employment with ANS and Centennial/UHS as a CNA, and in the course and scope of working at Centennial/UHS, it was expected that Farmer would enter patients' rooms on the Sixth Floor of Centennial/UHS as part of his tasks.

• • •

1 10. In addition, Farmer was expected to give bed baths, cleanup stool, cleanup
2 urine, and check monitor leads.

3 11. On May 14, 2008, Farmer entered Jane Doe's room, Room 614 at
4 Centennial/UHS.

5 12. On May 14, 2008, having contact with a patient in the patient's room on the
6 Sixth Floor of Centennial/UHS was in the course and scope of Farmer's employment with
7 ANS and Centennial/UHS as a CNA.

8 13. Farmer had contact with Jane Doe in her room on the Sixth Floor of
9 Centennial/UHS.

10 14. On May 14, 2008, Jane Doe awoke to find Steven Farmer pinching and
11 rubbing her nipples telling her that he was fixing her EKG leads.

12 15. Farmer lifted up Jane Doe's hospital gown.

13 16. Farmer sexually assaulted her by digitally penetrating her anus.

14 17. Farmer digitally penetrated Jane Doe's anus, vagina, and pinched and rubbed
15 her nipples against the will of Jane Doe.

16 18. Farmer was convicted in the Eighth Judicial District Court, Clark County,
17 Nevada, in Case Number 08C245739, in Count 10 of Sexual Assault (Felony -- Category A) in
18 violation of NRS 200.364 & 200.366 for the digital penetration, by inserting his finger(s) into
19 the anal opening of Jane Doe, against her will or under conditions in which Farmer knew, or
20 should have known, that Jane Doe was mentally or physically incapable of resisting or
21 understanding the nature of Farmer's conduct.

22 19. Farmer was convicted in the Eighth Judicial District Court, Clark County,
23 Nevada, in Case Number 08C245739, in Count 12 of Sexual Assault (Felony -- Category A) in
24 violation of NRS 200.364 & 200.366 for the digital penetration, by inserting his finger(s) into
25 the genital opening of Jane Doe, against her will or under conditions in which Farmer knew,
26 or should have known, that Jane Doe was mentally or physically incapable of resisting or
27 understanding the nature of Farmer's conduct.

28 ...

1 20. Farmer was convicted in the Eighth Judicial District Court, Clark County,
2 Nevada, in Case Number 08C245739, in Count 11 of Open or Gross Lewdness (Gross
3 Misdemeanor) in violation of NRS 201.210 for touching and/or rubbing the genital opening of
4 Jane Doe with his hand(s) and/or finger(s).

5 21. Farmer was convicted in the Eighth Judicial District Court, Clark County,
6 Nevada, in Case Number 08C245739, in Count 13 of Open or Gross Lewdness (Gross
7 Misdemeanor) in violation of NRS 201.210 for touching and/or rubbing and/or pinching the
8 breast(s) and/or nipple(s) of Jane Doe with his hand(s) and/or finger(s).

9 22. Farmer was convicted in the Eighth Judicial District Court, Clark County,
10 Nevada, in Case Number 08C245739, in Count 14 of Open or Gross Lewdness (Gross
11 Misdemeanor) in violation of NRS 201.210 for touching and/or rubbing and/or pinching the
12 breast(s) and/or nipple(s) of Jane Doe with his hand(s) and/or finger(s).

13 23. Farmer was convicted in the Eighth Judicial District Court, Clark County,
14 Nevada, in Case Number 08C245739, in Count 15 of Indecent Exposure (Gross
15 Misdemeanor) in violation of NRS 201.220 for deliberately lifting the hospital gown of Jane
16 Doe to look at her genital opening and/or anal opening and/or breast(s).

17 **CONCLUSIONS OF LAW**

18 1. NRS 41.133 states: "If an offender has been convicted of the crime which
19 resulted in the injury to the victim, the judgment of conviction is conclusive evidence of all
20 facts necessary to impose civil liability for the injury."

21 2. The Nevada Supreme Court has explained: "We conclude that the language
22 of NRS 41.133 establishes a conclusive presumption of liability when an offender has been
23 convicted of the crime that resulted in the injury to the victim." *Cromer v. Wilson*, 225 P.3d
24 788, 790 (Nev. 2010). "NRS 41.133 mandates that conviction of a crime resulting in injury to
25 the victim is **conclusive evidence of civil liability for the injury.**" *Langon v. Matamoros*,
26 121 Nev. 142, 143, 111 P.3d 1077, 1077 (2005) (emphasis added).

27 3. Farmer was convicted of the crime which resulted in injuries to the victim.

28 ...

1 4. As to all Defendants, the judgment of conviction is conclusive evidence of the
2 fact of the anal sexual assault of Jane Doe.

3 5. As to all Defendants, the judgment of conviction is conclusive evidence of the
4 fact of the vaginal sexual assault of Jane Doe.

5 6. As to all Defendants, the judgment of conviction is conclusive evidence of the
6 fact of the unlawful touching and/or rubbing the genital opening of Jane Doe with his hand(s)
7 and/or finger(s).

8 7. As to all Defendants, the judgment of conviction is conclusive evidence of the
9 fact of the unlawful touching and/or rubbing and/or pinching the breast(s) and/or nipple(s) of
10 Jane Doe with his hand(s) and/or finger(s).

11 8. As to all Defendants, the judgment of conviction is conclusive evidence of the
12 facts regarding his deliberately lifting of the hospital gown of Jane Doe to look at her genital
13 opening and/or anal opening and/or breast(s).

14 9. As to Farmer, the judgment of conviction results in summary judgment as to
15 liability and dismissal of any affirmative defenses related to liability. Though comparative
16 fault was alleged by Farmer, at this date, no facts have been presented as to same. However,
17 Plaintiff's Motion solely dealt with the issue of liability. Plaintiff will have to file a separate
18 motion on the issue of comparative fault should she believe that summary judgment would be
19 proper on that issue.

20 10. All affirmative defenses that relate to the criminal acts committed by Farmer
21 are dismissed as to all of the defendants.

22 11. The Court finds that Farmer is a convicted felon on criminal acts that form the
23 underlying basis for this lawsuit.

24 12. The Court finds that there is no genuine issue of material fact as to liability of
25 Farmer.

26 13. The Court GRANTS the plaintiff's Motion as to Farmer's liability pursuant to
27 NRCP 56; *Wood v. Safeway*, 121 Nev. 724 (2005); NRS 41.130; and NRS 41.133.

28 ...

1 14. Judgment and conviction on the felony crimes is conclusive evidence to
2 impose civil liability for the injuries to the plaintiff, however, the issue of damages as to
3 Farmer remains an issue for the time of trial.

4 15. Plaintiff also moved for summary judgment against ANS and Centennial/UHS
5 based upon NRS 41.130, the respondeat superior statute.

6 16. The first issue is who were Farmer's employers. The Court finds that Farmer,
7 at the time the criminal acts were committed, was the employee of American Nursing
8 Services, Inc., Universal Health Services, Inc., and Valley Health System, LLC.

9 17. With regard to negligence, the Court further finds that the plaintiff must prove
10 general foreseeability.

11 18. To refute respondeat superior liability per NRS 41.130, the defendants must
12 prove the various sections and provisions of NRS 41.745 in order to rebut a claim made under
13 NRS 41.130

14 19. NRS 41.130 states:

15 Except as otherwise provided in NRS 41.745, whenever any
16 person shall suffer personal injury by wrongful act, neglect or
17 default of another, the person causing the injury is liable to the
18 person injured for damages; and where the person causing the
19 injury is employed by another person or corporation respon-
20 sible for the conduct of the person causing the injury, that other
21 person or corporation so responsible is liable to the person
22 injured for damages.

23 20. NRS 41.745 states:

- 24 1. An employer is not liable for harm or injury caused
25 by the intentional conduct of an employee if the
26 conduct of the employee:
- 27 (a) Was a truly independent venture of the employee;
 - 28 (b) Was not committed in the course of the very task
 assigned to the employee; and
 - (c) Was not reasonably foreseeable under the facts and
 circumstances of the case considering the nature
 and scope of his or her employment.

...
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1 For the purposes of this subsection, conduct of an employee is reasonably
2 foreseeable if a person of ordinary intelligence and prudence could have reasonably
3 anticipated the conduct and the probability of injury.

4 21. At this time, the Court finds there is a genuine issue of material fact with
5 regard to liability, the principal one being whether the misconduct of Farmer was reasonably
6 foreseeable.

7 22. Hence, the Court denies Plaintiff's Motion for Partial Summary Judgment
8 without prejudice, pursuant to NRCP 56, *Wood v. Safeway*, 121 Nev. 724 (2005); *Prell Hotel*
9 *Corporation v. Antonacci*, 86 Nev. 390 (1970); and NRS 41.745.

10 Accordingly,

11 **IT IS HEREBY ORDERED** that, as explained above, Plaintiffs' Motion for
12 Summary Judgment Re: Liability is GRANTED IN PART as to Farmer's liability pursuant to
13 NRCP 56; *Wood v. Safeway*, 121 Nev. 724 (2005); NRS 41.130; and NRS 41.133.

14 **IT IS FURTHER ORDERED** that, as explained above, Plaintiffs' Motion for
15 Summary Judgment Re: Liability is DENIED in part WITHOUT PREJUDICE as to the
16 liability of ANS and Centennial/UHS as there is a genuine issue of material fact as to liability
17 pursuant to NRCP 56, *Wood v. Safeway*, 121 Nev. 724 (2005); *Prell Hotel Corporation v.*
18 *Antonacci*, 86 Nev. 390 (1970); and NRS 41.745.

19 **IT IS SO ORDERED.**

20 DATED this 27th day of February, 2015.

21
22 
23 RICHARD F. SCOTTI
24 DISTRICT COURT JUDGE
25
26
27
28

CERTIFICATE OF SERVICE

I hereby certify that on or about the date filed, a copy of this Order was electronically served, mailed or placed in the attorney's folder on the first floor of the Regional Justice Center as follows:


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TAB 11

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**IN THE SUPREME COURT OF THE
STATE OF NEVADA**

VALLEY HEALTH SYSTEM, LLC, a
Delaware limited liability company,
d/b/a CENTENNIAL HILLS
HOSPITAL MEDICAL CENTER and
UNIVERSAL HEALTH SERVICES,
INC., a Delaware corporation,

Petitioners,

vs.

EIGHTH JUDICIAL DISTRICT
COURT OF THE STATE OF
NEVADA, IN AND FOR THE
COUNTY OF CLARK, and THE
HONORABLE RICHARD F. SCOTTI,

Respondents,

and

AMERICAN NURSING SERVICES,
INC., a Louisiana corporation; ESTATE
OF JANE DOE, by and through its
Special Administrator, Misty Peterson;
STEVEN DALE FARMER, an
individual; DOES I through X,
inclusive; and ROE CORPORATIONS
I through X, inclusive,

Real Parties in Interest.

Supreme Court Case
No.: _____

District Court No.
09-A-595780-C

Dept. II

Electronically Filed
Apr 29 2015 08:40 a.m.
Tracie K. Lindeman
Clerk of Supreme Court

**PETITIONERS VALLEY HEALTH SYSTEM, LLC, d/b/a CENTENNIAL
HILLS MEDICAL CENTER'S AND UNIVERSAL HEALTH SERVICES,
INC.'S PETITION FOR WRIT OF MANDAMUS AND/OR WRIT OF
PROHIBITION**

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*Attorneys for Petitioners Valley Health System,
LLC, d/b/a Centennial Hills Hospital Medical
Center and Universal Health Services, Inc.*

4810-6907-6259, v. 1



Docket 67886 Document 2015-12947

AA0363

NRAP 26.1 DISCLOSURE

The undersigned counsel of record certifies that the following are persons and entities as described in NRAP 26.1(a) and must be disclosed. These representations are made in order that the judges of this Court may evaluate possible disqualification or recusal.

Petitioner VALLEY HEALTH SYSTEM, LLC, d/b/a CENTENNIAL HILLS HOSPITAL MEDICAL CENTER is a Delaware Limited Liability Company that is wholly-owned and operated by UHS OF DELAWARE, INC., a Delaware Corporation that is the management company for Co-Petitioner, UNIVERSAL HEALTH SERVICES, INC., also a Delaware Corporation and a holding company that is a wholly-owned subsidiary UNIVERSAL HEALTH SERVICES, a publicly-held company that owns 10% or more of petitioners' stock.

UHS is a registered trademark of UHS of Delaware, Inc., the management company for Universal Health Services, Inc. and a wholly owned subsidiary of Universal Health Services.

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Petitioners, VALLEY HEALTH SYSTEM, LLC, a Delaware limited liability company, d/b/a CENTENNIAL HILLS HOSPITAL MEDICAL CENTER and UNIVERSAL HEALTH SERVICES, INC., a Delaware corporation, have been represented by various partners and associates of the law firm of HALL PRANGLE & SCHOONVELD, LLC, in all proceedings in the district court action, and expect to present petitioners before The Nevada Supreme Court, with regard to the instant matter.

DATED this 27 day of April, 2015

HALL PRANGLE & SCHOONVELD, LLC


MICHAEL E. PRANGLE, ESQ.
Nevada Bar No. 8619
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Las Vegas, Nevada 89144
Attorneys for Petitioners
Valley Health System, LLC, d/b/a
Centennial Hills Hospital Medical Center
and Universal Health Services, Inc.

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NRAP 21(a)(5) VERIFICATION

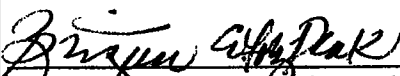
Under penalty of perjury, the undersigned declares that he is the attorney for
Petitioners named in the foregoing Petition and knows the contents thereof; that the
pleading is true of his own knowledge, except as to those matters stated on
information and belief, and that as to such matters he believes to be true. This
verification is made by the undersigned attorney pursuant to NRS 15.010, on the
ground that the matters stated, and relied upon, in the foregoing Petition are all
contained in the prior pleadings and other records of the District Court, true and
correct copies of which have been attached hereto.



JOHN F. BEMIS, ESQ.

SUBSCRIBED AND SWORN to before me.

This 27th day of April, 2015



NOTARY PUBLIC in and
for said County and State



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1 **PETITION FOR WRIT OF MANDAMUS AND/OR PROHIBITION**

2 Petitioners Valley Health System, LLC, a Delaware limited-liability
3 company d/b/a Centennial Hills Hospital Medical Center (hereinafter “Centennial
4 Hills”), and Universal Health Services, Inc., a Delaware corporation (hereinafter
5 “UHS”), by and through their attorneys of record, Hall Prangle & Schoonveld,
6 LLC, pursuant to Nevada Rule of Appellate Procedure 21, and based on this
7 Court’s original jurisdiction set forth Art. 6, Sec. 4 of the Nevada Constitution and
8 NRS 34.160, hereby respectfully petition this Honorable Court to issue a Writ of
9 Mandamus and/or Writ of Prohibition, directing the Respondent District Court (the
10 Honorable Richard F. Scotti) to vacate that portion of his February 27, 2015, Order
11 Granting Plaintiff’s Motion for Summary Judgment Re: Liability in Part, wherein
12 Respondent:
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- 17 1. Held that for purposes of imposing liability on an employer for the
18 intentional criminal conduct of an employee under NRS 41.745,
19 Plaintiff’s burden of proof is limited to establishing only “general
20 foreseeability,” while *the defendant employer has the burden to prove*
21 *that the conduct of the particular criminal assailant employee was not*
22 *reasonably foreseeable under the facts and circumstances of the particular*
23 *case (WA0852, Vol. IV) (emphasis added); and*
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1 2. Found that the criminal assailant, Steven Farmer, was, *as a matter of law*,
2 also an employee of Centennial Hills and its parent company UHS, at the
3 time of the subject incident.¹ (WA0852, Vol. IV) (emphasis added).
4

5 **A. The District Court Improperly Interpreted NRS 41.745 And**
6 **Made Improper Conclusions Of Law Regarding Proximate Cause**
7 **And Burden Of Proof, For Which This Court's Intervention Is**
8 **Necessary**

9 An employer is *not* liable for harm or injury caused by an employee's
10 intentional conduct, if the conduct:

11 (a) Was a truly independent venture of the
12 employee;

13 (b) Was not committed in the course of the
14 very task assigned to the employee; and

15 (c) **Was not *reasonably foreseeable* under the**
16 **facts and circumstances of the case considering**
17 **the nature and scope of his or her employment.**

18 For the purposes of this subsection, conduct of an
19 employee is *reasonably foreseeable* if a person of
20 ordinary intelligence and prudence could have
21 reasonably anticipated the conduct and the
22 probability of injury.

23 2. **Nothing in this section imposes strict liability on**
24 **an employer for any unforeseeable intentional**
25 **act of an employee.**

26 NRS 41.745(1)-(2) (emphasis added).
27

28 ¹ These two rulings reflect the prior oral rulings of Judge Valorie J. Vega (WA0840-41, Vol. IV).
Judge Vega retired from the bench before a written order was entered.

1 Neither the *Wood* court nor the Nevada Legislature has ever imposed the
2 Respondent's "dual" burden of proof to hold employers vicariously liable for their
3 employees' intention torts under NRS 41.745, which is an unworkable proposition
4 that will necessarily leave a lay jury in a state of hopeless confusion in trying to
5 understand and resolve the issues in this case. Thus, writ relief is imperative to
6 prevent the parties and the district court from needlessly expending voluminous
7 resources in an attempt to prepare and try this case under the impossible procedural
8 standard that the district court has established; the result of which would likely be
9 another trial under proper burden of proof rules. See *MountainView Hosp., Inc. v.*
10 *Eighth Judicial Dist. Ct.*, 273 P.3d 861, 864-65, 128 Nev. Adv. Op. 17 (2012)
11 (citing "judicial economy" as a proper basis for granting writ).

12 Moreover, Respondent's order reflects the pressing need for this Court to
13 clarify its decade-old decision in *Wood v. Safeway, Inc.*, 121 Nev. 724, 739, 121
14 P.3d 1026, 1036 (2005), wherein this Court rejected the "general foreseeability"
15 standard that the Respondent improperly applied to the instant matter in its order.
16 Furthermore, the *Wood* court gave no indication that the traditional burden of proof
17 rules were altered to hold employers vicariously liable for their employees'
18 intention torts under NRS 41.130 and NRS 41.745, and specifically the *Wood*

1 decision does not relieve Plaintiff of her burden to prove “reasonable
2 foreseeability” to overcome the NRS 41.745 requirements.

3 The plain language of NRS 41.745, its legislative history, as well as this
4 Court’s holding in *Wood*, make clear that the Nevada legislature clearly intended to
5 eliminate the “general foreseeability” standard and to place the burden on Plaintiff
6 to prove that the statutory elements of NRS 41.745 are not satisfied – including
7 proof that the employee’s conduct was “reasonably foreseeable.” NRS 41.745(c).
8 Accordingly, Respondent’s order, which not only limits Plaintiff’s burden of proof
9 under NRS 41.745 to a “general foreseeability” requirement, but also places the
10 burden on Defendants “to prove the various sections and provisions of NRS
11 41.745,” reflects an urgent need for this Court’s expeditious intervention to clarify
12 its holding in *Wood* – specifically the burden of proof imposed by NRS 41.745 and
13 applicable foreseeability standard. (WA0852, Vol. IV). *See Rolf Jensen & Assoc.,*
14 *Inc. v. Eighth Judicial Dist. Ct.*, 282 P.3d 743, 746, 128 Nev. Adv. Op. 42 (2012)
15 (noting the “need for clarification” of Nevada law as an appropriate basis for
16 granting a writ petition); *International Game Technology, Inc. v. Second Judicial*
17 *Dist. Ct.*, 124 Nev. 193, 198, 179 P.3d 556, 559 (2008) (writ petition would be
18 granted where it “raise[d] an important legal issue in need of clarification,
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1 involving public policy, of which this court's review would promote sound judicial
2 economy and administration").

3 **B. This Court's Intervention Is Also Necessary To Address The**
4 **District Court's Improper Finding That Steven Farmer Was An**
5 **Employee Of Petitioners, Centennial Hills Hospital And UHS As**
6 **A Matter Of Law**

7 This Court's intervention is also needed to address Respondent's summary
8 judgment order that the criminal assailant in this case was an employee of
9 Centennial Hills, as well as its parent corporation UHS, *as a matter of law*, at the
10 time of the subject incident. (WA0852, Vol. IV). These issues raise questions of
11 fact for the jury to resolve.
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RELIEF SOUGHT

Wherefore, Petitioners Centennial Hills and UHS request this Honorable Court's intervention to correct Respondent's erroneous burden of proof and employment rulings. Granting the Writ will benefit the entire Nevada bench and bar by making clear that the general foreseeability standard is inapplicable, and that Plaintiff bears the burden to prove the elements of NRS 41.745 are not present.

DATED this 27 day of April, 2015

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and Universal Health Services, Inc.

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I. ISSUES PRESENTED FOR REVIEW

A. This Court's Guidance Is Urgently Needed To Resolve The Burden Of Proof And The Foreseeability Standard Issues Under NRS 41.745

1. In an action against an alleged employer for injuries caused by the
onal criminal conduct of an alleged employee under NRS 41.745:

a) Does the “general foreseeability” standard apply in light of the language of NRS 41.745, this Court’s decision in *Wood v. Safeway, Inc.*, 121 P.3d 1026 (2005), and the statute’s legislative history; and

b) Does *Plaintiff* have the burden to prove the statutory elements for recovery against an employer under NRS 41.745, including the requirement that the employee's intentional criminal conduct was "reasonably foreseeable to the employer under the facts and circumstances of the case"?

B. Employment Issues That Should Be Resolved By A Jury, Not The District Court As A Matter Of Law

2. Does the assailant's alleged employment by entities other than his employer present a fact issue that should be resolved by the trier of fact?

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II. STATUTE INVOLVED – NRS 41.745

41.745. Liability of employer for intentional conduct of employee; limitations

1. An employer is not liable for harm or injury caused by the intentional conduct of an employee if the conduct of the employee;

(a) Was a truly independent venture of the employee;

(b) Was not committed in the course of the very task assigned to the employee; and

(c) Was not reasonably foreseeable under the facts and circumstances of the case considering the nature and scope of his or her employment.

For the purposes of this subsection, conduct of an employee is reasonably foreseeable if a person of ordinary intelligence and prudence could have reasonably anticipated the conduct and the probability of injury.

2. Nothing in this section imposes strict liability on an employer for any unforeseeable intentional act of an employee.

3. For the purposes of this section:

(a) "Employee means any person who is employed by an employer, including, without limitation, any present or former officer or employee, immune contractor, an employee of a university school for profoundly gifted pupils described in chapter 392A of NRS or a member of a board or commission or Legislator in this State.

(b) "Employer" means any public or private employer in this State, including, without limitation, the State of Nevada, a university school for profoundly gifted pupils described in chapter 392A of NRS, any agency of this State and any political subdivision of the State.

Added by Laws 1997, p. 1357. Amended by Laws 2005, c. 481, § 22, eff. July 1, 2005.

III. STATEMENT OF FACTS

A. Jane Doe Suffers From Seizure Disorder & Is Admitted To Centennial Hills Hospital In May 2008

In May 2008, Jane Doe was a fifty-one year old woman who had a medical history of severe anxiety, depression, and a seizure, or "pseudoseizure," disorder, which caused her to experience "uncontrollable sensory overload." (WA0328-29, Vol. II). Ms. Doe testified that when she had seizures, her body would "clench" and "tighten," and that she did not know what was going on around her." (WA0329, Vol. II). Ms. Doe further testified that after a seizure she was unable to speak or move, and was effectively immobilized for a period of time, which could last 24 to 48 hours following a seizure episode. (WA0270, Vol. II; WA0329-30, Vol. II). Ms. Doe also testified that, despite this immobilization, she was completely aware of everything going on around her, but that she "just can't participate in any of it." (WA0270, Vol. II).

On May 13, 2008, Ms. Doe was transported to Centennial Hills Hospital's emergency department via ambulance sometime between 5:10 p.m. and 5:35 p.m., after having suffered a seizure episode in the parking lot of a grocery store earlier that same day. (WA0330, Vol. II; WA0857, WA0859-60; Vol. IV). Upon her arrival to the emergency department, the emergency physician, Erik Evensen, D.O., assessed Ms. Doe and determined that she was suffering from a prolonged

1 postictal (post-seizure) period. (WA0855, WA0856, WA0859-60; Vol. IV). After
2 performing a physical examination, Dr. Evensen ordered an IV, a cardiac monitor,
3 pulse oximeter, O₂ nasal cannula, and Foley catheter for Ms. Doe, all of which
4 were placed or inserted by the emergency department nursing staff. (WA0858-60,
5 Vol. IV). Dr. Curtis Bazemore then admitting Ms. Doe for observation and
6 monitoring, and was taken to the med surg telemetry floor, room 614, sometime
7 between 7:15 p.m. and 8.30 p.m., on May 13, 2008. (WA0859-60, Vol. IV).
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10 **B. Steven Farmer Supplied To Centennial Hills By ANS Pursuant To**
11 **BroadLane Contract**

12 At the time of Ms. Doe's admission, Steven Farmer, a Certified Nursing
13 Assistant ("CNA"), was an employee of American Nursing Services ("ANS"), a
14 supplemental staffing agency (WA0162-204, Vol. I). Mr. Farmer had been
15 certified as a CNA in both California and Nevada. (WA0162, WA0168-69,
16 WA0176-81; Vol. 1). See NRS 632.2852 for certification process. Mr. Farmer
17 was on Centennial Hills' premises pursuant to a contractual agreement, referred to
18 as the "Broadlane Contract," by which ANS agreed to provide staffing to
19 Centennial Hills. (WA0127, Vol. 1). Mr. Farmer had completed an application for
20 employment with ANS, he had been interviewed by ANS staff, and he had
21 completed a CNA "skills test" that was administered by ANS. (WA0162-87, Vol.
22 1). ANS also performed a criminal background investigation of Mr. Farmer in
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1 accordance with its obligation under the Broadlane Contract, which revealed that
2 he had no record of a criminal history. (WA0170-72, Vol. 1). While on Centennial
3 Hills' premises, Mr. Farmer wore an identification badge that listed the name of
4 the facility at the top, then his name, then the term "Contract Staff," and then the
5 name of his employer, "American Nursing Services, Inc." (WA0699-700;
6 WA0702, Vol. III). As a CNA, Mr. Farmer's general job duties included
7 performing a number nursing support tasks. See Nevada State Board of Nursing,
8 "CNA Skills Guidelines." (WA0173, Vol. 1).

12 **C. Farmer Is Assigned To The Sixth Floor At Centennial Hills**
13 **Hospital And Thereafter Assaults Ms. Doe**

14 On May 14, 2008, Mr. Farmer was scheduled to work in Centennial Hills
15 Hospital's emergency department from 7:00 p.m. to 7:00 a.m. (WA0863, Vol. IV).
16 At approximately 9:30 p.m., Mr. Farmer was reassigned to the Sixth Floor, where
17 he allegedly remained for the duration of his shift into the early morning of May
18 15, 2008. (WA0863-64, Vol. IV). During this time period, Mr. Farmer entered
19 Ms. Doe's room on multiple occasions and committed various sexual assaults on
20 her. (WA0122-24, Vol. I).

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1 **D. Evidence That There Was No Work-Related Reason For Farmer**
2 **To Enter Ms. Doe's Room At The Time Of The Sexual Assaults**

3 Farmer was subsequently indicted on six crimes against Jane Doe, including
4 sexual assault, open or gross lewdness, and indecent exposure. (WA0122-24, Vol.

5 I). During Farmer's criminal trial, Ms. Doe testified about the various sexual
6 assaults committed by Mr. Farmer. She testified that, on one occasion, Farmer
7 entered her room and pinched her nipples, stating that "one [of] the leads has come
8 off on your heart monitor." (WA0076, Vol. I). However, Ms. Doe testified that the
9 leads "were not on [her] nipples" and that she did not hear "the beeping sound"
10 that the telemetry machine makes when a lead has fallen off. (WA0076-77, Vol.

11 I). Ms. Doe described another incident where Farmer entered her room, claiming
12 that he had to clean feces from her leg, and inserted his fingers into her anus.
13 (WA0080, Vol. I). However, Ms. Doe did not feel that she had gone to the
14 bathroom (WA0101, Vol. I), and she further testified that Farmer did not wipe her
15 off, he did not change the blue pad that was underneath her to protect against a
16 bowel movement or a catheter leak, and he did not change her hospital gown.

17 (WA0080-81, Vol. I). On another occasion, Ms. Doe testified that Farmer digitally
18 penetrated her vagina, claiming that he was checking her catheter. (WA0081-82,
19 Vol. I). However, Ms. Doe testified that the catheter was not inside her vagina.
20 (WA0081-84, Vol. I). On another occasion, Farmer entered Ms. Doe's room for
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1 no stated reason and lifted up her gown so that he could see her entire body.
2 (WA0079, Vol. I).

3 **IV. PROCEDURAL HISTORY**

4 **A. Plaintiff's Complaint And Amended Complaint**

5 On July 23, 2009, Ms. Doe filed the instant action against Steven A. Farmer,
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7 ANS, Centennial Hills and UHS, alleging that during her admission in May 2008,
8 Farmer sexually assaulted her while she was a patient at Centennial Hills.
9 (WA0001-06, WA0007-12; Vol. I). Plaintiff alleged that the corporate defendants
10 (ANS, Centennial Hills and UHS) were liable to Plaintiff for the intentional acts of
11 their alleged employee, Farmer, based *inter alia* on the doctrine of *respondeat*
12 *superior*. (WA0004, WA0010; Vol. 1). Plaintiff's complaint sought general and
13 punitive damages. (WA0006, WA0012; Vol. I). Subsequently, Ms. Doe died of
14 causes unrelated to this case, and Misty Peterson, Special Administrator of the
15 Estate, was substituted as Plaintiff for Ms. Doe. (WA0042-3, WA0126; Vol. I;
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21 WA0248, Vol. II).

22 **B. Farmer Is Convicted Of The Assaults Against Jane Doe**

23 On May 30, 2014, Farmer was criminally convicted in the Eighth Judicial
24 District, Clark County, Nevada, Case No. 08 C 245739/C249693, of six crimes
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1 against Jane Doe, which included sexual assault, open or gross lewdness, and
2 indecent exposure. (WA0122-24, Vol. I).

3 **C. Plaintiff Moves For Summary Judgment On Liability**
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5 On September 29, 2014, Plaintiff moved for summary judgment on the issue
6 of liability against all defendants, including ANS, Centennial Hills and UHS.
7 (WA0053-124, Vol. I). Plaintiff urged that each of these corporate entities was
8 vicariously liable as a matter of law for Farmer's criminal assaults on Ms. Doe.
9 (WA0062-64, Vol. I). However, Plaintiff's initial motion did not cite to NRS
10 41.745, or even argue the issue of foreseeability as to any of the corporate
11 defendants. (WA0053-124, Vol. I).
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15 Centennial Hills and UHS opposed Plaintiff's summary judgment motion,
16 citing NRS 41.745 and urging that Plaintiff could not recover even at a jury trial,
17 much less as a matter of law, as Centennial Hills and UHS urged that in criminally
18 assaulting Ms. Doe, Farmer was engaged in a truly independent venture; that he
19 was not acting within the course and scope of any assigned task or duties as nurse
20 assistant; and that his criminal assaults of Ms. Doe were not reasonably foreseeable
21 to Centennial Hills. (WA0129-38, Vol. I). Specifically, Centennial Hills and UHS
22 relied upon this Court's decision in *Wood v. Safeway, Inc.*, 121 Nev. 724, 737, 121
23 P.3d 1026, 1035 (2005), and urged that there were no known prior acts or any
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1 other circumstances that could have put Centennial Hills on notice that Farmer
2 would sexually assault Ms. Doe. (WA0132-35, Vol. I). ANS provided Centennial
3 Hills with documentation showing that Farmer was certified as a CNA in both
4 California and Nevada, that he had passed a criminal background test in both
5 states, as well as a negative drug test. (WA0133-34, WA0170-72, WA0183; Vol.
6 I). ANS also provided Centennial Hills with Farmer's prior employment
7 information, which contained no reports of improper conduct or bad character.
8 (WA0133-34, Vol. I).

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12 In her Reply, Plaintiff urged that she was required to prove only the "general
13 foreseeability" standard discussed in *State Dep't of Hum. Res. v. Jimenez*, 113 Nev.
14 735, 941 P.2d 969 (1997), a Nevada Supreme Court opinion that was subsequently
15 withdrawn. (WA0521, Vol. III). Although Plaintiff acknowledged that the Nevada
16 legislature intended to overrule *Jimenez* when it drafted NRS 41.745 (WA0519, fn.
17 9; Vol. III); nevertheless, she urged that it was sufficient for her to show that
18 Farmer's sexual assaults were "not so unusual or startling," given that CNAs and
19 other hospital personnel often have physical contact with a patient. (WA0521-24,
20 Vol. III). Plaintiff even urged that foreseeability was established as to ANS by the
21 fact that ANS had purchased liability insurance to cover sexual assaults.
22 (WA0523, Vol. III). Plaintiff also provided "expert" affidavits asserting the
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1 “general foreseeability” of such assaults on the basis that hospitals often insure
2 against such incidents. (WA0525-26, Vol. III). Plaintiff claimed that these general
3 foreseeability assertions satisfied “the foreseeability element of *Wood’s respondeat*
4
5 *superior* analysis.” (WA0525, Vol. III).

6 Ultimately, Plaintiff ignored the foreseeability issue and argued that
7 Centennial Hills and UHS should be “strictly liable” for Farmer’s conduct
8 (WA0541, Vol. III), despite the fact that NRS 41.745(2) expressly states that
9 “[n]othing in this section imposes strict liability on an employer for any
10
11 unforeseeable intentional act of employee.”
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13 Centennial and UHS filed a supplemental brief to emphasize that the
14 foreseeability standard applied by this Court in *Wood* was not general
15 foreseeability, but rather was a fact specific “reasonable foreseeability” standard
16 pertaining to the specific employee involved in the criminal assault, and the facts
17 and circumstances of the particular case. (WA0762-87, Vol. IV). Centennial and
18 UHS further urged that the burden of proving the statutory elements of NRS
19 41.745 required for imposing intentional tort liability on an employer remained
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21 with the Plaintiff. (WA0768, Vol. IV).
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1 **D. Respondent Grants Plaintiff's Motion On Liability In Part**

2 On February 27, 2015, Respondent entered its Order granting Plaintiff's
3 Motion for Summary Judgment on Liability in part, which included, *inter alia*, the
4 following findings of fact and conclusions of law:
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6 **Findings of Fact:**

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- 8 • "In May 2008, Centennial/UHS had a contractual agreement whereby ANS
9 would provide certain Hospital Staff, which including Certified Nursing
10 Assistants ("CNA");"
 - 11 • "In May 2008, Farmer was an agency CNA working at Centennial/UHS
12 through ANS;"
 - 13 • "On May 14, 2008, Farmer originally was told to work in the Emergency
14 Room by Centennial/UHS;"
 - 15 • "In May 2008, Farmer wore an employee badge that had his name, ANS,
16 Centennial/UHS, and contract staff written on it;"
 - 17 • "At around 21:30 hours on May 14, 2008, while Farmer was working at
18 Centennial Hills Hospital Medical Center, Farmer was moved from the
19 Emergency Room to the Sixth Floor by Centennial/UHS to work;"
 - 20 • "On May 14, 2008, Jane Doe was on the Sixth Floor in Room 614 at
21 Centennial/UHS;"
 - 22 • "On May 14, 2008, in the course and scope of his employment with ANS
23 and Centennial/UHS as a CNA, and in the course and scope of working at
24 Centennial/UHS, it was expected that Farmer would enter patients' rooms on
25 the Sixth Floor of Centennial/UHS as part of his tasks;"
 - 26 • "In addition, Farmer was expected to give bed baths, cleanup stool, cleanup
27 urine, and check monitor leads;"
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- 1 • "On May 14, 2008, having contact with a patient in the patient's room on the
2 Sixth Floor of Centennial/UHS was in the course and scope of Farmer's
3 employment with ANS and Centennial/UHS as a CNA;"

- 4 • "Farmer had contact with Jane Doe in her room on the Sixth Floor of
5 Centennial/UHS."

6 **Conclusions of Law:**

- 7
8 • "Pursuant to NRS 41.133, and based upon Farmer's criminal conviction for
9 the acts underlying the instant lawsuit, Plaintiff's Motion as to Farmer's
10 liability is granted, however the issue of damages as to Farmer remains an
11 issue for the time of trial;"

- 12 • "Farmer, at the time the criminal acts were committed, **was the employee of**
13 **American Nursing Services, Inc., Universal Health Services, Inc., and**
14 **Valley Health Systems, LLC;"**

- 15 • "With regard to negligence, the Court further finds that **plaintiff must prove**
16 **general foreseeability;"**

- 17 • "To refute respondeat superior liability per NRS 41.130, **the defendants**
18 **must prove the various sections and provisions of NRS 41.745** in order to
19 rebut a claim made under NRS 41.130;"

- 20 • "At this time, the Court finds there is a genuine issue of material fact with
21 regard to liability, the principal one being whether the misconduct of Farmer
22 was reasonably foreseeable;"

- 23 • "Hence, the Court denies Plaintiff's Motion for Partial Summary Judgment
24 without prejudice, pursuant to NRCP 56, *Wood v. Safeway*, 121 Nev. 724,
25 121 P.3d 1026 (2005); *Prell Hotel Corp. v. Antonacci*, 86 Nev. 390, 469
26 P.2d 399 (1970); and NRS 41.745."

27 (WA0847-54; Vol. IV)(emphasis added).
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1 **V. REASONS WHY A WRIT OF MANDAMUS SHOULD ISSUE**

2 **A. Standard Of Review**

3 A writ of mandamus is available (1) "to compel the performance of an act
4 which the law especially enjoins as a duty resulting from an office, trust or
5 station," NRS 34.160, (2) "to control a manifest abuse of or arbitrary or capricious
6 exercise of discretion," or (3) "*to clarify an important issue of law.*" *Bennett v.*
7 *Eighth Judicial Dist. Ct.*, 121 Nev. 802, 806, 121 P.3d 605, 608 (2005) (emphasis
8 added). When the District Court's findings raise questions of law, such as those at
9 issue in this petition, they are reviewed *de novo*. *Marquis v. Eighth Judicial Dist.*
10 *Ct.*, 122 Nev. 1147, 1156, 146 P.3d 1130, 1136 (2006); *Borger v. Eighth Judicial*
11 *Dist. Ct.*, 120 Nev. 1021, 1026, 102 P.3d 600, 604 (2004). The writ shall be issued
12 in all cases where the petitioner does not have a plain, speedy and adequate remedy
13 in the ordinary course of law. NRS 34.170.
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19 **B. Respondent's Order Requiring Plaintiff To Prove Only "General**
20 **Foreseeability," And Imposing The Burden Of Proving The**
21 **Statutory Elements of NRS 41.745 on Defendants, Raises**
22 **Significant Legal Issues For Which Clarification Of Nevada Law**
23 **Is Urgently Needed**

24 **1. The "General Foreseeability" Standard Does Not Comport**
25 **With Nevada Jurisprudence, As The Plain Language Of NRS**
26 **41.745 Sets Forth A Specific "Reasonable Foreseeability"**
27 **Standard**
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1 NRS 41.745 states in pertinent part that an employer is not liable for the
2 harm or injury caused by the intentional conduct of an employee that:

3 c) Was not reasonably foreseeable *under the facts and*
4 *circumstances of the case considering the nature and*
5 *scope of his or her employment.*

6 [C]onduct . . . is reasonably foreseeable if a person of ordinary
7 intelligence and prudence *could have reasonably anticipated*
8 *the conduct and the probability of injury.* (emphasis added).

9 Accordingly, the plain language of NRS 41.745 establishes that the
10 foreseeability standard required to impose liability on an employer for the
11 intentional criminal acts of an employee is fact specific "*reasonable*
12 *foreseeability,*" to be determined "under the facts and circumstances of the case,"
13 not the "general foreseeability" urged by Plaintiff and set forth in Respondent's
14 Order. (WA0519-25, Vol. III; WA0852, Vol. IV).

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18 **a. This Court Held In *Wood* That The "General**
19 **Foreseeability" Standard Is An Incorrect Statement**
20 **Of Nevada Law**

21 This Court has already interpreted and expressly endorsed NRS 41.745's
22 reasonable foreseeability standard, which limits an employer's liability to conduct
23 by that employee that was reasonably foreseeable to the employer "under the facts
24 and circumstances of the particular case." In *Wood*, plaintiff, a mentally disabled
25 Safeway employee, sued her employer (Safeway) and the company that provided
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1 Safeway with janitorial service, after she was sexually assaulted by a one of the
2 janitorial company's employees. 121 Nev. at 724, 121 P.3d at 1026. Plaintiff
3 alleged that the assailant's acts were foreseeable to the janitorial service company
4 because it was not "highly extraordinary" that a workforce comprised of highly
5 transient, untrained, largely unsupervised illegal aliens would sexually assault
6 "vulnerable females" such as herself. *Id.*, at 739, 121 P.3d at 1036. This Court
7 rejected all of the plaintiff's arguments and affirmed summary judgment in favor
8 of defendants under NRS 41.745. *Id.* at 1037.

12 On the issue of foreseeability, the Court explained that the "highly
13 extraordinary" standard was "an incorrect statement of the law." *Wood*, 121 Nev.
14 at 739-40, 121 P.3d at 1036. Rather, "whether an intentional act is reasonably
15 foreseeable depends on whether one has '*reasonable cause to anticipate such act*
16 *and the probability of injury resulting therefrom.*'" *Id.* (Emphasis added). The
17 Court held that plaintiff failed to show a material issue of fact as to the reasonable
18 foreseeability of the criminal assailant employee's conduct, given that the
19 employee had no prior criminal history, and the janitorial service had received no
20 complaints of misconduct or sexual harassment involving the assailant or any other
21 employee in the past ten years. *Id.* at 740, 121 P.3d at 1036-37. Accordingly,
22 "[u]nder the circumstances of this case, it was not reasonably foreseeable that [the
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1 assailant] would sexually assault a Safeway employee.” *Wood*, 121 Nev. at 740,
2 121 P.3d at 1037 (emphasis added).²

3 As demonstrated by this Court’s analysis in *Wood*, the foreseeability
4 required to impose employer liability under NRS 41.745 is “reasonable
5 foreseeability” – *i.e.*, the criminal conduct of the particular assailant employee
6 must be reasonably foreseeable to the employer under the facts and circumstances
7 of the particular case – and the “general foreseeability” set forth in Respondent’s
8 Order (WA0852, Vol. IV) is not the law.
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12 **b. The “Reasonable Foreseeability” Standard Applied In**
13 ***Wood* Comports With The Legislature’s Intent**
14 **Behind Its Enactment Of NRS 41.745**

15 The plain language of NRS 41.745 and this Court’s holding in *Wood* make
16 clear that “reasonable foreseeability” under the specific facts and circumstances of
17 the case is required to impose employer liability under NRS 41.745. However, to
18 the extent any ambiguity exists and/or remains, it is resolved by the statute’s
19 legislative history.
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22 NRS 41.745, formerly Assembly Bill 595, was enacted by the Legislature in
23 response to this Court’s March 27, 1997, decision in *State, Dep’t of Human Res.*,
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25 ² Relying on the same absence of evidence of reasonable foreseeability, this Court in *Wood*
26 further held that the janitorial service company was entitled to summary judgment on the
27 additional ground that the employee’s criminal assaults constituted an unforeseeable intervening
28 and superseding cause. *Wood*, 121 Nev. at 741; 121 P.3d at 1037.

1 *Division Of Mental Hygiene & Mental Retardation v. Jimenez*, 113 Nev. 356, 359,
2 935 P.2d 274, 275-76 (1997), *opinion withdrawn, reh'g dismissed*, 113 Nev. 735,
3 941 P.2d 969 (1997), wherein a new test for employer liability was announced,
4 replacing the previous test from *Prell Hotel Corp. v. Antonacci*, 86 Nev. 390, 469
5 P.2d 399 (1970). Under the *Jimenez* test, an employee's intentional torts were
6 considered foreseeable if, in the context of the particular enterprise, the employee's
7 conduct was not "so 'unusual or startling' that it would seem unfair to include the
8 loss resulting from it in the costs of the employer's business." *Jimenez*, 113 Nev. at
9 365, 935P.2d at 279-80.
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13 Recognizing that this new risk allocation/general foreseeability test, set forth
14 in *Jimenez*, essentially imposed strict liability on employers for an employee's
15 intentional wrongdoing, the Legislature enacted NRS 41.745 both to codify the
16 *Prell* standard – contained within NRS 41.745(1)(a) and (b) – and to add a
17 "reasonable foreseeability" standard set forth in NRS 41.745(1)(c). See Hearings
18 on A.B. 595, 69th Leg., Assem. Comm. on Jud., at 14, 15 (Nev. June 19, 1997).
19 (WA0789-90, WA0791-808; Vol. IV). Indeed, in her comments to the Assembly
20 Committee on Judiciary, Assistant Attorney General Brooke Neilsen, whose office
21 proposed the bill, testified that "the language in . . . subsection 1(c), which required
22 the conduct of an employee to be reasonably foreseeable for the employer to be
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1 held liable, was included in the bill to address the foreseeability test mentioned in
2 the *Jimenez* opinion” to “try and get the court and jury to focus on what happened
3 in a particular case.” (WA0795, WA0797; Vol. IV). Committee Counsel Risa L.
4 Berger further explained that “[t]he intent of [section 1, subsection 1(c)] was to
5 bring it back to an ordinary negligence standard.” (WA0800, Vol. IV). Most
6 succinctly, Assemblywoman and Vice Chairman Barbara Buckley testified that
7 “subsection 1(c) needed to be included, so that the definition of foreseeability as
8 spreading the risk to private employers *was overruled*. Otherwise, *there was no*
9 *point in the legislation being passed*.” (WA0801, Vol. IV) (emphasis added).
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13 **2. The Burden To Prove Reasonable Foreseeability Under NRS** 14 **41.745 Remains On Plaintiff**

15 The fact that Respondent’s Order applies the “general foreseeability”
16 standard rejected in *Wood* is grounds in itself for this Court to intervene and vacate
17 that portion of Respondent’s February 27, 2015, Order. Furthermore, Respondent’s
18 concurrent finding that the defendant employer has the burden of proof on all
19 issues under NRS 41.745 (WA0852, Vol. IV), presents yet another compelling
20 basis for writ relief. Neither this Court’s holding in *Wood*, the language of NRS
21 41.745, nor the statute’s legislative history, support the proposition that traditional
22 negligence principles – imposing the burden of proof on plaintiff – do not apply in
23 a case where plaintiff sues an employer for an employee’s intentional criminal acts.
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1 To recover in a negligence action, “a *plaintiff* must demonstrate (1) that the
2 defendant owed the plaintiff a duty of care, (2) that the defendant breached that
3 duty, (3) that breach of the duty caused harm to the plaintiff *that was reasonably*
4 *foreseeable*, and (4) damages.” *Butler ex rel. Biller v. Bayer*, 123 Nev. 450, 464,
5 168 P.3d 1055, 1065 (2007) (emphasis added). This Court has long recognized
6 that the burden of proof remains with the plaintiff and that he or she must show
7 “that the injury was the natural and probable consequence of the negligence or
8 wrongful act, and that it ought to have been foreseen in the light of the attending
9 circumstances.” *Yamaha Motor Co., U.S.A. v. Arnoult*, 114 Nev. 233, 238, 955
10 P.2d 661, 664 (1980). (citations omitted).

11
12 The plain language of NRS 41.745 does not alter or amend these
13 fundamental burden of proof principles. NRS 41.745 sets forth “reasonable
14 foreseeability” and other elements required to render an employer liable for the
15 intentional conduct of its alleged employee. In *Wood*, the Court affirmed summary
16 judgment in favor of the employer, and gave no indication that the traditional
17 burden of proof rules would be altered in a jury trial under NRS 41.745.³

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25 ³ *Wood* involved the employer’s summary judgment motion; thus the employer had the “burden”
26 to produce evidence establishing that there were no material issues of fact requiring a trial. See
27 NRCp 56(c).
28

1 Furthermore, to the extent there is any ambiguity in NRS 41.745 as to which party
2 bears the burden of proof, it is resolved by the statute's clear legislative history: In
3 her testimony before the Assembly Committee on Judiciary, Assistant Attorney
4 General Brooke Nielsen testified: "*the plaintiff retained the burden of proof with*
5 *respect to the provisions of section 1, subsection 1. The plaintiff must prove his or*
6 *her case. The bill did not alter this burden.*" (WA0795, Vol. IV) (emphasis
7 added).

8
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10 Thus, to recover against an employer for an employee's intentional acts at
11 trial, a *plaintiff must prove* all three of the following requirements: (a) the
12 employee's conduct was not an independent venture; (b) the employee's conduct
13 was committed in the course of his or her assigned tasks; and (c) the employee's
14 conduct was reasonably foreseeable under the facts and circumstances of the case
15 considering the nature and scope of his or her employment. *See* NRS 41.745
16 (emphasis added). Accordingly, the Writ should be granted to vacate
17 Respondent's contrary ruling that "[t]o refute *respondeat superior* liability per
18 NRS 41.130, the *defendants must prove* the various sections and provisions in NRS
19 41.745. (WA0852, Vol. IV) (emphasis added).

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1 **C. Writ Review Is Also Needed Because Farmer's Employment**
2 **Status With Respect To Centennial And UHS Raise Questions Of**
3 **Fact That Must Be Decided By A Jury And Not The District**
4 **Court**

5 Respondent's Order also granted Plaintiff's motion on the issue of Farmer's
6 employer(s) at the time of the subject sexual assaults, specifically finding that
7 Farmer was, *as a matter of law*, an employee of Centennial Hills and its parent
8 corporation, UHS, in addition to ANS. (WA0852, Vol. IV).

9 In her briefing to the district court, Plaintiff expressly disclaimed any
10 reliance on a theory of ostensible agency for purposes of establishing the alleged
11 employment relationship. (WA0515, Vol. III). Rather, plaintiff has steadfastly
12 argued that Farmer was an employee of Centennial Hills and UHS based upon the
13 following evidence: (1) Farmer was an agency CNA working at Centennial Hills
14 through ANS; (2) ANS sent Farmer to Centennial Hills to work there as a CNA;
15 (3) Farmer was originally told to work in the Emergency Room but was then later
16 moved to the Sixth Floor by Centennial Hills to work; and that (4) Farmer wore a
17 badge which stated his name, Centennial Hills, ANS, and "Contract Staff."
18 (WA0057-59, Vol. I; WA0848-49, Vol. IV). This is the *entirety* of the evidence
19 upon which Plaintiff relies, and upon which Respondent based its finding that
20 Farmer was, as a matter of law, an employee of Centennial Hills and its parent
21 corporation, UHS, at the time of the sexual assaults.

1 Centennial Hills and UHS denied that Farmer was their employee and in
2 support of this denial, presented substantial evidence that Farmer was not their
3 employee, including: Farmer's HR file which included a completed ANS
4 employment application; evidence that he had completed an interview with ANS
5 personnel; evidence that ANS provided the job description for which Farmer
6 applied; and evidence that Farmer had completed a CNA skills test at ANS'
7 request. (WA0125-38, Vol. 1; WA0762-87, Vol. IV). There was no evidence that
8 Centennial Hills or UHS paid Farmer or provided workers' compensation benefits
9 or any other remuneration for his services.
10
11

12
13 In *Rockwell v. Sun Harbor Budget Suites*, 112 Nev. 1217, 1223, 925 P.2d
14 1175, 1179 (1996), this Court recognized that in order for an employer-employee
15 relationship to exist, the purported employer must maintain control over the
16 purported employee, and that control must relate to all the "details and method of
17 performing the work" within the course and scope of the alleged employment.⁴
18
19 Normally such issues of control and scope of employment are questions of fact for
20 the jury. *Yellow Cab of Reno, Inc. v. Second Judicial Dist. Ct.*, 262 P.3d 699, 704,
21
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25 ⁴ The *Rockwell* Court found employment status as a matter of law based upon a property
26 owner's non-delegable duty to provide responsible security personnel. *Rockwell*, 112 Nev. at
27 1223; 925 P.2d at 1179. No such non-delegable duty exists here.
28

1 127 Nev. Adv. Op. 52 (2011). That should certainly be true here where there is no
2 evidence that Centennial Hills or UHS directed Farmer to enter Plaintiff's room at
3 any of the times at issue or directed him to do any of the things that he claimed that
4 he was doing at the time of the assaults (cleaning up bowel movement, checking
5 catheter placement, or replacing a telemetry lead that had fallen off). Indeed, the
6 testimony of Ms. Doe herself, *supra*, would give the jury an ample basis to
7 conclude that Farmer had no work-related reason for entering her room at the time
8 of any of the assaults, and thus he was clearly acting outside the scope of any
9 alleged employment or control by Centennial Hills or UHS. *See Kornton v.*
10 *Conrad, Inc.*, 119 Nev. 123, 124, 67 P.3d 316, 317 (2003);⁵ *J.C. Penney Co. v.*
11 *Gravelle*, 62 Nev. 434, 450, 155 P.2d 477, 482 (1945). Accordingly, Respondent's
12 finding that Farmer was an employee of Centennial Hills and UHS, *as a matter of*
13 *law*, should be vacated.

19 CONCLUSION

20 Respondent's Order evidences an urgent need for this Court to grant the
21 requested Writ in order to clarify Nevada law on this important and recurring legal
22 issue, which will also promote judicial economy and administration of justice

25 ⁵ The district court made only general findings about the course and scope of Farmer's
26 employment (WA0848-49, Vol. IV), and properly did not address the factual issues of whether
27 Farmer was in the course and scope of his employment at the time of the sexual assaults on Ms.
28 Doe, or whether he was actually performing any assigned task at the time the assaults occurred.

1 throughout the State, as Respondent's facially erroneous "dual" burden of proof
2 Order should not be allowed to persist and potentially affect other pending and
3 future Nevada cases involving an employer's liability for its employees'
4 intentional torts. Accordingly, Petitioners respectfully request that this Court issue,
5 as appropriate, a Writ of Mandamus or Prohibition directing the Respondent
6 District Court to vacate the portions of its February 27, 2015, Order that: (1)
7 require Plaintiff to prove only "general foreseeability"; (2) impose on Petitioners
8 the burden of proof under NRS 41.745; and (3) find as a matter of law that
9 Petitioners were the employer of the criminal assailant.
10
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12

13 Dated this 27 day of April, 2015
14

15 HALL PRANGLE & SCHOONVELD, LLC

16
17 
18 MICHAEL E. PRANGLE, ESQ.

19 Nevada Bar No. 8619

20 JOHN F. BEMIS, ESQ.

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22 1160 N. Town Center Drive, Suite 200

23 Las Vegas, Nevada 89144

24 *Attorneys for Petitioners*

25 *Valley Health System, LLC, d/b/a*

26 *Centennial Hills Hospital Medical Center*

27 *and Universal Health Services, Inc.*
28

1 **NRAP 28.2 ATTORNEY'S CERTIFICATE OF COMPLIANCE**

2 I hereby certify that this brief complies with the requirements of NRAP
3
4 32(a)(4), the typeface requirements of NRAP 32(a)(5), and the style requirements
5 of NRAP 32(a)(6). This brief has been prepared in a proportionally-spaced
6 typeface using Microsoft Word with 14-point, double-spaced Times New Roman
7 font.
8

9 I further certify that this brief complies the page limitations of NRAP
10 32(a)(7) because, excluding the parties of the brief exempted by NRAP
11 32(a)(7)(C), it is proportionately spaced, has a typeface font of 14 points or more,
12 and does not exceed 30 pages in length.
13

14 I further certify that I have read Petitioners Valley Health System, LLC d/b/a
15 Centennial Hills Hospital Medical Center and Universal Health Services, Inc.'s
16 Petition for Writ of Mandamus and/or Writ of Prohibition, and to the best of my
17 knowledge, information, and belief, it is not frivolous or interposed for any
18 improper purpose. I further certify that this brief complies with all applicable
19 rules, including the requirement of NRAP 28(e) that every assertion in the brief
20 regarding matters in the record be supported by a reference to the page and volume
21 number, if any, of the appendix where the matter relied on is to be found.
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1 I understand that I may be subject to sanctions if the accompanying brief is
2 not in conformity with the requirements of NRAP.

3
4 DATED this 27 day of April, 2015.

5 HALL PRANGLE & SCHOONVELD, LLC

6
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16 *Centennial Hills Hospital Medical Center*

17 *and Universal Health Services, Inc.*

CERTIFICATE OF SERVICE

I hereby certify that on the 28 day of April, 2015, I electronically filed the foregoing served the foregoing **PETITIONERS' VALLEY HEALTH SYSTEM, LLC, d/b/a CENTENNIAL HILLS HOSPITAL MEDICAL CENTER'S AND UNIVERSAL HEALTH SERVICES, INC.'S PETITION FOR WRIT OF MANDAMUS AND/OR WRIT OF PROHIBITION** in a sealed envelope, via U.S. Mail, first-class, postage pre-paid, to the following parties at their last known address:

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MURDOCK & ASSOCIATES, CHTD.
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*Attorneys for Real Parties in Interest
Estate of Jane Doe, by and through its
Special Administrator, Misty Peterson*

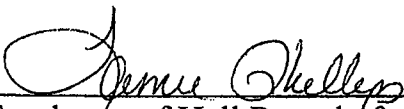
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3 Nevada Department of Justice
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6 Counsel for Respondents
7 The Honorable Richard F. Scotti

The Honorable Richard Scotti
Eighth Judicial District Court
Department 2
Phoenix Building
330 S. Third St., Courtroom 110
Las Vegas, NV 89155

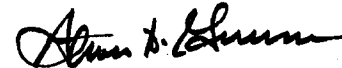
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10 An Employee of Hall Prangle & Schoonveld, LLC

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TAB 12

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CLERK OF THE COURT

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7 ECKLEY M. KEACH, CHTD.
8 521 South Third Street
9 Las Vegas, NV 89101
10 702-685-6111
11 Attorneys for Plaintiff

12
13 DISTRICT COURT
14 CLARK COUNTY, NEVADA

13 ESTATE OF JANE DOE, by and through its)
14 Special Administrator, Misty Petersen,)
15)
16 Plaintiff,)

CASE NO. 09-A-595780-C
DEPT. NO. II

16 vs.)

PLAINTIFF'S MOTION FOR
RULE 37 SANCTIONS

17 VALLEY HEALTH SYSTEM LLC, a Nevada)
18 limited liability company, d/b/a CENTENNIAL)
19 HILLS HOSPITAL MEDICAL CENTER;)
20 UNIVERSAL HEALTH SERVICES, INC., a)
21 Delaware corporation; AMERICAN NURSING)
22 SERVICES, INC., a Louisiana corporation;)
23 STEVEN DALE FARMER, an individual; DOES I)
24 through X, inclusive; and ROE CORPORATIONS)
25 I through X, inclusive,)

(DISCOVERY
COMMISSIONER)

DATE:
TIME:

23 Defendants.)
24)

25 PLAINTIFF'S MOTION FOR NRCP 37 SANCTIONS AGAINST VALLEY HEALTH
26 SYSTEM LLC, d/b/a CENTENNIAL HILLS HOSPITAL MEDICAL CENTER
27 AND UNIVERSAL HEALTH SERVICES, INC.

28 COMES NOW Plaintiff Estate of Jane Doe, by and through its Special Administrator,
Misty Petersen (hereinafter "Plaintiff"), by and through its attorneys of record, Murdock &



AA0407

1 Associates, Chtd. and Eckley M. Keach, Chtd., and hereby submits its Motion for NRCP 37
2 Sanctions Against Valley Health System, LLC, d/b/a Centennial Hills Hospital Medical Center
3 and Universal Health Services, Inc., (collectively "UHS") as follows.
4

5 This Motion is made and based upon the papers and pleadings on file herein, the attached
6 Points and Authorities, Affidavits of Robert E. Murdock, Esq., and any oral argument as may be
7 had by this Court.

8 DATED this 29th day of April, 2015.
9

10 MURDOCK & ASSOCIATES, CHTD.
11 ECKLEY M. KEACH, CHTD.

12 /s/ Robert E. Murdock
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14 Eckley M. Keach Bar No. 1154
15 521 South Third Street
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17 Attorneys for Plaintiff
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TO: HALL PRANGLE & SCHOONVELD, LLC, Its Attorney of Record

DATED this 29th day of April, 2015.

/s/ Robert E. Murdock

Robert E. Murdock Bar No. 4013
Eckley M. Keach Bar No. 1154
520 South Fourth Street
Las Vegas, NV 89101
Attorneys for Plaintiff

1 **POINTS AND AUTHORITIES**

2 This motion is brought pursuant to NRCP 37. An appropriate sanction in this matter for
3 UHS' intentional violation of the rules of discovery is for the Court to find Farmer's
4 misconduct was reasonably foreseeable to UHS. The actions of UHS are outrageous and
5 require Court intervention. The actions of UHS counsel in fomenting the issues by obviously
6 telling a witness to not comply with a noticed deposition is shocking, yet not surprising.
7 Severe sanctions against counsel and UHS are mandatory.
8

9 **INTRODUCTION**

10 The essential facts of this case were recently detailed in this Court's Findings of Fact
11 and Conclusions of Law in the February 27, 2015, Order on Plaintiff's Motion for Summary
12 Judgment Re: Liability, (hereafter the "FFCL"). (Exhibit "8"). Jane Doe's case was filed on
13 July 23, 2009. Because of the criminal case, it was stayed on January 26, 2011. For three
14 years, some or all discovery in this case was stayed. Over the next twelve to eighteen months
15 after the stay was lifted--after the convictions in the criminal case—Plaintiffs tried/fought to
16 get the criminal discovery that UHS already had¹ over Defendants' persistent objections.
17

18 It became obvious why UHS resisted disclosure so strenuously once the discovery was
19 finally provided. In the FFCL the Court concluded UHS and ANS would be liable for all
20 damages suffered by Ms. Petersen from Farmer's criminal conduct if Plaintiff's met their
21 burden on whether the misconduct of Farmer was reasonably foreseeable. **Well, lo and**
22 **behold, for the past SIX YEARS UHS knew Farmer was engaged in inappropriate**
23 **conduct with not just one vulnerable female, but potentially many.** Witness statements
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28 ¹ The Court should not forget that Mr. Bemis had received material from Mr. Farmer's criminal defense counsel and failed to disclose same per NRCP 16.1.

1 and reports six years old detail information from several UHS nurses regarding Farmer's
2 inappropriate contact with other female patients. This evidence establishes as a matter of law
3 that Farmer's rape of the decedent was reasonably foreseeable by UHS, making them liable for
4 Plaintiff's damages. So of course UHS would do everything to prevent the disclosure of this
5 evidence—and they did. They hid witnesses. They hid statements. And, they continue to do
6 so.
7

8 The Past Is Prologue:

9 The Court will recall that Plaintiff was just before this Court a week ago when UHS
10 claimed it could not provide information because of HIPAA.² That motion was brought about
11 because UHS hid a nurse witness from Plaintiff, one Christine Murray. In May 2008,
12 *unbeknownst to Plaintiff but well known to UHS*, Nurse Murray gave a statement to the
13 LVMPD which the Director of Nursing at Centennial was well aware of. In or around
14 February or March of 2008, Mr. Farmer was working as a "sitter" in an older patient's room.
15 Ms. Murray stated that this means that a doctor ordered someone to be in the room with her at
16 all times. Nevertheless, Mr. Farmer was alone with her and had the door shut with all of the
17 lights out. Centennial/UHS staff heard yelling from the room to the effect that she did not
18 want him near her. **Instead of investigating what occurred, Ms. Murray and the**
19 **Centennial/UHS staff basically blamed the incident on a "crazy old lady". As she told**
20 **Metro, "She's a crazy old lady, that's why she has a sitter...So we didn't put any**
21 **credence into what she was saying".** See Exhibit "9": Murray Deposition at 53:16-23; See
22 Exhibit "10": Murray Statement to LVMPD. Once Plaintiff became aware of same, Plaintiff
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28 ² Of course, HIPAA wasn't really involved since allegations of potentially criminal conduct are not covered by HIPAA.

1 started sending discovery to find out who the actual nurse was and what exactly Nurse Murray
2 did not "lend any credence into".³ UHS delayed the issue by objecting via HIPAA and
3 delaying the issue for months. Just last week this Court ruled that UHS would have to go back
4 and look through all of the medical records where Mr. Farmer was working and provide any
5 incidents where there was a problem with Farmer. Of course, this included the patient who
6 through the sitter out. Again, this was just LAST WEEK.

8 Now, UHS is up to its old tricks. But, they have gone too far.

9 The criminal discovery disclosed another Nurse who had plenty to say about Mr.
10 Farmer. As is their modus operandi, Nurse Margaret Wolfe was never disclosed per NRCP
11 16.1 nor was she identified in any way. Based on what she told the LVMPD, this was not
12 surprising. UHS knew that Farmer was a problem and Nurse Wolfe told that to the LVMPD in
13 May of 2008.

15 Nurse Wolfe gave a recorded statement to the LVMPD in May 2008. While Nurse
16 Murray saw Mr. Farmer place his hands inside a female patient's gown and "pretend" to check
17 the monitor wires, it is unclear when that incident actually happened in relation to the sexual
18 assault of Jane Doe. But, Ms. Wolfe also gave an explosive statement about Farmer well
19 before the actions with this one patient:
20
21

22 ///

23 ///

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28 ³ The latter is the oddest issue. What would one not "lend any credence into"? Putting on a blood pressure cuff?
OR, the claim that Farmer was touching her improperly.

1 A: Um, the same nurse, Ray Sumera⁴, had told me um, another time that
2 he—to watch him around my female patients. That he was concerned because he
3 was very overly attentive with female patients and very anxious to connect them to
4 the monitors and disconnect them from the monitors which would require him to reach
5 into their clothing.

6 ...

7 A: He was just very suspicious in his activities. Um, such as going into
8 rooms with doors closed with female patients when he was not asked to.

9 ...

10 Q: How...if you had to give me an estimate, how many times would you say
11 that you...you've seen him walk into rooms, for female patients, where the doors are
12 closed but there's no, no need for him to be in that room?

13 A: Multiple times. I couldn't put a number on it.

14 ...

15 Q: Okay. Um...and you said that he just—these actions that he was doing is
16 what made uh..it was of a concern and made you suspicious?

17 A: Yes.

18 ...

19 Q: Okay. Um, anything else you can think of that might be of uh, useful
20 information to me to assist me in my investigation?

21 A: Um, nothing comes to mind other than, like I said, there were other people
22 that had um told me that they had the same—

23 Q: Ex-expressed concerns?

24 A: Yeah. Concerns about him.

25 ...

26 A: There's one other nurse that had come to me...

27 A: Kim, that's her name. Kim.

28 LVMPD Statement of Margaret Wolfe, Exhibit "9".

⁴ This is Nurse Renato Sumera. According to Nurse Wolfe, he occasionally worked as a Charge Nurse. See Statement of Wolfe at 13.

1 Nurse Wolfe, then an employee of Centennial Hills, and allegedly represented by the
2 Hall Prangle Law Firm⁵, has made it quite clear that Centennial was well aware that Farmer
3 was suspicious, that the employees of Centennial had concerns about him, that on multiple
4 occasions, he was in a room with patient where the doors were closed but he had no reason to
5 be in there, that he was overly attentive to female patients and this was known to Centennial
6 Hills staff. So, to sum up, **Centennial was on notice of issues with Farmer and it was**
7 **clearly foreseeable that Farmer would sexually assault patients at Centennial.** And,
8 CENTENNIAL DID NOTHING! Though Nurse Wolfe stated that she was told by Charge
9 Nurse Sumera to "watch" Farmer, he was still allowed to see patients and, depressingly, to
10 sexually assault Jane Doe.
11

12
13 UHS does not want her deposition taken. Before even knowing what she would testify
14 about, and that she was no longer an employee of UHS, her name came out in the
15 Prosecution's Witness List (a public document available on Wiznet). So, on October 6, 2014,
16 Plaintiff asked Mr. Bemis for deposition dates of Ms. Wolfe, among others. See Exhibit "1",
17 Email dated October 6, 2014. PLAINTIFF HEARD NOTHING. Upon receipt of the criminal
18 discovery, the LVMPD Statement, and having heard nothing from Mr. Bemis regarding
19 deposition dates, Plaintiff identified Nurse Wolfe in her 16.1. Then on March 18, 2015,
20 Plaintiff set the deposition of Nurse Wolfe for April 2, 2015. (Exhibit "2"). On March 24,
21 2015, Mr. Bemis wrote a letter to counsel advising "unavailability" on April 2, 2015. (Exhibit
22 "3"). Mr. Bemis advised that she was available on April 27, or April 28, 2015. But, because
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28 ⁵ Ms. Wolfe is no longer an employee of Centennial. Apparently she was not a "manager" or "management level
employee". Yet, Hall Prangle has cloaked her with "being represented" such that Plaintiff's counsel cannot speak
with her. This clearly goes against the spirit of *Palmer v. Pioneer Inn Assocs., LTD.*, 118 Nev. 943 (Nev. 2002).

1 Plaintiff was also going to be taking Nurse Sumera (who still works at the hospital), and
2 Director of Nursing Wescott (who also still works for the hospital), Plaintiff chose April 28,
3 2015 (and then afterwards would take Sumera and Wescott). Accordingly, Plaintiff served an
4 Amended Notice on March 25, 2015 for April 28, 2015. (Exhibit "4").
5

6 On April 16, 2015, Mr. Bemis wrote a letter to Plaintiff's counsel advising that Ms.
7 Wolfe was no longer available and suggested May 5. (Exhibit "5"). That same day, Mr.
8 Murdock responded advising that "Because of the deposition schedule in this case and because
9 of my schedule, Ms. Wolfe's deposition cannot be moved. It would require changing
10 everyone's deposition and I simply cannot do that". See Exhibit "6". As per usual,
11 NOTHING WAS HEARD FROM MR. BEMIS.
12

13 Then, on Friday, April 24, 2015, Mr. Bemis called Mr. Murdock and advised that he
14 would be filing a Motion for Protective Order on an OST regarding the deposition. Mr.
15 Murdock specifically advised him to do so as he was not taking the deposition off.⁶ Mr.
16 Murdock received no notice of a Motion being filed.
17

18 On April 27, 2015, at 4:40 pm, Mr. Bemis emailed Mr. Murdock and advised that he
19 had attempted to file his Motion but that it was kicked back for being "too late". He then
20 advised that he would be doing a "non-appearance" at the deposition. See Exhibit "7".
21

22 On April 28, 2015, at the time set for the deposition, Mr. Bemis appeared and advised
23 that though he had accepted service and that no protective order was in place, Ms. Wolfe was
24 not coming.
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⁶ Mr. Bemis advised that Ms. Wolfe had "mandatory training" at UMC.

1 This creates issues in this case. First, time is running short. Deadlines are rapidly
2 approaching.

3 Also, Plaintiff scheduled other depositions to follow Ms. Wolfe's testimony—but hers
4 had to come first. The depositions of two other nurses, Lorraine Wescott, R.N. and Renato
5 Sumera, R.N. are both set for Friday, May 1, 2015 and were set within 24 hours of setting Ms.
6 Wolfe's deposition.

7
8 There is a procedure to object to a properly noticed deposition. The objecting party can
9 seek court intervention to get a protective order to prevent the deposition from going forward.
10 The court can evaluate the basis for the objection in light of the facts of the case and decide if
11 delay is appropriate.

12
13 A deponent cannot unilaterally refuse to appear at a deposition⁷—particularly in a case
14 such as this where the existence of the evidence was hidden from Plaintiff for six years, and
15 once it was disclosed, UHS persistently delayed the taking of the witness' testimony. It is
16 obvious UHS does not want Plaintiff to depose Ms. Wolfe; the reason is just as certain—Ms.
17 Wolfe will have to expand on what she told the LVMPD about Farmer with female patients
18 and UHS does not want Plaintiff to know. Frankly, after reading what she told the LVMPD and
19 how UHS hid her and her statement from Plaintiff for over ½ a decade, UHS's issues are
20 understandable. But, that is not how the justice system works.

21
22
23 UHS has the legal right to refuse to produce Ms. Wolfe—as long as it is prepared to
24 face the consequences of sanctions under NRCP 37. Egregious, intentional violations of the
25

26
27 ⁷ This Court needs to inquire about the role that Mr. Bemis played in Nurse Wolfe's not showing up. If he advised
28 her that she could ignore a deposition notice, where he accepted service, then this Court needs to remind Mr. Bemis
that zealotness has boundaries. While Plaintiff is not suggesting that the Court refer Mr. Bemis to the Bar, this
Court needs to sanction him personally, in addition to the sanction against UHS.

1 rules of discovery can result in the harshest of sanctions, including striking the answer, or any
2 lesser sanction that would adequately address the seriousness of the violation. When evaluating
3 the appropriate sanction to impose, the court should consider the nature of the evidence being
4 refused and tailor a sanction that addresses the infringement.

5
6 Per the FFCL, UHS is liable for all damages suffered by Plaintiff from Farmer's
7 criminal conduct if the misconduct of Farmer was reasonably foreseeable. There is no doubt
8 but that Ms. Wolfe's testimony would prove decisive on that issue. UHS' intentional violation
9 of the rules requiring her testimony will substantially affect Plaintiff's case by delaying matters
10 again and again. A proper sanction would be to strike UHS's answer. However, in candor to
11 this Court, the appropriate sanction is the least sanction that will remedy the violation. Here,
12 the violation is trying to prevent Plaintiff from proving Farmer's misconduct was reasonably
13 foreseeable. This is precisely part of the evidence Ms. Wolfe would discuss in her deposition.
14 The least sanction to deal with this violation is to find Farmer's misconduct was reasonably
15 foreseeable to UHS. Testimony on that issue is being thwarted. A sanction must be imposed so
16 that Plaintiff is not harmed and UHS does not benefit from UHS' breach.

17
18
19 Resetting the deposition will not remedy the total harm to Plaintiff. Two other
20 depositions must be vacated and reset.⁸ The discovery to follow these three depositions must
21 be delayed. The five-year rule is running, deadlines are coming and the trial date is coming up.
22
23 **UHS knew of the purported problem for over two weeks and refused to seek a protective**
24 **order**—they knew it was meritless. Rather, they wait until late in the afternoon the day before
25

26
27
28 ⁸ Mr. Bemis, suggested that Ms. Wolfe could have her deposition taken on May 5 beginning at 1:00 pm. Plaintiff
already has a 30(b)(6) deposition in another case with 15 separate subjects. So, that date wouldn't work. And,
apparently, Ms. Wolfe is getting married and will be away for several weeks.

1 the deposition and email Plaintiff they are not going to comply with the rules. This Court
2 cannot allow non-deposing parties to unilaterally vacate a deposition. It would wreak havoc on
3 the entire judicial system.

4 UHS—and its counsel—are very sophisticated litigators. They know the rules. UHS
5 **made a calculated litigation decision.** UHS would rather risk Rule 37 sanctions than comply
6 with the rules. UHS believes the risk of a serious sanction, such as striking its answer, or even
7 the lesser sanction of finding reasonable foreseeability, is so remote that it should blatantly
8 disregard for the rules of the court rather than produce the witness. Thousands of dollars in
9 sanctions are meaningless to UHS.⁹ So, this Court needs to craft a sanction that will get its
10 attention and be relevant to the conduct. Awarding foreseeability, which is the exact issue with
11 Ms. Wolfe's deposition, does just that. A lesser sanction will be meaningless to UHS and will
12 serve to let UHS do what it wants. They already believe that the Rules do not apply to them.
13 This Court cannot allow that kind of rule-elevenish gamesmanship—particularly from these
14 sophisticated defendants. The sanctions have to deter this contemptible conduct—otherwise the
15 rules, and the sanctions, are a joke.¹⁰

19 ARGUMENT

20 The law is clear. The Court has the power to apply whatever sanction it finds necessary
21 or reasonable with respect to litigation abuses by a party. See Skeen v. Valley Bank of
22 Nevada, 89 Nev. 301, 303, 511 P.2d 1053, 1054 (Nev. 1973) (holding a “[d]efault judgment
23

24
25
26 ⁹ According to multiple internet sources, UHS Inc. had revenues of 8.4 BILLION in 2013. A \$1000 sanction is pennies to them. Or hay pennies.

27 ¹⁰ Hall Prangle recently congratulated itself when at the start of a trial in Chicago, the firm convinced the Court to
28 dismiss plaintiff's wrongful death case as a sanction for improperly obtained evidence and withholding such evidence. Perhaps this Court should give them a mirror. See <http://www.hpslaw.com/mike-tarpey-and-bill-souferis-secure-rare-defense-victory-following-a-motion-for-sanctions>.

1 will be upheld where the normal adversary process has been halted due to an unresponsive
2 party, because diligent parties are entitled to be protected against interminable delay and
3 uncertainty as to their legal rights”); see also, **Schatz v. Devitte** 75 Nev. 124, 126, 335 P.2d
4 783, 784 (Nev. 1959) (upholding order to strike defendant’s answer for failure to appear at a
5 deposition).
6

7 Where the issue is intentional discovery abuse, the Court has leeway to fashion an
8 appropriate remedy which includes the striking of an answer. This Court well knows the
9 Nevada Supreme Court’s trilogy of **Young v. Johnny Ribeiro Building**, 106 Nev. 88, 787
10 P.2d 777, 780 (1990), **Foster v. Dingwall**, 126 Nev. , 227 P.3d 1042 (2010), **Bahena v.**
11 **Goodyear Tire & Rubber Co.**, 245 P.3d 1182 (Nev. 2010) (and, **Bahena I**, 235 P.3d 592
12 (Nev. 2010)). The take home message is that “while dismissal need not be preceded by other
13 less severe sanctions, it should be imposed only after thoughtful consideration of all the factors
14 involved in a particular case”. **Young** at 92, 787 P.2d at 780. “In *Foster v. Dingwall*, 126
15 Nev. , 227 P.3d 1042 (2010), we reiterated the holding in *Young* by affirming discovery
16 sanctions of entry of a default judgment. The majority in *Foster* concluded that NRCp
17 37(b)(2)(C) and 37(d) specifically and independently provide that a court may strike a party’s
18 pleadings if that party fails to obey a discovery order or fails to attend his or her own
19 deposition. 126 Nev. at , 227 P.3d at 1048. Finally, we concluded that the sanctions ‘were
20 necessary to demonstrate to future litigants that they are not free to act with wayward disregard
21 of a court’s orders’, and that the conduct of the appellants evidenced ‘their willful and
22 recalcitrant disregard of the judicial process’. 126 Nev. at , 227 P.3d at 1049”. **Bahena v.**
23 **Goodyear Tire & Rubber Co.**, 245 P.3d 1182, 1184 (Nev. 2010). Importantly, “Nevada
24 jurisprudence does not follow the federal model of requiring progressive sanctions against a
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1 party for failing to comply with a discovery order". **Bahena v. Goodyear Tire & Rubber**
2 **Co.**, 245 P.3d 1182, 1184 (Nev. 2010).

3 If this Court is going to strike the answer (*and only if so*), this Court needs to examine
4 the so-called Ribeiro factors:

5
6 The factors a court may properly consider include, but are not
7 limited to, the degree of willfulness of the offending party, the extent
8 to which the non-offending party would be prejudiced by a lesser
9 sanction, the severity of the sanction of dismissal relative to the
10 severity of the discovery abuse, whether any evidence has been
11 irreparably lost, the feasibility and fairness of alternative, less severe
12 sanctions, such as an order deeming facts relating to improperly
13 withheld or destroyed evidence to be admitted by the offending
14 party, the policy favoring adjudication on the merits, whether
15 sanctions unfairly operate to penalize a party for the misconduct of
16 his or her attorney, and the need to deter both the parties and future
17 litigants from similar abuses.

18 **Young v. Johnny Ribeiro Bldg.**, 106 Nev. 88, 93 (Nev. 1990). In this case, Plaintiff is
19 seeking a sanction much less than striking UHS' Answer: **Johnny Ribeiro** requires an
20 evidentiary hearing for this severest of sanction. Lesser sanctions under Rule 37 do not require
21 an evidentiary hearing. Forcing a party to pay a fine, or costs and attorney's fees obviously do
22 not first require an evidentiary hearing. Similarly, a finding that a single disputed fact is
23 deemed proved does not require an evidentiary hearing. This Court is specifically requested to
24 impose the requested sanction forthwith finding Farmer's misconduct was reasonably
25 foreseeable to UHS.

26 This Court needs to get tough with UHS. UHS knew all about Nurse Murray and the
27 issue of the "crazy old lady". Yet, they failed to identify her. Then, when discovery is sought
28 about Farmer being thrown out of the patient's room and Nurse Murray not "lending any
credence" to what the "crazy old lady" was stating, UHS stonewalls and brings up HIPAA.
But, they had known about the issue since May 2008. This Court gave UHS a pass on the

1 delay but ordered it to find the information. But, now, we have yet another issue. A nurse who
2 told the LVMPD that Farmer was suspicious, he was overly attentive to female patients, very
3 anxious to connect patients to leads which would require him to reach into their clothing, in
4 patient rooms on multiple occasions with the door closed and when he was not required, and a
5 charge nurse was aware of same and had that nurse "watch" farmer because of these actions,
6 and another nurse warned her as well, her deposition is delayed and delayed. Plaintiff has
7 wanted the deposition since October of 2014. It is almost 7 months later.
8

9 UHS must be sanctioned. And, must be sanctioned in a way that fits their crime.
10 Foreseeability as a matter of law should be ordered.
11

12 Dated this 29th day of April, 2015.
13

14 MURDOCK & ASSOCIATES, CHTD.
15 ECKLEY M. KEACH, CHTD.

16 /s/ Robert E. Murdock
17 Robert E. Murdock Bar No. 4013
18 Eckley M. Keach Bar No. 1154
19 520 South Fourth Street
20 Las Vegas, NV 89101
21 Attorneys for Plaintiff
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[illegible]

ROBERT E. MURDOCK, being first duly sworn, deposes and says:

1. I am an attorney duly licensed to practice law in the State of Nevada and along with Eckley M. Keach, am the attorney for Plaintiff in the above-captioned matter.

2. I have personal knowledge of the facts set forth herein and am capable and willing to testify to same if called upon to do so.

3. Attached hereto as Exhibit "1" is a true and correct copy of Affiant's an email to attorney John Bemis informing him Plaintiff would like to set depositions of various witnesses. Ms. Wolfe, being one of those witnesses on the list.

4. Attached hereto as Exhibit "2" is a true and correct copy of the Notice of Taking
Deposition of Margaret Wolfe, R.N. dated March 18, 2015.

5. Attached hereto as Exhibit "3" is a true and correct copy of the March 24, 2015, letter from attorney John Bemis informing him that Ms. Wolfe was no longer an employee of Valley Health System, LLC, and that she was unavailable for her deposition set for April 2, 2015.

6. Mr. Bemis provided April 27, 2015 and April 28, 2015 as dates Ms. Wolfe advised him she was available for her deposition.

7. Attached hereto as Exhibit "4" is a true and correct copy of the March 25, 2015, Amended Notice of Taking Deposition of Margaret Wolfe, R.N.

8. Attached hereto as Exhibit "5" is a true and correct copy of the April 16, 2015, letter Affiant received a letter from attorney John Bemis informing him Ms. Wolfe was no longer available for her deposition due to a conflict with work.

1 9. Mr. Bemis provided May 5, 2015 at 1:00 pm as a date she advised she was available.

2 10. Attached hereto as Exhibit "6" is a true and correct copy of the letter to Mr. Bemis on
3 April 16, 2015, informing him that her deposition could not be moved due to the schedule of
4 Affiant as well as other depositions already set.
5

6 11. On Friday April 24, 2015, Affiant received a telephone call from Mr. Bemis advising
7 him that he would be filing a motion for protective order on OST regarding the deposition.
8

9 12. Attached hereto as Exhibit "7" is a true and correct copy of April 27, 2015, email from
10 Mr. Bemis advising him that he had attempted to file the motion but it was kicked back for
11 being "too late", and advised he would be doing a "non-appearance" at the deposition.


12 13. On April 28, 2015, at the time set for the deposition of Margaret Wolfe, R.N. Mr.
13 Bemis appeared and advised that though he had accepted service and that no protective order
14 was in place, Ms. Wolfe was not coming.
15

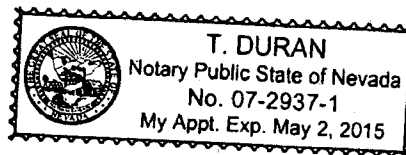
16 14. To date, this issue remains unresolved, thereby necessitating the instant motion.

17 FURTHER AFFIANT SAYETH NAUGHT
18

19 
ROBERT E. MURDOCK

20 Subscribed and sworn to before me
21 this 29th day of April, 2015.

22 
Notary Public in and for said
23 County and State
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AA0424

EXHIBIT “1”

EXHIBIT “1”

4/28/2015

RE: Doe

From: John Bemis <JBemis@HPSLaw.com>

To: 'Robert E. Murdock, Esq.' <lasvegasjustice@aol.com>

Subject: RE: Doe

Date: Mon, Oct 6, 2014 2:25 pm

Hi Rob,

I have the draft DCRR being sent out shortly. I will get a determination on whether any of these witnesses still work for VHS or their last knowns. I will get back to you once I hear from the client.

Thanks,

John

From: Robert E. Murdock, Esq. [<mailto:lasvegasjustice@aol.com>]

Sent: Monday, October 6, 2014 4:13 PM

To: John Bemis

Subject: Doe

John,

Depending on the outcome of the MSJ, we will need to take the following depositions. Rather than waste time, I would like to at least get these set, and we can always take them off. So, please get me dates for the following:

Carol Butler

John Coldsmith

Kimberly Davis, R.N.

Christen Edwards, R.N.

Karen Goodhart, R.N.

Jeanine James, R.N.

Julie Montero, R.N.

Christine Murray, R.N.

Sandra Pagain, R.N.

Julie Rackley, R.N.

Pam Robertson, R.N.

Jackie Schumacher, R.N.

Margaret Wolfe, R.N.

I can probably do 2 per day. Get me a few dates so that I can look at my schedule and then we can get this out to all counsel.

I also await the DCRR from last Thursday. Please provide a draft asap.

Thank you.

Robert E. Murdock, Esq.

AA0426
1/2

4/28/2015

RE: Doe

MURDOCK & ASSOCIATES

521 S. 3rd Street

Las Vegas, Nevada 89101

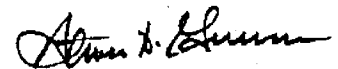
702-685-6111 office

702-685-6222 fax

702-497-7560 cell

EXHIBIT “2”

EXHIBIT “2”



CLERK OF THE COURT

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Attorneys for Plaintiffs

DISTRICT COURT
CLARK COUNTY, NEVADA

ESTATE OF JANE DOE, by and through its
Special Administrator, Misty Petersen,
Plaintiff,

vs.

VALLEY HEALTH SYSTEM LLC, a Nevada
limited liability company, d/b/a CENTENNIAL
HILLS HOSPITAL MEDICAL CENTER;
UNIVERSAL HEALTH SERVICES, INC., a
Delaware corporation; AMERICAN NURSING
SERVICES, INC., a Louisiana corporation;
STEVEN DALE FARMER, an individual; DOES I
through X, inclusive; and ROE CORPORATIONS
I through X, inclusive,

Defendants.

CASE NO. 09-A-595780-C
DEPT. NO. II

NOTICE OF TAKING
DEPOSITION OF
MARGARET WOLFE, R.N.

DATE: April 2, 2015
TIME: 9:30 a.m.

TO: ALL DEFENDANTS HEREIN; and
TO: THEIR RESPECTIVE COUNSEL OF RECORD

///

///

1 Pursuant to Rules 26 and 30 of the Nevada Rules of Civil Procedure, please take notice
2 that on Thursday, April 2, 2015 at 9:30 a.m. at Murdock & Associates, Chtd., 521 South Third
3 Street, Las Vegas, Nevada 89101, Plaintiff will take the deposition of Margaret Wolfe, R.N.
4

5 Said deposition will be taken by stenographic and/or video tape means before a notary
6 public, or before some other officer authorized by law to administer oaths. Testimony shall
7 continue from day to day until completed. You are invited to attend and cross-examine.

8 DATED this 18th day of March, 2015.

9 MURDOCK & ASSOCIATES, CHTD.
10 ECKLEY M. KEACH, CHTD.

11
12 /s/ Robert E. Murdock
13 Robert E. Murdock Bar No. 4013
14 Eckley M. Keach Bar No. 1154
15 521 South Third Street
16 Las Vegas, NV 89101
17 Attorneys for Plaintiffs
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EXHIBIT “3”

EXHIBIT “3”

HPS

Hall Prangle and Schoonveld LLC
Attorneys at Law

1160 North Town Center Drive, Suite 200
Las Vegas, Nevada 89144
P 702.809.6400
F 702.384.6025
www.hpslaw.com

John F. Bemis, Esq.
jbemis@hpslaw.com

ELECTRONICALLY SERVED
03/24/2015 12:45:09 PM

March 24, 2015

VIA ELECTRONIC SERVICE

Robert Murdock, Esq.
521 South Third Street
Las Vegas, Nevada 89101

Re: Estate of Jane Doe vs. Centennial Hills Hospital

Dear Mr. Murdock,


We are in receipt of the Notices of Taking Depositions of Margaret Wolfe, Renato Sumera and Lorraine Wescott in the above-referenced matter. Please be advised that counsel is not available to attend on April 2, 2015, as currently noticed. However, we have received new dates of availability to re-schedule their depositions. Sumera and Wescott are both available on April 27, 2015 and May 1, 2015 to attend. Both of these individuals are still employed by Valley Health System, LLC.

We were advised that Margaret Wolfe is no longer an employee. We have gotten in touch with her and we were advised that she is available to re-schedule her deposition to April 27, 2015 or April 28, 2015. Please advise if these dates work for your office.

Additionally, we have reached out to Mr. Stockton for availability. We will inform you of dates as soon as possible. Should you have any questions or concerns, please do not hesitate to contact the undersigned.

Sincerely,

HALL PRANGLE & SCHOONVELD, LLC



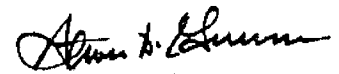
John F. Bemis, Esq.

JFB/djc
cc: All Counsel

4850-5144-4258, v. 1

EXHIBIT “4”

EXHIBIT “4”



CLERK OF THE COURT

1 Robert E. Murdock, Esq.
2 Nevada Bar No. 4013
3 MURDOCK & ASSOCIATES, CHTD.
4 521 South Third Street
5 Las Vegas, NV 89101
6 702-685-6111

7 Eckley M. Keach, Esq.
8 Nevada Bar No. 1154
9 ECKLEY M. KEACH, CHTD.
10 521 South Third Street
11 Las Vegas, NV 89101
12 702-685-6111
13 Attorneys for Plaintiffs

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DISTRICT COURT
CLARK COUNTY, NEVADA

ESTATE OF JANE DOE, by and through its)
Special Administrator, Misty Petersen,)
Plaintiff,)
vs.)
VALLEY HEALTH SYSTEM LLC, a Nevada)
limited liability company, d/b/a CENTENNIAL)
HILLS HOSPITAL MEDICAL CENTER;)
UNIVERSAL HEALTH SERVICES, INC., a)
Delaware corporation; AMERICAN NURSING)
SERVICES, INC., a Louisiana corporation;)
STEVEN DALE FARMER, an individual; DOES I)
through X, inclusive; and ROE CORPORATIONS)
I through X, inclusive,)
Defendants.)

CASE NO. 09-A-595780-C
DEPT. NO. II

AMENDED
NOTICE OF TAKING
DEPOSITION OF
MARGARET WOLFE, R.N.

DATE: April 28, 2015
TIME: 9:30 a.m.

TO: ALL DEFENDANTS HEREIN; and
TO: THEIR RESPECTIVE COUNSEL OF RECORD

///

///

1 Pursuant to Rules 26 and 30 of the Nevada Rules of Civil Procedure, please take notice
2 that on Tuesday, April 28, 2015 at 9:30 a.m. at Murdock & Associates, Chtd., 521 South Third
3 Street, Las Vegas, Nevada 89101, Plaintiff will take the deposition of Margaret Wolfe, R.N.

4 Said deposition will be taken by stenographic and/or video tape means before a notary
5 public, or before some other officer authorized by law to administer oaths. Testimony shall
6 continue from day to day until completed. You are invited to attend and cross-examine.
7

8 DATED this 25th day of March, 2015.

9 MURDOCK & ASSOCIATES, CHTD.
10 ECKLEY M. KEACH, CHTD.

11 /s/ Robert E. Murdock
12 Robert E. Murdock Bar No. 4013
13 Eckley M. Keach Bar No. 1154
14 521 South Third Street
15 Las Vegas, NV 89101
16 Attorneys for Plaintiffs
17
18
19
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1 CERTIFICATE OF SERVICE

2 I hereby certify that on March 25th, 2015, I served a copy of the foregoing PLAINTIFFS'
3 AMENDED NOTICE OF TAKING DEPOSITION OF Margaret Wolfe, R.N., upon the parties to
4 this action via the court's Wiznet mandatory electronic service, addressed as follows:

5 John F. Bemis, Esq.
6 Hall Prangle & Schoonveld, LLC
7 1160 North Town Center Dr., Suite 200
8 Las Vegas, NV 89144

9 Robert C. McBride, Esq.
10 Carroll, Kelly, Trotter, Franzen, McKenna & Peabody
11 701 North Green Valley Parkway, Suite 200
12 Henderson, NV 89074

13 S. Brent Vogel, Esq.
14 Amanda J. Brookhyser, Esq.
15 Lewis Brisbois Bisgaard & Smith
16 6385 South Rainbow Blvd., Suite 600
17 Las Vegas, NV 89118

18 James P.C. Silvestri, Esq.
19 Pyatt Silvestri
20 701 Bridger Avenue, Suite 600
21 Las Vegas, NV 89101

22 Kim Irene Mandelbaum, Esq. (via courtesy copy Wiznet)
23 Mandelbaum, Ellerton & Kelly
24 2012 Hamilton Lane
25 Las Vegas, NV 89106
26
27
28

/s/ Robert E. Murdock
An employee of Murdock & Associates, Chtd.

EXHIBIT “5”

EXHIBIT “5”

HPS

Hall Prangle and Schoonveld LLC
Attorneys at Law

1160 North Town Center Drive, Suite 200
Las Vegas, Nevada 89144
P 702.889.6400
F 702.384.6025
www.hpslaw.com

John F. Bemis, Esq.
jbemis@hpslaw.com

April 16, 2015

ELECTRONICALLY SERVED
04/16/2015 03:06:46 PM

VIA ELECTRONIC SERVICE

Robert Murdock, Esq.
521 South Third Street
Las Vegas, Nevada 89101

Re: Estate of Jane Doe vs. Centennial Hills Hospital

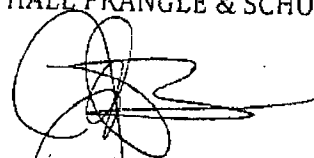
Dear Mr. Murdock,

We were just informed that Margaret Wolfe is no longer available for her deposition, currently scheduled for Tuesday, April 28, 2015 at 9:30 a.m. due to a conflict with work. She has advised us that she is available on Tuesday, May 5, 2015 starting at 1:00 p.m. Please advise if this date works for your office.

Should you have any questions or concerns, please do not hesitate to contact the undersigned.

Sincerely,

HALL PRANGLE & SCHOONVELD, LLC



John F. Bemis, Esq.

JFB/djc
cc: All Counsel

4824-5298-1795, v. 1

EXHIBIT “6”

EXHIBIT “6”

Murdock & Associates, Chtd.

*A Professional Law Corporation
521 South Third Street
Las Vegas, Nevada 89101
E-mail: LasVegasJustice@aol.com*

*Telephone
(702) 685-6111*

*Faxsimile
(702) 685-6222*

Robert E. Murdock

April 16, 2015

John F. Bemis, Esq.
HALL PRANGLE & SCHOONVELD, LLC
1160 N. Town Center Drive, Ste. 200
Las Vegas, Nevada 89144

Re: Doe v. Valley Health System

Dear John,

Thank you for your letter. Because of the deposition schedule in this case and because of my schedule, Ms. Wolfe's deposition cannot be moved. It would require changing everyone's deposition and I simply cannot do that.

By the way, do you represent Ms. Wolfe? Does she know you represent her?

Very truly yours,

MURDOCK & ASSOCIATES, CHTD.

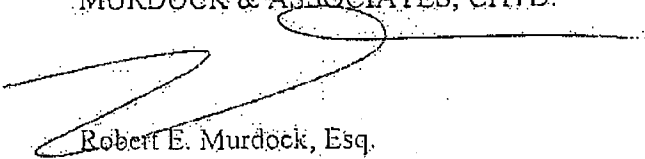

Robert E. Murdock, Esq.

EXHIBIT “7”

EXHIBIT “7”

4/28/2015

Doe

From: John Bemis <JBemis@HPSLaw.com>

To: 'Robert E. Murdock, Esq.' <lasvegasjustice@aol.com>

Subject: Doe

Date: Mon, Apr 27, 2015 4:40 pm

Hi Rob,

I attempted to call you at the office, but you had just left. We attempted to file our Motion for Protective Order. The DC kicked it back for being too late. Before you spent much time prepping for the deposition, I wanted to make sure you were aware that we will be doing a non-appearance tomorrow.

Please give me a call if you want to discuss this before tomorrow morning.

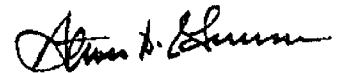
Thanks,

John F. Bemis, Esq.
HALL PRANGLE & SCHOONVELD
1160 N. Town Center Dr., Suite 200
Las Vegas, NV 89144
Phone: (702) 889-6400
Fax: (702) 384-6025

NOTICE: The information contained in this electronic message is intended only for the personal and confidential use of the designated recipient(s) named above. This message may be attorney-client communication, and as such, is privileged and confidential. If the reader of this message is not the intended recipient or an agent responsible for delivering it to the intended recipient, you are hereby notified that you have received this document in error, and that any review, dissemination, distribution, or copying of this message is strictly prohibited. If you have received this communication in error, please notify us immediately by telephone or return e-mail and permanently destroy all original messages. Thank you.

EXHIBIT “8”

EXHIBIT “8”



CLERK OF THE COURT

1 **ORDR**

2
3 **DISTRICT COURT**
4 **CLARK COUNTY, NEVADA**
5

6 ESTATE OF JANE DOE, by and through its
7 Special Administrator, Misty Petersen,

8 Plaintiff,

9 vs.

10 VALLEY HEALTH SYSTEM, LLC, a Nevada
11 limited liability company, d/b/a CENTENNIAL
12 HILLS HOSPITAL MEDICAL CETER;
13 UNIVERSAL HEALTH SERVICES, INC., a
14 Delaware corporation; AMERICAN NURSING
15 SERVICE, INC., a Louisiana corporation;
16 STEVEN DALE FARMER, an individual;
17 DOES I through X, inclusive; and ROE
18 CORPORATIONS I through X, inclusive,

19 Defendants.
20

Case No.: 09-A-595780-C

Dept. No.: II

Date: December 17, 2014

**ORDER ON PLAINTIFF'S MOTION
FOR SUMMARY JUDGMENT RE:
LIABILITY**

21 This matter came before the Court on December 17, 2014 on Plaintiff's Motion for
22 Summary Judgment Re: Liability.

23 Appearing on behalf of Plaintiff, Estate of Jane Doe, by and through its Special
24 Administrator, Misty Petersen, were its attorneys Robert E. Murdock, Esq. and Eckley M.
25 Keach, Esq.

26 Appearing on behalf of Defendants, Valley Health System LLC d/b/a Centennial Hills
27 Hospital Medical Center and Universal Health Services, Inc. (hereinafter, "Centennial/UHS"),
28 was their attorney Michael E. Prangle, Esq.

Appearing on behalf of Defendant American Nursing Services, Inc. (hereinafter,
"ANS"), was its attorney James P.C. Silvestri, Esq.

Appearing on behalf of Defendant Steven Dale Farmer (hereinafter, "Farmer") was his
attorney Heather S. Hall, Esq.

Richard F. Scotti
District Judge

Department Two
Las Vegas, NV 89155

1 Having read and reviewed all of the pleadings and papers on file herein regarding
2 relevant issues, having read the transcript of the proceedings in this matter, and good cause
3 appearing therefor, the Court adopts and makes the following Findings of Fact and
4 Conclusions of Law:

5 **FINDINGS OF FACT**

6 1. In May of 2008, Jane Doe was a patient at Centennial Hills Hospital Medical
7 Center.

8 2. In May of 2008, Centennial/UHS had a contractual agreement whereby ANS
9 would provide certain hospital staff, which included Certified Nursing Assistants (hereinafter,
10 "CNA").

11 3. In May of 2008, Farmer was an agency CNA working at Centennial/UHS
12 through ANS.

13 4. On May 14, 2008, ANS sent Farmer to Centennial/UHS to work there as a
14 CNA.

15 5. On May 14, 2008 Farmer originally was told to work in the Emergency Room
16 by Centennial/UHS.

17 6. In May of 2008, Farmer wore an employee badge that had his name, ANS,
18 Centennial/UHS, and contract staff written on it.

19 7. At around 21:30 hours on May 14, 2008, while Farmer was working at
20 Centennial Hills Hospital Medical Center, Farmer was moved from the Emergency Room to
21 the Sixth Floor by Centennial/UHS to work.

22 8. On May 14, 2008, Jane Doe was on the Sixth Floor in Room 614 at
23 Centennial/UHS.

24 9. On May 14, 2008, in the course and scope of his employment with ANS and
25 Centennial/UHS as a CNA, and in the course and scope of working at Centennial/UHS, it was
26 expected that Farmer would enter patients' rooms on the Sixth Floor of Centennial/UHS as
27 part of his tasks.

28

1 10. In addition, Farmer was expected to give bed baths, cleanup stool, cleanup
2 urine, and check monitor leads.

3 11. On May 14, 2008, Farmer entered Jane Doe's room, Room 614 at
4 Centennial/UHS.

5 12. On May 14, 2008, having contact with a patient in the patient's room on the
6 Sixth Floor of Centennial/UHS was in the course and scope of Farmer's employment with
7 ANS and Centennial/UHS as a CNA.

8 13. Farmer had contact with Jane Doe in her room on the Sixth Floor of
9 Centennial/UHS.

10 14. On May 14, 2008, Jane Doe awoke to find Steven Farmer pinching and
11 rubbing her nipples telling her that he was fixing her EKG leads.

12 15. Farmer lifted up Jane Doe's hospital gown.

13 16. Farmer sexually assaulted her by digitally penetrating her anus.

14 17. Farmer digitally penetrated Jane Doe's anus, vagina, and pinched and rubbed
15 her nipples against the will of Jane Doe.

16 18. Farmer was convicted in the Eighth Judicial District Court, Clark County,
17 Nevada, in Case Number 08C245739, in Count 10 of Sexual Assault (Felony -- Category A) in
18 violation of NRS 200.364 & 200.366 for the digital penetration, by inserting his finger(s) into
19 the anal opening of Jane Doe, against her will or under conditions in which Farmer knew, or
20 should have known, that Jane Doe was mentally or physically incapable of resisting or
21 understanding the nature of Farmer's conduct.

22 19. Farmer was convicted in the Eighth Judicial District Court, Clark County,
23 Nevada, in Case Number 08C245739, in Count 12 of Sexual Assault (Felony -- Category A) in
24 violation of NRS 200.364 & 200.366 for the digital penetration, by inserting his finger(s) into
25 the genital opening of Jane Doe, against her will or under conditions in which Farmer knew,
26 or should have known, that Jane Doe was mentally or physically incapable of resisting or
27 understanding the nature of Farmer's conduct.

28 ...

20. Farmer was convicted in the Eighth Judicial District Court, Clark County, Nevada, in Case Number 08C245739, in Count 11 of Open or Gross Lewdness (Gross Misdemeanor) in violation of NRS 201.210 for touching and/or rubbing the genital opening of Jane Doe with his hand(s) and/or finger(s).

21. Farmer was convicted in the Eighth Judicial District Court, Clark County, Nevada, in Case Number 08C245739, in Count 13 of Open or Gross Lewdness (Gross Misdemeanor) in violation of NRS 201.210 for touching and/or rubbing and/or pinching the breast(s) and/or nipple(s) of Jane Doe with his hand(s) and/or finger(s).

22. Farmer was convicted in the Eighth Judicial District Court, Clark County, Nevada, in Case Number 08C245739, in Count 14 of Open or Gross Lewdness (Gross Misdemeanor) in violation of NRS 201.210 for touching and/or rubbing and/or pinching the breast(s) and/or nipple(s) of Jane Doe with his hand(s) and/or finger(s).

23. Farmer was convicted in the Eighth Judicial District Court, Clark County, Nevada, in Case Number 08C245739, in Count 15 of Indecent Exposure (Gross Misdemeanor) in violation of NRS 201.220 for deliberately lifting the hospital gown of Jane Doe to look at her genital opening and/or anal opening and/or breast(s).

CONCLUSIONS OF LAW

1. NRS 41.133 states: "If an offender has been convicted of the crime which resulted in the injury to the victim, the judgment of conviction is conclusive evidence of all facts necessary to impose civil liability for the injury."

2. The Nevada Supreme Court has explained: “We conclude that the language of NRS 41.133 establishes a conclusive presumption of liability when an offender has been convicted of the crime that resulted in the injury to the victim.” *Cromer v. Wilson*, 225 P.3d 788, 790 (Nev. 2010). “NRS 41.133 mandates that conviction of a crime resulting in injury to the victim is **conclusive evidence of civil liability for the injury.**” *Langon v. Matamoros*, 121 Nev. 142, 143, 111 P.3d 1077, 1077 (2005) (emphasis added).

3. Farmer was convicted of the crime which resulted in injuries to the victim.

...

Richard F. Scotti
District Judge

Department Two
Las Vegas, NV 89155

1 4. As to all Defendants, the judgment of conviction is conclusive evidence of the
2 fact of the anal sexual assault of Jane Doe.

3 5. As to all Defendants, the judgment of conviction is conclusive evidence of the
4 fact of the vaginal sexual assault of Jane Doe.

5 6. As to all Defendants, the judgment of conviction is conclusive evidence of the
6 fact of the unlawful touching and/or rubbing the genital opening of Jane Doe with his hand(s)
7 and/or finger(s).

8 7. As to all Defendants, the judgment of conviction is conclusive evidence of the
9 fact of the unlawful touching and/or rubbing and/or pinching the breast(s) and/or nipple(s) of
10 Jane Doe with his hand(s) and/or finger(s).

11 8. As to all Defendants, the judgment of conviction is conclusive evidence of the
12 facts regarding his deliberately lifting of the hospital gown of Jane Doe to look at her genital
13 opening and/or anal opening and/or breast(s).

14 9. As to Farmer, the judgment of conviction results in summary judgment as to
15 liability and dismissal of any affirmative defenses related to liability. Though comparative
16 fault was alleged by Farmer, at this date, no facts have been presented as to same. However,
17 Plaintiff's Motion solely dealt with the issue of liability. Plaintiff will have to file a separate
18 motion on the issue of comparative fault should she believe that summary judgment would be
19 proper on that issue.

20 10. All affirmative defenses that relate to the criminal acts committed by Farmer
21 are dismissed as to all of the defendants.

22 11. The Court finds that Farmer is a convicted felon on criminal acts that form the
23 underlying basis for this lawsuit.

24 12. The Court finds that there is no genuine issue of material fact as to liability of
25 Farmer.

26 13. The Court GRANTS the plaintiff's Motion as to Farmer's liability pursuant to
27 NRCp 56; *Wood v. Safeway*, 121 Nev. 724 (2005); NRS 41.130; and NRS 41.133.

28 ...

1 14. Judgment and conviction on the felony crimes is conclusive evidence to
2 impose civil liability for the injuries to the plaintiff, however, the issue of damages as to
3 Farmer remains an issue for the time of trial.

4 15. Plaintiff also moved for summary judgment against ANS and Centennial/UHS
5 based upon NRS 41.130, the respondeat superior statute.

6 16. The first issue is who were Farmer's employers. The Court finds that Farmer,
7 at the time the criminal acts were committed, was the employee of American Nursing
8 Services, Inc., Universal Health Services, Inc., and Valley Health System, LLC.

9 17. With regard to negligence, the Court further finds that the plaintiff must prove
10 general foreseeability.

11 18. To refute respondeat superior liability per NRS 41.130, the defendants must
12 prove the various sections and provisions of NRS 41.745 in order to rebut a claim made under
13 NRS 41.130

14 19. NRS 41.130 states:

15 Except as otherwise provided in NRS 41.745, whenever any
16 person shall suffer personal injury by wrongful act, neglect or
17 default of another, the person causing the injury is liable to the
18 person injured for damages; and where the person causing the
19 injury is employed by another person or corporation respon-
20 sible for the conduct of the person causing the injury, that other
21 person or corporation so responsible is liable to the person
22 injured for damages.

23 20. NRS 41.745 states:

- 24 1. An employer is not liable for harm or injury caused
25 by the intentional conduct of an employee if the
26 conduct of the employee:
- 27 (a) Was a truly independent venture of the employee;
 - 28 (b) Was not committed in the course of the very task
 assigned to the employee; and
 - (c) Was not reasonably foreseeable under the facts and
 circumstances of the case considering the nature
 and scope of his or her employment.

29 ...

Richard F. Scotti
District Judge

Department Two
Las Vegas, NV 89155

1 For the purposes of this subsection, conduct of an employee is reasonably
2 foreseeable if a person of ordinary intelligence and prudence could have reasonably
3 anticipated the conduct and the probability of injury.

4 21. At this time, the Court finds there is a genuine issue of material fact with
5 regard to liability, the principal one being whether the misconduct of Farmer was reasonably
6 foreseeable.

7 22. Hence, the Court denies Plaintiff's Motion for Partial Summary Judgment
8 without prejudice, pursuant to NRCP 56, *Wood v. Safeway*, 121 Nev. 724 (2005); *Prell Hotel*
9 *Corporation v. Antonacci*, 86 Nev. 390 (1970); and NRS 41.745.

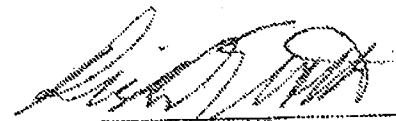
10 Accordingly,

11 **IT IS HEREBY ORDERED** that, as explained above, Plaintiffs' Motion for
12 Summary Judgment Re: Liability is GRANTED IN PART as to Farmer's liability pursuant to
13 NRCP 56; *Wood v. Safeway*, 121 Nev. 724 (2005); NRS 41.130; and NRS 41.133.

14 **IT IS FURTHER ORDERED** that, as explained above, Plaintiffs' Motion for
15 Summary Judgment Re: Liability is DENIED in part WITHOUT PREJUDICE as to the
16 liability of ANS and Centennial/UHS as there is a genuine issue of material fact as to liability
17 pursuant to NRCP 56, *Wood v. Safeway*, 121 Nev. 724 (2005); *Prell Hotel Corporation v.*
18 *Antonacci*, 86 Nev. 390 (1970); and NRS 41.745.

19 **IT IS SO ORDERED.**

20 DATED this 27th day of February, 2015.

21
22 
23 RICHARD F. SCOTTI
24 DISTRICT COURT JUDGE
25
26
27
28

Richard F. Scotti
District Judge

Department Two
Las Vegas, NV 89155

CERTIFICATE OF SERVICE

I hereby certify that on or about the date filed, a copy of this Order was electronically served, mailed or placed in the attorney's folder on the first floor of the Regional Justice Center as follows:

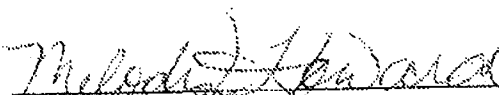
Robert E. Murdock, Esq.
MURDOCK & ASSOCIATES, CHTD.
Attorneys for Plaintiff

Robert C. McBride, Esq.
Heather S. Hall, Esq.
CARROLL, KELLY, TROTTER,
FRANZEN, MCKENNA & PEABODY
Attorneys for Defendant Steven Farmer

Ekley M. Keach, Esq.
ECKLEY M. KEACH, CHTD
Attorneys for Plaintiff

John H. Bemis, Esq.
Michael E. Prangle, Esq.
HALL, PRANGLE, SCHOOVELD, LLC
Attorneys for Valley Health System LLC

James P.C. Silvestri, Esq.
PYATT SILVESTRI
Attorneys for Defendant American Nursing Services, Inc.


Melody Howard
Judicial Executive Assistant

Richard F. Scotti
District Judge

Department Two
Las Vegas, NV 89155

EXHIBIT “9”

EXHIBIT “9”

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A. Yes.

Q. After you heard the patient yelling, did you go investigate what she was yelling about?

MR. SILVESTRI: Objection. Asked and answered.

THE WITNESS: No, I did not.
BY MR. MURDOCK:

Q. Did you ever ask her nurse what the patient was yelling about?

A. No.

Q. And then you said to the police, "And we thought she's a little crazy." Is that correct?

A. Yes.

Q. You're talking about the patient?

A. Yes.

Q. And then you told the police, "She's a little crazy old lady. That's why she has the sitter." Is that right?

A. Yes.

Q. And then you stated as you go down, "So we didn't put any credence into what she was saying." Is that right?

A. Right.

Q. That's what you told the police, right?

A. Yes.

EXHIBIT “10”

EXHIBIT “10”

LAS VEGAS METROPOLITAN POLICE DEPARTMENT

VOLUNTARY STATEMENT

PAGE 1

EVENT #: 080530-2056 (Reference 080516-1021)

SPECIFIC CRIME: OPEN & GROSS LEWDNESS

DATE OCCURRED:

TIME OCCURRED:

LOCATION OF OCCURRENCE:

CITY OF LAS VEGAS

CLARK COUNTY

NAME OF PERSON GIVING STATEMENT: MARGARET WOLFE

DOB: 06/11/70

SOCIAL SECURITY #:

RACE:

SEX: F

HEIGHT:

WEIGHT:

HAIR:

EYES:

WORK SCHEDULE:

DAYS OFF:

HOME ADDRESS:

HOME PHONE:

WORK ADDRESS: CENTENNIAL HILLS HOSPITAL

WORK PHONE: 629-1211

BEST PLACE TO CONTACT:

BEST TIME TO CONTACT:

The following is the transcription of a tape-recorded interview conducted by DETECTIVE M. SAUNDERS, P# 6076, LVMPD SEXUAL ASSAULT Detail, on MAY 30, 2008 at 0758 hours.

Q. Hello operator. This is Detective M. Saunders, P# 6076, dictating--or not dictating. I'm sorry. Uh, having one taped interview reference event number 080516-1021. This interview is taking place at 8775 West Deer Springs Road, Las Vegas, Nevada 89149. The time is approximately 0758 hours on the 30th of May, 2008. Present for this interview, last name of Wolfe, W-O-L-F-E, first name of Margaret, M-A-R-G-

VOLUNTARY STATEMENT

PAGE 2

EVENT #: 080530-2056 (Reference 080516-1021)

STATEMENT OF: MARGARET WOLFE

A-R-E-T. Her date of birth is 06/11 of 1970. She has a work phone number of 629-

1211. Is that information true and correct?

A. Yes.

Q. Okay. Is it all right if I call you Margaret?

A. Yes.

Q. Okay. Margaret, um, I was talking to you a little while ago about an incident that you're aware of that occurred at your hospital, uh, and you work at Centennial Hills Hospital. Correct?

A. That's correct.

Q. And where do, where, what do you do for uh, uh, Centennial Hills Hospital?

A. I'm an E.R. nurse.

Q. _____ And were you working on the day of uh, or the, the evening shift or graveyard shift of...uh...May 15th to May 16th?

A. Yes, I was.

Q. Okay. And was there somebody that worked with you or was assisting, I should say, in the E.R., by the name of Steven Farmer?

A. Yes.

Q. Okay. And what was Steven Farmer's job?

A. He was a CNA. Contracted out through an agency.

Q. _____ And what would you say his job duties were?

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A. Um, he was to assist the nurses with um, patient care, taking them to the bathroom.

uh, possibly changing their clothing, cleaning any uh, messes that patient, you know, may have. Uh, just, just general assistance in patient care. Transporting patients to and from different units.

Q. Okay. Um...and did you know Mr. Farmer?

A. Just through work.

Q. Just through work. Okay. Um...I want to direct you back to--on that specific in--uh, specific night there was a young lady that was brought into the E.R. that I believe, um, um, Nurse Goodheart, uh, Karen Goodheart worked on, and uh--or was assigned to and her name was um...Roxanne Ca--uh, Cagnina. Was that--does that name sound familiar?

A. No.

Q. Okay. Um, are you familiar with the circumstances with Mr. Farmer and his arrest?

A. Yes.

Q. Um, that night--uh, let me back up. There was--while I was talking to you um, you relayed some information to me that you saw something one night--on that same night. It was the 15th, that you felt was inappropriate and, and suspicious and can you tell me about what that situation was again.

A. Yes. I had a patient that was um...brought in...by ambulance and uh, she was laying on the gurney, uh, in a gown that opened from the front. She was brought

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from a Quick Care. Our gowns open in the back, but um, this gown happened to
open in the front and...

Q. Okay.

A. um, he went into her room for uh, no apparent reason. The call light was not
on. The alarms on the monitor were not going off and I was standing right outside
the patient's room. So he had no reason to have gone in there.

Q. And she was your patient?

A. Yes, she was.

Q. Okay. And he was not assigned to her?

A. No, he was not.

Q. Okay.

A. He's just assigned to the general E.R.

Q. Okay.

A. Not to specific patients.

Q. Okay.

A. Um, so he went into the room, opened her gown, fully, underneath the sheets. Uh,
he put his hands inside of her gown. I didn't see what he was touching but to me
it looked like he pretended like he was uh, checking the monitor wires that were on
her to see if there were placed correctly which again, he would have absolutely no

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reason to do that and in fact it's out of his scope of practice to be checking monitor
placements. Um--

Q. What was the...what was this um, this patient, um, what was her mental status?
Was she awake, asleep, was she--

A. She was awake and alert.

Q. _____ Um, was she on any medications?

A. I don't recall if I gave her any morphine or not.

Q. Okay.

A. Um, if she had any medication it would have been morphine.

Q. Okay. And what would--uh, I don't know if you can tell me or not, do you remember
what she was brought in for?

A. I do.

Q. Okay. I don't know--what, you know, never mind. We won't--I don't need to know
that. Do you remember what the patient's name was?

A. It was Denise Hanna.

Q. Denise Hanna. Do you remember how that's spelled?

A. The last name is H-A-N-N-A. The first name is D-E-N-I-S-E.

Q. Okay. And how old was she?

A. Uh, approximately thirties or forties.

Q. Thirties to forties? Okay. And white female, black female, Hispanic?

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A. White female.

Q. White female. Okay. Okay. And so...did Ms. Hanna say anything to you or...

A. I was out, outside of the room, but within view, um, at the time. She didn't say anything but she quickly closed her gown and appeared very uncomfortable about what had just happened. Um, when I had gone back into the room, she didn't say anything about the situation but uh, continued to just act in a way that she was uh, very self conscious about uh, being covered up.

Q. Okay. Now you say that he put his hands, ____ he opened up the front of her gown but he put his hands under the sheets. Were there sheets still laying over the top of her?

A. He lifted the sheet up and opened her gown, so the sheet wasn't touching her but it was lifted up over the top of her body.

Q. Okay. So were her breasts completely exposed?

A. Yes.

Q. Okay. And could you see her breasts—

A. ____

Q. —from where you were at?

A. Not from where I was at but the view he was standing at, she would have been completely exposed.

Q. She was completely exposed to him?

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A. Yes.

Q. Okay. And he did this...um...under the pretense that, that you could assu—that you assumed by what you could see what he was doing, like wanting to check wires?

A. Right. The heart monitor.

Q. The heart monitor. Okay. And where would the probes, so to speak, be placed on a, on a female patient, um, that had this type of monitor hooked up to them?

A. There's five leads. Two of them go underneath the clavicle, midline underneath the clavicle. One of them goes, um, approximately between the breasts and then there's two that would be on the ribs, kind of on the sides, that would be on a woman, usually fall underneath her breasts.

Q. Okay. So it'd be just, just under the—to, ___ to the right and the left of the breasts?

A. Yes.

Q. Okay. Um...did he say anything to you, did he say anything to you when uh, when he came out of the room?

A. No, he did not. He walked away.

Q. Did he immediately go to another room or what did he—did you see where he went to or what he did?

A. I didn't see where he went after that.

Q. Okay. Um, and, and Ms. Hanna never said anything to you?

A. No.

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- Q. Okay. Did anybody, um...did you talk to anybody about this?
-
- A. I did. I told another male nurse. His name is Ray Sumera.
- Q. Okay.
- A. And I asked him if he would talk to him about it, which he told me he did.
- Q. Okay. Did Ray say, did Mr. Sumera say anything about what uh, Mr. Farmer's response was to him?
- A. No, he did not.
- Q. Did uh...excuse me. Um...has uh, anybody else in the E.R. room, that you've worked with, uh, ev—ever come to you or have you ever talked to anybody that shared similar concerns that you do about Mr. Farmer?
- A. Um, the same nurse, Ray Sumera, had told me um, another time that he—to watch him around my female patients. That he was concerned because he was very, overly attentive with female patients and very anxious to um to connect them to the monitors and disconnect them from the monitors, which would, um, require him to reach into their clothing.
- Q. Okay. Had, had anybody else ____—had you talked to anybody else about Mr. Uh, Mr. Farmer?
- A. I told Julie, who is the nurse I gave report to that morning, about the situation that happened with Ms. Hanna.
- Q. Okay. And again, all this occurred on the uh, morning of the 16th?

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A. Correct.

Q. Okay. Um...was uh, Ms. Hanna, um, released from E.R.--did she go home or was she admitted to the hospital?

A. She was admitted to the hospital but she was released um, later that day.

Q. Later that day. Okay. Um...can you think of anything that uh, might be beneficial that I might have forgot to ask to something that you feel is important that I need to know?

A. He was just very suspicious in his activities. Um, such as going into rooms with doors closed with female patients when he was not asked to.

Q. Is that against protocol?

A. It's not against protocol. It's just unusual--

Q. It's just unusual.

A. --for a CNA to do something like this.

Q. Okay.

A. Typically, if they enter a room, it's because a call light is on or um, a nurse has asked them to go in there. Especially when a door is closed, it's um, very atypical for somebody, even another nurse, just to walk into that room when there's no need for it.

Q. Okay. Wh--are the door normally closed? What would be a reason that they would close doors?

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A. If there was um, some sort of exam going on.

Q. Okay.

A. Um...if there was a procedure going on that was exposing the patient or a patient would be uncomfortable about. Uh, if a patient was sleeping.

Q. Okay.

A. Typically the doors stay open and um, curtains, often times, are closed, but doors typically stay open.

Q. How...if you had to give me an estimate, how many times would you say that you...you've seen him walk into rooms, for female patients, where the doors are closed but there's no, no need for him to be in that room?

A. Multiple times. I couldn't put a number on it.

Q. Okay. Um...have you ever had any conversations or talked to Mr. Farmer, before?

A. Um, just in general--

Q. Just _____

A. --course of work.

Q. Okay. Um...and you said that he just--these, these actions that he was doing is what made uh...it, it was of a concern and made you suspicious?

A. Yes.

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Q. Had there been anything else or had any other patients ever come forward to you on anything else, um, anything that Mr. Farmer had ever done that seemed inappropriate?

A. Not any other patients. No.

Q. _____ patients? But, but uh, some—Ms. Hanna's the only, only one that, that _____ to mind with you, where you actually observed him do something that, as you put it, was beyond his scope?

A. Yes.

Q. Okay. Um...okay. And then you understand that Mr. Farmer is the subject of an investigation right now, into a, a sexual assault?

A. Yes, I do.

Q. Okay. Okay. Do you harbor any...do you have any personal gain by coming forward to uh, with—to me with this information?

A. No, I don't. In fact um, I _____ fear that I could possibly get uh, in trouble with my job if I were to give out information uh, you know, regarding—against _____ with my patients.

Q. Okay. Um, anything else you can think of that might be of uh, useful information to me to assist me in my investigation?

A. Um, nothing that comes to mind other than, like I said, there were other people that had um, told me that they had the same—

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Q. Ex-expressed concerns?

A. Yeah. Concerns about him.

Q. Okay. And that would be Ray S-Sumera. Did Julie say she had any concerns?

A. Julie hasn't worked with him because she works on the day shift.

Q. Okay.

A. So um, she wouldn't normally be able to observe--

Q. Okay.

A. --any actions of his.

Q. Okay. And was he primarily just E.R. help? Did he ever go to any other areas of the hospital and assist there instead?

A. He worked on multiple floors.

Q. He worked multiple floors?

A. He was not specifically assigned to the E.R. every night.

Q. Okay. All right.

A. Sometimes he was um, assigned to be what's called a sitter, with um, psychiatric patients that are not medically cleared, if they are transferred up to the medical floor and are a flight risk or need to be observed um, for suicide precautions, things like that. Then they're um...they're put on a one on one sitter situation where he would be alone, watching that patient.

Q. Gotcha. Okay. All right. Well, um, anything else?

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- A. There's one other nurse that had come to me that I'm, I'm trying to remember her
name, that had told me some of the same things. Um...if you could turn it off one
second and give me a second to think _____
- Q. That, that's all right. What we'll do, we'll uh, what we'll do is, we'll go ahead and
terminate this interview. Uh-
- A. Kim. That's her name. Kim.
- Q. Kim?
- A. Yeah.
- Q. Okay. And where, where does Kim work?
- A. She works in the E.R. as well.
- Q. She works in the E.R. as well?
- A. Yes.
- Q. Okay. And she, she um, relayed some concern to you also?
- A. The same concerns that Ray had said about uh, his actions were suspicious,
especially with a female patient.
- Q. Was--and, and is Ray a nurse also or is he a--
- A. Yes.
- Q. Okay.
- A. He's a nurse and occasionally works as a charge nurse.
- Q. Okay. Okay. Um...okay. Anything else?

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A. (No audible response.)

Q. That you can think of? If I needed to speak with you about anything further, would that, would that still be possible?

A. Yes.

Q. Okay. Operator, this will end the interview. The time is uh...0811 hours on the 30th of May, 2008. Same people present. Same location. Thank you.

THIS VOLUNTARY STATEMENT WAS COMPLETED AT 8775 WEST DEER SPRINGS ROAD, LAS VEGAS, NEVADA 89149, ON THE 30TH DAY OF MAY, 2008 AT 0811 HOURS.

MS:gm

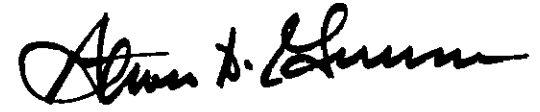
TAB 13

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Centennial Hills Hospital and
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CLERK OF THE COURT

**DISTRICT COURT
CLARK COUNTY, NEVADA**

MISTY PETERSON, AS SPECIAL
ADMINISTRATOR OF THE ESTATE OF
JANE DOE,

Plaintiff,

vs.

VALLEY HEALTH SYSTEM LLC, a Nevada
limited liability company, d/b/a CENTENNIAL
HILLS HOSPITAL MEDICAL CENTER;
UNIVERSAL HEALTH SERVICES, INC., a
Delaware corporation; AMERICAN NURSING
SERVICES, INC., a Louisiana corporation;
STEVEN DALE FARMER, an individual; DOES I
through X, inclusive; and ROE CORPORATIONS I
through X, inclusive,

Defendants.

CASE NO. A595780
DEPT NO. II

**DEFENDANTS VALLEY HEALTH SYSTEM LLC d/b/a CENTENNIAL HILLS
HOSPITAL MEDICAL CENTER AND UNIVERSAL HEALTH SERVICES, INC.'S
OPPOSITION TO PLAINTIFF'S MOTION FOR NRCP 37 SANCTIONS**

COMES NOW, Defendants, VALLEY HEALTH SYSTEMS, LLC d/b/a CENTENNIAL
HILLS HOSPITAL MEDICAL CENTER AND UHS OF DELAWARE, INC., (hereinafter

1 "Hospital Defendants") by and through their attorneys, HALL PRANGLE & SCHOONVELD,
2 LLC, hereby file their Opposition to Plaintiff's Motion for NRCP 37 Sanctions.

3 This Opposition is made and based upon the pleadings and papers on file herein, the
4 following points and authorities and oral argument of counsel at the time of hearing in this
5 matter.

6
7 DATED this 13 day of May, 2015.

8 HALL PRANGLE & SCHOONVELD, LLC

9
10 MICHAEL E. PRANGLE, ESQ.

Nevada Bar No.: 8619

11 JOHN F. BEMIS, ESQ.

Nevada Bar No. 9509

12 1160 North Town Center Drive, Suite 200

13 Las Vegas, NV 89144

14 *Attorneys for Defendants*

Centennial Hills Hospital and

15 *Universal Health Services, Inc.*

16 **I.**

17 **INTRODUCTION**

18 Plaintiff filed the instant Motion requesting sanctions in the form of "foreseeability as a
19 matter of law" against the Hospital Defendants due to the non-appearance of a non-party witness
20 at a deposition. The majority of Plaintiff's Motion is argument regarding his case in chief and
21 nothing to do with the instant Motion. There are several facts that Plaintiff tends to overlook.
22 First, Ms. Wolfe is not a party to this action, nor is she a NRCP 30(b)(6) representative for the
23 Hospital Defendants. While Ms. Wolfe is represented by the same counsel as the Hospital
24 Defendants, this does not make the Hospital Defendants legally responsible for her failure to
25 appear for her deposition simply because they have the same counsel.
26
27

28 Next, the deposition did in fact go forward within one week of the noticed deposition,

1 and the filing of this Motion. At the deposition, Plaintiff specifically questioned Ms. Wolfe
2 regarding her non-appearance. Keep in mind, Ms. Wolfe is no longer employed by the Hospital
3 Defendants and is currently an employee of UMC, a non-party. Ms. Wolfe testified as follows:

4 Q: Now, your deposition was originally set for last week?

5 A: Yes.

6 Q: You're aware of that, right?

7 A: Yes.

8 Q: But you did not show up, is that correct?

9 A: That's correct.

10 Q: And why didn't you show up?

11 A: I had a conflict of interest with my employer [UMC]. I did try to
12 cancel the deposition, and apparently was unable to, and I had a choice to make of
13 where I had to be.

14 I had a mandatory education that I had to do with my employer [UMC],
15 that had I not shown up to that, I would have been suspended.

16 Q: Okay.

17 A: **And so I chose to keep my job.**

18 *See Deposition of Margaret Wolfe, RN, 11:4-20, attached as Exhibit A (emphasis added).*

19 Plaintiff is correct that this deposition was noticed on April 28, 2015 based on the
20 representation of Ms. Wolfe's counsel, Mr. Bemis. The same day Mr. Bemis became aware of
21 Ms. Wolfe's professional conflict, he notified Plaintiff's counsel. *See Affidavit of John Bemis,*
22 *Esq., attached hereto as Exhibit B.* Plaintiff's counsel, Mr. Murdock, responded that the
23 deposition "cannot be moved. It would require changing everyone's deposition and I simply
24 cannot do that." *See Exhibit 6, attached to Plaintiff's Motion.*

25 As Ms. Wolfe testified at the deposition in this matter, she had the choice of complying
26 with this deposition notice or losing her job. *Ex. A.* She chose her job. *Id.* The Hospital
27 Defendants have *no relation* to her employment requirements at UMC. Mr. Bemis did
28 everything in his power to notify Plaintiff well in advance of the deposition of the conflict, to
provide alternative dates within one week of the noticed deposition, conduct an EDCR 2.34
conference to try to resolve the issue and file a Motion for Protective Order on Order Shortening

Time, all to no avail.

There was no attempt by the Hospital Defendants or Ms. Wolfe to evade the rules of procedure or discovery. In fact, every attempt was made to abide by these rules and be professional and courteous to opposing counsel. Plaintiff's refusal to move this deposition only because it would strategically affect the order of witnesses he wanted to depose, is not sufficient prejudice compared to Ms. Wolfe potentially losing her job. The sanction Plaintiff requests of "foreseeability as a matter of law" against the Hospital Defendants is beyond the realm of justice and is nonsensical. Refusing to work with counsel and forcibly boxing defense counsel in, should not be the appropriate method to win a case and avoid trial on the merits.

Plaintiff's Motion should be denied as Plaintiff suffered no prejudice and there is insurmountable evidence that this was not an intentional or dilatory move by the Hospital Defendants.

II.

LEGAL ARGUMENT

A. NRCP 37 Does Not Apply.

Plaintiff requests sanctions pursuant to NRCP 37. However, Plaintiff failed to cite to the specific section of the Rule that permits this Motion or sanctions of any nature. In fact, Plaintiff completely skips the argument of whether he is entitled to sanctions and just assumes he is as a matter of right. In actuality, NRCP 37 does not apply.

First, Ms. Wolfe is not a party to this action. The Hospital Defendants and Ms. Wolfe have the same legal representation, but she is not a named party nor is she a NRCP 36(b)(6) representative for the Hospital Defendants. There is no section within NRCP 37 that addresses the failure of a non-party to respond to a subpoena for deposition.

1 Second, Ms. Wolfe is not an employee of the Hospital Defendants, and again she was not
2 being offered as a NRCP 36(b)(6) representative for the Hospital Defendants. While the same
3 counsel is representing Ms. Wolfe and the Hospital Defendants, the actions of Ms. Wolfe in
4 failing to appear for her noticed deposition is not conduct that is sanctionable against the
5 Hospital Defendants. As Ms. Wolfe is no longer an employee of the Hospital Defendants, the
6 Hospital Defendants have no control over her work schedule or any repercussions that may result
7 if she fails to meet her employment obligations. As a courtesy, the Hospital Defendants agreed
8 to have the same counsel and work with Plaintiff's counsel to have this deposition go forward
9 without the need of an amended subpoena. These courtesies that were afforded to both Ms.
10 Wolfe and Plaintiff should not now result in sanctions against the Hospital Defendants for Ms.
11 Wolfe's actions.

12
13
14 There is no rule of law that states because the Hospital Defendants and Ms. Wolfe have
15 the same lawyer, the Hospital Defendants should now be sanctioned for the conduct of a non-
16 party through no fault of their own.

17
18 **B. The Deposition Notice for April 28, 2015, Was Not Enforceable And Plaintiff's**
19 **Conduct is Sanctionable.**

20 NRCP 45 governs the deposition of a non-party pursuant to subpoena. NRCP 45(d)(1)
21 specifically states:

22 A party or attorney responsible for issuing and serving a subpoena **must**
23 **take reasonable steps to avoid imposing undue burden** or expense on a person
24 subject to the subpoena. The court for the district where compliance is required
25 **must enforce this duty and impose an appropriate sanction** – which may
include lost earnings and reasonable attorney's fees – on a party or attorney who
fails to comply.

26 NRCP 45(d)(1) (emphasis added).

27 Ms. Wolfe contacted her counsel, Mr. Bemis, who is also the counsel for the Hospital
28

1 Defendants, on April 16, 2015 requesting the deposition be moved due to employment
2 requirements. This was nearly two weeks prior to the deposition date. Her counsel, Mr. Bemis,
3 wrote a letter and called counsel for Plaintiff, Mr. Murdock, requesting this deposition be moved
4 and provided alternative dates within one week of the deposition. Mr. Murdock stated Ms.
5 Wolfe's deposition "cannot be moved. It would require changing everyone's deposition and I
6 simply cannot do that." See Exhibit 6, attached to Plaintiff's Motion.
7

8 Plaintiff's counsel was well aware that proceeding with the deposition on April 28, 2015,
9 would result in an undue burden and/or expense on Ms. Wolfe to the degree of being suspended
10 or losing her job. Instead of complying with his duty to avoid this undue burden and/or expense
11 with the reasonable step of moving the deposition one week, Plaintiff's counsel proceeded with
12 the deposition and now seeks sanctions against the Hospital Defendants who had absolutely no
13 role in Ms. Wolfe's inability to attend the deposition.
14

15 At her deposition, Ms. Wolfe reiterated the burden of the April 28, 2015 deposition date
16 and that the Hospital Defendants played no role in preventing this deposition from going
17 forward:
18

19 Q: Now, your deposition was originally set for last week?

20 A: Yes.

21 Q: You're aware of that, right?

22 A: Yes.

23 Q: But you did not show up, is that correct?

24 A: That's correct.

25 Q: And why didn't you show up?

26 A: I had a conflict of interest with my employer [UMC]. I did try to
27 cancel the deposition, and apparently was unable to, and I had a choice to make of
28 where I had to be.

I had a mandatory education that I had to do with my employer [UMC],
that had I not shown up to that, I would have been suspended.

Q: Okay.

A: **And so I chose to keep my job.**

Ex. A(emphasis added).

The Court must enforce Plaintiff's duty to take these reasonable steps. Pursuant to NRCPT 45(d)(1), Plaintiff's actions in forcing Ms. Wolfe's counsel to draft a Motion for Protective Order and appear for the deposition on April 28, 2015, on her behalf, are sanctionable.

At a minimum, the instant Motion should be denied.

III.

CONCLUSION

Based on the foregoing, Defendants Centennial Hills Hospital and UHS respectfully request this Motion be denied.

DATED this 13 day of May, 2015.

HALL PRANGLE & SCHOONVELD, LLC


MICHAEL E. PRANGLE, ESQ.

Nevada Bar No.: 8619

JOHN F. BEMIS, ESQ.

Nevada Bar No. 9509

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...

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TELEPHONE: 702-889-6400 FACSIMILE: 702-384-6025

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that I am an employee of HALL PRANGLE & SCHOONVELD, LLC; that on the 13 day of May, 2015, I served a true and correct copy of the foregoing

DEFENDANTS VALLEY HEALTH SYSTEM LLC d/b/a CENTENNIAL HILLS

HOSPITAL MEDICAL CENTER AND UNIVERSAL HEALTH SERVICES, INC.'S

OPPOSITION TO PLAINTIFF'S MOTION FOR NRCP 37 SANCTIONS via Electronic

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An employee of HALL PRANGLE & SCHOONVELD, LLC

EXHIBIT A

<div>Page 1</div> <div>1 DISTRICT COURT</div> <div>2 CLARK COUNTY, NEVADA</div> <div>3 JANE DOE,</div> <div>4 Plaintiff,</div> <div>5 vs.</div> <div>6 VALLEY HEALTH SYSTEM LLC,</div> <div>7 a Nevada limited</div> <div>8 liability company, d/b/a</div> <div>9 CENTENNIAL HILLS HOSPITAL</div> <div>10 MEDICAL CENTER; UNIVERSAL</div> <div>11 HEALTH SERVICES, INC., a</div> <div>12 Delaware corporation;</div> <div>13 AMERICAN NURSING</div> <div>14 SERVICES, INC., a</div> <div>15 Louisiana corporation;</div> <div>16 STEVEN DALE FARMER, an</div> <div>17 individual; DOES I</div> <div>18 through X, inclusive; and</div> <div>19 ROE CORPORATIONS I</div> <div>20 through X, inclusive,</div> <div>21 Defendants.</div> <div>22 ~~~~~</div> <div>23 DEPOSITION OF</div> <div>24 MARGARET WOLFE, RN</div> <div>25 Wednesday, May 5, 2015</div> <div>9:30 a.m.</div> <div>521 S. Third Street</div> <div>Las Vegas, Nevada</div> <div>Carol O'Malley, CCR 178, RMR3</div>	<div>Page 3</div> <div>1 APPEARANCES OF COUNSEL (Cont'd)</div> <div>2</div> <div>3 For Defendant Farmer:</div> <div>4 CARROLL, KELLY, TROTTER,</div> <div>5 FRANZEN, McKENNA & PEABODY</div> <div>6 HEATHER S. HALL, ESQ.</div> <div>7 Suite 260</div> <div>8 8329 W. Sunset Road</div> <div>9 Las Vegas, Nevada 89113</div> <div>10 702.792.5755</div> <div>11 702.796.5855 Fax</div> <div>12 hshall@cktfmlaw.com</div> <div>13</div> <div>14</div> <div>15</div> <div>16</div> <div>17</div> <div>18</div> <div>19</div> <div>20</div> <div>21</div> <div>22</div> <div>23</div> <div>24</div> <div>25</div>
<div>Page 2</div> <div>1 APPEARANCES OF COUNSEL</div> <div>2 For Plaintiff:</div> <div>3 KEACH MURDOCK</div> <div>4 ROBERT E. MURDOCK, ESQ.</div> <div>5 520 S. Fourth Street</div> <div>6 Second Floor</div> <div>7 Las Vegas, Nevada 89101</div> <div>8 702.384.5563</div> <div>9 702.384.4570 Fax</div> <div>10 lasvegasjustice@aol.com</div> <div>11</div> <div>12 For Defendant Valley Health System LLC, d/b/a</div> <div>13 Centennial Hills Hospital Medical Center:</div> <div>14 HALL PRANGLE & SCHOONVELD, LLC</div> <div>15 JOHN F. BEMIS, ESQ.</div> <div>16 Suite 200</div> <div>17 1160 N. Town Center Drive</div> <div>18 Las Vegas, Nevada 89144</div> <div>19 702.889.6400</div> <div>20 702.384.6025 Fax</div> <div>21 jlbemis@hpslaw.com</div> <div>22</div> <div>23 For Defendant American Nursing Services, Inc.:</div> <div>24 LEWIS BRISBOIS BISGAARD & SMITH LLP</div> <div>25 AMANDA J. BROCKHYSER, ESQ.</div> <div>6385 S. Rainbow Boulevard</div> <div>Suite 600</div> <div>Las Vegas, Nevada 89118</div> <div>702.693.4320</div> <div>702.893.3383</div> <div>702.893.3789 Fax</div> <div>amanda.brockhyser@lewisbrisbois.com</div> <div>21</div> <div>22 PYATT & SILVESTRI</div> <div>23 JAMES P.C. SILVESTRI, ESQ.</div> <div>24 701 Bridger Avenue</div> <div>25 Las Vegas, Nevada 89101</div> <div>702.383.6000</div> <div>702.477.0088</div> <div>jsilvestri@psh-law.com</div>	<div>Page 4</div> <div>1 INDEX OF EXAMINATION</div> <div>2</div> <div>3 WITNESS: Margaret Wolfe, RN</div> <div>4</div> <div>5</div> <div>6</div> <div>7 EXAMINATION</div> <div>8</div> <div>9 By Mr. Murdock</div> <div>10 5, 75</div> <div>11 By Mr. Silvestri</div> <div>12 64, 76</div> <div>13 By Ms. Hall</div> <div>14 74</div> <div>15</div> <div>16 INDEX TO EXHIBITS</div> <div>17</div> <div>18 EXHIBITS</div> <div>19</div> <div>20</div> <div>21</div> <div>22</div> <div>23</div> <div>24</div> <div>25</div> <div>1 Voluntary Statement of Margaret Wolfe</div> <div>44</div>

Page 9

1 Q. Okay. And prior to your agreeing to be
2 represented by her -- so in other words, you had not
3 agreed to let them represent you at that point --
4 tell me about the conversation you had.
5 A. She told me that there was a deposition
6 that they wanted to do, that they wanted me to be a
7 part of, and would I be willing to help them out with
8 that.
9 Q. And you said?
10 A. And I said, "Yes."
11 Q. And what else?
12 A. I believe at that point she offered the
13 representation, and I accepted.
14 Q. Did she tell you that you needed
15 representation?
16 MR. BEMIS: Objection to after --
17 MR. MURDOCK: Prior. Prior.
18 BY MR. MURDOCK:
19 Q. Did she tell you that you needed
20 representation?
21 A. No.
22 Q. Did she advise you that she thought you
23 should be represented?
24 A. No.
25 Q. Did you believe you needed to be

Page 10

1 represented, for any reason whatsoever?
2 MR. BEMIS: Calls for speculation.
3 BY MR. MURDOCK:
4 Q. Go ahead.
5 A. I'm not sure if I should answer or not.
6 Q. Well, did you believe that you needed to be
7 represented, prior to her offering you
8 representation?
9 A. No.
10 Q. In other words, was there any reason in
11 your head that you thought, "Hey, maybe I should get
12 a lawyer?"
13 A. No.
14 Q. But when they offered it, you accepted it,
15 right?
16 A. Yes.
17 Q. It's free, right?
18 A. Well, that was part of it.
19 Q. Okay. And without telling me the contents
20 of the discussions, did you at some point have a
21 discussion with Mr. Bemis?
22 A. Yes.
23 Q. When was that?
24 A. We've had a few conversations on the phone,
25 and then one yesterday.

Page 11

1 Q. When were the phone conversations? Do you
2 remember?
3 A. Within the last couple of weeks.
4 Q. Now, your deposition was originally set for
5 last week?
6 A. Yes.
7 Q. You're aware of that, right?
8 A. Yes.
9 Q. But you did not show up, is that correct?
10 A. That's correct.
11 Q. And why didn't you show up?
12 A. I had a conflict of interest with my
13 employer. I did try to cancel the deposition, and
14 apparently was unable to, and I had a choice to make
15 of where I had to be.
16 I had a mandatory education that I
17 had to do with my employer, that had I not shown up
18 to that, I would have been suspended.
19 Q. Okay.
20 A. And so I chose to keep my job.
21 Q. Did you tell Mr. Bemis that?
22 MR. BEMIS: I'm going to tell her not
23 to respond to anything her and I discussed.
24 BY MR. MURDOCK:
25 Q. Did Mr. Bemis tell you there was a court

Page 12

1 notice for you to be here last week?
2 MR. BEMIS: I'm going to instruct her
3 not to answer anything that her and I discussed.
4 BY MR. MURDOCK:
5 Q. Did he tell you that?
6 A. I'm going to take his advice.
7 Q. Did he tell you that you could be
8 sanctioned?
9 MR. BEMIS: I'm going to instruct her
10 not to answer anything that her and I discussed.
11 BY MR. MURDOCK:
12 Q. Did he tell you that he could be
13 sanctioned?
14 MR. BEMIS: I instruct her not to
15 answer anything that her and I discussed.
16 BY MR. MURDOCK:
17 Q. Did he tell you that he attempted to get
18 the Court to change it by filing a motion, but the
19 Court refused?
20 MR. BEMIS: I'm going to instruct her
21 not to answer anything that her and I have discussed.
22 BY MR. MURDOCK:
23 Q. Did he tell you that he was too late in
24 filing the motion, despite the fact he could have
25 filed something earlier? Did he tell you that?

EXHIBIT 13

AFFIDAVIT OF JOHN F. BEMIS, ESQ.

STATE OF NEVADA)
) ss
COUNTY OF CLARK)

JOHN F. BEMIS, ESQ., being first duly sworn, deposes and states:

1. Your Affiant is an attorney licensed to practice law in the State of Nevada and is affiliated with the law firm of Hall Prangle & Schoonveld, LLC, counsel of record for Defendants Centennial Hills Hospital and UHS of Delaware, Inc. in the above-entitled matter.

2. Your Affiant is also counsel of record for the deponent, Margaret Wolfe, RN.

3. Upon receipt of the Notice of Taking Deposition of Margaret Wolfe, RN, Affiant contacted Ms. Wolfe and obtained her availability for deposition. April 27 and 28, 2015 were provided to counsel for Plaintiff, Mr. Murdock. Plaintiff subsequently re-noticed Ms. Wolfe's deposition to occur on April 28, 2015.

4. On April 16, 2015, Ms. Wolfe contacted Affiant and relayed that due to a conflict with her employer, UMC, she was no longer available for deposition on April 28, 2015 and could the deposition be moved to the following week. That same day, Affiant immediately contacted counsel for Plaintiff and notified him of the conflict and requested the deposition be moved. See Exhibit 5, attached to Plaintiff's Motion.

5. Following this correspondence, Plaintiff's counsel replied that the deposition "cannot be moved. It would require changing everyone's deposition and I simply cannot do that." See Exhibit 6, attached to Plaintiff's Motion.

6. After discussion with Ms. Wolfe, she determined that she could not appear for the deposition on April 28, 2014.

1 7. Once Ms. Wolfe confirmed she would not be attending the deposition on April
2 28, 2015, Affiant contacted Plaintiff's counsel, Mr. Murdock, and held an EDCR 2.34
3 conference on April 24, 2015. Resolution could not be reached, thus Affiant immediately filed a
4 Motion for Protective Order on Order Shortening Time with the Discovery Commissioner.

5 8. The Motion was sent to the Discovery Commissioner on Friday, April 24, 2015.
6
7 On Monday, April 27, 2014, the Discovery Commissioner's office notified Affiant that the
8 Motion was too close to the deposition date and therefore would not be heard.

9 9. After receiving this notification from the Discovery Commissioner's office,
10 Affiant immediately contacted Plaintiff's counsel, Mr. Murdock, and notified him that the
11 Discovery Commissioner's office had rejected the Motion and thus, Affiant had no choice but to
12 do a non-appearance. See Exhibit 7, attached to Plaintiff's Motion.

13 10. Affiant appeared at the noticed deposition of Ms. Wolfe on April 28, 2015, and
14 again explained the conflict Ms. Wolfe had and the choice she was forced to make. Affiant
15 again offered the alternative dates which were for the following week. No record of non-
16 appearance or this discussion was taken.

17 11. The following day, Wednesday, April 29, 2015, Plaintiff filed the instant Motion
18 against the Hospital Defendants.

19 12. On Friday, May 1, 2015, at the deposition in this case of Renato Sumera, Affiant
20 provided additional dates of availability for Ms. Wolfe.

21 13. On Monday, May 4, 2015, Plaintiff re-noticed the deposition of Ms. Wolfe for
22 that Wednesday, May 6, 2015. See Plaintiff's Second Amended Notice of Taking Deposition of
23 Margaret Wolfe RN, attached as Exhibit C. Ms. Wolfe appeared and the deposition was
24 completed.
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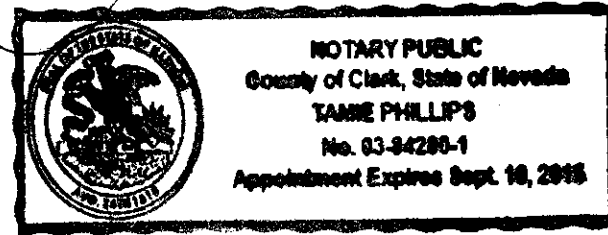
1 14. Everything stated within this Affidavit is true and correct to the best of Your Affiant's
2 knowledge, information and belief.

3 FURTHER YOUR AFFIANT SAYETH NAUGHT.

4
5
6 JOHN F. BEMIS, ESQ.

7 SUBSCRIBED and SWORN to
8 before me this 13 day of May, 2015.

9 Jamie Phillips
10 NOTARY PUBLIC in and for said
11 County and State



EXHIBIT

C

1 Robert E. Murdock, Esq.
2 Nevada Bar No. 4013
3 MURDOCK & ASSOCIATES, CHTD.
4 521 South Third Street
5 Las Vegas, NV 89101
6 702-685-6111

7 Eckley M. Keach, Esq.
8 Nevada Bar No. 1154
9 ECKLEY M. KEACH, CHTD.
10 521 South Third Street
11 Las Vegas, NV 89101
12 702-685-6111
13 Attorneys for Plaintiffs

10 DISTRICT COURT
11 CLARK COUNTY, NEVADA

13 ESTATE OF JANE DOE, by and through its
14 Special Administrator, Misty Petersen,

15 Plaintiff,

16 vs.

17 VALLEY HEALTH SYSTEM LLC, a Nevada
18 limited liability company, d/b/a CENTENNIAL
19 HILLS HOSPITAL MEDICAL CENTER;
20 UNIVERSAL HEALTH SERVICES, INC., a
21 Delaware corporation; AMERICAN NURSING
22 SERVICES, INC., a Louisiana corporation;
23 STEVEN DALE FARMER, an individual; DOES I
24 through X, inclusive; and ROE CORPORATIONS
25 I through X, inclusive,

26 Defendants.

CASE NO. 09-A-595780-C
DEPT. NO. II

SECOND AMENDED
NOTICE OF TAKING
DEPOSITION OF
MARGARET WOLFE, R.N.

DATE: May 6, 2015
TIME: 9:30 a.m.

25 TO: ALL DEFENDANTS HEREIN; and

26 TO: THEIR RESPECTIVE COUNSEL OF RECORD

27 ///

28 ///



1 Pursuant to Rules 26 and 30 of the Nevada Rules of Civil Procedure, please take notice
2 that on Wednesday, May 6, 2015 at 9:30 a.m. at Murdock & Associates, Chtd., 521 South Third
3 Street, Las Vegas, Nevada 89101, Plaintiff will take the deposition of Margaret Wolfe, R.N.
4

5 Said deposition will be taken by stenographic and/or video tape means before a notary
6 public, or before some other officer authorized by law to administer oaths. Testimony shall
7 continue from day to day until completed. You are invited to attend and cross-examine.

8 DATED this 4th day of May, 2015.

9 **MURDOCK & ASSOCIATES, CHTD.**
10 **ECKLEY M. KEACH, CHTD.**

11
12 /s/ Robert E. Murdock
13 Robert E. Murdock Bar No. 4013
14 Eckley M. Keach Bar No. 1154
15 521 South Third Street
16 Las Vegas, NV 89101
17 Attorneys for Plaintiffs
18
19
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1 CERTIFICATE OF SERVICE

2 I hereby certify that on May 4th, 2015, I served a copy of the foregoing PLAINTIFFS'
3 SECOND AMENDED NOTICE OF TAKING DEPOSITION OF Margaret Wolfe, R.N., upon the
4 parties to this action via the court's Wiznet mandatory electronic service, addressed as follows:

5 John F. Bemis, Esq.
6 Hall Prangle & Schoonveld, LLC
7 1160 North Town Center Dr., Suite 200
8 Las Vegas, NV 89144

8 Robert C. McBride, Esq.
9 Carroll, Kelly, Trotter, Franzen, McKenna & Peabody
10 701 North Green Valley Parkway, Suite 200
11 Henderson, NV 89074

11 S. Brent Vogel, Esq.
12 Amanda J. Brookhyser, Esq.
13 Lewis Brisbois Bisgaard & Smith
14 6385 South Rainbow Blvd., Suite 600
15 Las Vegas, NV 89118

15 James P.C. Silvestri, Esq.
16 Pyatt Silvestri
17 701 Bridger Avenue, Suite 600
18 Las Vegas, NV 89101

18 Benjamin J. Carman, Esq.
19 4045 Spencer Street, Ste. 408
20 Las Vegas, Nevada 89119

21
22 /s/ Tiffany Dube
23 An employee of Murdock & Associates, Chtd.
24
25
26
27
28

TAB 14

IN THE SUPREME COURT OF THE STATE OF NEVADA

VALLEY HEALTH SYSTEM, LLC, A
DELAWARE LIMITED LIABILITY
COMPANY, D/B/A CENTENNIAL
HILLS HOSPITAL MEDICAL CENTER;
AND UNIVERSAL HEALTH
SERVICES, INC., A DELAWARE
CORPORATION,

Petitioners,

vs.

THE EIGHTH JUDICIAL DISTRICT
COURT OF THE STATE OF NEVADA,
IN AND FOR THE COUNTY OF
CLARK; AND THE HONORABLE
RICHARD SCOTTI, DISTRICT JUDGE,
Respondents,

and

AMERICAN NURSING SERVICES,
INC., A LOUISIANA CORPORATION;
ESTATE OF JANE DOE, BY AND
THROUGH ITS SPECIAL
ADMINISTRATOR, MISTY PETERSON;
AND STEVEN DALE FARMER, AN
INDIVIDUAL,
Real Parties in Interest.

No. 67886

FILED

MAY 20 2015

TRACIE K. LINDEMAN
CLERK OF SUPREME COURT
BY S. Young
DEPUTY CLERK

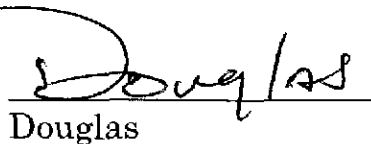
*ORDER DENYING PETITION
FOR WRIT OF MANDAMUS OR PROHIBITION*

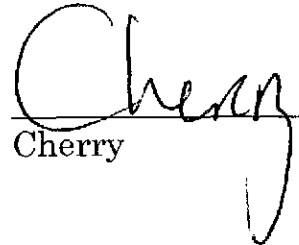
Having considered petitioners' arguments and supporting documents in this original proceeding, we are not persuaded that petitioners have met their burden to demonstrate that our extraordinary intervention is warranted. NRS 34.160; NRS 34.320; *Pan v. Eighth Judicial Dist. Court*, 120 Nev. 222, 224, 228, 88 P.3d 840, 841, 844 (2004)

(holding that an appeal is generally an adequate legal remedy precluding writ relief). Accordingly, we

ORDER the petition DENIED.

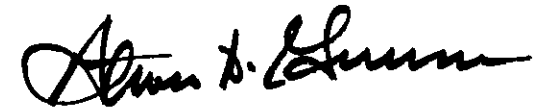
 , J.
Parraguirre

 , J.
Douglas

 , J.
Cherry

cc: Hon. Richard Scotti, District Judge
Hall Prangle & Schoonveld, LLC/Las Vegas
Eckley M. Keach, Chtd.
Pyatt Silvestri & Hanlon
Carroll, Kelly, Trotter, Franzen, & McKenna
Murdock & Associates, Chtd.
Lewis Brisbois Bisgaard & Smith, LLP/Las Vegas
Eighth District Court Clerk

TAB 15



CLERK OF THE COURT

Robert E. Murdock, Esq.
Nevada Bar No. 4013
MURDOCK & ASSOCIATES, CHTD.
521 South Third Street
Las Vegas, NV 89101
702-685-6111

Eckley M. Keach, Esq.
Nevada Bar No. 1154
ECKLEY M. KEACH, CHTD.
521 South Third Street
Las Vegas, NV 89101
702-685-6111
Attorneys for Plaintiff

DISTRICT COURT
CLARK COUNTY, NEVADA

ESTATE OF JANE DOE, by and through its
Special Administrator, Misty Petersen,

Plaintiff,

vs.

VALLEY HEALTH SYSTEM LLC, a Nevada
limited liability company, d/b/a CENTENNIAL
HILLS HOSPITAL MEDICAL CENTER;
UNIVERSAL HEALTH SERVICES, INC., a
Delaware corporation; AMERICAN NURSING
SERVICES, INC., a Louisiana corporation;
STEVEN DALE FARMER, an individual; DOES I
through X, inclusive; and ROE CORPORATIONS
I through X, inclusive,

Defendants.

CASE NO. 09-A-595780-C
DEPT. NO. II

**REPLY TO DEFENDANT
VALLEY HEALTH SYSTEM,
LLC d/b/a CENTENNIAL HILLS
HOSPITAL MEDICAL CENTER
AND UNIVERSAL HEALTH
SERVICES, INC'S OPPOSITION
TO PLAINTIFF'S MOTION FOR
NRCP 37 SANCTIONS**

(DISCOVERY COMMISSIONER)

**DATE: June 3, 2015
TIME: 9:00 am**

COMES NOW Plaintiff Estate of Jane Doe, by and through its Special Administrator, Misty Petersen (hereinafter "Plaintiff"), by and through its attorneys of record, Murdock & Associates, Chtd. and Eckley M. Keach, Chtd., and hereby submits its Reply to Defendant Valley Health System, LLC d/b/a Centennial Hills Hospital Medical Center and Universal Health Services, Inc.'s Opposition to Motion for Sanctions as follows.

1 This Reply is made and based upon the papers and pleadings on file herein, the attached
2 Points and Authorities, and any oral argument as may be had by this Court.

3 DATED this 21st day of May, 2015.

4 MURDOCK & ASSOCIATES, CHTD.
5 ECKLEY M. KEACH, CHTD.

6 /s/ Robert E. Murdock
7 Robert E. Murdock Bar No. 4013
8 Eckley M. Keach Bar No. 1154
9 521 South Third Street
10 Las Vegas, NV 89101
11 Attorneys for Plaintiff

12 POINTS AND AUTHORITIES

13 Mr. Bemis knows Nevada law. Mr. Bemis knows the ethical rules. Mr. Bemis knows very
14 well that in order to stop a deposition one needs to obtain a protective order, or at least a stay in
15 advance of a protective order. Despite all of Mr. Bemis's knowledge, he violated the law, violated
16 ethical rules, did not obtain a stay, did not obtain a protective order and did so when he represented
17 a witness in the case. And, instead of simply accepting fault, he seeks to blame Plaintiff's counsel
18 for not moving the deposition. And, he fails to tell this Court about the conflict of interest he has
19 with the witness and how he "offered" his legal services to an adverse witness. His conduct (on
20 behalf of Centennial and for the benefit of Centennial) cries out for sanctions.

21 Mr. Bemis wants to have his cake and eat it too. He wants to "represent" witnesses, but then
22 when those witnesses flake, "it's not his fault." The thing is, Mr. Bemis knows better.

23 This Court should recall that Mr. Bemis has gone to some lengths in this case that are
24 curious. For example, Mr. Bemis, the *hospital's* lawyer, was a "consultant" for the Public
25 Defender's Office (hereinafter "PD's Office") in their defense of Mr. Farmer. See Correspondence
26 dated January 31, 2013, from Feliciano to Bemis *et al.*¹ Why on earth would the hospital's lawyer
27 act as a "consultant" for the rapist who raped women in their hospital? That being said, surely as a
28 consultant, Mr. Bemis was given access to all of the LVMPD Statements—including that of
Margaret Wolfe.

¹ See Exhibit One attached hereto.

1 Nurse Margaret Wolfe (hereinafter “Wolfe”) should have been identified by Mr. Bemis
2 years ago. She gave a statement to the LVMPD on May 30, 2008. See Exhibit Two. In that
3 statement, **she implicated Centennial Hills Hospital with knowledge about Farmer**. It would be
4 amazing that he did not know about her or what she said to the LVMPD. As this Court well knows,
5 Mr. Bemis was a “consultant” to the PD’s Office in the defense of Mr. Farmer. So, one would think
6 that as a consultant, he would know what the witnesses told the LVMPD.

7 Regardless, when Mr. Murdock received her statement from the PD’s office, he immediately
8 supplemented his 16.1 to include same. That was on March 19, 2015.² So, *at least on that date*,
9 Mr. Bemis was well aware of her statement and how she implicated the hospital.

10 Instead of recognizing *an incredible conflict of interest*, Mr. Bemis and/or his staff,
11 contacted Nurse Wolfe (a former employee) and “offered” his representation. See Wolfe Depo at 1-
12 13. Then, he “prepped” her for the deposition. *Id.* Obviously, this is a nice way to know what the
13 witness is going to say, to shape her testimony (or attempt to) and to cloak the entire discussion with
14 privilege. Preparing a witness for deposition allowed Mr. Bemis to provide her with his sense of the
15 case, in effect, telling her information which she might not ordinarily know which could very well
16 shape her testimony.³

17 Most important, Mr. Bemis should have known immediately that he had a conflict of
18 interest. **Nurse Wolfe is an adverse witness**. Centennial has argued time and again that they knew
19 nothing bad about Farmer and had no reason to think he may assault a patient. See Centennial Hills
20 Opp. Mot. Sum Jud. at 8; Writ of Mandamus at 14; Amended Writ of Mandamus at 13. **The**
21 **problem is that this argument was false**. Centennial Hills, through Mr. Bemis, has put forth false
22 and misleading statements to the Court (and the Supreme Court).⁴ They knew what Nurse Wolfe
23 had said—but hid it instead: A Charge Nurse came to Nurse Wolfe weeks before the incident with
24 Jane Doe and told her to watch Farmer with her female patients as he was overly attentive and
25 suspicious. In other words, these antecedent circumstances gave Centennial reason to believe that
26

27 ² See Exhibit Three.

28 ³ The law firm Jenner & Block has prepared an excellent discussion on witness preparation. See
https://jenner.com/system/assets/assets/6170/original/Witness_Preparation_031611.pdf?1327965786.

⁴ Just a couple weeks ago, they made this statement to the Supreme Court in a Writ. Plaintiff was about to let the Court
know about the misleading statements when the Court, after just a few days, denied the Writ.

1 Farmer, by reason of his actions and inappropriate behavior, would create an undue risk of harm to
2 patients in carrying out his employment responsibilities. Centennial was on notice about Farmer,
3 and Mr. Bemis knew it.

4 As stated, Nurse Wolfe gave a statement to the LVMPD on May 30, 2008. In that
5 statement, she stated that a Charge Nurse (Renato Sumera) came to her weeks before the incident
6 with Jane Doe and the others and stated the following:

7 A: Um, the same nurse, Ray Sumera, had told me um, another time
8 that he—to watch him around my female patients. That he was concerned because
9 he was very overly attentive with female patients and very anxious to connect them to
10 the monitors and disconnect them from the monitors which would require him to
11 reach into their clothing.

12 A: He was just very suspicious in his activities. Um, such as going into rooms
13 with doors closed with female patients when he was not asked to.

14 ...
15 Q: How...if you had to give me an estimate, how many times would you say that
16 you...you've seen him walk into rooms, for female patients, where the doors are closed
17 but there's no, no need for him to be in that room?

18 A: Multiple times. I couldn't put a number on it.

19 ...
20 Q: Okay. Um...and you said that he just—these actions that he was doing is
21 what made uh..it was of a concern and made you suspicious?

22 A: Yes.

23 ...
24 Q: Okay. Um, anything else you can think of that might be of uh, useful
25 information to me to assist me in my investigation?

26 A: Um, nothing comes to mind other than, like I said, there were other people
27 that had um told me that they had the same—

28 Q: Ex-expressed concerns?

A: Yeah. Concerns about him.

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...

A: There's one other nurse that had come to me...

A: Kim, that's her name. Kim.

LVMPD Statement of Wolfe. The conflict of interest is crystal clear. Mr. Bemis should never have reached out to her and "offered" his services as a lawyer. Who was he really representing? And what was he trying to do to this adverse witness?

The answer is obvious. As this Court knows, Mr. Bemis obtained dates for her deposition from Nurse Wolfe. The deposition was set for **April 28**. Implicit in his brief is that Mr. Bemis was told by Nurse Wolfe that she could not attend the deposition because of work issues. That was communicated to Mr. Murdock on **April 16**. See Correspondence from John F. Bemis, Esq. dated April 16, 2015. Mr. Murdock responded **that day** and said "No." Mr. Bemis waited a week to ask again. Mr. Murdock again said "No." Mr. Bemis "threatened" a protective order and Mr. Murdock wished him good luck. But, Mr. Bemis waited too long and by then he was too late to get a protective order, and without a protective order, he obviously did not tell Nurse Wolfe that she had to show. We know this because she didn't show on April 28.

The point of all of this is that Mr. Bemis has an absolute conflict of interest. Nurse Wolfe is a former employee of Centennial. Her testimony is completely adverse to his client. Yet, in order to try and salvage something, Mr. Bemis begins representing her as her lawyer. This means more than words. He has duties, and his duties to her clearly equal the duties to Centennial.⁵

No doubt, Mr. Bemis has done the same throughout this case. For example, former employee Nurse Christine Murray, who heard the yells of a "crazy old lady" was represented by Mr. Bemis. Mr. Bemis apparently represents all current employees of Centennial. Just recently, Hall Prangle identified 10 witnesses. See Centennial's 8th Supp. attached hereto as Exhibit Four. They were all identified as "c/o Hall Prangle..." No addresses, no phone numbers. And, by using this "c/o Hall Prangle" identifier, Hall Prangle is seemingly asserting that they are representing these folks. The only reason, obviously, is that Hall Prangle believes that as employees, Hall

⁵ For example, is Mr. Bemis going to be allowed at the trial to argue that his own client is a liar?

1 Prangle can assert that they are represented, but, Nevada law disagrees: If the employees are
2 managers, then Plaintiff's counsel cannot speak with them; but if they are just run of the mill
3 employees, Plaintiff's counsel is allowed—and *Hall Prangle is frustrating those efforts*. See
4 **Palmer v. Pioneer Inn Associates, Ltd.**, 118 Nev. 943, 59 P.3d 1237 (Nev. 2002) By not
5 disclosing addresses and phone numbers of employees, Bemis is violating Rule 3.4 of the Nev. R.
6 Prof. Resp. which makes clear that a lawyer shall not “unlawfully obstruct another party’s access to
7 evidence.” Indeed, Mr. Bemis violated Rule 3.4 when he “lawyered up” Ms. Wolfe and has now,
8 apparently, “lawyered up” these new witnesses.

9 While Plaintiff has no issue with Mr. Bemis representing management, i.e., Renato Sumera
10 the Charge Nurse, Mr. Bemis cannot wave a magic wand and become everyone’s attorney. This is
11 especially true where there may be conflicts. Regardless, this shows what Hall Prangle and Mr.
12 Bemis are systematically doing in this case. They are shaping the testimony of witnesses and
13 keeping them from being interviewed by counsel. But, with Ms. Wolfe, it blew up in their face.

14 True, regarding Nurse Wolfe, she did show up on May 6—but on her and Mr. Bemis’ terms.
15 It may seem petty, but the Rules do not allow for same. Otherwise, there is no reason to have rules.
16 Weeks before the deposition Mr. Bemis knew that Nurse Wolfe couldn’t show up. At that time, he
17 should have filed a Motion for Protective Order; He didn’t. He committed malpractice for his
18 “client” Nurse Wolfe when he failed to file the Motion properly. And, who was he really
19 representing—Nurse Wolfe or the hospital?

20 Plaintiff has attached the entire deposition transcript of Nurse Wolfe. (Exhibit Five). As is
21 quite obvious, she is incredibly adverse to Centennial. She states quite clearly that weeks before
22 the incident with Jane Doe (and the others) that Farmer was overly helpful to female patients, she
23 did not want him around her female patients, Charge Nurse Sumera warned her about Farmer and
24 female patients, Farmer acted inappropriately by going into female patient rooms and shutting the
25 door, and he was incredibly suspicious. Perhaps, without the slant of Mr. Bemis as her lawyer, she
26 could have been more devastating to Centennial. And that is why this issue is so serious and the
27 bell cannot be unrung. This Court needs to sanction the client (who probably instructed Mr. Bemis
28 to do these acts) and/or, Mr. Bemis.

1 Mr. Bemis will argue that there is no harm, no foul. The United States Supreme Court has
2 hit this head on:

3 There is a natural tendency on the part of reviewing courts, properly
4 employing the benefit of hindsight, to be heavily influenced by the severity of
5 outright dismissal as a sanction for failure to comply with a discovery order. It is
6 quite reasonable to conclude that a party who has been subjected to such an order
7 will feel duly chastened, so that even though he succeeds in having the order
8 reversed on appeal he will nonetheless comply promptly with future discovery
9 orders of the district court. **But here, as in other areas of the law, the most**
10 **severe in the spectrum of sanctions provided by statute or rule must be**
11 **available to the district court in appropriate cases, not merely to penalize**
12 **those whose conduct may be deemed to warrant such a sanction, but to deter**
13 **those who might be tempted to such conduct in the absence of such a**
14 **deterrent. If the decision of the Court of Appeals remained undisturbed in**
15 **this case, it might well be that these respondents would faithfully comply**
16 **with all future discovery orders entered by the District Court in this case.**
17 **But other parties to other lawsuits would feel freer than we think Rule 37**
18 **contemplates they should feel to flout other discovery orders of other district**
19 **courts.**

20 **NHL v. Metro. Hockey Club**, 427 U.S. 639, 643 (U.S. 1976). If this Court were simply to
21 minimize the conduct of Mr. Bemis and UHS, it would open the floodgates to lawyers “lawyering
22 up” witnesses. For example, how would Mr. Bemis react if Mr. Murdock was to retain one of UHS
23 nurses and tell him that he can’t speak with her? Without sanctions, that is exactly what is going to
24 happen.

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This Court needs to order Mr. Bemis to follow the rules. This Court needs to sanction Mr. Bemis. This Court should consider severe sanctions because his conduct interfered with the witnesses and may very well have shaped her testimony. A proper sanction would be for the Court to order that there is no privilege between Ms. Wolfe and Mr. Bemis. This Court needs to Order Centennial to produce all addresses and phone numbers of any witnesses not Management (or who have speaking authority) in order that they can be interviewed by Plaintiff's counsel. Finally, a proper sanction would be to remove Mr. Bemis and Hall Prangle from the case. The latter would be proper if Mr. Bemis and Hall Prangle did these things on their own. On the other hand, if the actions were client driven, then this Court ought to consider ordering summary judgment on the issue of foreseeability.

DATED this 21st day of May, 2015

Respectfully submitted,

MURDOCK & ASSOCIATES, CHTD.
ECKLEY M. KEACH, CHTD.

/s/ Robert E. Murdock
Robert E. Murdock Bar No. 4013
Eckley M. Keach Bar No. 1154
521 South Third Street
Las Vegas, NV 89101
Attorneys for Plaintiff

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DECLARATION OF ROBERT E. MURDOCK

STATE OF NEVADA)
) ss.
COUNTY OF CLARK)

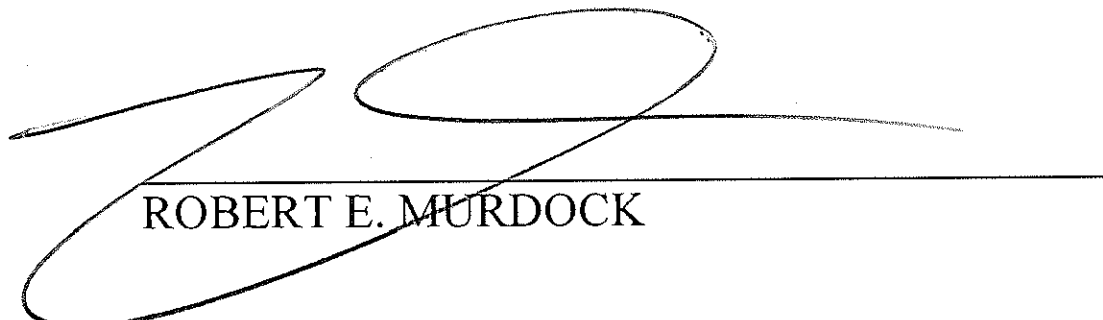
ROBERT E. MURDOCK, being first duly sworn deposes and says:

- 1. I am an attorney duly licensed to practice law in the State of Nevada and, along with Eckley M. Keach, am the attorney for Plaintiff in the captioned action.
- 2. I have personal knowledge of the facts set forth herein and am capable and willing to testify to same if called upon to do so.
- 3. Attached hereto as Exhibit 1 is a true and correct copy of correspondence from Amy A. Feliciano, Deputy Public Defender dated January 31, 2013.
- 4. Attached hereto as Exhibit 2 is a true and correct copy of Margaret Wolfe’s Voluntary Statement to Las Vegas Metropolitan Police Department, dated May 30, 2008.
- 5. Attached hereto as Exhibit 3 is a true and correct copy of the relevant pages of Plaintiff’s 25th Supplement to Early Case Conference Disclosures, dated March 19, 2015.
- 6. Attached hereto as Exhibit 4 is a true and correct copy of Defendant Valley Health System, LLC, d/b/a Centennial Hills Hospital Medical Center and Universal Health Services, Inc’s Eighth Supplement to its Initial Case Conference List of Witnesses and Documents, dated April 22, 2015.
- 7. Attached hereto as Exhibit 5 is a true and correct copy of the Deposition of Margaret Wolfe, R.N., dated May 5, 2015.
- 8. Attached hereto as Exhibit 6 is a true and correct copy of the relevant pages of Defendant Centennial Hills Hospital and Universal Health Services, Inc.’s Opposition to Plaintiff’s Motion for Summary Judgment re: Liability and Joinder to Defendant Steven Dale Farmer’s Limited Opposition dated October 14, 2014.
- 9. Attached hereto as Exhibit 7 is a true and correct copy of the relevant pages of Petitioners Valley Health System, LLC, d/b/a Centennial Hills Hospital Medical Center’s and Universal Health Services, Inc.’s Petition for Writ of Mandamus and/or Writ of Prohibition, dated April 29, 2015.
- 10. Attached hereto as Exhibit 8 is a true and correct copy of the relevant pages of Petitioners Valley Health System, LLC, d/b/a Centennial Hills Hospital Medical Center’s and Universal Health

1 Services, Inc.'s Amended Petition for Writ of Mandamus and/or Writ of Prohibition, dated May 15,
2 2015.

3 11. Attached hereto as Exhibit 9 is a true and correct copy of Mr. Bemis' April 16, 2015 letter to
4 Declarant.

5 FURTHER YOUR DECLARANT SAYETH NAUGHT.

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ROBERT E. MURDOCK

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11

EXHIBIT “1”

EXHIBIT “1”



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Phillip J. Kohn, Public Defender • Daren B. Richards, Assistant Public Defender

PRIVILEGED AND CONFIDENTIAL

January 31, 2013

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RE: State of Nevada v. Steven Dale Farmer
Case No. C245739

Dear Messrs McBride, Bemis, and Vogel and Ms. Hall:

We appreciate your consulting with us on the above-named case. Enclosed, per our January 21, 2013 meeting, please find the documents necessary for your review to assist with your consultation with us on this case. If you have any questions, please do not hesitate to contact me at (702) 455-5733. Thank you.

Very truly yours,

PHILIP J. KOHN
CLARK COUNTY PUBLIC DEFENDER

Amy A. Feliciano
Deputy Public Defender

/aaf
Enclosure(s)

PDDISC0073

AA0502

EXHIBIT “2”

EXHIBIT “2”

LAS VEGAS METROPOLITAN POLICE DEPARTMENT
VOLUNTARY STATEMENT

PAGE 1

EVENT #: 080530-2056 (Reference 080516-1021)

SPECIFIC CRIME: OPEN & GROSS LEWDNESS

DATE OCCURRED:

TIME OCCURRED:

LOCATION OF OCCURRENCE:

CITY OF LAS VEGAS

CLARK COUNTY

NAME OF PERSON GIVING STATEMENT: MARGARET WOLFE

DOB: 06/11/70

SOCIAL SECURITY #:

RACE:

SEX: F

HEIGHT:

WEIGHT:

HAIR:

EYES:

WORK SCHEDULE:

DAYS OFF:

HOME ADDRESS:

HOME PHONE:

WORK ADDRESS: CENTENNIAL HILLS HOSPITAL

WORK PHONE: 629-1211

BEST PLACE TO CONTACT:

BEST TIME TO CONTACT:

The following is the transcription of a tape-recorded interview conducted by DETECTIVE M. SAUNDERS, P# 6076, LVMPD SEXUAL ASSAULT Detail, on MAY 30, 2008 at 0758 hours.

Q. Hello operator. This is Detective M. Saunders, P# 6076, dictating—or not dictating. I'm sorry. Uh, having one taped interview reference event number 080516-1021. This interview is taking place at 8775 West Deer Springs Road, Las Vegas, Nevada 89149. The time is approximately 0758 hours on the 30th of May, 2008. Present for this interview, last name of Wolfe, W-O-L-F-E, first name of Margaret, M-A-R-G-

LAS VEGAS METROPOLITAN POLICE DEPARTMENT
VOLUNTARY STATEMENT

PAGE 2

EVENT #: 080530-2056 (Reference 080516-1021)

STATEMENT OF: MARGARET WOLFE

A-R-E-T. Her date of birth is 06/11 of 1970. She has a work phone number of 629-

1211. Is that information true and correct?

A. Yes.

Q. Okay. Is it all right if I call you Margaret?

A. Yes.

Q. Okay. Margaret, um, I was talking to you a little while ago about an incident that you're aware of that occurred at your hospital, uh, and you work at Centennial Hills Hospital. Correct?

A. That's correct.

Q. And where do, where, what do you do for uh, uh, Centennial Hills Hospital?

A. I'm an E.R. nurse.

Q. _____ And were you working on the day of uh, or the, the evening shift or graveyard shift of...uh...May 15th to May 16th?

A. Yes, I was.

Q. Okay. And was there somebody that worked with you or was assisting, I should say, in the E.R., by the name of Steven Farmer?

A. Yes.

Q. Okay. And what was Steven Farmer's job?

A. He was a CNA. Contracted out through an agency.

Q. _____ And what would you say his job duties were?

PDDISC0163

AA0505

LAS VEGAS METROPOLITAN POLICE DEPARTMENT

VOLUNTARY STATEMENT

PAGE 3

EVENT #: 080530-2056 (Reference 080516-1021)

STATEMENT OF: MARGARET WOLFE

- A. Um, he was to assist the nurses with um, patient care, taking them to the bathroom,
-
- uh, possibly changing their clothing, cleaning any uh, messes that patient, you know, may have. Uh, just, just general assistance in patient care. Transporting patients to and from different units.
- Q. Okay. Um...and did you know Mr. Farmer?
- A. Just through work.
- Q. Just through work. Okay. Um...I want to direct you back to—on that specific in—uh, specific night there was a young lady that was brought into the E.R. that I believe, um, um, Nurse Goodheart, uh, Karen Goodheart worked on, and uh—or was assigned to and her name was um...Roxanne Ca—uh, Cagnina. Was that—does that name sound familiar?
- A. No.
- Q. Okay. Um, are you familiar with the circumstances with Mr. Farmer and his arrest?
- A. Yes.
- Q. Um, that night—uh, let me back up. There was—while I was talking to you um, you relayed some information to me that you saw something one night—on that same night. It was the 15th, that you felt was inappropriate and, and suspicious and can you tell me about what that situation was again.
- A. Yes. I had a patient that was um...brought in...by ambulance and uh, she was laying on the gurney, uh, in a gown that opened from the front. She was brought

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LAS VEGAS METROPOLITAN POLICE DEPARTMENT

VOLUNTARY STATEMENT

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EVENT #: 080530-2056 (Reference 080516-1021)

STATEMENT OF: MARGARET WOLFE

from a Quick Care. Our gowns open in the back, but um, this gown happened to

open in the front and..._____

Q. Okay.

A. _____ um; he went into her room for uh, no apparent reason. The call light was not on. The alarms on the monitor were not going off and I was standing right outside the patient's room. So he had no reason to have gone in there.

Q. And she was your patient?

A. Yes, she was.

Q. Okay. And he was not assigned to her?

A. No, he was not.

Q. Okay.

A. He's just assigned to the general E.R.

Q. Okay.

A. Not to specific patients.

Q. Okay.

A. Um, so he went into the room, opened her gown, fully, underneath the sheets. Uh, he put his hands inside of her gown. I didn't see what he was touching but to me it looked like he pretended like he was uh, checking the monitor wires that were on her to see if there were placed correctly which again, he would have absolutely no

PDDISC0165

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LAS VEGAS METROPOLITAN POLICE DEPARTMENT
VOLUNTARY STATEMENT

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EVENT #: 080530-2056 (Reference 080516-1021)

STATEMENT OF: MARGARET WOLFE

~~reason to do that and in fact it's out of his scope of practice to be checking monitor~~

placements. Um—

Q. What was the...what was this um, this patient, um, what was her mental status?
Was she awake, asleep, was she—

A. She was awake and alert.

Q. _____ Um, was she on any medications?

A. I don't recall if I gave her any morphine or not.

Q. Okay.

A. Um, if she had any medication it would have been morphine.

Q. Okay. And what would—uh, I don't know if you can tell me or not, do you remember
what she was brought in for?

A. I do.

Q. Okay. I don't know—what, you know, never mind. We won't—I don't need to know
that. Do you remember what the patient's name was?

A. It was Denise Hanna.

Q. Denise Hanna. Do you remember how that's spelled?

A. The last name is H-A-N-N-A. The first name is D-E-N-I-S-E.

Q. Okay. And how old was she?

A. Uh, approximately thirties or forties.

Q. Thirties to forties? Okay. And white female, black female, Hispanic?

PDDISC0166

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LAS VEGAS METROPOLITAN POLICE DEPARTMENT

VOLUNTARY STATEMENT

PAGE 6

EVENT #: 080530-2056 (Reference 080516-1021)

STATEMENT OF: MARGARET WOLFE

A. White female.

Q. White female. Okay. Okay. And so...did Ms. Hanna say anything to you or...

A. I was out, outside of the room, but within view, um, at the time. She didn't say anything but she quickly closed her gown and appeared very uncomfortable about what had just happened. Um, when I had gone back into the room, she didn't say anything about the situation but uh, continued to just act in a way that she was uh, very self conscious about uh, being covered up.

Q. Okay. Now you say that he put his hands, ____ he opened up the front of her gown but he put his hands under the sheets. Were there sheets still laying over the top of her?

A. He lifted the sheet up and opened her gown, so the sheet wasn't touching her but it was lifted up over the top of her body.

Q. Okay. So were her breasts completely exposed?

A. Yes.

Q. Okay. And could you see her breasts--

A. ____

Q. --from where you were at?

A. Not from where I was at but the view he was standing at, she would have been completely exposed.

Q. She was completely exposed to him?

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LAS VEGAS METROPOLITAN POLICE DEPARTMENT

VOLUNTARY STATEMENT

PAGE 7

EVENT #: 080530-2056 (Reference 080516-1021)

STATEMENT OF: MARGARET WOLFE

A. Yes.

Q. Okay. And he did this...um...under the pretense that, that you could assu—that you assumed by what you could see what he was doing, like wanting to check wires?

A. Right. The heart monitor.

Q. The heart monitor. Okay. And where would the probes, so to speak, be placed on a, on a female patient, um, that had this type of monitor hooked up to them?

A. There's five leads. Two of them go underneath the clavicle, midline underneath the clavicle. One of them goes, um, approximately between the breasts and then there's two that would be on the ribs, kind of on the sides, that would be on a woman, usually fall underneath her breasts.

Q. Okay. So it'd be just, just under the—to, ___ to the right and the left of the breasts?

A. Yes.

Q. Okay. Um...did he say anything to you, did he say anything to you when uh, when he came out of the room?

A. No, he did not. He walked away.

Q. Did he immediately go to another room or what did he—did you see where he went to or what he did?

A. I didn't see where he went after that.

Q. Okay. Um, and, and Ms. Hanna never said anything to you?

A. No.

LAS VEGAS METROPOLITAN POLICE DEPARTMENT

VOLUNTARY STATEMENT

PAGE 8

EVENT #: 080530-2056 (Reference 080516-1021)

STATEMENT OF: MARGARET WOLFE

- Q. Okay. Did anybody, um...did you talk to anybody about this?
-
- A. I did. I told another male nurse. His name is Ray Sumera.
- Q. Okay.
- A. And I asked him if he would talk to him about it, which he told me he did.
- Q. Okay. Did Ray say, did Mr. Sumera say anything about what uh, Mr. Farmer's response was to him?
- A. No, he did not.
- Q. Did uh...excuse me. Um...has uh, anybody else in the E.R. room, that you've worked with, uh, ev-ever come to you or have you ever talked to anybody that shared similar concerns that you do about Mr. Farmer?
- A. Um, the same nurse, Ray Sumera, had told me um, another time that he-to watch him around my female patients. That he was concerned because he was very, overly attentive with female patients and very anxious to um to connect them to the monitors and disconnect them from the monitors, which would, um, require him to reach into their clothing.
- Q. Okay. Had, had anybody else ____-had you talked to anybody else about Mr. Uh, Mr. Farmer?
- A. I told Julie, who is the nurse I gave report to that morning, about the situation that happened with Ms. Hanna.
- Q. Okay. And again, all this occurred on the uh, morning of the 16th?

LAS VEGAS METROPOLITAN POLICE DEPARTMENT

VOLUNTARY STATEMENT

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EVENT #: 080530-2056 (Reference 080516-1021)

STATEMENT OF: MARGARET WOLFE

- A. Correct.
-
- Q. Okay. Um...was uh, Ms. Hanna, um, released from E.R.—did she go home or was she admitted to the hospital?
- A. She was admitted to the hospital but she was released um, later that day.
- Q. Later that day. Okay. Um...can you think of anything that uh, might be beneficial that I might have forgot to ask to something that you feel is important that I need to know?
- A. He was just very suspicious in his activities. Um, such as going into rooms with doors closed with female patients when he was not asked to.
- Q. Is that against protocol?
- A. It's not against protocol. It's just unusual—
- Q. It's just unusual.
- A. —for a CNA to do something like this.
- Q. Okay.
- A. Typically, if they enter a room, it's because a call light is on or um, a nurse has asked them to go in there. Especially when a door is closed, it's um, very atypical for somebody, even another nurse, just to walk into that room when there's no need for it.
- Q. Okay. Wh—are the door normally closed? What would be a reason that they would close doors?

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LAS VEGAS METROPOLITAN POLICE DEPARTMENT

VOLUNTARY STATEMENT

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EVENT #: 080530-2056 (Reference 080516-1021)

STATEMENT OF: MARGARET WOLFE

- A. If there was um, some sort of exam going on.
-
- Q. Okay.
- A. Um...if there was a procedure going on that was exposing the patient or a patient would be uncomfortable about. Uh, if a patient was sleeping.
- Q. Okay.
- A. Typically the doors stay open and um, curtains, often times, are closed, but doors typically stay open.
- Q. How...if you had to give me an estimate, how many times would you say that you...you've seen him walk into rooms, for female patients, where the doors are closed but there's no, no need for him to be in that room?
- A. Multiple times. I couldn't put a number on it.
- Q. Okay. Um...have you ever had any conversations or talked to Mr. Farmer, before?
- A. Um, just in general-
- Q. Just _____
- A. -course of work.
- Q. Okay. Um...and you said that he just-these, these actions that he was doing is what made uh...it, it was of a concern and made you suspicious?
- A. Yes.

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LAS VEGAS METROPOLITAN POLICE DEPARTMENT

VOLUNTARY STATEMENT

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EVENT #: 080530-2056 (Reference 080516-1021)

STATEMENT OF: MARGARET WOLFE

- Q. Had there been anything else or had any other patients ever come forward to you on anything else, um, anything that Mr. Farmer had ever done that seemed inappropriate?
- A. Not any other patients. No.
- Q. _____ patients? But, but uh, some—Ms. Hanna's the only, only one that, that _____ to mind with you, where you actually observed him do something that, as you put it, was beyond his scope?
- A. Yes.
- Q. Okay. Um...okay. And then you understand that Mr. Farmer is the subject of an investigation right now, into a, a sexual assault?
- A. Yes, I do.
- Q. Okay. Okay. Do you harbor any...do you have any personal gain by coming forward to uh, with—to me with this information?
- A. No, I don't. In fact um, I _____ fear that I could possibly get uh, in trouble with my job if I were to give out information uh, you know, regarding—against _____ with my patients.
- Q. Okay. Um, anything else you can think of that might be of uh, useful information to me to assist me in my investigation?
- A. Um, nothing that comes to mind other than, like I said, there were other people that had um, told me that they had the same—

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LAS VEGAS METROPOLITAN POLICE DEPARTMENT

VOLUNTARY STATEMENT

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EVENT #: 080530-2056 (Reference 080516-1021)

STATEMENT OF: MARGARET WOLFE

Q. Ex-expressed concerns?

A. Yeah. Concerns about him.

Q. Okay. And that would be Ray S-Sumera. Did Julie say she had any concerns?

A. Julie hasn't worked with him because she works on the day shift.

Q. Okay.

A. So um, she wouldn't normally be able to observe-

Q. Okay.

A. -any actions of his.

Q. Okay. And was he primarily just E.R. help? Did he ever go to any other areas of the hospital and assist there instead?

A. He worked on multiple floors.

Q. He worked multiple floors?

A. He was not specifically assigned to the E.R. every night.

Q. Okay. All right.

A. Sometimes he was um, assigned to be what's called a sitter, with um, psychiatric patients that are not medically cleared, if they are transferred up to the medical floor and are a flight risk or need to be observed um, for suicide precautions, things like that. Then they're um...they're put on a one on one sitter situation where he would be alone, watching that patient.

Q. Gotcha. Okay. All right. Well, um, anything else?

LAS VEGAS METROPOLITAN POLICE DEPARTMENT

VOLUNTARY STATEMENT

PAGE 13

EVENT #: 080530-2056 (Reference 080516-1021)

STATEMENT OF: MARGARET WOLFE

- A. There's one other nurse that had come to me that I'm, I'm trying to remember her
name, that had told me some of the same things. Um...if you could turn it off one
second and give me a second to think _____
- Q. That, that's all right. What we'll do, we'll uh, what we'll do is, we'll go ahead and
terminate this interview. Uh-
- A. Kim. That's her name. Kim.
- Q. Kim?
- A. Yeah.
- Q. Okay. And where, where does Kim work?
- A. She works in the E.R. as well.
- Q. She works in the E.R. as well?
- A. Yes.
- Q. Okay. And she, she um, relayed some concern to you also?
- A. The same concerns that Ray had said about uh, his actions were suspicious,
especially with a female patient.
- Q. Was—and, and is Ray a nurse also or is he a—
- A. Yes.
- Q. Okay.
- A. He's a nurse and occasionally works as a charge nurse.
- Q. Okay. Okay. Um...okay. Anything else?

LAS VEGAS METROPOLITAN POLICE DEPARTMENT

VOLUNTARY STATEMENT

PAGE 14

EVENT #: 080530-2056 (Reference 080516-1021)

STATEMENT OF: MARGARET WOLFE

A. (No audible response.)

Q. That you can think of? If I needed to speak with you about anything further, would that, would that still be possible?

A. Yes.

Q. Okay. Operator, this will end the interview. The time is uh...0811 hours on the 30th of May, 2008. Same people present. Same location. Thank you.

THIS VOLUNTARY STATEMENT WAS COMPLETED AT 8775 WEST DEER SPRINGS ROAD, LAS VEGAS, NEVADA 89149, ON THE 30TH DAY OF MAY, 2008 AT 0811 HOURS.

MS:gm

PDDISC0175

AA0517

EXHIBIT “3”

EXHIBIT “3”

Robert E. Murdock, Esq.
Nevada Bar No. 4013
MURDOCK & ASSOCIATES, CHTD.
521 South Third Street
Las Vegas, NV 89101
702-685-6111

Eckley M. Keach, Esq.
Nevada Bar No. 1154
ECKLEY M. KEACH, CHTD.
521 South Third Street
Las Vegas, NV 89101
702-685-6111
Attorneys for Plaintiff

DISTRICT COURT
CLARK COUNTY, NEVADA

ESTATE OF JANE DOE, by and through its
Special Administrator, Misty Petersen,
Plaintiff,

vs.

VALLEY HEALTH SYSTEM LLC, a Nevada
limited liability company, d/b/a CENTENNIAL
HILLS HOSPITAL MEDICAL CENTER;
UNIVERSAL HEALTH SERVICES, INC., a
Delaware corporation; AMERICAN NURSING
SERVICES, INC., a Louisiana corporation;
STEVEN DALE FARMER, an individual; DOES I
through X, inclusive; and ROE CORPORATIONS
I through X, inclusive,
Defendants.

CASE NO. 09-A-595780-C
DEPT. NO. II

**PLAINTIFF'S 25th
SUPPLEMENT TO CASE
CONFERENCE
DISCLOSURES PURSUANT
TO NRCP 16.1**

COMES NOW Plaintiff Estate of Jane Doe, by and through its Special Administrator,
Misty Petersen, by and through its attorneys of record, Murdock & Associates, Chtd. and Eckley
M. Keach, Chtd., and hereby supplements her early case conference disclosures pursuant to NRCP
16.1 as follows. **New information appears in bold.**

64. Criminal discovery provided to Steven Farmer. (This is protected but will be released after the criminal trial of Mr. Farmer and as soon as Plaintiff receives same pursuant to earlier subpoenas.)

65. All documents from the Las Vegas Metropolitan Police Department investigation of Steven Farmer. (This is protected but will be released after the criminal trial of Mr. Farmer and as soon as Plaintiff receives same pursuant to earlier subpoenas.)

66. Correspondence dated April 29, 2014 from Ryan J. Bashor, Deputy Public Defender, to Robert E. Murdock, Esq. with invoice relating to Sandra Higelin in the case of State of Nevada v. Steven Dale Farmer, Case No. C245739.

67. Second Amended Information filed on February 24, 2014 in State v. Farmer, Case No. 10C245739.

68. Court Minutes of May 28, 2014 in State v. Farmer, Case No. 08C249693.

69. Judgment of Conviction filed on June 2, 2014 in State v. Farmer, Case No. C245739 / C249693.

70. CD containing emails concerning Steven Farmer between the Clark County Public Defender's Office and Defense Counsel dated April 9, 2009 through January 21, 2014 (Bates PD000001-PD00135) received via FOIA Request.

71. Documents received from Public Defender's Office Bates Stamped
PDDISC0001-477.

72. Plaintiff reserves the right to supplement this list of documents as further information becomes available.

73. Plaintiff further reserves the right to identify any and all documents identified by any of the Defendants.

WITNESSES

1. Jane Doe, c/o Murdock & Associates, Chtd. and Eckley M. Keach, Chtd., 520 South Fourth Street, Las Vegas, Nevada 89101, will testify regarding the facts and circumstances of the subject incident.

2. Person(s) Most Knowledgeable of Centennial Hills Hospital Medical Center, c/o Hall Prangle & Schoonveld, LLC, 1160 North Town Center Drive, Suite 200, Las Vegas, Nevada

68. Bonnie Pyle, 7711 Little Valley Ave., Las Vegas, NV 89147-8509, is expected to testify regarding conversations had between her and Michelle Simmons regarding Steven Farmer.

69. Plaintiff reserves the right to supplement this list of documents as discovery continues.

70. Plaintiff further reserves the right to identify any and all documents identified by any of the Defendants.

DATED this 19th day of March, 2015.

MURDOCK & ASSOCIATES, CHTD.
ECKLEY M. KEACH, CHTD.

/s/ Robert E. Murdock
Robert E. Murdock Bar No. 4013
Eckley M. Keach Bar No. 1154
521 South Third Street
Las Vegas, NV 89101
Attorneys for Plaintiff

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CERTIFICATE OF SERVICE

I hereby certify that on 3/19/15, I served a copy of the foregoing PLAINTIFF'S 25th SUPPLEMENT TO EARLY CASE CONFERENCE DISCLOSURES upon the parties to this action via the court's Wiznet mandatory electronic service, addressed as follows:

John F. Bemis, Esq. Hall Prangle & Schoonveld, LLC 1160 North Town Center Dr., Suite 200 Las Vegas, NV 89144	Kim Irene Mandelbaum, Esq. Mandelbaum, Ellerton & McBride 2012 Hamilton Lane Las Vegas, NV 89106
Robert C. McBride, Esq. Carroll, Kelly, Trotter, Franzen, McKenna & Peabody 701 North Green Valley Parkway, Suite 200 Henderson, NV 89074	
S. Brent Vogel, Esq. Lewis Brisbois Bisgaard & Smith 6385 South Rainbow Blvd., Suite 600 Las Vegas, NV 89118	
James P.C. Silvestri, Esq. Pyatt Silvestri 701 Bridger Avenue, Suite 600 Las Vegas, NV 89101	

/s/ Robert E. Murdock
An employee of Murdock & Associates, Chtd.

EXHIBIT “4”

EXHIBIT “4”

HALL PRANGLE & SCHOONVELD, LLC
1160 NORTH TOWN CENTER DRIVE
SUITE 200
LAS VEGAS, NEVADA 89144
TELEPHONE: 702-889-6400 FACSIMILE: 702-384-6025

SUPP

MICHAEL E. PRANGLE, ESQ.
Nevada Bar No. 8619
JOHN F. BEMIS, ESQ.
Nevada Bar No. 9509
HALL PRANGLE & SCHOONVELD, LLC
1160 North Town Center Drive, Suite 200
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702-889-6400 – Phone
702-384-6025 – Facsimile
mprangle@hpslaw.com
jbemis@hpslaw.com
Attorneys for Defendant
Valley Health System, LLC d/b/a
Centennial Hills Hospital Medical Center

DISTRICT COURT

CLARK COUNTY, NEVADA

MISTY PETERSON, AS SPECIAL
ADMINISTRATOR OF THE ESTATE OF
JANE DOE,

Plaintiff,

vs.

VALLEY HEALTH SYSTEM LLC, a Nevada
limited liability company, d/b/a CENTENNIAL
HILLS HOSPITAL MEDICAL CENTER;
UNIVERSAL HEALTH SERVICES, INC., a
Delaware corporation; AMERICAN NURSING
SERVICES, INC., a Louisiana corporation;
STEVEN DALE FARMER, an individual; DOES I
through X, inclusive; and ROE CORPORATIONS I
through X, inclusive,

Defendants.

CASE NO. A595780
DEPT NO. II

**DEFENDANT VALLEY HEALTH SYSTEM, LLC d/b/a CENTENNIAL HILLS
HOSPITAL MEDICAL CENTER'S EIGHTH SUPPLEMENT TO IT'S INITIAL
EARLY CASE CONFERENCE LIST OF WITNESSES AND DOCUMENTS**

1 DEFENDANT VALLEY HEALTH SYSTEM, LLC, d/b/a CENTENNIAL HILLS
2 HOSPITAL MEDICAL CENTER (hereafter Centennial Hills Hospital), by and through its
3 attorneys of record, the law firm of HALL PRANGLE & SCHOONVELD, LLC, hereby submits
4 its Eighth Supplement to its NRCP 16.1 List of Witnesses and Documents as follows
5 (supplements provided in **bold**):

6
7 I.

8 WITNESSES

- 9 1. Jane Doe
10 c/o Robert E. Murdock, Esq.
11 MURDOCK & ASSOCIATES, CHTD.
12 521 South Third Street
13 Las Vegas, Nevada 89101

14 Jane Doe is expected to testify as to the facts and circumstances surrounding this matter
15 and her alleged damages.

- 16 2. Jane Doe's two sons

17 Jane Doe's two sons are expected to testify as to the facts and circumstances surrounding
18 this matter, their mother's alleged damages and conversations they had with their mother about
19 the incident.

- 20 3. Steven Dale Farmer
21 c/o Robert C. McBride, Esq.
22 MANDELBAUM ELLERTON & MCBRIDE
23 2012 Hamilton Lane
24 Las Vegas, Nevada 89106

25 Mr. Farmer is expected to testify as to the facts and circumstances surrounding this
26 matter and the allegations made against him.

- 27 4. Debra Scott, MSN, RN, FRE
28 Executive Director
Nevada State Board of Nursing
5011 Meadowwood Mall Way, Suite 300
Reno, NV 89502-6567

Ms. Scott is expected to testify regarding The certification process, background check
and investigation performed by the Nevada Board of Nursing prior to certification. The

1 Certification Process for a Certified Nurses Assistant. Revocation of Steven Dale Farmer's CNA
2 Certificate (CNA021509). Investigation of Steven Dale Farmer by the Nevada Board of Nursing
prior to revocation of Steven Dale Farmer's CNA certificate (CNA021509).

- 3 5. Michael Egstad, Manager I
4 Licensing and Certification Program
5 California Department of Public Health (CDPH)
6 ATCS - MS 3301
7 P.O. Box 997416
1615 Capitol Avenue
Sacramento, CA 95899-7416

8 Mr. Egstad is expected to testify regarding The certification process, background check
9 and investigation performed by the California Board of Nursing prior to CNA certification. The
10 Certification Process for a Certified Nurses Assistant. The Certification Process for Steven D.
11 Farmer (Home Health Certificate Number 00199703, Nurse Assistant Certificate 00659300).
Revocation of Steven Dale Farmer's CNA Certificate (Home Health Certificate Number
00199703, Nurse Assistant Certificate 00659300).

- 12 6. Collado Jeunnesse, RN
13 Kim Moon, RN
14 Abraham Deppa, CNA
15 Nikki Carter, CNA
16 Marina McDowell, CNA
17 Alana Schons, CNA
18 Nelina Arante, RN
19 Ronald Lodevico
20 Venise Abelard, CNA
Paula Mosley, RN
Pamela Flagg, CNA
Amber Vergara
Loretta Korinis
Michelle Lucas

21 The above identified nurses and certified Nurses' Assistants are expected to testify as to
22 the care and treatment rendered as well as the facts and circumstances surrounding this matter.

- 23 7. Curtis E. Bazemore, M.D.
24 Cobinder S. Chopra, M.D.
25 James E. Mock, M.D.

26 The above identified physicians are expected to testify as to the care and treatment
27 rendered as well as the facts and circumstances surrounding this matter.

28 . . .

- 1 8. Employees, former employees, representatives
2 of and former representatives of American
3 Nursing Services, Inc.,
4 c/o LEWIS BRISBOIS BISGAARD & SMITH
5 6385 South Rainbow Blvd., Suite 600
6 Las Vegas, NV 89118

7 The above described witnesses are expected to be identified during discovery and to
8 testify in regards to all facts and circumstances surrounding Steven Farmer and the incident in
9 questions including but not limited to investigations performed, background checks performed
10 regarding Steven Farmer and the assignment of Steven Farmer to Centennial Hills Hospital.

- 11 9. Crystal Johnson
12 4650 North Rainbow Blvd., #2109
13 Las Vegas, NV 89108
14 714-580-5383

15 Ms. Johnson is expected to testify as to the facts and circumstances surrounding this
16 matter. THIS INDIVIDUAL IS REPRESENTED BY COUNSEL.

- 17 10. Douglas Nichols
18 c/o John F. Bemis, Esq.
19 HALL PRANGLE & SCHOONVELD, LLC
20 1160 North Town Center Drive, Suite 200
21 Las Vegas, NV 89144

22 Mr. Nichols is expected to testify as to the facts and circumstances surrounding this
23 matter.

- 24 11. Mary Jo Solon
25 Southwest Medical Associates

26 Ms. Solon is expected to testify as to the facts and circumstances surrounding this matter.

- 27 12. Matthew Ross
28 Rawson-Neal Psychiatric Hospital
1650 Community College Dr.
Las Vegas, NV 89146

Mr. Ross is expected to testify as to the facts and circumstances surrounding this matter.

13. Michelle Simmons
5336 Fireside Ranch Ave.
Las Vegas, NV 89131

1 Ms. Simmons is expected to testify as to the facts and circumstances surrounding this
2 matter.

3 14. Salvatore Sparacino
4 c/o John F. Bemis, Esq.
5 HALL PRANGLE & SCHOONVELD, LLC
6 1160 North Town Center Drive, Suite 200
7 Las Vegas, NV 89144

8 Mr. Sparacino is expected to testify as to the facts and circumstances surrounding this
9 matter.

10 15. Nida Canque
11 (702) 301-0433

12 16. Asuncion Layug
13 6628 MacDoogie Street
14 Las Vegas, NV 89166
15 Ph: (702) 405-7919

16 17. Alexe Brown-Gay
17 5973 Spinnaker Point Avenue
18 Las Vegas, NV 89110
19 Ph: (702) 438-2860

20 18. Emma Cortez
21 1835 Pallid Swift Court
22 North Las Vegas, NV 89084
23 Ph: (702) 292-8330

24 19. Maria Dakudo
25 5201 Meadows Lily Avenue
26 Las Vegas, NV 89108
27 Ph: (702) 545-0938

28 20. Janette Luoang
455 E. Twain Avenue, #144
Las Vegas, NV 89169
Ph: (213) 839-3915

21 Tiffiney Bills
22 4230 Valley Regents Drive
23 North Las Vegas, NV 89032
24 Ph: (702) 443-4813

25 ///

HALL PRANGLE & SCHOONVELD, LLC
1160 NORTH TOWN CENTER DRIVE
SUITE 200
LAS VEGAS, NEVADA 89144
TELEPHONE: 702-889-6400 FACSIMILE: 702-384-6025

22. **Deepa Abraham**
4515 N. Las Vegas Blvd., Bldg, 78 #1003
Las Vegas, NV 89115
Ph: (702) 643-6634
23. **Cindy Parmalee, former Nursing Clinical Supervisor**
4516 Mohawk River Avenue
North Las Vegas, NV 89031
Ph: (702) 541-6630
24. **Pierre**
7835 S. Rainbow Blvd. #1771
Las Vegas, NV 89131
Ph: (702) 897-0708
25. **Salcedo**
8613 Dodds Canyon
Las Vegas, NV 89131
Ph: (702) 332-2423
26. **Walker**
3829 Moonshine Falls Avenue
North Las Vegas, NV 89085
Ph: (702) 595-9205
27. **Dechavez**
6913 Puetollano Drive
North Las Vegas, NV 89084
Ph: (702) 396-1784
28. **Gayle**
Unknown Contact Information
29. **Mosley**
15757 N 90th Place #1077
Scottsdale, AZ 85260
Ph: (314) 221-5914
30. **Mosely P**
6765 Tulip Falls Drive, #2050
Las Vegas, NV 89011
Ph: (702) 418-2618

///

///

31. Schuele
5277 Drifting Sands Court
Las Vegas, NV 89149
Ph: (503) 338-8864
32. Stringer
5125 Costabella Lane
Las Vegas, NV 89130
Ph: (702) 459-9043
33. Wescott
Unknown
34. Ramona Albulan, former Charge Nurse
Ph: (702) 982-8767
Ph: (440) 840-4740
35. Vicky Johnson, former Director of Nursing
Ph: (702) 806-5208

The above-named individuals, Canque – Johnson (#15-35), are former employees of Defendant, Valley Health System, LLC, and have been identified by Defendant as having worked with Defendant Steven Farmer and Christine Murray, RN on the same shift and/or floor in February and/or March of 2008, and may have knowledge and information about the alleged incident with the elderly patient to which Nurse Murray referred in her deposition testimony. Defendant has provided the foregoing individuals' last known contact information, and has made efforts to verify the accuracy of such contact information to the best of its ability.

36. Lilibeth Parejas, RN
37. Bernadine Rebogio, RN
38. Janice Collado, RN
39. Darlene Infante Carbonell, RN
40. Maria Dacquell, CNA
41. Rhona Lopez
42. Aman McPherson
43. Ailynne Belbis
44. Larena Abdul
45. Rebecca Cronister
c/o John F. Bemis, Esq.
HALL PRANGLE & SCHOONVELD, LLC
1160 North Town Center Drive, Suite 200
Las Vegas, NV 89144

The above-named individuals, Parejas – Cronister (#36-45), are current employees of Defendant, Valley Health System, LLC, and have been identified by Defendant as having

1 worked with Defendant Steven Farmer and Christine Murray, RN on the same shift and/or
2 floor in February and/or March of 2008, and may have knowledge and information about
3 the alleged incident with the elderly patient to which Nurse Murray referred in her
4 deposition testimony.

5 46. Defendant reserves the right to supplement its list of witnesses.

6 47. Defendant reserves the right to call any witnesses identified by any other parties
7 in this litigation.

8 II.

9 DOCUMENTS

10 1. Jane Doe's medical records Bates Stamped CH00001 through CH00317
11 (Exhibit A on CD).

12 2. Centennial Hills Hospital Daily Security Logs
13 Bates Numbered SDAL 000001 – 001421 (Exhibit B on CD).

14 3. Records produced by Nevada State Board of Nursing
15 (Exhibit C on CD).

16 4. Centennial Hills Hospital Job Description for CNA
17 Bates Numbered Unit Coord/C N A – 1 -8 (Exhibit D on attached CD).

18 5. Daily Patient Assignment Sheets for the 6th Floor dated 05/13/2008 –
19 05/18/2008. Bates Numbered ASSIGN000001 – 000012
20 (Exhibit E)

21 6. Critical Care Services Assignment Sheets for the 5th Floor dated 05/13/2008 –
22 05/18/2008. Bates Numbered ASSIGN000013 – 000023
23 (Exhibit F)

24 7. Emergency Department Daily Assignments dated 05/13/2008 – 05/18/2008.
25 Bates Numbered ASSGIN000024 – 000035
26 (Exhibit G)

27 8. Steven Dale Farmer Staffing Sheets.
28 Bates Numbered STAFF000001 – 000003
(Exhibit H)

9. Broadlane, Inc. Contract dated 08/12/2007
Bates Numbered BROADLANE000001 – 000050
(Exhibit I)

- 1 10. Privilege Log for Schedule of Steven Dale Farmer
(Exhibit J)
- 2 11. Schedule of Steven Dale Farmer at Centennial Hills Hospital from
3 April 13, 2008 through June 7, 2008 bates labeled CHH00318 – CHH00321
4 (Exhibit K)
- 5 12. Privilege Log for Schedule of Steven Dale Farmer
(Exhibit L)
- 6 13. Schedule of Steven Dale Farmer at Centennial Hills Hospital on May 14, 2008
7 bates labeled CHH00322 – CHH00325
8 (Exhibit M)
- 9 14. Privilege Log for Centennial Hills Hospital HR File for Steven Dale Farmer
10 (Exhibit N)
- 11 15. Centennial Hills Hospital HR File for Steven Dale Farmer bates labeled
12 CHH00326 – CHH00365
13 (Exhibit O)
- 14 16. Privilege Log for Agency Payroll Spreadsheets for February 2008,
15 March 2008, April 2008 and May 2008
16 (Exhibit P)
- 17 17. Agency Payroll Spreadsheets for February 2008, March 2008, April, 2008,
18 and May 2008 bates labeled CHH00366 – CHH00372
19 (Exhibit Q)
- 20 18. Medical Records from Clark County Adult Mental Health bates labeled
21 CCAMH00001 – CCAMH00022 (Exhibit R attached hereto via CD)
- 22 19. Medical Records from Gary Chopra Gobinder, MD bates labeled Chop00001 –
23 Chop00038 (Exhibit S attached hereto via CD)
- 24 20. Medical Records from MountainView Hospital bates labeled MVH00001 –
25 MVH00159 (Exhibit T attached hereto via CD)
- 26 21. Medical Records from Southern Hills Hospital bates labeled Shills00001 –
27 Shills00241 (Exhibit U attached hereto via CD)
- 28 22. Medical Records from University Medical Center bates labeled UMC00001 –
UMC00209 (Exhibit V attached hereto via CD)
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23. Las Vegas Metropolitan Police Department's Criminal File of Steven Dale Farmer bates labeled LVMPD00001 – LVMPD0190 with Privilege Log.
(Exhibit W attached hereto via CD)
CONFIDENTIAL: SUBJECT TO PROTECTIVE ORDER.
24. Las Vegas Metropolitan Police Department's Color Photos of Steven Dale Farmer bates labeled LVMPD0191 – LVMPD0196.
(Exhibit X attached hereto via CD)
CONFIDENTIAL: SUBJECT TO PROTECTIVE ORDER.
25. Las Vegas Metropolitan Police Department's Audio File of 911 Call
(Exhibit Y attached hereto via CD)
CONFIDENTIAL: SUBJECT TO PROTECTIVE ORDER.
26. Defendant reserves the right to supplement this list of documents.
27. Defendant reserves the right to utilize any document utilized or identified by any other party to this litigation.

DATED this 22nd day of April, 2015

HALL PRANGLE & SCHOONVELD, LLC

By: /s/: Brigitte E. Foley, NV Bar No. 12965 for:
MICHAEL E. PRANGLE, ESQ.
Nevada Bar No. 8619
JOHN F. BEMIS, ESQ.
Nevada Bar No. 9509
1160 North Town Center Drive, Suite 200
Las Vegas, NV 89144
Attorneys for Defendant
Valley Health System, LLC d/b/a
Centennial Hills Hospital Medical Center

HALL PRANGLE & SCHOONVELD, LLC
1160 NORTH TOWN CENTER DRIVE
SUITE 200
LAS VEGAS, NEVADA 89144
TELEPHONE: 702-889-6400 FACSIMILE: 702-384-6025

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that I am an employee of HALL PRANGLE & SCHOONVELD, LLC; that on the 22nd day of April, 2015, I served a true and correct copy of the foregoing **DEFENDANT VALLEY HEALTH SYSTEM, LLC d/b/a CENTENNIAL HILLS HOSPITAL MEDICAL CENTER'S EIGHTH SUPPLEMENT TO IT'S INITIAL EARLY CASE CONFERENCE LIST OF WITNESSES AND DOCUMENTS** via E-Service on Wiznet pursuant to mandatory NEFCR 4(b) to the following parties:

Robert E. Murdock, Esq.
MURDOCK & ASSOCIATES, CHTD.
520 South Fourth Street
Las Vegas, Nevada 89101
Attorneys for Plaintiff

Eckley M. Keach, Esq.
ECKLEY M. KEACH, CHTD.
520 South Fourth Street
Las Vegas, Nevada 89101
Attorneys for Plaintiff

S. Brent Vogel, Esq.
LEWIS BRISBOIS BISGAARD & SMITH
6385 South Rainbow Blvd., Suite 600
Las Vegas, NV 89118
-and-
James P.C. Silvestri, Esq.
PYATT SILVESTRI
701 Bridger Ave., Suite 600
Las Vegas, NV 89101
Attorneys for Defendant
American Nursing Services, Inc.

Robert C. McBride, Esq.
CARROL, KELLY, TROTTER,
FRANZEN, MCKENNA & PEABODY
8329 W. Sunset Road, Suite 260
Las Vegas, NV 89113
Attorneys for Defendant
Steven Dale Farmer Attorneys for
Defendant
Steven Dale Farmer

/s/ Brigitte E. Foley
An employee of HALL PRANGLE & SCHOONVELD, LLC

EXHIBIT “5”

EXHIBIT “5”

<p style="text-align: right;">Page 1</p> <p>1 DISTRICT COURT 2 CLARK COUNTY, NEVADA 3 JANE DOE, 4 Plaintiff, 5 vs. 6 VALLEY HEALTH SYSTEM LLC, 7 a Nevada limited 8 liability company, d/b/a 9 CENTENNIAL HILLS HOSPITAL 10 MEDICAL CENTER; UNIVERSAL 11 HEALTH SERVICES, INC., a 12 Delaware corporation; 13 AMERICAN NURSING 14 SERVICES, INC., a 15 Louisiana corporation; 16 STEVEN DALE FARMER, an 17 individual; DOES I 18 through X, inclusive; and 19 ROE CORPORATIONS I 20 through X, inclusive, 21 Defendants. 22 ~~~~~ 23 DEPOSITION OF 24 MARGARET WOLFE, RN 25 26 Wednesday, May 5, 2015 27 9:30 a.m. 28 29 521 S. Third Street 30 Las Vegas, Nevada 31 32 Carol O'Malley, CCR 178, RMR3</p>	<p style="text-align: right;">Page 3</p> <p>1 APPEARANCES OF COUNSEL (Cont'd) 2 3 For Defendant Farmer: 4 5 CARROLL, KELLY, TROTTER, 6 FRANZEN, McKENNA & PEABODY 7 HEATHER S. HALL, ESQ. 8 Suite 260 9 8329 W. Sunset Road 10 Las Vegas, Nevada 89113 11 702.792.5755 12 702.796.5855 Fax 13 hshall@cktfmlaw.com 14 15 16 17 18 19 20 21 22 23 24 25</p>
<p style="text-align: right;">Page 2</p> <p>1 APPEARANCES OF COUNSEL 2 For Plaintiff: 3 KEACH MURDOCK 4 ROBERT E. MURDOCK, ESQ. 5 520 S. Fourth Street 6 Second Floor 7 Las Vegas, Nevada 89101 8 702.384.5563 9 702.384.4570 Fax 10 lasvegasjustice@aol.com 11 12 For Defendant Valley Health System LLC, d/b/a 13 Centennial Hills Hospital Medical Center: 14 HALL PRANGLE & SCHOONVELD, LLC 15 JOHN F. BEMIS, ESQ. 16 Suite 200 17 1160 N. Town Center Drive 18 Las Vegas, Nevada 89144 19 702.889.6400 20 702.384.6025 Fax 21 jlbemis@hpslaw.com 22 23 For Defendant American Nursing Services, Inc.: 24 25 LEWIS BRISBOIS BISGAARD & SMITH LLP 26 AMANDA J. BROOKHYSER, ESQ. 27 6385 S. Rainbow Boulevard 28 Suite 600 29 Las Vegas, Nevada 89118 30 702.693.4320 31 702.893.3383 32 702.893.3789 Fax 33 amanda.brookhyser@lewisbrisbois.com 34 35 PYATT & SILVESTRI 36 JAMES P.C. SILVESTRI, ESQ. 37 701 Bridger Avenue 38 Las Vegas, Nevada 89101 39 702.383.6000 40 702.477.0088 41 jsilvestri@psh-law.com</p>	<p style="text-align: right;">Page 4</p> <p>1 INDEX OF EXAMINATION 2 3 WITNESS: Margaret Wolfe, RN 4 5 6 7 EXAMINATION PAGE 8 9 By Mr. Murdock 5, 75 10 By Mr. Silvestri 64, 76 11 By Ms. Hall 74 12 13 14 15 INDEX TO EXHIBITS 16 17 EXHIBITS MARKED 18 1 Voluntary Statement of Margaret Wolfe 44 19 20 21 22 23 24 25</p>

<p style="text-align: right;">Page 5</p> <p>1 Deposition of Margaret Wolfe, RN 2 May 6, 2015 3 (Prior to the commencement of the deposition, 4 all of the parties present agreed to waive 5 statements by the court reporter, pursuant to 6 Rule 30(b)(4) of NRCP.) 7 8 MARGARET WOLFE, RN, 9 having been first duly sworn, testified as follows: 10 11 EXAMINATION 12 BY MR. MURDOCK: 13 Q. Would you please state your name for the 14 record? 15 A. Margaret Wolfe. 16 Q. Ms. Wolfe, have you ever had your 17 deposition taken before? 18 A. No. 19 Q. Are you represented by counsel here? 20 A. Yes. 21 Q. Who is that? 22 A. John Bemis. 23 Q. How did you come to be represented by Mr. 24 Bemis? 25 A. I believe I was contacted by their office.</p>	<p style="text-align: right;">Page 7</p> <p>1 Q. Okay. Did they also tell you -- or did Mr. 2 Bemis tell you that he helped Mr. Farmer out during 3 the criminal trial? 4 MR. BEMIS: I'm going to instruct her 5 not to -- 6 BY MR. MURDOCK: 7 Q. Did he tell you that he provided documents 8 to Mr. Farmer, so he could help out his criminal 9 case? 10 MR. BEMIS: I'm going to instruct her 11 not to answer anything that her and I discussed. 12 BY MR. MURDOCK: 13 Q. Did he tell you that he actually represents 14 the hospital, and not you, even here today? 15 MR. BEMIS: You can answer, but you're 16 not to answer anything you and I discussed. 17 BY MR. MURDOCK: 18 Q. Are you going to take your counsel's word 19 for it? 20 A. Yes, I am. 21 Q. Okay. When did you get that phone call 22 where they offered to represent you? 23 A. Approximately a month ago. I don't 24 remember exactly. 25 Q. And who called you specifically? Do you</p>
<p style="text-align: right;">Page 6</p> <p>1 Q. So he told you that you were going to be 2 represented by him? 3 A. They did. 4 Q. They did? 5 MR. BEMIS: I object to form. 6 From the aspect of her acceptance 7 of the representation, she can talk. But after that 8 I'm going to instruct her not to answer about 9 anything we talked about. 10 BY MR. MURDOCK: 11 Q. Go ahead. 12 A. I was offered their representation, and I 13 accepted it. 14 Q. Okay. Good. How much are you paying? 15 A. I'm not paying anything. 16 Q. When you were offered their representation, 17 did they tell you that they also allegedly represent 18 a whole bunch of other people? 19 MR. BEMIS: I object to form and 20 instruct her not to answer anything we discussed. 21 BY MR. MURDOCK: 22 Q. Go ahead. You can answer the question, if 23 you want. 24 A. I'm going to take the advice of my 25 attorney.</p>	<p style="text-align: right;">Page 8</p> <p>1 remember? 2 A. It was a female. I don't remember her 3 name. 4 Q. Was she a lawyer? 5 A. I don't know. 6 Q. And in that phone call was she the one who 7 said, "We would like to represent you," or something 8 like that, or offered to represent you? 9 A. I believe so. 10 Q. Did she tell you about any potential 11 conflicts of interest between yourself and the 12 hospital? 13 MR. BEMIS: I'm going to instruct her 14 not to answer anything that's been discussed with 15 myself or my firm. 16 BY MR. MURDOCK: 17 Q. Do you know if she was actually even from 18 their firm, whoever this person was? 19 A. I'm assuming that she is. I don't know for 20 a fact. 21 Q. Okay. Do you remember her name? 22 A. No. 23 Q. Did she tell you she was from their firm? 24 A. She told me she was from a firm. I don't 25 remember the name of that firm.</p>

<p>Page 9</p> <p>1 Q. Okay. And prior to your agreeing to be 2 represented by her -- so in other words, you had not 3 agreed to let them represent you at that point -- 4 tell me about the conversation you had. 5 A. She told me that there was a deposition 6 that they wanted to do, that they wanted me to be a 7 part of, and would I be willing to help them out with 8 that. 9 Q. And you said? 10 A. And I said, "Yes." 11 Q. And what else? 12 A. I believe at that point she offered the 13 representation, and I accepted. 14 Q. Did she tell you that you needed 15 representation? 16 MR. BEMIS: Objection to after -- 17 MR. MURDOCK: Prior. Prior. 18 BY MR. MURDOCK: 19 Q. Did she tell you that you needed 20 representation? 21 A. No. 22 Q. Did she advise you that she thought you 23 should be represented? 24 A. No. 25 Q. Did you believe you needed to be</p>	<p>Page 11</p> <p>1 Q. When were the phone conversations? Do you 2 remember? 3 A. Within the last couple of weeks. 4 Q. Now, your deposition was originally set for 5 last week? 6 A. Yes. 7 Q. You're aware of that, right? 8 A. Yes. 9 Q. But you did not show up, is that correct? 10 A. That's correct. 11 Q. And why didn't you show up? 12 A. I had a conflict of interest with my 13 employer. I did try to cancel the deposition, and 14 apparently was unable to, and I had a choice to make 15 of where I had to be. 16 I had a mandatory education that I 17 had to do with my employer, that had I not shown up 18 to that, I would have been suspended. 19 Q. Okay. 20 A. And so I chose to keep my job. 21 Q. Did you tell Mr. Bemis that? 22 MR. BEMIS: I'm going to tell her not 23 to respond to anything her and I discussed. 24 BY MR. MURDOCK: 25 Q. Did Mr. Bemis tell you there was a court</p>
<p>Page 10</p> <p>1 represented, for any reason whatsoever? 2 MR. BEMIS: Calls for speculation. 3 BY MR. MURDOCK: 4 Q. Go ahead. 5 A. I'm not sure if I should answer or not. 6 Q. Well, did you believe that you needed to be 7 represented, prior to her offering you 8 representation? 9 A. No. 10 Q. In other words, was there any reason in 11 your head that you thought, "Hey, maybe I should get 12 a lawyer?" 13 A. No. 14 Q. But when they offered it, you accepted it, 15 right? 16 A. Yes. 17 Q. It's free, right? 18 A. Well, that was part of it. 19 Q. Okay. And without telling me the contents 20 of the discussions, did you at some point have a 21 discussion with Mr. Bemis? 22 A. Yes. 23 Q. When was that? 24 A. We've had a few conversations on the phone, 25 and then one yesterday.</p>	<p>Page 12</p> <p>1 notice for you to be here last week? 2 MR. BEMIS: I'm going to instruct her 3 not to answer anything that her and I discussed. 4 BY MR. MURDOCK: 5 Q. Did he tell you that? 6 A. I'm going to take his advice. 7 Q. Did he tell you that you could be 8 sanctioned? 9 MR. BEMIS: I'm going to instruct her 10 not to answer anything that her and I discussed. 11 BY MR. MURDOCK: 12 Q. Did he tell you that he could be 13 sanctioned? 14 MR. BEMIS: I instruct her not to 15 answer anything that her and I discussed. 16 BY MR. MURDOCK: 17 Q. Did he tell you that he attempted to get 18 the Court to change it by filing a motion, but the 19 Court refused? 20 MR. BEMIS: I'm going to instruct her 21 not to answer anything that her and I have discussed. 22 BY MR. MURDOCK: 23 Q. Did he tell you that he was too late in 24 filing the motion, despite the fact he could have 25 filed something earlier? Did he tell you that?</p>

<p style="text-align: right;">Page 13</p> <p>1 MR. BEMIS: I'm going to instruct her 2 not to answer anything her and I discussed. 3 BY MR. MURDOCK: 4 Q. Did he tell you that he fell below the 5 standard of care already in representing you? Did he 6 tell you that? 7 MR. BEMIS: I'm going to instruct her 8 not to answer anything that her and I discussed. 9 BY MR. MURDOCK: 10 Q. You're currently a nurse, correct? 11 A. Yes. 12 Q. And where are you a nurse at? 13 A. UMC pediatric ER. 14 Q. Now, Ms. Wolfe, you have no legal training, 15 do you? 16 A. No. 17 Q. You're not a lawyer? 18 A. No. 19 Q. You're not a paralegal? 20 A. No. 21 Q. You haven't gone to school for any legal 22 things? 23 A. Nothing. 24 Q. Do you know what perjury is? 25 A. Yes, I do.</p>	<p style="text-align: right;">Page 15</p> <p>1 Q. Who is he? 2 A. He was a CNA that worked at Centennial 3 Hospital at the same time I was there. 4 Q. What did he look like? 5 A. Poppa Smurf. Sorry. He had a white beard, 6 white hair, medium stature. 7 Q. Did you give a statement to the police a 8 couple days -- well, actually it would have been 9 maybe a couple weeks after he was arrested, in 2008? 10 A. Yes. 11 Q. Did you lie to the police? 12 A. No. 13 Q. Did you make up any stories to tell the 14 police? 15 A. No. 16 Q. After you spoke with the police, did you 17 speak with anybody at Centennial Hills Hospital about 18 what you told the police? 19 A. I don't recall. 20 Q. Who was your director of nursing at the 21 time? Do you remember? 22 A. Amy Bochenek. 23 Q. That's how you pronounce it? 24 A. (Witness nods.) 25 Q. Is that a yes?</p>
<p style="text-align: right;">Page 14</p> <p>1 Q. What is perjury? 2 A. Lying under oath. 3 Q. Do you know that it is a crime to lie to 4 the police? 5 A. Yes, I do. 6 Q. Do you know that it is a crime to obstruct 7 justice? 8 A. Yes. 9 Q. Do you know that it is a crime to obstruct 10 justice by lying to the police? 11 A. Yes. 12 Q. Prior to this deposition you were sitting 13 in my lobby, correct? 14 A. Yes. 15 Q. And I came to speak with you, correct? 16 A. Yes. 17 Q. And at that time I did not have an actual 18 conversation with you, did I? 19 A. No. 20 Q. On the other hand, I spoke, correct? 21 A. Correct. 22 Q. I didn't ask you one question, correct? 23 A. Right. 24 Q. Do you know Steven Farmer? 25 A. Yes.</p>	<p style="text-align: right;">Page 16</p> <p>1 A. Yes. 2 Q. Now, do you recall speaking with Amy -- 3 A. Yes. 4 Q. I'm sorry, let me finish my question. 5 A. Okay. 6 Q. The only reason is, she's going to get mad 7 at me. 8 Do you recall speaking with Amy 9 about Mr. Farmer? 10 A. Yes. 11 Q. Was that before or after he was arrested? 12 A. It was after, because the situation 13 happened on the same day. 14 Q. Right. Okay. And you went to Amy to 15 discuss the situation with Ms. Hanna, is that 16 correct? 17 A. I didn't go directly to Amy, no. 18 Q. Who did you go to? 19 A. I went to my charge nurse that was on that 20 shift. 21 Q. Who was that, by the way? 22 A. Ray Sumera. 23 Q. Now, Ray testified the other day that he 24 was a relief charge nurse. 25 A. Uh-huh.</p>

<p style="text-align: right;">Page 17</p> <p>1 Q. Is that a yes?</p> <p>2 A. Yes.</p> <p>3 Q. What is a relief charge nurse?</p> <p>4 MR. BEMIS: I object to form. Go ahead</p> <p>5 and answer.</p> <p>6 THE WITNESS: A relief charge nurse</p> <p>7 fills in when the permanent charge nurse is not</p> <p>8 available.</p> <p>9 BY MR. MURDOCK:</p> <p>10 Q. Okay. Why did you go to Ray to talk about</p> <p>11 that incident?</p> <p>12 A. Because that's my chain of command that I</p> <p>13 would follow.</p> <p>14 Q. Have you seen the transcript of the</p> <p>15 conversation you had with Detective Saunders?</p> <p>16 A. Yes.</p> <p>17 Q. Do you recall any mistakes in that</p> <p>18 transcript?</p> <p>19 A. No.</p> <p>20 Q. So you went to Ray because of the chain of</p> <p>21 command. After you went to Ray, did you go to</p> <p>22 somebody else?</p> <p>23 A. Yes.</p> <p>24 Q. Is that when you went to Amy?</p> <p>25 A. No.</p>	<p style="text-align: right;">Page 19</p> <p>1 Q. Who did you speak to?</p> <p>2 A. Ray Sumera, and probably a couple other ER</p> <p>3 nurses, but I don't recall exactly who.</p> <p>4 Q. And when would that have been? Do you</p> <p>5 recall?</p> <p>6 A. Just throughout the course of his</p> <p>7 employment in the ER.</p> <p>8 Q. And do you recall what you discussed?</p> <p>9 A. I told them that he made me very</p> <p>10 uncomfortable, especially around female patients, and</p> <p>11 I did not want him in my female patients' rooms.</p> <p>12 Q. What made you uncomfortable?</p> <p>13 A. He was overly helpful with female patients,</p> <p>14 and it was just a feeling I had that made me</p> <p>15 uncomfortable and uneasy around him.</p> <p>16 He would go into females rooms</p> <p>17 when there was no need for him to be in there,</p> <p>18 sometimes with the door or the curtain shut, and I</p> <p>19 felt that was inappropriate.</p> <p>20 Q. And you had voiced this to Ray prior to the</p> <p>21 incident with Ms. Hanna?</p> <p>22 A. Yes.</p> <p>23 Q. And would it have been weeks and/or a month</p> <p>24 prior?</p> <p>25 A. Weeks.</p>
<p style="text-align: right;">Page 18</p> <p>1 Q. Who did you go to?</p> <p>2 A. I spoke with the nurse that I was giving</p> <p>3 report to at shift change.</p> <p>4 Q. Who was that? Do you remember?</p> <p>5 A. Her name is Julie. I don't remember her</p> <p>6 last name.</p> <p>7 Q. And when did you wind up speaking with Amy?</p> <p>8 A. Later that day she called me.</p> <p>9 Q. So somehow it got back up to her?</p> <p>10 A. Yes.</p> <p>11 Q. Were you at home at the time?</p> <p>12 A. Yes.</p> <p>13 Q. And my guess is that you repeated</p> <p>14 everything you told Ray, correct?</p> <p>15 A. Yes.</p> <p>16 Q. And also everything you told Julie,</p> <p>17 correct?</p> <p>18 A. Correct.</p> <p>19 Q. Did you lie to them?</p> <p>20 A. No.</p> <p>21 Q. Prior to the day you spoke with Amy and the</p> <p>22 day you spoke with Julie, and the day you spoke with</p> <p>23 Ray when the incident with Ms. Hanna occurred, had</p> <p>24 you ever spoken to anybody before about Mr. Farmer?</p> <p>25 A. Yes.</p>	<p style="text-align: right;">Page 20</p> <p>1 MR. SILVESTRI: I'm sorry, what was it?</p> <p>2 THE WITNESS: Weeks.</p> <p>3 MR. SILVESTRI: Thank you.</p> <p>4 BY MR. MURDOCK:</p> <p>5 Q. And when you had this discussion with Ray,</p> <p>6 what did he say -- the discussion weeks before?</p> <p>7 A. I don't recall.</p> <p>8 Q. Did he say he would take care of it?</p> <p>9 A. He did say he would talk to him.</p> <p>10 Q. When you had this conversation with Ray</p> <p>11 several weeks before, why did you have the</p> <p>12 conversation with Ray?</p> <p>13 A. Because I felt it better for a male to be</p> <p>14 talking to a male about it, than me to be approaching</p> <p>15 Mr. Farmer.</p> <p>16 Q. Was it also because Ray was a relief charge</p> <p>17 nurse?</p> <p>18 A. No.</p> <p>19 Q. But nevertheless, Ray was a relief charge</p> <p>20 nurse?</p> <p>21 A. Correct.</p> <p>22 Q. Now, a relief charge nurse is not always</p> <p>23 the charge nurse?</p> <p>24 A. Correct.</p> <p>25 Q. It's just when the charge nurse is not</p>

<p style="text-align: right;">Page 21</p> <p>1 there, he becomes the relief charge nurse?</p> <p>2 A. Right.</p> <p>3 Q. Now, is that because the charge nurse is</p> <p>4 absent, or for example because the charge nurse has</p> <p>5 gone to lunch, or something like that?</p> <p>6 A. No. The permanent charge nurse is not</p> <p>7 scheduled that day.</p> <p>8 Q. Okay. But you knew at the very least when</p> <p>9 you had these discussions with Ray, several weeks</p> <p>10 prior to the Denise Hanna discussion, that Ray was a</p> <p>11 relief charge nurse?</p> <p>12 A. Yes.</p> <p>13 Q. He may not have been at the time, but he</p> <p>14 certainly was a relief charge nurse, correct?</p> <p>15 A. Yes.</p> <p>16 Q. Okay. So I'd like to know a little bit</p> <p>17 more about the discussion you had with Ray several</p> <p>18 weeks before.</p> <p>19 A. Okay.</p> <p>20 Q. So I want to talk about that for right now,</p> <p>21 okay?</p> <p>22 A. (Witness nods.)</p> <p>23 Q. You said that he was overly attentive --</p> <p>24 that Farmer was overly attentive with female</p> <p>25 patients?</p>	<p style="text-align: right;">Page 23</p> <p>1 A. Yes.</p> <p>2 Q. And that was one of the things you</p> <p>3 complained to Ray about, correct?</p> <p>4 A. Yes.</p> <p>5 Q. And why did you go to Ray about that? Not</p> <p>6 personally Ray, but why did you go to anybody about</p> <p>7 that?</p> <p>8 A. I went to Ray about it because I trusted</p> <p>9 him. I knew that he would keep it in confidence</p> <p>10 between he and I, and I knew that he would follow</p> <p>11 through and speak with him, as I asked him to.</p> <p>12 Q. Sure.</p> <p>13 A. And he had a little bit of authority, being</p> <p>14 that he was a relief charge nurse. It gave him a</p> <p>15 little bit more leverage.</p> <p>16 Q. Sure. Did you ever go to speak with the</p> <p>17 patients of the rooms that Mr. Farmer was in?</p> <p>18 A. No.</p> <p>19 Q. Why not?</p> <p>20 A. I didn't want to accuse somebody falsely of</p> <p>21 something, and I didn't want to raise any red flags</p> <p>22 with patients.</p> <p>23 Q. Okay. But yet you were concerned about</p> <p>24 Farmer?</p> <p>25 A. Yes.</p>
<p style="text-align: right;">Page 22</p> <p>1 A. Yes.</p> <p>2 Q. Now, you had not seen him assault anyone,</p> <p>3 correct?</p> <p>4 A. No, not at that point.</p> <p>5 Q. You had not seen him rape anyone?</p> <p>6 A. No.</p> <p>7 Q. Now, you said that he would go into rooms</p> <p>8 of patients and you weren't there, and close the</p> <p>9 door?</p> <p>10 A. Uh-huh.</p> <p>11 Q. How did you know that --</p> <p>12 MR. SILVESTRI: Hold on. Ma'am, you</p> <p>13 have to answer out loud.</p> <p>14 MR. MURDOCK: Yeah, I'm sorry.</p> <p>15 MR. SILVESTRI: "Yeses" and "nos,"</p> <p>16 because the court reporter will have a difficult time</p> <p>17 with that.</p> <p>18 THE WITNESS: Okay. Sorry.</p> <p>19 MR. SILVESTRI: So can we get a clear</p> <p>20 answer on these? I'm sorry.</p> <p>21 MR. MURDOCK: No, no. That's okay.</p> <p>22 BY MR. MURDOCK:</p> <p>23 Q. Now, when you said that he would go into</p> <p>24 rooms of patients and close the doors -- you</p> <p>25 witnessed that, correct?</p>	<p style="text-align: right;">Page 24</p> <p>1 Q. Was he also in rooms with patients with the</p> <p>2 lights out? Is that what I heard you say, or not?</p> <p>3 A. No, I never said that.</p> <p>4 Q. Okay. That's somebody else.</p> <p>5 So he would walk into rooms, close</p> <p>6 the door?</p> <p>7 A. Yes.</p> <p>8 Q. That's not appropriate for a CNA, is it?</p> <p>9 MR. BEMIS: I object to form. Go ahead</p> <p>10 and answer, if you know.</p> <p>11 THE WITNESS: It's inappropriate for a</p> <p>12 male patient to be in a room with a female patient</p> <p>13 alone with the door closed.</p> <p>14 BY MR. MURDOCK:</p> <p>15 Q. Why is that?</p> <p>16 A. Because of the fact that allegations can be</p> <p>17 made and people can be accused of things that may or</p> <p>18 may not be true.</p> <p>19 Q. It's not just allegations can be made,</p> <p>20 things can actually happen, right?</p> <p>21 A. Yes.</p> <p>22 MR. SILVESTRI: Ms. Reporter, can you</p> <p>23 read back the last answer? Actually, the last</p> <p>24 question and answer.</p> <p>25 (The following was read:)</p>

<p style="text-align: right;">Page 25</p> <p>1 "Q. Was he also in rooms with patients with the 2 lights out? Is that what I heard you say, or 3 not? 4 A. No, I never said that. 5 Q. Okay. That's somebody else. So he would 6 walk into rooms, close the door? 7 A. Yes. 8 Q. That's not appropriate for a CNA, is it? 9 MR. BEMIS: I object to form. Go ahead 10 and answer, if you know. 11 THE WITNESS: It's inappropriate for a 12 male patient to be in a room with a female 13 patient alone with the door closed. 14 Q. Why is that? 15 A. Because of the fact that allegations can 16 be made and people can be accused of things 17 that may or may not be true. 18 Q. It's not just allegations can be made, 19 things can actually happen, right? 20 A. Yes." 21 BY MR. MURDOCK: 22 Q. And your answer was? 23 A. Yes. 24 Q. When I say "things can actually happen," 25 that would include sexual assaults, correct?</p>	<p style="text-align: right;">Page 27</p> <p>1 with Ray, or both? 2 A. I believe both of us, but I know with me. 3 Q. And why do you believe both of you? 4 A. Because all the nurses were talking about 5 it together. It wasn't just me. It wasn't just Ray. 6 All the nurses were concerned. 7 Q. When you say "all the nurses" -- all the 8 nurses on the shift? 9 A. Yes. 10 Q. Can you identify some of them? I know it's 11 been a long time, but could you identify some of 12 them, at least by first name? 13 A. Gina, Kim -- 14 MR. SILVESTRI: Kim? 15 THE WITNESS: Kim. 16 MS. HALL: Can you just keep your voice 17 up a little bit? It's hard for us to hear you down 18 here. 19 THE WITNESS: Okay. 20 MS. HALL: Thank you. 21 THE WITNESS: I worked with Karen, but 22 I don't recall if we had any conversations about it 23 or not. 24 BY MR. MURDOCK: 25 Q. Okay.</p>
<p style="text-align: right;">Page 26</p> <p>1 A. Yes. 2 MR. BEMIS: I object to form. 3 BY MR. MURDOCK: 4 Q. And that's one of the reasons why male CNAs 5 should not be in female patients' rooms with the door 6 closed, correct? 7 MS. HALL: Objection. Lacks 8 foundation. Speculation. 9 MR. BEMIS: Join. Go ahead and answer. 10 THE WITNESS: Correct. 11 BY MR. MURDOCK: 12 Q. Apparently another nurse also discussed 13 Mr. Farmer with you, is that correct, prior to the 14 Denise Hanna situation? 15 A. Not to my knowledge. 16 Q. There was a nurse by the name of Kim, and 17 my understanding is that you told Detective Saunders 18 that Kim relayed some concerns to you also, and that 19 would have been the same concerns that Ray had said 20 about his actions were suspicious, especially with a 21 female patient? 22 A. Yes, I do recall that now. 23 Q. Okay. And who was Kim? Do you remember? 24 A. Just a staff nurse there in the ER. 25 Q. And Kim had had a conversation with you or</p>	<p style="text-align: right;">Page 28</p> <p>1 A. I don't recall any other names, it was so 2 long ago. 3 Q. Okay. Suffice to say, if I would have 4 taken your deposition much closer in time to the 5 events occurring, you would have been able to give me 6 the names, correct? 7 A. Yes. 8 Q. Okay. Now, let's talk about Kim -- 9 specifically Kim, and then we'll get to the other 10 people. 11 But Kim -- you had a discussion 12 with her about Ray? 13 A. About Ray? 14 Q. I'm sorry. That was bad. That was bad. 15 (Discussion off the record.) 16 BY MR. MURDOCK: 17 Q. You were telling me about conversations you 18 had with Kim about Steven. 19 A. Yes. 20 Q. Tell me about those conversations. 21 A. I don't remember exact details, just the 22 fact that I had shared these same concerns I've 23 already voiced, with her, and she felt the same way. 24 Q. So in other words, he was being overly 25 attentive with female patients?</p>

<p style="text-align: right;">Page 29</p> <p>1 A. Yes.</p> <p>2 Q. And you both were suspicious about him,</p> <p>3 correct?</p> <p>4 A. Yes.</p> <p>5 Q. And when I just asked you about being</p> <p>6 suspicious about him, what were you suspicious of?</p> <p>7 A. I think "uncomfortable" is a better word</p> <p>8 than "suspicious."</p> <p>9 Q. Okay. And the reason I'm using the word</p> <p>10 "suspicious," to be honest with you, is because you</p> <p>11 used it in your conversation with Detective Saunders.</p> <p>12 A. Okay.</p> <p>13 Q. You said that Kim relayed some concern to</p> <p>14 you, the same concerns that Ray had said, about his</p> <p>15 actions were suspicious, especially with female</p> <p>16 patients.</p> <p>17 So what were you trying to convey</p> <p>18 when you used the word "suspicious" in that context?</p> <p>19 A. That there could be some actions happening</p> <p>20 by Mr. Farmer that were inappropriate.</p> <p>21 Q. Looking back at it, was it just that he was</p> <p>22 overly attentive with female patients, or was it a</p> <p>23 certain type of female patient? In other words, was</p> <p>24 it a type of female patient who maybe couldn't</p> <p>25 complain?</p>	<p style="text-align: right;">Page 31</p> <p>1 A. Correct.</p> <p>2 Q. That he would be overly helpful with</p> <p>3 putting certain devices on, is that correct?</p> <p>4 A. Yes.</p> <p>5 MR. BEMIS: I object to form.</p> <p>6 BY MR. MURDOCK:</p> <p>7 Q. And those devices were basically -- it</p> <p>8 wasn't blood pressure cuffs, correct?</p> <p>9 A. No.</p> <p>10 Q. It wasn't taking someone's temperature,</p> <p>11 right?</p> <p>12 A. Right.</p> <p>13 Q. It was a medical device whereby he would be</p> <p>14 able to see female private areas. Would that be</p> <p>15 correct?</p> <p>16 MR. BEMIS: I object to form. Go ahead</p> <p>17 and answer, if you know.</p> <p>18 THE WITNESS: Yes.</p> <p>19 BY MR. MURDOCK:</p> <p>20 Q. Okay. And that would include heart</p> <p>21 monitors?</p> <p>22 A. Yes.</p> <p>23 Q. And there was a discussion the other day</p> <p>24 about whether it's a 3-lead heart monitor, a 5-lead</p> <p>25 heart monitor, or a 12.</p>
<p style="text-align: right;">Page 30</p> <p>1 A. I didn't notice that.</p> <p>2 Q. Okay. Now, you also said that all of the</p> <p>3 nurses were talking about it.</p> <p>4 A. Yes.</p> <p>5 Q. So it was pretty common knowledge over at</p> <p>6 Centennial Hills Hospital, right?</p> <p>7 A. Yes.</p> <p>8 MR. BEMIS: I object to form.</p> <p>9 BY MR. MURDOCK:</p> <p>10 Q. And the conversations that you had with</p> <p>11 these other nurses were basically all the same, that</p> <p>12 he was overly attentive with female patients,</p> <p>13 correct?</p> <p>14 A. Yes.</p> <p>15 Q. That he was acting at least in a suspicious</p> <p>16 manner?</p> <p>17 A. Yes.</p> <p>18 Q. And that he was -- what was the word you</p> <p>19 wanted to use besides "suspicious?"</p> <p>20 A. "Inappropriate."</p> <p>21 Q. "Inappropriate." Is that correct?</p> <p>22 A. Yes.</p> <p>23 Q. And it was all related to the same thing,</p> <p>24 where he would go into female patients' rooms and</p> <p>25 close the door, correct?</p>	<p style="text-align: right;">Page 32</p> <p>1 When you saw him be overly</p> <p>2 attentive regarding these heart monitors, was it with</p> <p>3 a 3, a 5, a 12 -- all?</p> <p>4 A. 5.</p> <p>5 Q. It was a 5?</p> <p>6 A. It was a 5.</p> <p>7 Q. So with a 5-lead heart monitor, where would</p> <p>8 the monitors be placed?</p> <p>9 MR. BEMIS: I object to form. Go</p> <p>10 ahead.</p> <p>11 BY MR. MURDOCK:</p> <p>12 Q. Or actually they're not monitors.</p> <p>13 They're --</p> <p>14 A. Patches.</p> <p>15 Q. The patches. Where would those patches be</p> <p>16 placed?</p> <p>17 MR. BEMIS: Same objection. Answer, if</p> <p>18 you can.</p> <p>19 THE WITNESS: There's 2 leads that go</p> <p>20 under both clavicles. There is a lead that goes on</p> <p>21 both sides.</p> <p>22 BY MR. MURDOCK:</p> <p>23 Q. The ribs?</p> <p>24 A. Yes, on the ribs.</p> <p>25 Q. Okay.</p>

<p style="text-align: right;">Page 33</p> <p>1 A. And then there's one that goes on the 2 sternum. 3 Q. Now, in some women, depending on the size 4 of their breasts, you would need to move the breast 5 in order to place those patches, correct? 6 A. Correct. 7 Q. And that is what he was overly attentive 8 in? 9 MR. BEMIS: I object to form. Calls 10 for speculation. 11 BY MR. MURDOCK: 12 Q. In placing the patches. Not holding the 13 breast, but placing the patches? 14 A. I never saw him place patches on a patient. 15 Q. Okay. 16 A. Just in the situation I observed, the 17 patches were already in place and he appeared to be 18 checking them. 19 Q. Okay. Is that something that a CNA should 20 do? 21 MR. BEMIS: I object to form. Go ahead 22 and answer, if you know. 23 THE WITNESS: No. Especially when 24 there's no alarms going off, and the patient is 25 comfortable and the nurse is standing right there.</p>	<p style="text-align: right;">Page 35</p> <p>1 Q. But you certainly had a suspicion? 2 A. Yes. 3 Q. And it arose because -- at least one thing, 4 he was opening patients' gowns to check their leads 5 when no alarms had gone off, or things like that, 6 right? 7 A. That was one situation I had observed. 8 Q. So that was one. And were there other 9 situations that you had observed? 10 A. Doing the same thing, no. 11 Q. Well, what else would he do? Besides the 12 heart patch, what else? 13 A. Well, the things I just mentioned about 14 being in rooms alone. Transporting patients between 15 units, he was gone an extended period of time -- 16 longer than he should have been. Things like that. 17 Q. And again, everything together made you 18 suspicious? 19 A. Right. 20 Q. It wasn't just one thing? 21 A. Yes. 22 Q. After you saw him with the heart patch 23 issue -- I assume that was several weeks before the 24 incident with Denise Hanna? 25 A. That was Denise Hanna.</p>
<p style="text-align: right;">Page 34</p> <p>1 That is out of line for a CNA. 2 BY MR. MURDOCK: 3 Q. And that's one of the things that made you 4 suspicious, correct? 5 A. Yes. 6 Q. And that's one of the things that made you 7 go speak to Ray, correct? 8 A. Yes. 9 Q. When he would check those patches, would he 10 have to undo the gown of the patient? 11 A. There's a way to do it that you don't have 12 to expose the patient, but he did expose the patient 13 when he checked them. 14 Q. Okay. And again, this was one of the 15 things that was well-known to Centennial Hills staff, 16 correct? 17 MR. BEMIS: I object to form. Calls 18 for speculation. Answer, if you can. 19 BY MR. MURDOCK: 20 Q. Correct? 21 A. No. 22 Q. What was well-known to Centennial Hills 23 staff? 24 A. Just our suspicions of him. Not anything 25 concrete.</p>	<p style="text-align: right;">Page 36</p> <p>1 Q. Oh, that was Denise Hanna. 2 A. Yes. 3 Q. So prior to the Denise Hanna incident, you 4 had a suspicion of Mr. Farmer because he was in rooms 5 alone with patients, correct? 6 A. Correct. 7 Q. He was gone extended periods of time, 8 correct? 9 A. Yes. 10 Q. Any other suspicions? Because you said he 11 was overly attentive with females. 12 A. Right. 13 Q. Explain that. 14 A. He would always offer to help care for 15 female patients, whereas he didn't offer that with 16 the males. 17 Q. And that was several weeks before the 18 incident with Denise Hanna? 19 A. Yes. 20 Q. So in other words, just so I've got this 21 right, Denise Hanna was basically the culmination? 22 A. Yes. 23 Q. Would you agree with that? 24 A. Yes. 25 Q. But before the Denise Hanna incident, at</p>

<p style="text-align: right;">Page 37</p> <p>1 least several weeks before, that's when the 2 suspicions started -- where he would be in rooms 3 alone with patients, where he was gone for extended 4 periods of time when he was transporting patients, 5 and where he would always offer to help female 6 patients, as opposed to male patients, correct? 7 A. Correct. 8 MR. BEMIS: I object to form. 9 BY MR. MURDOCK: 10 Q. And in terms of the gone extended periods 11 of time with transporting patients, that would have 12 been with females patients, correct? 13 MR. BEMIS: I object to form. Calls 14 for speculation. 15 THE WITNESS: Correct. 16 BY MR. MURDOCK: 17 Q. And the being in rooms alone -- again, that 18 would be with female patients, as opposed to male 19 patients, correct? 20 MR. BEMIS: Same objection. Go ahead 21 and answer. 22 THE WITNESS: I can't say that it 23 wasn't ever with a male patient, but we noticed it 24 more with female patients. 25</p>	<p style="text-align: right;">Page 39</p> <p>1 Q. I mean if everybody was talking about it, 2 would you assume they knew? 3 MR. BEMIS: Calls for speculation. 4 THE WITNESS: I don't know what they 5 knew. 6 BY MR. MURDOCK: 7 Q. Okay. In other words, I'd have to ask 8 them, right? 9 A. Uh-huh. 10 Q. Is that a yes? 11 A. Yes. 12 Q. Okay. You didn't have any specific 13 conversations with Amy or Danielle that you recall, 14 correct? 15 A. Correct. 16 Q. You did have specific conversations with 17 Ray though, correct? 18 A. Yes. 19 Q. And that would have been before the 20 incident with Denise Hanna, correct? 21 A. Yes. 22 Q. Now, after the incident with Denise Hanna, 23 you worked at Centennial for about another year or 24 so. Would that be right? 25 A. Sounds about right.</p>
<p style="text-align: right;">Page 38</p> <p>1 BY MR. MURDOCK: 2 Q. Okay. And when you say "we," who is "we?" 3 A. The nursing staff. 4 Q. Now, who was your charge nurse on the 5 nightshift? Did you have one? 6 A. We had a couple of them. 7 Q. Who were they? 8 A. One of them was Amy. 9 Q. Amy who? 10 A. I don't remember her last name. 11 Q. Okay. 12 A. And the other one was Danielle, and I don't 13 remember her last name. 14 Q. Okay. And then the relief would have been 15 Ray? 16 A. Yes. 17 Q. Were Amy and Danielle made aware of these 18 suspicions that were had by the nursing staff about 19 Steven? 20 MR. BEMIS: I object to form. Calls 21 for speculation. Answer, if you know. 22 THE WITNESS: I don't know. 23 BY MR. MURDOCK: 24 Q. In other words, did they know? 25 A. I don't know.</p>	<p style="text-align: right;">Page 40</p> <p>1 Q. And my understanding is that at some point, 2 I want to say -- I could be wrong, but in the summer 3 of 2009, you were terminated by Centennial, is that 4 correct? 5 A. Yes. 6 Q. In between the time you were terminated and 7 the Denise Hanna incident, do you recall having any 8 conversations with anybody at Centennial Hills 9 Hospital regarding Steven Farmer? 10 MR. BEMIS: Besides what she already 11 testified to? 12 MR. MURDOCK: Yeah. 13 THE WITNESS: Again, all the nursing 14 staff was talking about it, following the case. So I 15 may have. I don't remember any specific 16 conversations with people, but it's possible. 17 BY MR. MURDOCK: 18 Q. Were you ever called in, for instance by 19 risk management, to discuss what you had witnessed 20 with Mr. Farmer? 21 A. No. 22 Q. Did any lawyers ever speak with you 23 regarding Mr. Farmer? 24 A. No. 25 Q. When was the first time a lawyer ever spoke</p>

<p style="text-align: right;">Page 41</p> <p>1 with you regarding Mr. Farmer?</p> <p>2 A. When I was subpoenaed for his criminal</p> <p>3 trial.</p> <p>4 Q. And before then no lawyers, like for</p> <p>5 instance Mr. Bemis -- he never called you?</p> <p>6 A. No.</p> <p>7 Q. And nobody from risk management had called</p> <p>8 you?</p> <p>9 A. No.</p> <p>10 Q. Now, your discussion with Amy Bochenek --</p> <p>11 that was after the Denise Hanna incident, correct?</p> <p>12 A. Yes.</p> <p>13 Q. And you said that occurred that day of the</p> <p>14 Denise Hanna incident, correct?</p> <p>15 A. Correct.</p> <p>16 Q. After that day, speaking with Amy Bochenek,</p> <p>17 did you speak with anybody else regarding Mr. Farmer,</p> <p>18 in terms of administrators or administration at</p> <p>19 Centennial Hills Hospital?</p> <p>20 A. Not that I can recall.</p> <p>21 Q. Okay. When you spoke with Amy Bochenek,</p> <p>22 did you tell her that the nursing staff had all been</p> <p>23 talking about Steven Farmer?</p> <p>24 A. I don't recall.</p> <p>25 Q. Is that something that you believe that</p>	<p style="text-align: right;">Page 43</p> <p>1 BY MR. MURDOCK:</p> <p>2 Q. Do you remember, was she an ER nurse?</p> <p>3 A. Yes.</p> <p>4 Q. When you said the nursing staff all knew,</p> <p>5 was that the nursing staff down at the ER?</p> <p>6 A. Yes.</p> <p>7 Q. Because that's basically who you had</p> <p>8 contact with, correct?</p> <p>9 A. Correct.</p> <p>10 Q. And that was the nursing staff on your</p> <p>11 shift?</p> <p>12 A. Correct.</p> <p>13 Q. So in other words, it wouldn't be up in the</p> <p>14 med-surg units, right?</p> <p>15 A. No.</p> <p>16 Q. That would just be down in the ER?</p> <p>17 A. Correct.</p> <p>18 Q. Had you ever heard about an incident</p> <p>19 whereby Mr. Farmer was thrown out of a room of a</p> <p>20 female patient in the med-surg unit, when he was</p> <p>21 acting as a sitter for an elderly woman?</p> <p>22 A. No.</p> <p>23 Q. Had you ever heard that there were screams</p> <p>24 coming from the room, and the nursing staff there</p> <p>25 didn't lend any credence to what she was alleging?</p>
<p style="text-align: right;">Page 42</p> <p>1 it's more likely than not that you did?</p> <p>2 A. I can't recall. I can't answer that.</p> <p>3 Q. When Mr. Farmer was arrested, that didn't</p> <p>4 come as a complete shock or surprise to you, did it?</p> <p>5 A. No.</p> <p>6 MS. HALL: Objection. Lack of</p> <p>7 foundation.</p> <p>8 BY MR. MURDOCK:</p> <p>9 Q. And it didn't come as a complete shock or</p> <p>10 surprise because you already basically had these</p> <p>11 suspicions, correct?</p> <p>12 MR. BEMIS: I object to form.</p> <p>13 BY MR. MURDOCK:</p> <p>14 Q. You can go ahead.</p> <p>15 A. Correct.</p> <p>16 Q. And these are the suspicions that you had</p> <p>17 voiced to Ray and others, correct?</p> <p>18 MR. BEMIS: Same objection.</p> <p>19 THE WITNESS: Correct.</p> <p>20 BY MR. MURDOCK:</p> <p>21 Q. Now, do you remember Kim's last name?</p> <p>22 MR. SILVESTRI: Who?</p> <p>23 MS. HALL: Kim.</p> <p>24 THE WITNESS: No, I don't. I'm sorry.</p> <p>25</p>	<p style="text-align: right;">Page 44</p> <p>1 MR. BEMIS: I object to form.</p> <p>2 MS. HALL: Lacks foundation.</p> <p>3 THE WITNESS: No.</p> <p>4 BY MR. MURDOCK:</p> <p>5 Q. Do you know a Nurse Murray -- Christine</p> <p>6 Murray? Does that name sound familiar at all?</p> <p>7 A. No.</p> <p>8 MR. MURDOCK: Let's mark this.</p> <p>9 (Plaintiff's Exhibit 1 marked.)</p> <p>10 BY MR. MURDOCK:</p> <p>11 Q. Showing you what's been marked as</p> <p>12 Plaintiff's Exhibit 1 --</p> <p>13 MR. MURDOCK: It's the statement of</p> <p>14 Margaret Wolfe. I figured you should have it.</p> <p>15 BY MR. MURDOCK:</p> <p>16 Q. Ms. Wolfe, I'm showing you what's been</p> <p>17 marked as Plaintiff's Exhibit 1.</p> <p>18 This is the transcript of your</p> <p>19 statement, is that correct?</p> <p>20 A. Yes.</p> <p>21 Q. And you said you had seen this before,</p> <p>22 correct?</p> <p>23 A. Yes.</p> <p>24 Q. When was the last time you saw this?</p> <p>25 A. Yesterday.</p>

<p style="text-align: right;">Page 45</p> <p>1 Q. Prior to yesterday -- and by the way, that 2 was in your meeting with Mr. Bemis? 3 A. Yes. 4 Q. Prior to yesterday, when was the last time 5 you had seen it? 6 A. Probably when I testified at the criminal 7 trial. 8 Q. And prior to then, do you recall seeing it? 9 A. No, I do not. 10 Q. Have you ever listened to the transcript 11 itself? 12 A. No. 13 Q. Was it recorded? 14 A. Yes. 15 Q. In fact that's what the transcript comes 16 from, right? 17 A. Yes. 18 Q. Where did this interview take place? 19 A. At an Einstein bagel shop right near the 20 Centennial Hospital. 21 Q. Do you know how Detective Saunders got your 22 name? 23 A. Yes. I contacted him. 24 Q. And why did you contact him? 25 A. Because I was disturbed over the incident</p>	<p style="text-align: right;">Page 47</p> <p>1 too? 2 A. Yes. 3 Q. Let me start over. 4 Were you Marcia Petersen's nurse? 5 A. No. 6 Q. You don't even know that name, do you? 7 A. No. 8 Q. Were you Ms. Cagnina's nurse? 9 A. No. 10 Q. Do you know who Ms. Cagnina is? 11 A. No. 12 Q. You were Denise Hanna's nurse? 13 A. Yes. 14 Q. When this incident occurred with Ms. Hanna, 15 how come you didn't go speak with Ms. Hanna? 16 A. I didn't want to alert her to something 17 that she may have perceived differently. 18 I did go into the room, and there 19 was what I perceived as eye contact between her and 20 I, knowing that something had just happened that 21 shouldn't have. But she did not say anything to me 22 about it, and I didn't want to raise concerns to her 23 if it was not an issue to her. 24 Q. But you did go speak to Ray about it? 25 A. Yes.</p>
<p style="text-align: right;">Page 46</p> <p>1 that I saw with Ms. Hanna and wanted it to be brought 2 to his attention. 3 Q. Because they had put out like a 4 community-wide thing about the assault, is that 5 correct? Were you aware of that? 6 A. Yes. 7 Q. And had you seen that? 8 A. No. 9 Q. But you knew Farmer was arrested? 10 A. Yes. 11 Q. And you wanted to let them know that there 12 were other issues potentially, correct? 13 A. Yes. 14 Q. Do you recall what time approximately the 15 Denise Hanna incident was? 16 A. It was in the early morning hours. 17 Q. Okay. 18 A. Possibly around 3:00 a.m. I'm not saying 19 that to be exact, but early morning hours. 20 Q. Was Marcia Petersen your nurse? Do you 21 remember Marcia Petersen? 22 A. I don't know that name. 23 Q. Okay. Was Ms. Cagnina your nurse? 24 A. My nurse? 25 Q. I'm sorry. Did I say that the last time,</p>	<p style="text-align: right;">Page 48</p> <p>1 Q. Okay. Take a look at Plaintiff's Exhibit 2 1. The time you gave the statement was about 7:58 in 3 the morning on May 30th, correct? 4 A. Correct. 5 Q. Do you know why it was done so early? 6 A. It was after I got off my shift. 7 Q. Okay. I need to ask you a personal 8 question. 9 A. Yes. 10 Q. And I promise you, this will probably be 11 the only personal question I will ever ask you. 12 Have you ever been sexually 13 assaulted? 14 A. Yes. 15 Q. Was it before this incident? 16 A. Many years. 17 Q. Okay. If you turn to page 2, the detective 18 asked you, "What do you do for Centennial Hills 19 Hospital?" And your answer was, "I'm an ER nurse." 20 Do you see that? 21 A. Yes. 22 Q. Was that the truth? 23 A. Yes. 24 Q. You didn't lie to the cops when you told 25 them that, right?</p>

<p style="text-align: right;">Page 49</p> <p>1 A. No.</p> <p>2 Q. Okay. And then as you go down the line it</p> <p>3 says, "And what was Steven Farmer's job?" Your</p> <p>4 answer was, "He was a CNA contracted out through an</p> <p>5 agency."</p> <p>6 Did you lie to the police there?</p> <p>7 A. No.</p> <p>8 Q. How did you know he was contracted out</p> <p>9 through an agency?</p> <p>10 A. It was just common knowledge with us there</p> <p>11 that he was an agency CNA, and not a staff CNA.</p> <p>12 I don't know how that information</p> <p>13 got relayed. We know in the hospital which employees</p> <p>14 are agency and which employees are staff.</p> <p>15 Q. Agency people back then at Centennial Hills</p> <p>16 Hospital -- did they have separate badges?</p> <p>17 A. Yes.</p> <p>18 Q. Is that how you figured out he was an</p> <p>19 agency nurse?</p> <p>20 A. Possibly.</p> <p>21 Q. But even that separate badge said</p> <p>22 "Centennial Hills Hospital" on it, correct?</p> <p>23 MR. BEMIS: I object to form.</p> <p>24 THE WITNESS: Correct.</p> <p>25</p>	<p style="text-align: right;">Page 51</p> <p>1 not much more to that conversation.</p> <p>2 Q. Well, apparently Ray told you that you</p> <p>3 should watch him around your female patients. Is</p> <p>4 that correct?</p> <p>5 A. Yes.</p> <p>6 Q. Did Ray say anything else about that? In</p> <p>7 other words, did he say he was being overly</p> <p>8 attentive, the same things you've already told us?</p> <p>9 A. I don't recall the specifics of anything</p> <p>10 else he said. Just that he did tell me that.</p> <p>11 Q. Okay. And that was at some point in time</p> <p>12 several weeks prior to the Denise Hanna situation,</p> <p>13 correct?</p> <p>14 A. Yes.</p> <p>15 Q. Okay. And that's when he told you, at the</p> <p>16 very least, to watch Mr. Farmer being around your</p> <p>17 female patients, correct?</p> <p>18 A. Yes.</p> <p>19 Q. And that was something specifically that</p> <p>20 Mr. Sumera told you, correct?</p> <p>21 A. Yes.</p> <p>22 Q. And as you go down, here's what he said --</p> <p>23 and maybe this will refresh your recollection.</p> <p>24 He states, "That he was concerned</p> <p>25 because he" -- meaning Mr. Farmer -- "was very overly</p>
<p style="text-align: right;">Page 50</p> <p>1 BY MR. MURDOCK:</p> <p>2 Q. Was it the night of the 14th going into the</p> <p>3 day of the 15th that the incident with Ms. Hanna</p> <p>4 occurred?</p> <p>5 A. Yes, the early morning of the 15th.</p> <p>6 Q. Okay. If you would turn to page 8 in the</p> <p>7 Voluntary Statement, there's a question in the middle</p> <p>8 of the page. It starts with, "Did a -- excuse me."</p> <p>9 It states, "Um, has uh, anybody</p> <p>10 else in the ER room that you've worked with, ever</p> <p>11 come to you, or have you ever talked to anybody that</p> <p>12 shared similar concerns that you do about</p> <p>13 Mr. Farmer?"</p> <p>14 And your answer was, "Um, the same</p> <p>15 nurse, Ray Sumera, had told me another time that</p> <p>16 he -- to watch him around my female patients."</p> <p>17 Do you see that?</p> <p>18 A. Yes.</p> <p>19 Q. Did you lie to the police when you said</p> <p>20 that?</p> <p>21 A. No.</p> <p>22 Q. Were you being honest and truthful?</p> <p>23 A. Yes.</p> <p>24 Q. Tell me what Ray told you.</p> <p>25 A. That's basically all he told me. There was</p>	<p style="text-align: right;">Page 52</p> <p>1 attentive with female patients, and very anxious to</p> <p>2 connect them to the monitors and disconnect them from</p> <p>3 the monitors, which would require him" -- meaning</p> <p>4 Mr. Farmer -- "to reach into their clothing."</p> <p>5 Do you see that?</p> <p>6 A. Yes.</p> <p>7 Q. Does that refresh your recollection?</p> <p>8 A. Yes.</p> <p>9 Q. Okay. So let's talk about that for a</p> <p>10 second.</p> <p>11 So at some point several weeks</p> <p>12 prior to the Denise Hanna situation, Mr. Sumera came</p> <p>13 to you and told you to watch Mr. Farmer around your</p> <p>14 female patients, correct?</p> <p>15 A. Correct.</p> <p>16 Q. And he told you that he was concerned</p> <p>17 because Mr. Farmer was overly attentive with female</p> <p>18 patients, correct?</p> <p>19 A. Yes.</p> <p>20 Q. And he told you that Mr. Farmer was very</p> <p>21 anxious to connect them to the monitors, correct?</p> <p>22 A. Yes.</p> <p>23 Q. And when you say "connect them to the</p> <p>24 monitors," was that the heart monitors that we talked</p> <p>25 about before?</p>

<p style="text-align: right;">Page 53</p> <p>1 A. Yes.</p> <p>2 Q. The 5 leads?</p> <p>3 A. Correct.</p> <p>4 Q. And also disconnect them from the monitors?</p> <p>5 A. Yes.</p> <p>6 Q. And that's the same heart monitors, the 5</p> <p>7 leads, correct?</p> <p>8 A. Correct.</p> <p>9 Q. And of course that would require him to</p> <p>10 reach into their clothing, correct?</p> <p>11 A. Yes.</p> <p>12 Q. Do you remember Julie's last name?</p> <p>13 A. No, I don't.</p> <p>14 Q. Okay. If you turn to page 9, the detective</p> <p>15 asks you basically if there's anything that he might</p> <p>16 have forgotten to ask about Mr. Farmer, and you state</p> <p>17 in the middle of the page about Farmer, "He was just</p> <p>18 very suspicious in his activities. Um, such as going</p> <p>19 into rooms with doors closed with female patients,</p> <p>20 when he was not asked to." Correct?</p> <p>21 A. Correct.</p> <p>22 Q. You didn't lie to the police when you told</p> <p>23 them that, correct?</p> <p>24 A. No.</p> <p>25 Q. And by the way, going back to page 8 for a</p>	<p style="text-align: right;">Page 55</p> <p>1 A. No.</p> <p>2 Q. You were being honest and truthful,</p> <p>3 correct?</p> <p>4 A. Yes.</p> <p>5 Q. You said something on page 11 I'd like to</p> <p>6 ask you a few questions about.</p> <p>7 There's a question towards the</p> <p>8 middle of the page -- towards the bottom, I guess.</p> <p>9 It says, "Okay. Okay." Do you see that?</p> <p>10 A. Yes.</p> <p>11 Q. It says, "Do you harbor any -- do you have</p> <p>12 any personal gain by coming forward to me with this</p> <p>13 information?"</p> <p>14 That's the detective asking,</p> <p>15 correct?</p> <p>16 A. Yes.</p> <p>17 Q. And you answered, "No, I don't. In fact,</p> <p>18 I" -- something -- "fear that I could possibly get in</p> <p>19 trouble with my job if I were to give out</p> <p>20 information, you know, regarding or against" --</p> <p>21 blank -- "with my patients."</p> <p>22 Do you see that?</p> <p>23 A. Yes.</p> <p>24 Q. I don't know what the blanks say. Do you</p> <p>25 know what the blanks say, or do you recall what you</p>
<p style="text-align: right;">Page 54</p> <p>1 second, to that long sentence in the middle of the</p> <p>2 page -- when you told the police that Ray Sumera had</p> <p>3 told you that you should watch your female patients</p> <p>4 around Farmer, because Ray was concerned that Farmer</p> <p>5 was very overly attentive with female patients and</p> <p>6 very anxious to connect them to the monitors and</p> <p>7 disconnect them from the monitors -- when you told</p> <p>8 the police that, you didn't lie to the police,</p> <p>9 correct?</p> <p>10 A. Correct.</p> <p>11 Q. You were being and honest and truthful with</p> <p>12 the police, correct?</p> <p>13 A. Yes.</p> <p>14 Q. If you turn to page 10, in the middle of</p> <p>15 the page the detective asks you, "If you had to give</p> <p>16 me an estimate, how many times would you say that</p> <p>17 you've seen him walk into female patients' rooms</p> <p>18 where the door is closed, but there's no need for him</p> <p>19 to be in that room?" Do you see that?</p> <p>20 A. Yes.</p> <p>21 Q. And your answer was, "Multiple times. I</p> <p>22 couldn't put a number on it." Is that correct?</p> <p>23 A. Yes.</p> <p>24 Q. You weren't lying to the police when you</p> <p>25 said that, correct?</p>	<p style="text-align: right;">Page 56</p> <p>1 were telling the police?</p> <p>2 A. I would probably have been referring to</p> <p>3 HIPAA information.</p> <p>4 Q. Because you spoke with the police?</p> <p>5 A. Yes.</p> <p>6 Q. So you were concerned about HIPAA about</p> <p>7 going to the police, correct?</p> <p>8 A. Not necessarily the police. I was</p> <p>9 concerned just about violating HIPAA laws by speaking</p> <p>10 with anybody about my patient.</p> <p>11 Q. Okay. Prior to going to the police, did</p> <p>12 you ask anybody if you could go to the police, or</p> <p>13 would you be violating HIPAA?</p> <p>14 A. No, I did not.</p> <p>15 Q. Why didn't you?</p> <p>16 A. Well, I did feel it was safe to speak with</p> <p>17 the police, and I wasn't giving specific information</p> <p>18 on her medical condition or things like that.</p> <p>19 Q. Right. You were giving specific</p> <p>20 information regarding a crime that you believe had</p> <p>21 been committed, correct?</p> <p>22 MR. BEMIS: I object to form.</p> <p>23 THE WITNESS: Right.</p> <p>24 BY MR. MURDOCK:</p> <p>25 Q. Now, then the detective, as you go along on</p>

<p style="text-align: right;">Page 57</p> <p>1 page 11, starts talking about other people that you 2 had discussed this with prior to the Denise Hanna 3 situation several weeks before, and you talk about 4 Julie specifically. Correct? 5 A. Yes. 6 Q. And -- oh, no, actually you don't. Because 7 Julie didn't work the nightshift with you, right? 8 A. Correct. 9 Q. Okay. In fact I'm reading that wrong here. 10 He asked you about Julie. You 11 didn't tell him about Julie, right? 12 A. (No response.) 13 Q. If you look at the question, it says, 14 "Okay, and that would be Ray Sumera. Did Julie say 15 she had any concerns?" Do you see that? 16 A. Yes. 17 Q. And you said, "Julie hasn't worked with 18 him, because she works on dayshift." Do you see 19 that? 20 A. Yes. 21 Q. And you were being honest and truthful 22 there, right? 23 A. Yes. 24 Q. But then as you go along, you were trying 25 to think up I guess people's names for the detective,</p>	<p style="text-align: right;">Page 59</p> <p>1 And you stated, "The same concerns that Ray had said 2 about his actions" -- meaning Farmer's -- "were 3 suspicious, especially with a female patient." 4 Correct? 5 A. Yes. 6 Q. So she had come to you, correct? 7 A. Yes. 8 Q. She relayed the concern to you, and I guess 9 you discussed it with her, correct? 10 A. Yes. 11 Q. And you were being truthful when you said 12 that to the police? 13 A. Yes. 14 Q. You weren't lying to the police? 15 A. No. 16 Q. I want you to take a few minutes here. I 17 know you've looked at this before, but I want you to 18 take a few minutes. I want you to read through your 19 entire transcript. 20 A. Okay. 21 Q. And I want you to tell me if there's 22 anything -- anything at all in the transcript that 23 you believe is wrong. 24 A. Okay. 25 Q. In other words, that there's a mistake, or</p>
<p style="text-align: right;">Page 58</p> <p>1 correct? 2 A. Yes. 3 Q. And then you state -- it's on the top of 4 page 13. 5 You state, "There's one other 6 nurse that had come to me, that I'm trying to 7 remember her name, that had told me some of the same 8 things." 9 And then you asked him to turn off 10 the recorder for one second so you could think about 11 it, right? 12 A. Yes. 13 Q. Were you nervous with the recorder being 14 on? 15 A. I was just nervous in general. Not so much 16 with the recorder, but yes, I was nervous. 17 Q. So you just couldn't think of certain 18 things real fast, right? 19 A. Right. 20 Q. But then it came to you, like it does, and 21 you came up with Kim, right? 22 A. Yes. 23 Q. And you state down towards the middle of 24 the page -- the detective asks you, "And she" -- 25 meaning Kim -- "relayed some concern to you also?"</p>	<p style="text-align: right;">Page 60</p> <p>1 something like that. Okay? 2 A. Okay. 3 Q. So take your time, and if you want I'll 4 give you a pen and -- well, actually just bend the 5 page. Okay? 6 A. Okay. 7 Q. Take your time. 8 MR. MURDOCK: We can go off the record. 9 (Recess.) 10 BY MR. MURDOCK: 11 Q. Ms. Wolfe, you have now had an opportunity 12 to review your voluntary statement in full, is that 13 correct? 14 A. Yes. 15 Q. Is there anything at all in the voluntary 16 statement that you believe is wrong? 17 A. No, but there was a contradiction to 18 something that was said earlier regarding the 19 dates -- 20 Q. Oh, okay. 21 A. -- of when it happened. 22 Q. Tell me about that. 23 A. You had said the 14th to the 15th, and it 24 was actually the 15th to the 16th. 25 Q. Okay. Is that something you specifically</p>

<p>Page 61</p> <p>1 remember, or is it something that --</p> <p>2 A. Something I read in here.</p> <p>3 Q. Something you read in here?</p> <p>4 A. Yeah.</p> <p>5 Q. So in here it says the 15th to the 16th?</p> <p>6 A. Yes.</p> <p>7 Q. But it in actually it was the 14th to the</p> <p>8 15th?</p> <p>9 MR. BEMIS: I object to form. It</p> <p>10 misstates her testimony.</p> <p>11 BY MR. MURDOCK:</p> <p>12 Q. I'm trying to figure it out. I'm not</p> <p>13 trying to --</p> <p>14 A. No, I believe the dates in here are</p> <p>15 correct, the 15th and 16th.</p> <p>16 Q. Okay.</p> <p>17 MS. HALL: I believe she said one of</p> <p>18 your questions said the 14th and 15th.</p> <p>19 MR. MURDOCK: Oh, okay. So my question</p> <p>20 was wrong.</p> <p>21 BY MR. MURDOCK:</p> <p>22 Q. But anything in the statement itself,</p> <p>23 outside of my question?</p> <p>24 MR. SILVESTRI: So that would mean it</p> <p>25 would be 3:00 a.m., or thereabouts, on the 16th?</p>	<p>Page 63</p> <p>1 BY MR. MURDOCK:</p> <p>2 Q. What does it mean to you?</p> <p>3 MR. MURDOCK: Not to you, John.</p> <p>4 THE WITNESS: I take it very seriously.</p> <p>5 That the information I give needs to be true and</p> <p>6 correct, to the best of my knowledge, and that I'm</p> <p>7 not to lie about anything.</p> <p>8 BY MR. MURDOCK:</p> <p>9 Q. Okay. When you gave the statement to the</p> <p>10 police, even though you weren't put under oath, is</p> <p>11 that the same standard you held yourself to?</p> <p>12 A. Yes.</p> <p>13 Q. Okay.</p> <p>14 MR. MURDOCK: I have nothing further at</p> <p>15 this time.</p> <p>16 However, for the record, no matter</p> <p>17 what happens to the rest of this deposition, I'm not</p> <p>18 closing this deposition.</p> <p>19 Because just for the record, I</p> <p>20 don't believe that Mr. Bemis can act as your counsel</p> <p>21 in this matter. I believe he's got a hell of a</p> <p>22 conflict of interest at this point in this case.</p> <p>23 Whether or not he continues as counsel in the entire</p> <p>24 case is up for discussion.</p> <p>25 That being said, if need be we'll</p>
<p>Page 62</p> <p>1 THE WITNESS: Correct.</p> <p>2 MR. MURDOCK: Okay.</p> <p>3 MR. SILVESTRI: Thank you.</p> <p>4 BY MR. MURDOCK:</p> <p>5 Q. So outside of my question being wrong, is</p> <p>6 there anything wrong in the statement itself,</p> <p>7 Plaintiff's Exhibit 1?</p> <p>8 A. No.</p> <p>9 Q. Is there anything in Plaintiff's Exhibit 1</p> <p>10 that you lied about?</p> <p>11 A. No.</p> <p>12 Q. Is there anything in Plaintiff's Exhibit 1</p> <p>13 you weren't being honest and truthful about with the</p> <p>14 police?</p> <p>15 A. No.</p> <p>16 Q. Okay. This morning before the deposition</p> <p>17 was started -- right when the deposition was started</p> <p>18 actually, you gave an oath.</p> <p>19 A. Yes.</p> <p>20 Q. And you gave an oath to tell the truth, is</p> <p>21 that correct?</p> <p>22 A. Yes.</p> <p>23 Q. What does that oath mean to you?</p> <p>24 MR. BEMIS: I object to form. Calls</p> <p>25 for a legal conclusion. You can answer.</p>	<p>Page 64</p> <p>1 have to get a court order, and potentially, if</p> <p>2 allowed, come back and ask you questions about your</p> <p>3 conversations with Mr. Bemis.</p> <p>4 But that being said, I'll leave it</p> <p>5 to Mr. Silvestri.</p> <p>6</p> <p>7 EXAMINATION</p> <p>8 BY MR. SILVESTRI:</p> <p>9 Q. Ms. Wolfe, my name is Jim Silvestri. I</p> <p>10 represent American Nursing Services.</p> <p>11 Why were you terminated from</p> <p>12 Centennial Hills?</p> <p>13 A. I had brought my daughter into work with me</p> <p>14 one night. I knew it was very busy that time of</p> <p>15 year, and I didn't want to call off and leave them in</p> <p>16 a bad situation.</p> <p>17 We had rooms in the back that were</p> <p>18 not being used, and she was -- you know, old enough</p> <p>19 that she didn't have to be watched continually.</p> <p>20 I just put her in one of those</p> <p>21 rooms to keep an eye on her throughout the night,</p> <p>22 instead of leaving her home alone.</p> <p>23 And she started getting sicker</p> <p>24 throughout the night. One of the doctors had</p> <p>25 suggested giving her a bag of fluid.</p>

<p style="text-align: right;">Page 65</p> <p>1 And she was not checked in as a</p> <p>2 patient, but we started an IV on her and gave her</p> <p>3 some fluids. And I was terminated for that.</p> <p>4 Q. Okay. And that was some breach of policy</p> <p>5 of the hospital?</p> <p>6 A. Yes.</p> <p>7 Q. And how long ago was that?</p> <p>8 A. About six years ago.</p> <p>9 Q. Now, most people would say that</p> <p>10 terminations are not pleasant; it can create bad</p> <p>11 feelings.</p> <p>12 Are you testifying here today with</p> <p>13 any animosity or bad feeling toward Centennial Hills</p> <p>14 Hospital?</p> <p>15 A. No. I know that I made a poor decision in</p> <p>16 that situation, and I don't hold the hospital</p> <p>17 responsible in any way.</p> <p>18 Q. All right. And it's true that the</p> <p>19 statement that we've seen in Exhibit 1 was given</p> <p>20 approximately a year before that event even occurred.</p> <p>21 Is that true?</p> <p>22 A. Yes.</p> <p>23 Q. Okay. I just want to go over some of these</p> <p>24 names, in case we can identify some different</p> <p>25 witnesses.</p>	<p style="text-align: right;">Page 67</p> <p>1 A. Yes.</p> <p>2 Q. Were these some of the nurses that you were</p> <p>3 talking about when you said that there were other</p> <p>4 nurses at Centennial Hills that had these same</p> <p>5 concerns or suspicions about Mr. Farmer?</p> <p>6 MR. BEMIS: I object to form.</p> <p>7 Misstates testimony. Go ahead and answer.</p> <p>8 THE WITNESS: I don't recall speaking</p> <p>9 with any of those people in specific about it. Most</p> <p>10 likely I did not talk with those particular people.</p> <p>11 BY MR. SILVESTRI:</p> <p>12 Q. Is Kim's last name Davis?</p> <p>13 A. Yes, that sounds right.</p> <p>14 Q. That's the Kim that you spoke about</p> <p>15 earlier?</p> <p>16 A. Yes.</p> <p>17 Q. Do you recall Julie's last name?</p> <p>18 A. No, I don't.</p> <p>19 Q. Could it be Montero?</p> <p>20 A. I don't know.</p> <p>21 Q. How about Amy? Is there an Amy?</p> <p>22 A. There were two Amys there. The manager,</p> <p>23 Amy Bochenek; and then another Amy, who was a charge</p> <p>24 nurse. I don't recall her last name.</p> <p>25 Q. Is that Amy Augusto?</p>
<p style="text-align: right;">Page 66</p> <p>1 You testified that several nurses</p> <p>2 had expressed or knew about similar concerns or</p> <p>3 suspicions that you had about Mr. Farmer, and I think</p> <p>4 the testimony was even these communications or</p> <p>5 statements were made weeks before the Hanna incident.</p> <p>6 Is that correct?</p> <p>7 A. Yes.</p> <p>8 Q. I don't want to misquote your testimony.</p> <p>9 Do you know Darby Curley?</p> <p>10 A. Yes.</p> <p>11 Q. And who is Darby?</p> <p>12 A. He was one of the charge nurses.</p> <p>13 Q. Shannon Brelig?</p> <p>14 A. Yes. She was one of the charge nurses.</p> <p>15 Q. Sherry Chipolene?</p> <p>16 A. I believe she was a relief charge.</p> <p>17 Q. Yvonne Fernandez?</p> <p>18 A. I do not remember her.</p> <p>19 Q. Jessica Brack?</p> <p>20 A. I don't recall her.</p> <p>21 Q. Ed Tenayo?</p> <p>22 A. I vaguely remember him.</p> <p>23 Q. Karen Evanson?</p> <p>24 A. Yes.</p> <p>25 Q. You remember her?</p>	<p style="text-align: right;">Page 68</p> <p>1 A. Yes.</p> <p>2 Q. Did you ever speak to Amy Augusto about</p> <p>3 Mr. Farmer?</p> <p>4 A. No.</p> <p>5 Q. Did she speak to you about him?</p> <p>6 A. No.</p> <p>7 Q. Were there any nurses on your shift in or</p> <p>8 around May -- well, I'll take that back -- January</p> <p>9 2008 through May 2008, that you considered yourself</p> <p>10 closer to than other nurses?</p> <p>11 A. Yes.</p> <p>12 Q. And who would those be?</p> <p>13 A. Gina.</p> <p>14 Q. Was her name anything other than Gina? Do</p> <p>15 you recall if that was a nickname?</p> <p>16 A. No. To my knowledge, that's what she goes</p> <p>17 by.</p> <p>18 Q. Okay. Anybody else that you were closer</p> <p>19 to?</p> <p>20 A. Ray.</p> <p>21 Q. And that's Ray Sumera?</p> <p>22 A. Yes.</p> <p>23 Q. Anybody else?</p> <p>24 A. Karen Goodheart.</p> <p>25 Q. Was Karen an ER nurse?</p>

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1 A. Yes.
2 Q. Anybody else?
3 A. Karen Evanston.
4 Q. Anybody else?
5 A. That's all that I can recall right now.
6 Q. What are your outside activities? Do you
7 belong to any groups or organizations?
8 A. I was very active in my church for awhile.
9 Not so much right now, but I was very active.
10 Q. Which church is that?
11 A. The LDS Church, Mormon.
12 Q. Were you active with any children or youth
13 groups at that church?
14 A. Yes.
15 Q. And I'm not in the LDS Church, but in my
16 church I'm involved in some youth groups and we go
17 through some youth training -- youth protection
18 training.
19 Are you familiar with any type of
20 youth protection training?
21 A. I am, but I have not had any.
22 Q. Have you had any youth protection training
23 through any other group?
24 A. No.
25 Q. A lot of the questions that you were asked

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1 about whether it's appropriate or not for a male
2 nurse or a male CNA to be in a room of a female
3 patient alone -- a lot of those questions sometimes
4 spoke about the door being closed and the door not
5 being closed.
6 A. Yes.
7 Q. I've got a couple questions to ask you
8 about that.
9 Is it appropriate for a male nurse
10 or a male CNA to be alone with a female patient with
11 the curtain closed?
12 MR. BEMIS: I object to form.
13 Incomplete hypothetical. Answer, if you know.
14 THE WITNESS: It would be similar to
15 the door being closed.
16 BY MR. SILVESTRI:
17 Q. And is it my understanding that at the ER
18 at Centennial Hills in or around January through May
19 of 2008 -- at least in those dates, some of the rooms
20 had doors, and some had just curtains. Is that fair?
21 A. Yes.
22 Q. If an alarm goes on because a lead is
23 detached or is not working properly, with respect to
24 a patient that has, as you talked about, a 5-lead
25 monitor on a patient, and that alarm goes off -- do

Page 71

1 you know if that alarm registers anywhere, other than
2 on the little machine where the leads are attached
3 to?
4 MR. BEMIS: Incomplete hypothetical.
5 Are you talking about in the ER specifically?
6 MR. SILVESTRI: Let's start there, with
7 the ER.
8 BY MR. SILVESTRI:
9 Q. Do you know if that's registered anywhere,
10 like in a patient's chart, or at the nurses' station?
11 A. At the nurses' station there's usually a
12 central monitor. Not always.
13 Q. Well, sometimes the alarm might be going
14 off in a patient's room, and if somebody is not right
15 there they're not going to fix it right away.
16 And that's why I want to know, is
17 that alarm registered anywhere else in the ER?
18 MR. BEMIS: Same objection.
19 THE WITNESS: The alarm itself?
20 BY MR. SILVESTRI:
21 Q. Yeah.
22 A. No.
23 Q. Is there some other notification though
24 that the nurses' station would get that a lead was
25 not attached properly, or was somehow improperly

Page 72

1 working?
2 A. The alarm doesn't necessarily mean that a
3 lead is not attached properly. It just means there's
4 an arrhythmia that needs to be addressed, which could
5 be caused from a lead not being attached properly.
6 Q. Okay.
7 A. The alarms are very loud, so you would hear
8 it outside of the room.
9 Q. Is there any other mechanism though that
10 registers that problem or that issue?
11 A. Sometimes there's central monitors, that an
12 alarm would go off on that central monitor at the
13 nurses' station as well.
14 Q. Do you know if that central alarm goes off
15 if it's registered in a patient's chart?
16 A. Occasionally the monitor will print out a
17 strip of what the rhythm is, and that could be placed
18 into the patient's chart.
19 Q. And it would print out this arrhythmia?
20 A. Yes.
21 Q. Do you know if it's the same system up on
22 the 6th floor of Centennial Hills Hospital?
23 A. I do not know.
24 MR. BEMIS: Objection. Foundation.
25

<p style="text-align: right;">Page 73</p> <p>1 BY MR. SILVESTRI: 2 Q. Do you know where Kim Davis is today? 3 A. No, I don't. 4 Q. You also mentioned Gina. Do you know where 5 Gina is today, where she works? 6 A. The last I knew she was working at UMC. I 7 don't know if she's still there. 8 Q. Do you know what department? 9 A. I believe med-surg. 10 Q. Then you mentioned Karen Evanson. Do you 11 know where she is? 12 A. No, I don't. 13 Q. Then there was one other person. I think 14 it was another Karen. 15 A. Karen Goodheart. 16 Q. Do you know where Karen Goodheart is? 17 A. I don't. I know they're still in Las 18 Vegas, but I don't know where they're working. 19 Q. I'm sorry if I've asked this before. 20 Did you ever communicate with the 21 agencies, or any agency nurse or agency CNA, while 22 you worked at Centennial Hills Hospital? 23 A. No. 24 Q. And the Julie that we spoke of in your 25 statement, do you know where she is today?</p>	<p style="text-align: right;">Page 75</p> <p>1 MR. BEMIS: Objection. 2 THE WITNESS: Not to my knowledge. 3 BY MS. HALL: 4 Q. You certainly weren't ever contacted by 5 anyone at Centennial and asked to give any sort of 6 statement about Steven related to an internal 7 investigation, true? 8 A. True. 9 MS. HALL: Thank you. That's all I 10 have. 11 12 FURTHER EXAMINATION 13 BY MR. MURDOCK: 14 Q. Had you been asked by Centennial about 15 Steven Farmer prior to Denise Hanna, that situation, 16 what would you have told them? 17 A. Exactly what I've told you here. That he 18 made me uncomfortable and I did not want him around 19 my female patients. 20 Q. Because he was overly attentive? 21 A. Yes. 22 Q. And you were suspicious? 23 A. Yes. 24 MR. MURDOCK: Thank you. I have 25 nothing further at this time.</p>
<p style="text-align: right;">Page 74</p> <p>1 A. No, I don't. 2 Q. Do you know if she's still in Las Vegas? 3 A. I do not know. 4 Q. Do you know the last place that you were 5 aware of where she worked? 6 A. Centennial Hills. 7 MR. SILVESTRI: Thank you, Ms. Wolfe. 8 MS. BROOKHYSER: I have no questions. 9 MS. HALL: Just a couple. 10 11 EXAMINATION 12 BY MS. HALL: 13 Q. I just want to get some context on a couple 14 of things that you testified to earlier. 15 Earlier when Mr. Murdock was 16 questioning you, you mentioned that -- I think your 17 testimony was that among the nurses it was kind of 18 well-known, these suspicions or concerns about Steven 19 Farmer, correct? 20 A. Yes. 21 Q. Were you talking about before May 16, 2008? 22 A. Yes. 23 Q. Do you know if before May 16, 2008 there 24 was ever any sort of internal investigation at 25 Centennial related to Steven Farmer?</p>	<p style="text-align: right;">Page 76</p> <p>1 MR. SILVESTRI: Oh, I just have one 2 other question. 3 4 FURTHER EXAMINATION 5 BY MR. SILVESTRI: 6 Q. You mentioned you went to Ray Sumera, as he 7 was a relief charge nurse. He was also a male. 8 Typically at your work, if you're 9 on your shift and you have any issues, is the charge 10 nurse the first person you would go to? 11 A. Yes. 12 MR. SILVESTRI: That's all I've got. 13 Thank you. 14 MR. MURDOCK: You have an opportunity 15 to read and sign, if you so desire. I know John will 16 tell you to read and sign, so -- 17 MR. BEMIS: We'll read and sign. 18 MR. MURDOCK: Very good. 19 20 (The deposition concluded at 11:03 a.m.) 21 22 23 24 25</p>

Page 77

1 REPORTER'S CERTIFICATE

2 STATE OF NEVADA)

3) ss.

4 COUNTY OF CLARK)

5 I, Carol O'Malley, Nevada Certified Court

6 Reporter 178, do hereby certify:

7 That I reported the taking of the deposition

8 of MARGARET WOLFE, RN on May 6, 2015 commencing at

9 the hour of 9:30 a.m.;

10 That prior to being examined, the witness was by

11 me duly sworn to testify to the truth, the whole

12 truth, and nothing but the truth;

13 That I thereafter transcribed my said

14 shorthand notes into typewriting and that the

15 typewritten transcription of said deposition is a

16 complete, true, and accurate transcription of my said

17 shorthand notes taken down at said time. Review of

18 the transcript was requested.

19 I further certify that I am not a relative or

20 employee of an attorney or counsel involved in said

21 action, nor financially interested in said action.

22 IN WITNESS WHEREOF, I have hereunto set my hand

23 in my office in the County of Clark, State of Nevada,

24 this 7th day of May, 2015.

25 *Carol O'Malley*
Carol O'Malley, CCR No. 178

Page 79

1 DEPOSITION ERRATA SHEET

2 Page No. Line No. Change to:

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24 SIGNATURE: DATE:

25 MARGARET WOLFE, RN

Page 78

1 DEPOSITION ERRATA SHEET

2

3 File No. 104099

4 Case Caption: Doe vs. Valley Health Systems

5

6

7

8 DECLARATION UNDER PENALTY OF PERJURY

9

10 I declare under penalty of perjury that I have

11 read the entire transcript of my deposition taken in

12 the captioned matter or the same has been read to me,

13 and the same is true and accurate, save and except

14 for changes and/or corrections, if any, as indicated

15 by me on the DEPOSITION ERRATA SHEET hereof, with the

16 understanding that I offer these changes as if still

17 under oath.

18

19 Signed this day of , 20 .

20

21

22

23 MARGARET WOLFE, RN

24

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Page 80

1 DEPOSITION ERRATA SHEET

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24 SIGNATURE: DATE:

25 MARGARET WOLFE, RN

EXHIBIT “6”

EXHIBIT “6”

at 739. Based upon the assaults being an independent venture by Ronquillo-Nino, the Nevada Supreme Court held that Doe's argument must fail. *Id.*

Likewise, in the instant matter, there is absolutely no possible scenario that alleged sexual assault can be considered within the course and scope of Mr. Farmer's employment. As such, the alleged sexual assault must be considered a truly independent venture of Mr. Farmer. Based upon Mr. Farmer's alleged sexual assault being a truly independent venture, Centennial Hills cannot be held liable for the intentional tort allegations.

2. There is Absolutely No Clear Notice of a Propensity for the Type of Action that is Alleged to Have Occurred.

Most importantly, the alleged sexual assault committed by Mr. Farmer was completely unforeseeable under the facts and circumstances of the case considering the nature and scope of his employment. In order to hold an employer liable for the intentional torts of an employee, NRS 41.745 requires that the action of the employee was reasonably foreseeable under the facts and circumstances of the case considering the nature and scope of his employment. Moreover, NRS 41.745 states "for the purposes of this subsection, conduct of an employee is reasonably foreseeable if a person of ordinary intelligence and prudence could have reasonably anticipated the conduct and the probability of injury." The Nevada Supreme Court has held that if an action is not reasonably foreseeable, the court does not need to look at the other two elements of NRS 41.745(1). *Vaughan v. Harrah's Las Vegas Inc.*, 2008 WL 6124455, 2, attached hereto as Exhibit C.

The Nevada Supreme Court determined that whether an intentional act is reasonably foreseeable depends on whether one has reasonable cause to anticipate such act and the probability of injury resulting therefrom. *See Rockwell v. Sun Harbor Budget Suites*, 112 Nev. 1217, 925 P.2d 1175 (1996) (citing *Thomas v. Bokelman*, 86 Nev. 10, 462 P.2d 1020 (1970)).

1 The Nevada Supreme Court has quoted, with approval, the California Court of Appeal in
2 explaining foreseeability in the context of respondeat superior as follows:

3 Foreseeability, as a test for respondeat superior merely means that in the context of
4 the particular enterprise an employee's conduct is not so unusual or startling that it
5 would seem unfair to include the loss resulting from it among other costs of the
6 employer's business. In other words, where the question is one of vicarious liability,
7 the inquiry should be whether the risk was one 'that may fairly be regarded as typical
8 of or broadly incidental' to the enterprise undertaken by the employer.

9 Under the modern rationale for respondeat superior, the test for determining whether
10 an employer is vicariously liable for the tortious conduct of his employee is closely
11 related to the test applied in workers' compensation cases for determining whether an
12 injury arose out of or in the course of employment. See *Wood*, 121 Nev. at 740
13 (citing *Rodgers v. Kemper Construction Co.*, 50 Cal.App.3d 608, 124 Cal.Rptr. 143,
14 148-49 (1975)).

15 In *Wood*, the Nevada Supreme Court concluded that the because the assailant had no prior
16 criminal record in the United States or Mexico, and because there was no prior complaints
17 against the assailant for sexual harassment, that it was not reasonably foreseeable that the
18 assailant would sexually assault a Safeway employee. 121 Nev. at 740. In *Vaughan*, the Nevada
19 Supreme Court held that based on a lack of a criminal record and no worker complaints of
20 violent assault, Harrah's could not be held liable for its employee assaulting a patron in the
21 bathroom. *Exhibit C*, 2008 WL 6124455, 2.

22 In the instant situation, there were absolutely no known prior acts by Mr. Farmer that
23 could potentially put Centennial Hills on notice that Mr. Farmer would assault a patient. Prior
24 to the alleged incident, Steven Farmer was a certified nurses' assistant in California and Nevada.
25 Mr. Farmer went through a background check to receive his certification in both states.
26 Centennial Hills was provided with a criminal background check, proof of negative drug test and
27 employment background information prior to booking shifts with Mr. Farmer. Thereafter,
28 Centennial Hills performed a primary source verification with the Nevada State Board of
Nursing prior to hiring Mr. Farmer. Further, in reviewing Mr. Farmer's employment file at

EXHIBIT “7”

EXHIBIT “7”

1 against Jane Doe, which included sexual assault, open or gross lewdness, and
2 indecent exposure. (WA0122-24, Vol. I).

3 **C. Plaintiff Moves For Summary Judgment On Liability**
4

5 On September 29, 2014, Plaintiff moved for summary judgment on the issue
6 of liability against all defendants, including ANS, Centennial Hills and UHS.
7 (WA0053-124, Vol. I). Plaintiff urged that each of these corporate entities was
8 vicariously liable as a matter of law for Farmer's criminal assaults on Ms. Doe.
9 (WA0062-64, Vol. I). However, Plaintiff's initial motion did not cite to NRS
10 41.745, or even argue the issue of foreseeability as to any of the corporate
11 defendants. (WA0053-124, Vol. I).
12
13
14

15 Centennial Hills and UHS opposed Plaintiff's summary judgment motion,
16 citing NRS 41.745 and urging that Plaintiff could not recover even at a jury trial,
17 much less as a matter of law, as Centennial Hills and UHS urged that in criminally
18 assaulting Ms. Doe, Farmer was engaged in a truly independent venture; that he
19 was not acting within the course and scope of any assigned task or duties as nurse
20 assistant; and that his criminal assaults of Ms. Doe were not reasonably foreseeable
21 to Centennial Hills. (WA0129-38, Vol. I). Specifically, Centennial Hills and UHS
22 relied upon this Court's decision in *Wood v. Safeway, Inc.*, 121 Nev. 724, 737, 121
23 P.3d 1026, 1035 (2005), and urged that there were no known prior acts or any
24
25
26
27
28

1 other circumstances that could have put Centennial Hills on notice that Farmer
2 would sexually assault Ms. Doe. (WA0132-35, Vol. I). ANS provided Centennial
3 Hills with documentation showing that Farmer was certified as a CNA in both
4 California and Nevada, that he had passed a criminal background test in both
5 states, as well as a negative drug test. (WA0133-34, WA0170-72, WA0183; Vol.
6 I). ANS also provided Centennial Hills with Farmer's prior employment
7 information, which contained no reports of improper conduct or bad character.
8 (WA0133-34, Vol. I).

12 In her Reply, Plaintiff urged that she was required to prove only the "general
13 foreseeability" standard discussed in *State Dep't of Hum. Res. v. Jimenez*, 113 Nev.
14 735, 941 P.2d 969 (1997), a Nevada Supreme Court opinion that was subsequently
15 withdrawn. (WA0521, Vol. III). Although Plaintiff acknowledged that the Nevada
16 legislature intended to overrule *Jimenez* when it drafted NRS 41.745 (WA0519, fn.
17 9; Vol. III); nevertheless, she urged that it was sufficient for her to show that
18 Farmer's sexual assaults were "not so unusual or startling," given that CNAs and
19 other hospital personnel often have physical contact with a patient. (WA0521-24,
20 Vol. III). Plaintiff even urged that foreseeability was established as to ANS by the
21 fact that ANS had purchased liability insurance to cover sexual assaults.
22 (WA0523, Vol. III). Plaintiff also provided "expert" affidavits asserting the
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EXHIBIT “8”

EXHIBIT “8”

1 (WA0062-64, Vol. I). However, Plaintiff's initial motion did not cite NRS 41.745
2 or even argue the issue of foreseeability as to any of the corporate defendants.
3 (WA0053-124, Vol. I).
4

5 Centennial Hills and UHS (Centennial's parent company) (WA0028, Vol. I)
6 responded to Plaintiff's summary judgment motion, citing NRS 41.745 and urging
7 that Plaintiff could not recover even at a jury trial, much less as a matter of law,
8 unless she proved: that Mr. Farmer's criminal assaults against Ms. Doe were not a
9 truly independent venture; that the assaults occurred within the course and scope of
10 the very tasks assigned to him; and that these criminal sexual assaults by Mr.
11 Farmer were reasonably foreseeable to Centennial Hills. (WA0129, Vol. I).
12 Centennial Hills and UHS urged that in criminally assaulting Ms. Doe, Farmer was
13 engaged in a truly independent venture; that he was not acting within the course
14 and scope of any assigned task or duties as nurse assistant; and that his criminal
15 assaults of Ms. Doe were not reasonably foreseeable to Centennial Hills.
16 (WA0129-35, Vol. I).
17
18
19
20
21

22 With respect to the issue of reasonable foreseeability, Centennial Hills and
23 UHS relied upon this Court's decision in *Wood v. Safeway, Inc.*, 121 Nev. 724,
24 737, 121 P.3d 1026, 1035 (2005), and urged that there were no known prior acts or
25 any other circumstances that could have put Centennial Hills on notice that Farmer
26 would sexually assault Ms. Doe, or any other patient. (WA0132-35, Vol. I).
27
28

EXHIBIT “9”

EXHIBIT “9”

HPS

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Attorneys at Law

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April 16, 2015

ELECTRONICALLY SERVED
04/16/2015 03:06:46 PM

VIA ELECTRONIC SERVICE

Robert Murdock, Esq.
521 South Third Street
Las Vegas, Nevada 89101

Re: Estate of Jane Doe vs. Centennial Hills Hospital

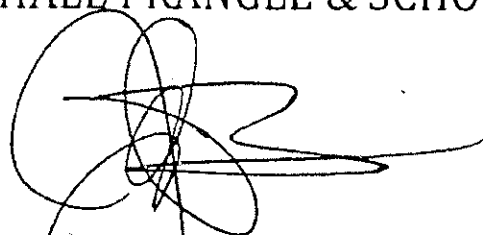
Dear Mr. Murdock,

We were just informed that Margaret Wolfe is no longer available for her deposition, currently scheduled for Tuesday, April 28, 2015 at 9:30 a.m. due to a conflict with work. She has advised us that she is available on Tuesday, May 5, 2015 starting at 1:00 p.m. Please advise if this date works for your office.

Should you have any questions or concerns, please do not hesitate to contact the undersigned.

Sincerely,

HALL PRANGLE & SCHOONVELD, LLC



John F. Bemis, Esq.

JFB/djc
cc: All Counsel

4824-5298-1795, v. 1

TAB 16

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MICHAEL E. PRANGLE, ESQ.

Nevada Bar No. 8619

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Attorneys for Defendants

Valley Health System, LLC d/b/a

Centennial Hills Hospital and

Universal Health Services, Inc.

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07/30/2015 03:14:36 PM

Alvin D. Schuman

CLERK OF THE COURT

DISTRICT COURT
CLARK COUNTY, NEVADA

MISTY PETERSON, AS SPECIAL
ADMINISTRATOR OF THE ESTATE OF
JANE DOE,

Plaintiff,

vs.

CASE NO. A595780
DEPT NO. II

VALLEY HEALTH SYSTEM LLC, a Nevada
limited liability company, d/b/a CENTENNIAL
HILLS HOSPITAL MEDICAL CENTER;
UNIVERSAL HEALTH SERVICES, INC., a
Delaware corporation; AMERICAN NURSING
SERVICES, INC., a Louisiana corporation;
STEVEN DALE FARMER, an individual; DOES I
through X, inclusive; and ROE CORPORATIONS I
through X, inclusive,

Defendants.

**DEFENDANTS VALLEY HEALTH SYSTEM LLC d/b/a CENTENNIAL HILLS
HOSPITAL MEDICAL CENTER AND UNIVERSAL HEALTH SERVICES, INC.'S
OBJECTION TO DISCOVERY COMMISSIONER REPORT AND
RECOMMENDATION**

///
///



COME NOW, Defendants, VALLEY HEALTH SYSTEMS, LLC d/b/a CENTENNIAL HILLS HOSPITAL MEDICAL CENTER AND UHS OF DELAWARE, INC., (hereinafter "Hospital Defendants") by and through their attorneys, HALL PRANGLE & SCHOONVELD, LLC, and hereby file their Objection to the Discovery Commissioner's Report and Recommendations that Plaintiff's Motion for NRCP 37 Sanctions.

The Discovery Commissioner's Report and Recommendations is attached hereto as **Exhibit A**. This Objection is made and based on the papers and pleadings on file herein, the Points and Authorities attached hereto and such argument of counsel which may be adduced at the time of the hearing on said objection.

DATED this 30th day of July, 2015.

HALL PRANGLE & SCHOONVELD, LLC

/s/: John F. Bemis, Esq.

MICHAEL E. PRANGLE, ESQ.

Nevada Bar No.: 8619

JOHN F. BEMIS, ESQ.

Nevada Bar No. 9509

1160 North Town Center Drive, Suite 200

Las Vegas, NV 89144

Attorneys for Defendants

Valley Health System, LLC d/b/a

Centennial Hills Hospital and

Universal Health Services, Inc.

I.

INTRODUCTION

The matter originally came before the Discovery Commissioner on Plaintiff's Motion for NRCP 37 Sanctions against the Hospital Defendants -- seeking a finding that Farmer's sexual assault was foreseeable as a matter of law -- due to their delay in disclosing Nurse Margret Wolfe pursuant to NRCP 16.1 and for their alleged complicity in her non-appearance at deposition on

1 April 28, 2015. At the hearing on Plaintiff's Motion, Plaintiff expanded her request for sanctions
2 to include the Hospital Defendants' delay in disclosing two additional nurses, Nurse Christine
3 Murray and Nurse Ray Sumera in their NRCP 16.1 disclosures. After entertaining argument, the
4 Discovery Commissioner determined that while Nurse Wolfe's failure to appear for her
5 deposition was a "non-issue", Plaintiff's Motion should nonetheless be granted in part. The
6 Discovery Commissioner made the following additional recommendations:
7

- 8 • That "full admission of the nurses' LVMPD statements without the
9 necessity of foundation, and without restriction both as to substance and
10 form; hearsay cannot be an objection, and there cannot be objections to
11 recorded statements as the statements are the best information at or near
12 the time of the events";
- 13 • Hospital Defendants to be sanctioned in the amount of \$1,000 per
14 unidentified nurse (3) for each year not identified (6) for a total of
15 \$18,000.00;
- 16 • Due to length of time that elapsed between filing of Plaintiff's Complaint
17 and their ultimate disclosure, an evidentiary hearing should be held by the
18 District Court to determine additional sanctions, including whether case
19 terminating sanctions are warranted, whether the Hospital Defendants
20 intended to thwart the discovery process and hinder Plaintiff's ability to
21 discover relevant facts, and whether the Hospital Defendant's misled the
22 court; and
- 23 • That the District Court "may reconsider reducing the amount of sanctions
24 if the [Hospital Defendants] were to sufficiently prove with a degree of
25 probability that the hospital had no knowledge of Sumera or Wolfe until
26 just recently." **Exhibit A.**

27 The Hospital Defendants request that the Court reject the Discovery Commissioner's
28 Recommendations and deny Plaintiff's Motion for Sanctions, or, in the alternative and in
accordance with the Discovery Commissioner's final recommendation, reduce the sanctions
awarded because the Hospital Defendants did not have knowledge that these persons had
information relevant to *this* Plaintiff's claims (or knowledge of the substance of either Nurse
Wolfe's or Nurse Murray's 2008 statements to the LVMPD) until after they received a copy of

Farmer's police file in May 2013 – documentation the Hospital Defendants were precluded from disclosing pursuant to a Protective Order until November 12, 2014.

Notwithstanding these facts explaining the Hospital Defendants' delay in disclosing these witnesses and their statements, Plaintiff nonetheless knew of Nurse Murray and Nurse Wolfe, and that they may have information relevant to the instant case, as early as March 17, 2010 when she disclosed them as part of her Fifth Supplement to Case Conference Disclosures Pursuant to NRCP 16.1. Likewise, Plaintiff also had knowledge of Nurse Sumera as early as May 13, 2010, when she filed her Sixth Supplemental 16.1 List of Witnesses and Documents disclosing two depositions wherein Nurse Sumera was identified as a nurse taking care of another patient and possibly in a relief charge role for the evening of the Cagnina incident (May 16, 2008). Thus, contrary to the Discovery Commissioner's finding, Plaintiff was not prejudiced by any delay in disclosure of the identifies of these witnesses by the Hospital Defendants since she clearly knew of their existence and potential relevance to the instant case no later than May 13, 2010, less than a year after filing suit when she included them in her own NRCP 16.1 disclosures.

Alternatively, to the extent Plaintiff did suffer any prejudice as a result of the Hospital Defendants' delay in disclosing these witnesses' identities, the Discovery Commissioner's sanctions ordering the full admission of the Police Statements and \$18,000 in additional sanctions far outweigh the alleged violation given the aforementioned reasons explaining the delay and Plaintiff's possession of this information less than a year after filing suit. Accordingly, for each of the aforementioned reasons, the Hospital Defendants request that this Court deny Plaintiff's Motion for Sanctions, or, in the alternative, reduce the sanctions in a manner it deems just and proper.

II.

LEGAL ARGUMENT**A. The Hospital Defendants Did Not Know That These Witnesses Had Information Relevant To The Incident At Issue Until May 2013 – Almost Two Years After They Had Already Been Disclosed By Plaintiff.**

The Discovery Commissioner's recommendations for sanctions should not be adopted or, in the alternative, should be substantially reduced, because the Hospital Defendants did not have knowledge that either witness had information relevant to *this* Plaintiff's claims, or of the substance of Nurse Wolfe's and/or Nurse Murray's statements to the Las Vegas Metropolitan Police, until May 2013, after plaintiff had already disclosed these witnesses in her March and May 2010 Fifth and Sixth Supplemental NRCP 16.1 disclosures. Indeed, as discussed more fully below, the sequence of events following the incident in question demonstrate that there was no willful noncompliance with a court order or any attempt by the Hospital Defendants to intentionally thwart the discovery process such that sanctions would be warranted, much less the severe sanctions recommended here.

At the time Plaintiff filed her Complaint in the instant case, the State of Nevada, as of July 2, 2008, had already instituted criminal proceedings against Mr. Farmer in *State v. Farmer*, No. C245739 based on another patient (Cagnina) complaint arising from an incident on May 16, 2008. The Cagnina criminal case was later consolidated with allegations by other claimants, including Doe, alleging that they too had been sexually assaulted by Mr. Farmer (Case No. 08C249693). Approximately one year later, close in time to when Plaintiff filed her initial complaint in this case, Nurse Christine Murray and Nurse Margaret Wolfe were disclosed as witnesses in the criminal proceedings. See September 28, 2009 Second Supplemental Notice of Witnesses And/Or Expert Witnesses and October 16, 2009 Third Supplemental Notice of

Witnesses And/Or Expert Witnesses, attached hereto as **Exhibit B** and **C**, respectively. Several of the witnesses named in these disclosures, including Nurses Murray and Wolfe, were neither assigned to nor involved in the instant Plaintiff's treatment. Rather, Nurse Murray was assigned to one of the other complaining witnesses (Cagnina) while Nurse Wolfe (and Nurse Sumera) was an emergency room nurse who also did not provide any care or treatment to Plaintiff, much less work on the same floor as Plaintiff's hospital room. While the Hospital Defendants interviewed Nurses Wolfe, Murray, and Sumera immediately following the Cagnina incident, those interviews took place *before* the Hospital Defendants had any knowledge of the incident involving the instant Plaintiff. Once the instant Plaintiff's allegations surfaced, the Hospital Defendants did not re-interview these witnesses because neither Nurse Wolfe, Nurse Murray, nor Nurse Sumera were assigned to Plaintiff or provided her any care and treatment. As a result, the Hospital Defendants reasonably believed that they would not have any information relevant to Plaintiff's claims but instead, had information relevant only to the other criminal complainants – the patient(s) to whom they had actually provided treatment. Thus, given this knowledge, the Hospital Defendants made the decision, in good faith, not to include these witnesses in their NRCP 16.1 initial or supplemental disclosures in the instant case.

However, on May 6, 2013, during the course of proceedings in *Cagnina v. Centennial Hills Hospital*, No. A5707056, the Hospital Defendants, pursuant to a joint motion with the plaintiff to compel, obtained a copy of the Las Vegas Metropolitan Police Department file for Steven Farmer. See May 6, 2013 Notice of Entry of Order re: Discovery Commissioner's Report and Recommendations in *Cagnina v. Centennial Hills Hospital*, No. A570756, attached hereto as **Exhibit F**. Prior to obtaining the police file, the Hospital Defendants were aware that several nurses had spoken with the police but they neither attended nor were privy to the substance of

those interviews/statements. Upon obtaining a copy of Mr. Farmer's file, the Hospital Defendants learned for the first time that Nurses Murray, Wolfe, and Sumera had information that could be relevant to Plaintiff's claims. The Hospital Defendants, however, were precluded at that time from disseminating Mr. Farmer's police file outside the confines of the *Cagnina* Proceedings due to a protective order. See Exhibit F, at 2, ¶2. Indeed, it was not until November 14, 2014, that the Hospital Defendants were able to produce the file when they were ordered to do so by this Court. See November 12, 2014 Discovery Commissioner's Report and Recommendation, attached hereto as Exhibit G. By that time, over *three years* had already passed since Plaintiff had disclosed Nurses Murray and Wolfe in her Fifth and Sixth Supplemental NRCP 16.1 Disclosures.

Thus, as demonstrated by this sequence of events, the Hospital Defendants did not willfully withhold any information, much less know that these witnesses had information relevant to the instant Plaintiff's claims until May 2013 at the earliest. Moreover, even upon receiving the police file, the Hospital Defendants were prevented from disclosing or producing the file until November 2014. Given these facts, and that Plaintiff had already disclosed Nurse Murray and Wolfe as individuals who may have knowledge of his claims approximately *3 years earlier*, this Court should decline to adopt the Discovery Commissioner's recommendations or, in the alternative, substantially reduce the recommended sanctions.

B. Plaintiff Was Not Prejudiced By The Hospital Defendants' Failure to Disclose The Identities Of Nurses Murray, Wolfe, Or Sumera Because She Had Knowledge Of Their Identities And Potential Relevance As Early As March and May 2010 – Within One Year After Filing Suit.

The Discovery Commissioner's recommendations should also not be adopted or, in the alternative, should be substantially reduced because Plaintiff was not prejudiced – or at best only minimally prejudiced – by the Hospital Defendants' failure to timely disclose Nurses Murray,

1 Wolfe, and Sumera.

2 As discussed *supra*, at the time of filing of Plaintiff's Complaint, criminal proceedings on
3 behalf of several complaining witnesses had already been underway against Farmer. In the
4 course of those proceedings, the District Attorney filed certain witness disclosures, identifying
5 numerous staff at Centennial Hills Hospital. Specifically, on September 28, 2009, the District
6 Attorney filed his Second Supplemental Notice of Witnesses and/or Expert Witnesses,
7 identifying Carol Butler, Christine Murray, Margaret Wolfe, Christen Edwards, Jeanine James,
8 Julie Montero, P. Robertson, Jackie Schumacher and Lori Wescott. *See Exhibit B.* Three weeks
9 later, the District Attorney filed his Third Supplemental Notice of Witnesses and/or Expert
10 Witnesses, further identifying additional witnesses and documentation, including Kim Davis,
11 Karen Goodhart and Sandra Pagain. *See Exhibit C.* Several of these witnesses, including
12 Christine Murray and Margaret Wolfe, were not assigned to Plaintiff nor had any involvement in
13 her care and treatment while a patient at Centennial Hills.
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16 On March 17, 2010, Plaintiff identified and disclosed both of these witness lists in their
17 entirety as part of her Fifth Supplemental 16.1 Statement of Witnesses and Documents. *See*
18 Plaintiff's Fifth Supplement to Case Conference Disclosures Pursuant to NRCP 16.1, attached
19 hereto as *Exhibit D.* Shortly thereafter, on May 13, 2010, Plaintiff filed a Sixth Supplement to
20 Case Conference Disclosures Pursuant to 16.1 wherein she identified certain additional
21 documentation, including the deposition of Karen Goodhart and Amy Bochenek from the
22 *Cagnina v. Centennial Hills Hospital* civil case. *See* Plaintiff's Sixth Supplement to Case
23 Conference Disclosures Pursuant to NRCP 16.1, attached hereto as *Exhibit E.* Notably, the
24 depositions of Ms. Goodhart and Ms. Boechenek both identify Rey Sumera as a nurse taking
25 care of the patient and possibly as a relief charge nurse for the evening of May 16, 2008. *See*
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March 10, 2010 Deposition of Amy Bochenek, RN, attached hereto as **Exhibit H**, at 33, 49, and January 27, 2010 Deposition of Karen Goodhart, RN, attached hereto as **Exhibit I**, at 35, 48, 75, 89-90. While Plaintiff chose to disclose these witnesses at that time, the Hospital Defendants did not because, as discussed above, these witnesses were not assigned to Plaintiff and thus, they reasonably believed they were included in the District Attorney's witness lists solely because they were relevant to the other complaining witnesses' claims. In retrospect, the Hospital Defendants could have and in fairness should have disclosed these three witnesses in a supplemental NRCP 16.1 disclosure at that time. However, all of these witnesses were already known to and identified by Plaintiff in her own NRCP 16.1 disclosures almost three years earlier.

Thus, despite any delay by the Hospital Defendants in disclosing these witnesses' identities, Plaintiff already had demonstrated her belief that Nurses Murray and Wolfe – as early as March 2010 – and Nurse Sumera via Ms. Goodhart and Ms. Bochenak's deposition – as early as May 2010 – had information relevant to her claims when she identified and disclosed the State's Witness Lists in their entirety in her own NRCP 16.1 disclosures. Accordingly, for this additional reason, the Court should decline to adopt the Discovery Commissioner's recommendations or, in the alternative, substantially reduce the recommended sanctions.

C. To The Extent Sanctions Are Still Warranted, They Should Be Reduced.

While the Hospital Defendants believe no sanctions are warranted given the above sequence of events – especially considering Plaintiff's knowledge of these witnesses' identities *less than a year after filing suit* – if sanctions are to be issued, they should be substantially reduced.

Nevada law is clear that sanctions may only be imposed where there has been willful noncompliance with a court order or where the adversary process has been halted by the actions

of the unresponsive party. *Fire Ins. Exchange v. Zenith Radio Corp.*, 103 Nev. 648, 651, 747 P.2d 911, 913 (1987). *GNLV Corp. v. Serv. Control Corp.*, 111 Nev. 866, 869, 900 P.2d 323, 325 (1995). Fundamental notions of due process require that the discovery sanctions for discovery abuses be just and that the sanctions relate to the claims which were at issue in the discovery order which is violated. *Wyle v. R.J. Reynolds Industries, Inc.*, 709 F.2d 585, 591 (9th Cir.1983). *Young v. Johnny Ribeiro Bldg., Inc.*, 106 Nev. 88, 92, 787 P.2d 777, 779-80 (1990). Implicit in district judge's authority to sanction parties for failure to comply with pretrial conference orders is that district judge must design sanction to fit violation. Rules Civ.Proc., Rule 37(b)(2). *City of Sparks v. Second Judicial Dist. Court In and For County of Washoe*, 1996, 920 P.2d 1014, 112 Nev. 952.

Here, the Discovery Commissioner sanctioned Defendant \$18,000, employing a formula of \$1,000 per "unidentified nurse (3) for each year not identified (6). . . ." See **Exhibit A**. In addition, she recommended

- due to the "time length involved in UHS' failure to identify the nurses," an evidentiary hearing before this Honorable Court to determine whether case terminating sanctions are appropriate;
- the full admission of the nurses' Las Vegas Metropolitan Police Department statements without the necessity of foundation, without the restriction both as to substance and form, and barring any objections based on hearsay or to recorded statements; and
- that the District Court "may reconsider reducing the amount of sanctions if the [Hospital Defendants] were to sufficiently prove with a degree of probability that the hospital had no knowledge of Sumera or Wolfe until just recently." **Exhibit A**.

Given the sequence of events discussed *supra* (Points I.A. and I.B.), this Court should decline to adopt the Discovery Commissioner's recommendations. Nonetheless, to the extent this Court determines that sanctions are still warranted because of the Hospital Defendants'

1 failure to supplement their NRCP 16.1 disclosures in May 2013 (upon receipt of the police file),
2 the recommended sanctions should be substantially reduced to a monetary fine. The reduction is
3 appropriate because the Hospital Defendants did not willfully disobey a court order or otherwise
4 attempt to thwart the discovery process. Rather, the Hospital Defendants' decision not to
5 identify Nurses Wolfe, Murray and/or Sumera in their NRCP 16.1 disclosures prior to May 2013
6 was motivated by a good faith belief that these persons did not have information relevant to the
7 instant Plaintiff's case. Thus, any monetary sanctions should instead reflect the period of time
8 between when they acquired the police file in May 2013 (and arguably knew these nurses
9 possessed potentially relevant information) and their ultimately disclosure of the file containing
10 their identities and statements in November 2014. Employing the Discovery Commissioner's
11 formula, the monetary sanctions should therefore be reduced from \$18,000 to \$3,000,
12 representing \$1,000 per "unidentified witness" for the year they knew about the witnesses and
13 their potential knowledge relevant to the instant Plaintiff's case yet failed to disclose their
14 identities.
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III.

CONCLUSION

Based on the foregoing, Defendants Centennial Hills Hospital and UHS respectfully request this Honorable Court rescind the sanctions recommended by the Discovery Commissioner, or, in the alternative, reduce the sanctions to a monetary fine of \$3,000.

DATED this 30th day of July, 2015.

HALL PRANGLE & SCHOONVELD, LLC

/s/: John F. Bemis, Esq.

MICHAEL E. PRANGLE, ESQ.

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Attorneys for Defendants

Centennial Hills Hospital and

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DECLARATION OF JOHN F. BEMIS, ESQ. RE LR 2.34

STATE OF NEVADA)
) SS.
COUNTY OF CLARK)

JOHN F. BEMIS, being first duly sworn deposes and says:

1. I am an attorney duly licensed to practice law in the State of Nevada and, along with Michael E. Prangle, Esq., am the attorney for Defendants Centennial Hills Hospital and Universal Health Services, Inc. in the above captioned action.
2. I have personal knowledge of the facts set forth herein and am capable and willing to testify to same if called upon to do so.
3. Attached hereto as Exhibit A is a true and correct copy of the July 14, 2015 Discovery Commissioner's Report and Recommendations.
4. Attached hereto as Exhibit B is a true and correct copy of the District Attorney's Office September 28, 2009 Second Supplemental Notice of Witnesses And/Or Expert Witnesses in *State v. Farmer*, No. C245739.
5. Attached hereto as Exhibit C is a true and correct copy of the District Attorney's Office October 16, 2009 Third Supplemental Notice of Witnesses And/Or Expert Witnesses in *State v. Farmer*, No. C245739.
6. Attached hereto as Exhibit D is a true and correct copy of Plaintiff's Fifth Supplement to Case Conference Disclosures Pursuant to NRCP 16.1.
7. Attached hereto as Exhibit E is a true and correct copy of Plaintiff's Sixth Supplement to Case Conference Disclosures Pursuant to NRCP 16.1.

1 8. Attached hereto as Exhibit F is a true and correct copy of the May 6, 2013 Notice of
2 Entry of Order re: Discovery Commissioner's Report and Recommendations in *Cagnina*
3 *v. Centennial Hills Hospital*, No. A570756.

4 9. Attached hereto as Exhibit G is a true and correct copy of this Court's November 12,
5 2014 Discovery Commissioner's Report and Recommendation.

6 10. Attached hereto as Exhibit H is a true and correct copy of the March 10, 2010 Deposition
7 of Amy Bochenek, RN, in *Cagnina v. Centennial Hills Hospital*, No. A570756,
8 specifically pages 33 and 49.

9 11. Attached hereto as Exhibit I is a true and correct copy of the January 27, 2010 Deposition
10 of Karen Goodhart, RN, in *Cagnina v. Centennial Hills Hospital*, No. A570756,
11 specifically pages 35, 48, 75, 89 and 90.

12 FURTHER YOUR DECLARANT SAYETH NAUGHT.
13
14

15 /s/: John F. Bemis, Esq.
16 JOHN F. BEMIS, ESQ.
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CERTIFICATE OF SERVICE

I HEREBY CERTIFY that I am an employee of HALL PRANGLE & SCHOONVELD, LLC; that on the 30th day of July, 2015, I served a true and correct copy of the foregoing

DEFENDANTS VALLEY HEALTH SYSTEM LLC d/b/a CENTENNIAL HILLS

HOSPITAL MEDICAL CENTER AND UNIVERSAL HEALTH SERVICES, INC.'S

OPPOSITION TO PLAINTIFF'S MOTION FOR NRCP 37 SANCTIONS via Electronic

Service through Wiznet to the following parties at their last known address:

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/s/: Audrey Ann Stephanski

An employee of HALL PRANGLE & SCHOONVELD, LLC

CASE NO. 70083

**IN THE
SUPREME COURT OF NEVADA**

**VALLEY HEALTH SYSTEM, LLC, a Nevada limited liability company,
d/b/a CENTENNIAL HILLS HOSPITAL MEDICAL CENTER; AND
UNIVERSAL HEALTH SERVICES, INC., a Delaware corporation,**

Appellants,

vs.

**ESTATE OF JANE DOE, BY AND THROUGH ITS SPECIAL
ADMINISTRATOR, MISTY PETERSON,**

Respondent.

**APPEAL FROM THE EIGHTH JUDICIAL DISTRICT COURT, CLARK
COUNTY, NEVADA
HONORABLE JUDGE RICHARD SCOTTI, CASE NO. A-09-595780-C**

APPELLANTS' APPENDIX TO OPENING BRIEF

VOLUME II of XVII

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APPENDIX TO APPELLANTS' OPENING BRIEF

VOLUME II of XVII

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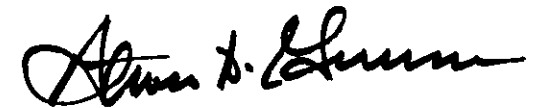
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Plaintiff's Exhibit 32 – Excerpts of Deposition of Margaret Wolfe, RN dated May 5, 2015	XVII	80	AA3214-AA3221
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TAB 8



CLERK OF THE COURT

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DISTRICT COURT
CLARK COUNTY, NEVADA

ESTATE OF JANE DOE, by and through its
Special Administrator, Misty Petersen,

Plaintiff,

vs.

VALLEY HEALTH SYSTEM LLC, a Nevada
limited liability company, d/b/a CENTENNIAL
HILLS HOSPITAL MEDICAL CENTER;
UNIVERSAL HEALTH SERVICES, INC., a
Delaware corporation; AMERICAN NURSING
SERVICES, INC., a Louisiana corporation;
STEVEN DALE FARMER, an individual; DOES I
through X, inclusive; and ROE CORPORATIONS
I through X, inclusive,

Defendants.

CASE NO. 09-A-595780-C
DEPT. NO. II

**REPLY TO DEFENDANTS'
OPPOSITIONS TO
PLAINTIFF'S MOTION FOR
SUMMARY JUDGMENT
RE: LIABILITY**

DATE: December 3, 2014
TIME: 9:00 a.m.

COMES NOW Plaintiff Estate of Jane Doe, by and through its Special Administrator,
Misty Petersen, by and through its attorneys of record, Murdock & Associates, Chtd., and Eckley
M. Keach, Chtd., and hereby submits its Reply to Defendants' Oppositions to Plaintiff's Motion
for Summary Judgment Re: Liability as follows.

1 This Reply is made and based upon the attached Points and Authorities, the papers and
2 pleadings on file herein, and any oral argument as may be had by this Court.

3 DATED this 21st day of November, 2014.

4 MURDOCK & ASSOCIATES, CHTD.
5 ECKLEY M. KEACH, CHTD.

6 /s/ Robert E. Murdock
7 Robert E. Murdock Bar No. 4013
8 Eckley M. Keach Bar No. 1154
9 521 South Third Street
10 Las Vegas, NV 89101
11 Attorneys for Plaintiff

12
13
14 **POINTS AND AUTHORITIES**

15 **I. INTRODUCTION**

16 The Motion for Partial Summary Judgment is limited in scope. The Motion is based upon
17 NRS 41.133 and how such is applied. Once Mr. Farmer was convicted, two things occurred: (1)
18 Mr. Farmer's civil liability is automatic, and (2) the facts used for the conviction have all been
19 proven. The court must grant summary judgment on those issues. All of the defendants now must
20 concede the fact that Jane Doe was sexually assaulted by Farmer and all of the details of those
21 sexual assaults that he was convicted of are now established as a matter of law. That is what NRS
22 41.133 mandates.

23 This has consequences. Any "affirmative defenses" or factual defenses related to those
24 conceded facts must now be dismissed. Both American Nursing Services, Inc. (hereinafter,
25 "ANS") and Centennial Hills Hospital Medical Center (hereinafter, "Centennial/UHS") seem to
26 have missed that point. If the facts of the sexual assaults have been proven, there is no further
27 relevance to, for example, when she told the police or why she may have waited to tell the police.
28 The sexual assault has been established, and the only issues have to deal with damages.

Additionally, because of the conviction, NRS 41.130 mandates liability upon ANS and Centennial/UHS as the employers of Farmer.

Centennial/UHS and ANS argue that they are not liable based upon NRS 41.745.¹ They claim that Farmer's intentional acts preclude their liability. The issue, however, is that the Nevada Supreme Court disagrees with them. Unless this Court is going to overrule **Prell Hotel Corp. v. Antonacci**, 86 Nev. 390, 469 P.2d 399 (Nev. 1970), and **Wood v. Safeway, Inc.**, 121 P.3d 1026, 121 Nev. 724 (2005), this Court must grant summary judgment against both ANS and UHS, not for their own negligence², but based upon NRS 41.133, 41.130, and 41.745.

There are no genuine issues of material fact regarding (1) whether the sexual assault occurred, (2) how the sexual assault occurred, (3) liability of Farmer for the sexual assault on Jane Doe, (4) employment of Farmer by both ANS and Centennial/UHS, (5) respondeat superior liability for ANS, (6) respondeat superior liability for Centennial/UHS, (7) absolute strict liability for the actions of Farmer as to Centennial/UHS, and (8) ratification of Farmer's actions by Centennial/UHS and ANS through the actions of their lawyers. The party who moves for summary judgment has the burden of showing the absence of genuine issues of material fact. **Cuzze v. Univ. & Cmty. Coll. Sys. of Nev.**, 123 Nev. 598, 602, 172 P.3d 131, 134 (2007). Plaintiff has met this burden.

II. LEGAL ARGUMENT

A. THE UNCONTESTED FACTS

All parties agree that the following facts are uncontested:

1. In May of 2008, Jane Doe was a patient at Centennial/UHS. ANS Admission Number 1 (1st Set). Centennial/UHS Admission Number 1 (5th Set).

///

///

¹ They actually both allege that they are either not liable or there is a question of fact.

² ANS has separately filed a Motion for Summary Judgment regarding their own negligence and Centennial/UHS has joined in same; however, this was withdrawn because of an agreement regarding documentation from ANS. Nevertheless, some of the issues that go to their own negligence, also apply to the issue of the foreseeability prong of respondeat superior. Hence, herein, Plaintiff discusses facts which apply to both. But, the instant Motion only has to do with NRS 41.130 liability. Issues related to the negligence of ANS and Centennial will be discussed in another Motion.

1 2. In May of 2008, Centennial/UHS had a contractual agreement whereby ANS would
2 provide certain hospital staff, which included Certified Nursing Assistants (hereinafter, "CNA").
3 Simmons Deposition at 115. ANS00665-ANS00703 (Portions).

4 3. In May of 2008, Defendant Steven Farmer was an agency CNA working at
5 Centennial/UHS through ANS. Centennial/UHS Admission Number 2 (5th Set).

6 4. In May of 2008, Farmer wore an employee badge that had his name, ANS, and
7 Centennial/UHS written on it. Sparacino Person(s) Most Knowledgeable Deposition at 7-8.

8 5. There was nothing on the badge to indicate to a patient that Farmer was not an
9 employee of Centennial/UHS. *Id.* at 8.

10 6. There was nothing about his clothing, job performance, duties, or anything he did
11 that would indicate to a patient that Farmer was not an employee of Centennial/UHS. *Id.* at 8.

12 7. At around 21:30 hours on May 14, 2008, Farmer was moved by Centennial/UHS
13 from the Emergency Room to the Sixth Floor to work. Centennial/UHS Documents Staff00001;
14 CHH00323; CHH Interrogatory Response No. 1 (7th Set).

15 8. On May 14, 2008, Jane Doe was in Room 614 at Centennial/UHS. Centennial/UHS
16 Chart.

17 9. On May 14, 2008, in the course and scope of his employment with ANS as a CNA
18 and in the course and scope of working at Centennial/UHS, it was expected as part of his tasks that
19 Farmer would enter patients' rooms on the Sixth Floor of Centennial/UHS. In addition, Farmer
20 was expected to give bed baths, cleanup stool, cleanup urine, and check monitor leads. CNA
21 Skills Guidelines (Nevada State Board of Nursing); Centennial/UHS Skills Competency Checklist.
22 Goodhart Deposition at 43-44.

23 10. On May 14, 2008, Farmer entered Jane Doe's room, Room 614 at Centennial/UHS.
24 Testimony of Jane Doe at 8-14.

1 11. On May 14, 2008, having contact with a patient in the patient's room on the Sixth
2 Floor of Centennial/UHS was in the course and scope of Farmer's employment with ANS as a
3 CNA. CNA Skills Guidelines (Nevada State Board of Nursing); Centennial/UHS Skills
4 Competency Checklist. Goodhart Deposition at 43-44.
5

6 12. Farmer had contact with Jane Doe in her room on the Sixth Floor of
7 Centennial/UHS. Testimony of Jane Doe at 8-14.

8 13. Jane Doe suffers from seizures where she is completely aware of what is going on
9 outside of her but cannot talk and move for up to 24 hours after. Testimony of Jane Doe at 3-4.
10

11 14. Jane Doe woke up to find Steven Farmer pinching and rubbing her nipples. *Id.* at
12 8-9.

13 15. Farmer lifted up her hospital gown. *Id.* at 10-11.

14 16. Farmer told her that she had some feces, and lifted up her leg. *Id.* at 12.

15 17. Cleaning feces of patients is part of the job duties of a CNA such as Farmer. CNA
16 Skills Guidelines (Nevada State Board of Nursing); Centennial/UHS Skills Competency Checklist.
17 Goodhart Deposition at 43-44.
18

19 18. Jane Doe felt Farmer's thumb enter her anus. Testimony of Jane Doe at 13.

20 19. This was painful to Jane Doe. *Id.*
21

22 20. Farmer then placed his finger inside her vagina to allegedly move her catheter. *Id.*
23 at 14.

24 21. As a result of these actions, Jane Doe felt pain, humiliation and embarrassment.
25 She couldn't move or scream; she just had to lay there. *Id.*
26

27 22. Steven Farmer digitally penetrated Jane Doe's anus, vagina, and pinched and
28 rubbed her nipples against the will of Jane Doe and while Jane Doe was physically unable to
resist. *Id.* at 8-14; Judgment of Conviction.

1 23. Farmer was convicted in the Eighth Judicial District Court, Clark County, Nevada,
2 in Case Number 08C245739, in Count 10 of Sexual Assault (Felony – Category A) in violation of
3 NRS 200.364 & 200.366 for the digital penetration, by inserting his finger(s) into the anal opening
4 of Jane Doe, against her will or under conditions in which Farmer knew, or should have known,
5 that Jane Doe was mentally or physically incapable of resisting or understanding the nature of
6 Farmer's conduct. Judgment of Conviction.

8 24. Farmer was convicted in the Eighth Judicial District Court, Clark County, Nevada,
9 in Case Number 08C245739, in Count 12 of Sexual Assault (Felony – Category A) in violation of
10 NRS 200.364 & 200.366 for the digital penetration, by inserting his finger(s) into the genital
11 opening of Jane Doe, against her will or under conditions in which Farmer knew, or should have
12 known, that Jane Doe was mentally or physically incapable of resisting or understanding the
13 nature of Farmer's conduct. Judgment of Conviction.

15 25. Farmer was convicted in the Eighth Judicial District Court, Clark County, Nevada,
16 in Case Number 08C245739, in Count 11 of Open or Gross Lewdness (Gross Misdemeanor) in
17 violation of NRS 201.210 for touching and/or rubbing the genital opening of Jane Doe with his
18 hand(s) and/or finger(s). Judgment of Conviction.

20 26. Farmer was convicted in the Eighth Judicial District Court, Clark County, Nevada,
21 in Case Number 08C245739, in Count 13 of Open or Gross Lewdness (Gross Misdemeanor) in
22 violation of NRS 201.210 for touching and/or rubbing and/or pinching the breast(s) and/or
23 nipple(s) of Jane Doe with his hand(s) and/or finger(s). Judgment of Conviction.

25 27. Farmer was convicted in the Eighth Judicial District Court, Clark County, Nevada,
26 in Case Number 08C245739, in Count 14 of Open or Gross Lewdness (Gross Misdemeanor) in
27 violation of NRS 201.210 for touching and/or rubbing and/or pinching the breast(s) and/or
28 nipple(s) of Jane Doe with his hand(s) and/or finger(s). Judgment of Conviction.

1 28. Farmer was convicted in the Eighth Judicial District Court, Clark County, Nevada,
2 in Case Number 08C245739, in Count 15 of Indecent Exposure (Gross Misdemeanor) in violation
3 of NRS 201.220 for deliberately lifting the hospital gown of Jane Doe to look at her genital
4 opening and/or anal opening and/or breast(s). Judgment of Conviction.
5

6 **B. STEVEN FARMER HAS NO DEFENSE**

7 Plaintiff takes this opportunity to remind Mr. Farmer's counsel of their Rule 11
8 obligations. Farmer argues first that the Public Defender's Office is appealing his conviction. So
9 what? Once a person is convicted, NRS 41.133 applies regardless of appeals. A conviction is all
10 that is needed. The Nevada Supreme Court has made such clear:
11

12 We conclude that the language of NRS 41.133 establishes a conclusive
13 presumption of liability when an offender has been convicted of the crime that
14 resulted in the injury to the victim.

15 **Cromer v. Wilson**, 225 P.3d 788, 790 (Nev. 2010). NRS 41.133 mandates that conviction of a
16 crime resulting in injury to the victim is **conclusive evidence of civil liability for the injury**.
17 **Langon v. Matamoros**, 121 Nev. 142, 143, 111 P.3d 1077, 1077 (2005). The facts have been
18 proved; there is nothing at issue.

19 Farmer was convicted. Liability is automatic per NRS 41.133. **Even ANS and**
20 **Centennial/UHS concede same**. See ANS' Opposition at 3; Centennial/UHS Opposition at 4.
21 Centennial/UHS also concedes that "The conviction can be introduced against all Defendants."
22 **Id.**

23 Yes, comparative fault and damages are an issue at trial. Plaintiff *specifically* stated this in
24 her Motion. But, the comparative fault defense must be "well grounded in fact or warranted by
25 law." **Buck v. Greyhound Lines**, 105 Nev. 756, 764 (Nev. 1989). What facts have been alleged
26 to show that the decedent, a bedridden patient in the hospital, did anything that would give rise to
27 a claim that she negligently contributed to her own injury? No such facts have been alleged, and
28

1 no such facts exist. Even the thought of that is disgusting.³ Was she wearing the wrong clothing?
2 Did she not scream (even if she could)? Did she not fight back? The law simply does not allow
3 Farmer to even claim that Jane Doe was at fault. H. Woods, **Comparative Fault Section 7.1**, at
4 165 (2nd Ed. 1987 & Supp. 1993) (Comparative negligence not applicable to reduce the damages
5 to which the victim of an intentional tort is entitled).

6 **1. Comparative Fault Goes to Damages Only—Not Liability**

7 Most important to the comparative fault defense is that issues of comparative fault only go
8 to **damages — not liability**. The present motion deals with imposition of liability based upon a
9 jury's conviction. This motion does not deal with damages. The law in Nevada is crystal clear —
10 comparative fault is a damage issue — not a liability issue.

11
12 In **Cromer v. Wilson**, 126 Nev. 106, 225 P.3d 788, 790 (Nev. 2010), the Court addressed
13 the effect of NRS 41.133 on the issues of comparative negligence and damages. The defendant
14 was convicted of felony DUI and felony reckless driving in an accident that severely injured the
15 plaintiff. The district court allowed the jury to decide the issue of liability instead of granting the
16 plaintiff's Motion for Summary Judgment. The jury found the defendant liable. In determining
17 liability, the jury was allowed to consider comparative negligence. It found the plaintiff 25% at
18 fault, and the defendant 75% at fault. The jury returned a verdict in favor of the plaintiff and
19 awarded \$4,530,785.50 in damages.
20

21 On appeal, the Nevada Supreme Court held that NRS 41.133 establishes a conclusive
22 presumption of liability when an offender has been convicted of the crime that resulted in the
23 injury to the victim. Thus, the district court should have granted the plaintiff's Motion for
24 Summary Judgment on the issue of liability, and the trial should have resolved only the issue of
25
26

27 ³ See **Dunlea v. Dappen**, 924 P.2d 196, fn 6 (Haw. 1996) (“We note, however, that some of the defenses asserted in
28 Dappen's Answer, which was filed by his former counsel, were so offensive that comment is warranted. The answer
asserted that, ‘[a]s to all counts,’ the claims were barred by contributory negligence, assumption of the risk, and
comparative negligence. The inclusion of these defenses against a claim alleging incestuous rape of a minor are as
frivolous as they are repugnant and thus would have warranted appropriate sanctions, sua sponte.”)

1 damages. However, the Court also held that NRS 41.133 does not abrogate the law regarding
2 comparative negligence or damages. Therefore, while NRS 41.133 establishes a conclusive
3 presumption of liability, a defendant may argue comparative negligence pursuant to NRS 41.141
4 to reduce an award of damages at a trial **as to damages only**. Hence, comparative fault is an issue
5 of damages, not liability.
6

7 Farmer does not provide ANY factual basis for comparative fault of Jane Doe. Indeed,
8 Farmer's argument has been that he did not sexually assault Jane Doe — he has never argued that
9 "it was her fault" until now.⁴ A motion to dismiss Farmer's comparative fault defense will be
10 forthcoming. However, at this point — for this motion — the issue of comparative fault is not in
11 play, has no value in the present discussion, provides no benefit to Defendants, and cannot be
12 considered by this Court.

13 Again, Farmer's counsel is coming dangerously close to a Rule 11 violation. It is one
14 thing to represent one's client zealously — it is another thing to argue specious, vile
15 misrepresentations.

16 All of this being said, Farmer has not provided any basis for a denial of the Motion.
17 Accordingly, the Motion for Summary Judgment as to the sexual assault by Farmer must be
18 granted.

19 **C. THE FACT OF THE SEXUAL ASSAULT HAS BEEN CONCLUSIVELY PROVEN**
20 **AS TO ALL PARTIES**

21 It is clear that there are no genuine issues of material fact at issue here as against any of the
22 parties regarding whether the sexual assault took place. **Farmer did sexually assault Jane Doe.**
23 That fact is now proven conclusively. **Farmer did do the very things he was alleged to have**
24 **done which resulted in the various convictions.** Those facts are now proven conclusively. This
25 is important as this removes any "defenses" that either ANS or Centennial/UHS claimed that the
26 sexual assaults did not occur. Centennial/UHS concedes this when it admits that "the conviction
27

28

⁴ The only defense to sexual assault is consent or the sexual assault did not occur. Since Farmer was convicted, the jury determined that there was no consent and that the sexual assault occurred.

1 can be introduced against all Defendants.” Centennial/UHS Opposition at 4. ANS, on the other
2 hand, does not understand this.

3 ANS alleges that there are “contested facts” about alleged late notice to the police or about
4 her medical issues and not screaming out.⁵ But, these are no longer relevant since there is no
5 question that the assault occurred. The reason is simple: one cannot have different facts
6 established in a case. The facts are the facts. Now, that may be hard to swallow for ANS, but, if
7 the Court were to allow different facts to be found, inconsistent verdicts would be a possibility.
8 The law does not allow this.

9 The Nevada Supreme Court illustrates the issue. In **Desert Cab v. Marino**, 108 Nev. 32
10 (Nev. 1992), the Court had before it a situation where Edwards, an employee of Desert Cab, was
11 convicted of assault and battery. The District Court admitted the conviction per NRS 41.133. The
12 Nevada Supreme Court upheld the District Court and found that though the conviction mandated
13 liability as against Edwards, Desert Cab could still argue that the actions were not in the course
14 and scope per NRS 41.130. **But, importantly, the facts of the assault and battery were still**
15 **conclusively proved as to Desert Cab.**

16 In addition, how could there be a finding that Jane Doe was sexually assaulted in a
17 criminal case where the standard is beyond a reasonable doubt, but in a civil case, Jane Doe could
18 be found to not have been sexually assaulted? It cannot happen. Any issue related to the sexual
19 assault and whether it occurred has been rendered moot by the conviction.

20 The language of NRS 41.133 also makes this clear: “If an offender has been convicted of
21 the crime which resulted in the injury to the victim, the judgment of conviction is **conclusive**
22 **evidence of all facts necessary to impose civil liability for the injury.**” The facts are proven via
23 the statute. So, as to ALL defendants, the facts have now been established.

24 ///

25 ///

26 ///

27
28 ⁵ ANS makes the same tired argument that it has not been able to take the deposition of Jane Doe’s children. While this may have been relevant (as to whether the assault occurred) before the conviction, because of the conviction, there has now been a finding that the sexual assault occurred. Now, the deposition is concededly important as to damages — but as to liability? No.

1 **D. BOTH CENTENNIAL/UHS AND ANS WERE THE EMPLOYERS**

2 Centennial/UHS brings up the specter of “ostensible agency” with regard to Mr. Farmer.
3 However, this is not an issue at this point.⁶ It is clear that Farmer was an employee of ANS.
4 Farmer was also clearly an employee of Centennial/UHS. “An employer ‘includes every person
5 having control or custody of any employment, place of employment or any employee.’” **Terry v.**
6 **Sapphire/Sapphire Gentlemen's Club**, 2014 Nev. LEXIS 113 (Nev. 2014). Centennial/UHS
7 concedes that *Farmer was working at Centennial/UHS*. Centennial/UHS concedes that they
8 directed Farmer how and where to perform his tasks at Centennial/UHS. Centennial/UHS has
9 produced **no** facts to establish that they did not control Farmer’s work while he was at the hospital.
10 He was a CNA, working on the hospital’s patients, and completely controlled by Centennial/UHS,
11 who could tell him to leave, work, take a break, see this patient or that patient, how to clean a
12 patient, how to bathe a patient, and when to see a patient. Importantly in this case,
13 Centennial/UHS also controlled which floor Farmer worked, as it did on the night of this sexual
14 assault, when Centennial/UHS staff ordered Farmer to stop working in the ER (where
15 Centennial/UHS had originally placed him that evening) and to go to the Sixth Floor and work
16 there. This demonstrates beyond any doubt that Centennial/UHS controlled Farmer’s employment,
17 because it was his employer.

18 As this Court knows, also, an employee can certainly have two employers *especially with*
19 *regard to respondeat superior liability*. This is because an employee can be simultaneously under
20 the control of two employers making them both liable. **Rockwell v. Sun Harbor Budget Suites**,
21 112 Nev. 1217, 1224, 925 P.2nd 1175 (Nev. 1996)(“...we note that it is possible for an employee
22 to be simultaneously under the control of two different employers. See **Gulf Oil Corp. v.**
23 **Williams**, 642 S.W.2d 270, 272 (Tex. Ct. App. 1982) (concluding that it is possible for two
24
25

26 ⁶ Centennial has admitted that a patient identifies an employee by their badge. Nichols Person(s) Most
27 Knowledgeable Deposition at 16. Centennial has admitted that Mr. Farmer wore a badge that said ANS AND
28 Centennial. See Sparacino Person(s) Most Knowledgeable Deposition at 7. Centennial has conceded that patients are
not instructed one way or another about what a contract staff individual is. *Id.* at 8. Unless a patient asks, a patient is
not going to know one way or another whether staff are employees or not because the badge states both. *Id.* Notably,
Centennial has put forth no facts to oppose the issue of agency. Simply stating that there is an “issue” does not equate
with a genuine issue of material fact.

1 entities to have joint control over an employee).”).⁷ In **Rockwell**, the security guard who
2 murdered the resident (his girlfriend) was directly employed by a management company who
3 provided the security staff to the apartment complex.

4 Thamar was hired by Bigelow Management (Bigelow) as a security guard and was
5 provided to Sun Harbor in the same capacity. Elaine Olsen, the manager of Sun
6 Harbor, claimed that because Bigelow hired and paid him, Thamar was a Bigelow
employee.

7 **Rockwell**, 925 P.2nd at 1177. The court found held the apartment complex was an employer of the
8 security guard for the purposes of respondeat superior liability holding:

9 Sun Harbor undertook to obtain security services, a personal and non-delegable
10 duty, and it did not matter that the owners of Sun Harbor had an additional filter,
11 i.e., Bigelow, between themselves and the actual security guard. Additionally, Sun
12 Harbor arranged for and accepted the security services of Thamar, and therefore the
relationship of master and servant (or employer-employee) existed between Sun
Harbor and the security guards.

13 **Id.** at 1180.

14 There is no issue with having “co-employers” because “[g]enerally, a person may be the
15 employee of two employers” as long as “the service to one does not involve abandonment of the
16 service to the other.” **Zinn v. McKune**, 143 F.3d 1353, 1361 (10th Cir. 1998) (quoting
17 Restatement (Second) of Agency § 226 (1958). As the respondent to a Motion for Summary
18 Judgment, Centennial/UHS is required to rebut this issue and to present admissible evidence if it
19 believed there was an issue of material fact regarding the employment status of Farmer. See
20 **Clark v. JDI Loans, LLC (In re Cay Clubs)**, 319 P.3d 625, 635 (Nev. 2014). It presented
21 absolutely nothing except for argument. Since the admissible evidence of facts makes clear that
22 Centennial/UHS had control over Farmer, and moved him from one area of the hospital to another,
23 there is no issue about his employment. For the purposes of determining respondeat superior
24 liability, he was the employee of both ANS and Centennial/UHS.

25 ///

26 ///

27 ///

28
⁷ Nevada’s worker’s compensation case law is replete with examples of co-employer cases. See, e.g., **GES, Inc. v. Corbitt**, 117 Nev. 265 (Nev. 2001); **Hays Home Delivery v. Empls Ins. Co.**, 117 Nev. 678 (Nev. 2001).

1 Accordingly, there is no issue in the case at bar. Farmer was the “employee” of both ANS
2 and Centennial/UHS. They both had joint control over Farmer and are both responsible for his
3 actions per NRS 41.130 and are both subject to the effects of his conviction per NRS 41.133.⁸

4 **E. THE INTENTIONAL ACTS OF FARMER WERE COMMITTED WITHIN THE**
5 **COURSE, SCOPE, AND TASKS OF EMPLOYMENT, AND BOTH ANS AND**
6 **CENTENNIAL/UHS ARE LIABLE**

7 Both ANS and Centennial/UHS argue that Farmer’s intentional acts remove liability for
8 them based upon **Wood v. Safeway, Inc.**, 121 P.3d 1026, 121 Nev. 724 (2005), and NRS 41.745.
9 However, it is apparent that neither ANS nor Centennial/UHS think much of **Prell Hotel Corp. v.**
10 **Antonacci**, 86 Nev. 390, 469 P.2d 399 (Nev. 1970), the leading Supreme Court case on the issue
11 which is on all fours with the case at bar. Even our local Federal Court has ruled on the issue.
12 Moreover, ANS and Centennial/UHS both misunderstand the foreseeability requirement of NRS
13 41.745 and attempt to use the “negligence” foreseeability definition. They both misunderstood the
14 Nevada Supreme Court’s definition and description.

15 In Nevada, the general rule of vicarious employer liability is set forth in NRS 41.130,
16 which provides:

17 *Except as otherwise provided in NRS 41.745, whenever any person shall suffer*
18 *personal injury by wrongful act, neglect or default of another, the person causing*
19 *the injury is liable to the person injured for damages; and where the person causing*
20 *the injury is employed by another person or corporation responsible for the conduct*
of the person causing the injury, that other person or corporation so responsible is
liable to the person injured for damages.

21 In **Prell**, this court held that an employer may be held vicariously liable for the intentional
22 tort of an employee, even if unauthorized by the employer, if the tort occurs “within the scope of
23 the task assigned to that employee.” **Prell**, 86 at 391, 469 P.2d at 400. As explained by this court
24 (citations omitted):

25 Early doctrine would not admit that a willful tort could be within the scope of
26 employment. This inflexible, arbitrary view has gradually been eroded, and the
27 concept of scope of employment enlarged. Of course, if the employee’s tort is truly
28 an independent venture of his own and not committed in the course of the very task
assigned to him, the employer is not liable. **Where, however, the willful tort is**

⁸ Again, the latter is conceded by Centennial. Opposition at 4.

1 committed in the course of the very task assigned to the employee, liability
2 may be extended to the employer.

3 **Prell**, 86 Nev. at 390-91, 469 P.2d at 400.

4 **Prell** affirmed a judgment, based on a jury verdict, holding a casino liable for an assault
5 and battery committed by a blackjack dealer against an invited casino guest. As recounted by this
6 Court in its opinion, the guest was playing "21" at the Aladdin Hotel & Casino, owned by
7 Defendant **Prell Hotel Corp.** He was served several free drinks while so engaged. He lost his
8 money, became angered and called the dealer a name. The dealer reacted by punching the guest in
9 the eye, rendering him unconscious. Although the dealer's precise conduct (striking the guest)
10 *clearly was not authorized by the hotel, of no benefit to the hotel, and certainly a venture of his*
11 *own*, this court reasoned that the hotel was appropriately found liable under the circumstances
12 because the employee's willful tort occurred within the scope of the very task assigned to him, that
13 of dealing 21:

14 In the instant matter, the plaintiff was an invited guest of the hotel to whom the
15 hotel served several free drinks, apparently to encourage his continued presence
16 and participation in gaming. When the guest lost his money, became angered and
17 called the dealer an opprobrious name, the dealer "dealt one card to each player all
18 the way round, and then just like this he hit him, very spontaneously, no warning of
19 any kind. He just hit him." **The dealer did not leave his position behind the 21**
20 **table to accomplish the assault and battery. His willful tort occurred within**
21 **the scope of the very task assigned to him, that of dealing '21.'** In these
22 circumstances the employer is responsible.

23 **Prell**, 86 Nev. at 391, 469 P.2d at 400.

24 The obvious focus for litigants in respondeat superior cases based upon intentional acts is
25 not whether the "wrongful act itself was authorized **but whether it was committed in the course**
26 **of a series of acts of the agent which were authorized by the principal.**" **Ray v. Value**
27 **Behavioral Health, Inc.**, 967 F. Supp. 417, 420 (D. Nev. 1997).

28 In **Doe by & Through Knackert v. Estes**, 926 F. Supp. 979 (D. Nev. 1996), Judge Reed
had before him a case where a minor was sexually assaulted by a teacher. In discussing the
various state law claims, Judge Reed held the following:

However, this court must, where possible, resolve questions of Nevada law by
reference to decisions of this State's Supreme Court. That court's decision in **Prell**
Hotel Corp. v. Antonacci, 86 Nev. 390, 469 P.2d 399 (Nev. 1970) appears to

1 settle the question whether an employer is liable under the doctrine of respondeat
2 superior for a battery committed by an employee. . .

3 **This court fails to discern any principled legal distinction between a battery**
4 **claim against a casino whose blackjack dealer slugs a patron and the same**
5 **claim against a school district whose teacher fondles a student.** In both cases the
6 plaintiff was on the defendant's premises for the purpose of enjoying the
7 defendant's services. In neither case can it reasonably be argued that the employee's
8 duties included acts of common law battery. The school district's motion for
9 summary judgment on the battery claim must accordingly be denied.

10 **Id.**, at 926 F. Supp. at 989 (emphasis added).

11 The issue was reaffirmed by Judge Hicks in **Jane Doe A v. Green**, 298 F. Supp. 2d 1025
12 (D. Nev. 2004). There, a coach at the Clark County School District had assaulted and battered a
13 student. The Court agreed with Judge Reed's analysis of **Prell** by stating that there is no
14 distinction between an employee who batters a patron in the course of employment and an
15 employee who fondles a student in the course of employment:

16 Consequently, it is apparent that the School District is liable for intentional torts
17 committed by its employees during their employment, even if it is clear that those
18 acts were not authorized by the School District. In the instant case, Green was
19 authorized by the School District to monitor and instruct the students attending the
20 school during school hours, and to supervise and coach those students who
21 participated in the school-sanctioned athletic activities. The authority vested in
22 Green permitted him to direct and discipline students, to meet privately with
23 students in his office, to pull students out of other classes, and to have other
24 substantial contact with students at his discretion. Therefore, this Court concludes
25 that the Defendant School District is subject to respondeat superior liability for the
26 tortuous acts committed by Green at those times in which he was engaged - or
27 should have been engaged - in his duties as an instructor and athletics coach of the
28 school.

29 **Id.**, 298 F. Supp. 2d at 1042.⁹

30 ///

31 ⁹ Judge Reed also cited to the Nevada Supreme Court's withdrawn opinion in **Department of Human Resources,**
32 **Div. of Mental Hygiene & Mental Retardation v. Jimenez**, 113 Nev. 356 (Nev. 1997). While not wishing to
33 engage in a lengthy historical analysis, **Jimenez** was withdrawn immediately before the Legislature was going to
34 reverse it. Ultimately, the Legislature decided that **Prell** was the right approach and passed NRS 41.745 to reestablish
35 the **Prell** test for employer liability for intentional torts committed by employees" and adding the issue of
36 foreseeability. The **Prell** test is to be the test used when reviewing intentional torts and respondeat superior. In
37 addition, the Legislature added the foreseeability issue. So, as discussed herein, a reviewing Court would use the
38 **Prell** test and would look at the issue of foreseeability, but in the context of respondeat superior, not negligence.
39 And, that is what Wood actually says.

1 Defendants seemingly want this Court to overrule **Prell**, and the above federal court
2 decisions, and make a general rule that sexual assaults cannot form the basis for respondeat
3 superior liability based upon **Wood v. Safeway**. However, such is not the rule of **Wood**. This
4 Court would actually have to overrule **Wood**, and all of its precursors, to agree with Defendants.
5 Actually, the **Prell** test *was the test* used in **Wood v. Safeway**. **Wood** did not create any new test
6 or elements. The holding in **Wood**, combined with **Prell**, mandates that this Court grant summary
7 judgment.

8 1. Foreseeability

9 **Wood** involved Jane Doe who was working at Safeway. Mr. Emilio Ronquillo-Nino, who
10 was employed by a company who provided janitorial service to Safeway, sexually assaulted her
11 three times while she was at work. The analysis specifically discussed **Prell**, as well as NRS
12 41.745 which embodies **Prell**. See Footnote 5 *supra*.

13 **Wood** stated that:

14 Before NRS 41.745 was enacted, this court had stated that an employee's
15 intentional conduct relieves an employer of liability when "the employee's tort is
16 truly an independent venture of his own and not committed in the course of the
17 very task assigned to him." **This court had also acknowledged that if "the**
18 **willful tort is committed in the course of the very task assigned to the**
employee," then it is appropriate to extend liability to the employer. These two
observations are essentially codified in NRS 41.745(1)(a) and (b).

19 **Wood**, 121 Nev. at 737-738.

20 Then, the Court added:

21 NRS 41.745 also requires an element of foreseeability, in effect raising the standard
22 and making employers liable only **when an employee's intentional conduct is**
reasonably foreseeable under the circumstances.

23 **Wood**, 121 Nev. at 739.

24 Explaining the issue of foreseeability, the Court found:

25 According to NRS 41.745(1), an employee's conduct "is reasonably foreseeable if a
26 person of ordinary intelligence and prudence could have reasonably anticipated the
27 conduct and the probability of injury." We have noted that whether an intentional
28 act is reasonably foreseeable depends on whether one has "reasonable cause to
anticipate such act and the probability of injury resulting therefrom."

Id. at 739-740.

1 The Court accepted the explanation of foreseeability in this context as not specific to the
2 individual, as ANS and Centennial/UHS miss, but generally, and it is not the same "foreseeability"
3 that is involved in a negligence context:

4 One way to determine whether a risk is inherent in, or created by, an enterprise is to
5 ask whether the actual occurrence was a generally foreseeable consequence of the
6 activity. However, "foreseeability" in this context must be distinguished from
7 "foreseeability" as a test for negligence. In the latter sense "foreseeable" means a
8 level of probability which would lead a prudent person to take effective precautions
9 whereas "foreseeability" as a test for respondeat superior merely means that
10 in the context of the particular enterprise an employee's conduct is not so
11 unusual or startling that it would seem unfair to include the loss resulting
12 from it among other costs of the employer's business. In other words, where the
13 question is one of vicarious liability, the inquiry should be whether the risk was
14 one "that may fairly be regarded as typical of or broadly incidental" to the
15 enterprise undertaken by the employer.

12 Under the modern rationale for respondeat superior, the test for determining
13 whether an employer is vicariously liable for the tortious conduct of his employee
14 is closely related to the test applied in workers' compensation cases for determining
15 whether an injury arose out of or in the course of employment.

15 Wood, 121 Nev. at 740 fn 53.¹⁰

16 ///

17 ///

18 ///

19 ///

20
21 ¹⁰ This is similar to the Supreme Court of Oregon's analysis in priest molestation cases. In *Fearing v. Bucher*, 977
22 P.2d 1163, 1167 (Or. 1999), the Supreme Court of Oregon addressed the problems associated with applying the
23 doctrine of respondeat superior to intentional torts. The petitioner in *Fearing* alleged that a priest, employed by the
24 Archdiocese of Portland, had sexually molested him. The Court held:

23 [I]n the intentional tort context, it usually is inappropriate for the court to base its decision regarding
24 the adequacy of the complaint on whether the complaint contains allegations that the intentional tort
25 itself was committed in furtherance of any interest of the employer or was of the same kind of
26 activities that the employee was hired to perform. Such circumstances rarely will occur and are not,
27 in any event, necessary to vicarious liability. Rather, the focus properly is directed at whether
28 the complaint contains sufficient allegations of [the defendant's] conduct that was within the
scope of his employment that arguably resulted in the acts that caused the plaintiffs injury.

27 Instead of asking whether the intentional tort itself was within the scope of employment, the *Fearing* analysis
28 inquires as to whether the tortfeasor's conduct leading up to the intentional tort was conduct that falls within
the scope of employment. Here, Farmer was pinching nipples while he was "fixing leads." He was digitally
penetrating her when he was "cleaning feces." He placed his finger in her vagina while "moving" her catheter. Since
those activities claimed by Farmer were within the scope, the sexual assault was as well.

1 The Court then found that a janitor sexually assaulting an employee of the store at which
2 he was cleaning was not "foreseeable" because it was not incidental to the task of cleaning a
3 store.¹¹

4 This is the **exact opposite** of what we have in the case at bar. Here, we have a CNA whose
5 *very job* it is to bathe patients, to clean the patient from feces and urine, and, generally to have
6 patient contact. This was conceded by an RN at Centennial/UHS:

7 Q. Can they [CNA's] touch a patient? Can they handle a patient, you know,
8 physically touch a patient?

9 A. They can give a bed bath. They can clean up stool and urine. They can
10 give a bed pan.

11 Deposition of Karen Goodhart, R.N., Centennial/UHS, at 43-44. This corresponds with the CNA
12 Skills Guidelines from the State of Nevada (Centennial/UHS Exhibit A): perineal care (the genital
13 and anal region), incontinent care, bathing, applying monitor leads, urine assist, bowel assist
14 including digital stimulation.

15 In other words, unlike the janitor whose job it is to simply clean the store, the **very job**
16 given to CNAs is patient contact, and patient contact with the patient's anus and vaginal area.
17 Centennial/UHS has admitted that "in some of the training that the hospital staff does, there may
18 be something in there concerning assaults on patients or staff themselves." Deposition of Douglas

20
21 ¹¹ Nevada law regarding respondeat superior for intentional torts was basically foretold by Judge Friendly's well
22 known analysis in *Ira S. Bushey & Sons, Inc. v. United States*, 398 F.2d 167 (2d Cir. 1968). There, a drunken sailor
23 returned to his ship and intentionally opened valves that flooded a dry-dock, damaging both the ship and the dry-dock.
24 Judge Friendly noted that even though the drunken sailor was not motivated by a purpose to serve his employer, nor
25 was his job to open those valves, respondeat superior liability was proper. This liability rested on the fact that the
26 "business enterprise cannot justly disclaim responsibility for accidents which may be fairly said to be
27 characteristic of its activities" and that the sailor's conduct "was not so unforeseeable as to make it unfair to
28 charge the government with responsibility." *Id.* at 171 (internal quotation marks omitted).

25 Judge Calabresi continued the discussion of foreseeability in *Taber v. Maine*, 67 F.3d 1029 (2d Cir. N.Y.
26 1995), in a case involving a tort committed by yet another off-duty drunken sailor who first became intoxicated at a
27 party on the base and then later in the evening crashed his vehicle into the plaintiff's car while driving back to the
28 base. The Court emphasized that **all that happened was to be expected**, citing Judge Friendly's words that "[t]he
proclivity of seamen to find sollicitude by copious resort to the bottle . . . has been noted in opinions too numerous to
warrant citation." Hence, this conventional wisdom made the sailor's actions "a completely foreseeable event, in
the sense that it is a reasonably obvious risk of the general enterprise."

These cases represent Nevada law on intentional acts. Applied to Farmer's acts, his actions were foreseeable
to both ANS and Centennial and because the actions occurred within the very task of a can and were an obvious risk
of the enterprise, respondeat superior liability is proper.

1 Nichols, Person Most Knowledgeable of Valley Health System LLC, at 14. If there is training
2 about patient sexual assaults, then such are necessarily foreseeable.

3 Would it be startling that a person, whose very job it is to touch the private parts of
4 patients, would sexually assault that very patient by inserting fingers in those same private parts,
5 not for cleaning, but for sexual arousal? Of course not. This is not the first time something like
6 this has happened. It happens all the time in hospitals, nursing homes, anywhere there is this sort
7 of contact between patients and staff at such facilities and whose job it is to touch private areas of
8 patients.

9 Indeed, sexual assaults by clinical staff on patients is so prevalent that hospitals and
10 medical staffing companies can insure themselves for such a loss. Here, **ANS had that very**
11 **insurance.**¹² See Exhibit 1. Since sexual abuse is an insurable event, one must say that as a
12 matter of law, it is foreseeable because insurance only covers foreseeable risks. This is the essence
13 of why employers are subject to liability for acts which insurance covers. See, e.g., **United**
14 **Student Aid Funds, Inc. v. Design Factory**, 2012 U.S. Dist. LEXIS 102020 (D. Nev. July 20,
15 2012)(J. Dawson)(explaining that “In Nevada, an employer's liability extends beyond the actual or
16 possible control over the employees to include risks inherent in or created by the enterprise
17 because the employer, rather than the innocent injured party, is best able to spread the risk through
18 prices, rates or liability insurance. (citation omitted); see also, Guido Calabresi, **Some Thoughts**
19 **on Risk Distribution and the Law of Torts**, 70 Yale L.J. 499, 543 (1961) (arguing that the
20 master is the best insurer, both in the sense of being able to obtain insurance at the lower rates and
21 in the sense of being most aware of the risk). A court must determine whether the action taken by
22 the employee was a generally foreseeable consequence of his or her employment. (Citation
23 omitted). The employee's conduct is foreseeable if it is not so unusual or startling that it would
24 seem unfair to include the loss resulting from it among the other costs of the employer's business.
25 **Id.**)¹³ If an entity can cover an event with insurance, and has done so, there is no question about
26

27
28 ¹² Indeed, Mr. Farmer has been represented by insurance company attorneys in this civil litigation.

¹³ “SCR 123 prohibits citation to unpublished orders and opinions issued by the Nevada Supreme Court. This ban does
not extend to federal district court dispositions, which may be cited for their persuasive, if nonbinding, precedential
value.” **Schuck v. Signature Flight Support of Nev., Inc.**, 245 P.3d 542, 547 (Nev. 2010).

1 its foreseeability. Moreover, coverage establishes that the action is not "so unusual or startling"
2 since there is coverage for said actions.

3 Attached hereto as Exhibit 2 is the Affidavit and Curriculum Vitae of Paul B. Hofmann,
4 Dr. P.H., FACHE, an expert in hospital administration. He testifies that:

5 4. That while I have significant opinions regarding the conduct of both
6 American Nursing Services and Centennial Hills Hospital/Universal Health
7 Services, the principal issue is whether it is foreseeable in general that a certified
8 nursing assistant could sexually assault a patient, particularly patients who are
9 severely compromised, physically and/or emotionally.

10 5. That the answer to this question is – absolutely.

11 6. That it is well known in the health care field that sexual abuse by staff
12 against patients does occur. Hospital departments of human resources and staffing
13 agencies clearly have an undeniable professional and ethical obligation to employ
14 personnel who would not engage in such activity, but the serious possibility for
15 sexual abuse still exists. **Sexual assaults of patients by staff is a known
16 foreseeable risk for which most insurance companies that insure hospitals and
17 their staffing agencies offer coverage riders.** In this case, I have been made
18 aware that ANS maintained such coverage.

19 7. That although there is a potential for sexual abuse in every organization,
20 hospitals and other health care facilities must be especially vigilant to ensure that
21 vulnerable patients like Jane Doe are not at risk because of the very nature of the
22 tasks required of the clinical staff of a hospital which, for certified nursing
23 assistants, includes bathing patients, cleaning feces and urine from patients, and
24 other activities where patients have their bodies exposed.

25 8. That because the sexual assaults of patient is a known foreseeable risk, most
26 hospitals and staffing agencies have appropriate policies to prevent sexual abuse of
27 patients in place, but they are truly meaningless if they are not followed
28 consistently. **When those policies are breached, a sexual assault is not startling
or unusual because the very policy instituted to protect patients against the
sexual assault has not been followed.** While it is certainly a horrific event, it is
foreseeable that when policies are breached, patients can be irreversibly
compromised. Hence, the reason for the policies in the first place. . . .

10 10. That with regard to the specific foreseeability concerning Steven Farmer's
11 behavior, it is evident American Nursing Services was on notice of a prior issue of
12 alleged abuse of a patient. An institution identified Mr. Farmer as "Do not return"
13 due to both "Alleged violations as defined in Practice Acts of respective regulatory
14 body" and "Abuse of client and/or patient or other caregivers" (per American
15 Nursing Services' Incident Report signed on January 25, 2008 by Ms. Simons,
16 Clinical Director of Clinical Operations), and an investigation was still underway

1 on February 12, 2008. Nonetheless, Mr. Farmer was assigned by American
2 Nursing Services to Centennial Hills Hospital on February 18, 2008. This action
3 directly contributed to placing Jane Doe at a preventable risk of harm.

4 11. That the Hospital was not told about the prior abuse by Mr. Farmer nor the
5 related incomplete investigation, but the Hospital should not have relied
6 exclusively on American Nursing Services for its background check. According to
7 Ms. Johnson, who was then the Hospital's staffing coordinator, the organization
8 requires receipt of references prior to allowing agency staff to work at the Hospital.
9 However, in this instance, that policy was not followed. Ms. Johnson admitted the
10 Hospital would not have allowed Mr. Farmer to work there if it had known of the
11 prior abuse. Furthermore, Ms. Johnson could not explain why his references were
12 not checked, and she confirmed Mr. Farmer should not have been working at the
13 Hospital until references were provided. The reason for background checks is to
14 confirm a candidate's qualifications, competence and personal behavior meet the
15 organization's performance standards and expectations. Since sexual assaults by
16 hospital staff is a known foreseeable risk, one of the reasons hospitals, such as
17 Centennial Hills, conduct background checks is to insure that a person with a
18 history of sexual assaults is not allowed to work in a situation that could place a
19 patient at risk. The Hospital's failure to comply with its own policies directly
20 contributed to placing Jane Doe at a preventable risk of harm.

21 Hofmann Affidavit at pages 1-3.

22 Based upon Dr. Hoffman's Affidavit, the foreseeability element of **Wood's respondeat**
23 **superior analysis** is satisfied as to both ANS and Centennial/UHS. As to ANS, they were on
24 actual notice of Farmer's proclivity for abuse. As to Centennial/UHS, by having the background
25 checks and last employer check, dangerous propensities of employees were foreseeable.

26 Attached hereto as Exhibit 3 is the Affidavit and Curriculum Vitae of E. Dwayne
27 Tatalovich, an expert in crime prevention. He testifies:

28 4. That I have been awaiting various documents from American Nursing
Services regarding Steven Farmer and have been told that I may be receiving at
least some of them shortly. I am similarly awaiting much of the LVMPD reports
and other information. However, based upon what I have thus far, I can testify to
the following.

5. That, unfortunately, the hospital industry is plagued with persons who
commit crimes, including the crime of sexual assault on patients. That this comes
about for many reasons, including the fact that patients are in compromised
positions with staff, and exposing their most private parts and functions.

6. That Hospital Risk Management Journals, books and media reports discuss
patient sexual abuse and the need for prevention of same.

1 7. That because the prevalence of such sexual abuse is significant, hospitals
2 and medical staffing agencies routinely perform background and reference checks.

3 8. That, when a hospital or staffing agency fails to perform such checks,
4 criminal behavior is often the result, and thus such is foreseeable.

5 9. That as a security analyst for various entities, including healthcare entities, I
6 am frequently called upon to review security needs. One of the first areas that I
7 review are employee policies and procedures. I am aware that most hospitals will
8 have policies in place to investigate employees and their prior behavior. The issue
is generally not writing the policy; the problem is that many healthcare entities fail
to implement those very policies designed to look out for dangerous people.

9 10. **That patient sexual abuse by nursing assistants and clinical staff in**
10 **hospitals is foreseeable, not shocking and not surprising.** I am aware that most
healthcare entities will insure against this loss and ANS did in this instance.

11 Tatalovich Affidavit at pages 1-2.

12 In addition, Mr. Tatalovich testifies that Farmer's crimes were specifically foreseeable by
13 ANS and Centennial/UHS and goes through his reasons. For ANS, they were specifically aware
14 of the abuse allegations at Rawson Neal. For Centennial/UHS, they failed to follow their own
15 policies in allowing Farmer to work, which policies were put in place specifically to guard against
16 these type of predators working in a hospital. That is the essence of foreseeability in the context
17 of Wood's respondeat superior analysis. Pointedly, Mr. Tatalovich discusses an event that
18 occurred with Farmer, a couple months before the rapes that he was convicted of, that placed
19 Centennial/UHS on specific notice of issues relating to Mr. Farmer:

20 I have reviewed the LVMPD statement of Christine Murray. Ms. Murray, a nurse
21 at Centennial, testified that a couple months earlier to Farmer's assault on Jane
22 Doe, an incident took place whereby Mr. Farmer was sitting with a patient with the
23 door closed. She, and other Centennial staff, apparently heard yelling to the effect
24 that the woman wanted him out of the room. Instead of completing an incident
25 report or starting an investigation, Nurse Murray stated that because she was a
26 "crazy old lady", she and Centennial staff did not put any credence into what she
27 was saying. So, just like at Rawson Neal, instead of investigating properly, they
28 just blamed the patient. Accordingly, based upon this incident, I believe that
Centennial (through its Nurses, including but not limited to Ms. Murray) was well
aware of Mr. Farmer's foreseeable criminal nature. But, instead of doing anything
about it, they blamed a "crazy old lady." Hence, his criminal conduct later on
should not be surprising or startling.

1 **Id.** at page 3.¹⁴

2 This is specific foreseeability. One cannot argue that one is not foreseeable by sticking
3 one's head in the sand. Farmer's actions were foreseeable as a matter of law. Centennial/UHS was
4 on notice of same.

5 **2. Farmer's Assault Was Committed In The Course Of The Very Task Assigned To**
6 **Him**

7 For clarity, we need to go back to the first two elements, the so-called **Prell** elements. This
8 Court will see that these are crystal clear. **Wood** rolled the (a) and (b) elements of NRS 41.745(1)
9 basically into one statement for clarity. So, if the intentional conduct was done in the course of the
10 very task assigned, sections (a) and (b) are satisfied.

11 The first prong is whether the intentional tort is "a truly independent venture of the
12 employee." As the Court stated in **Wood**, 121 Nev. at 737, 738:

13 Before NRS 41.745 was enacted, this court had stated that an employee's
14 intentional conduct relieves an employer of liability when "the employee's tort is
15 truly an independent venture of his own and not committed in the course of the
16 very task assigned to him." (Citing **Prell v. Antonacci**.) This court had also
17 acknowledged that if "the willful tort is committed in the course of the very task
18 assigned to the employee," then it is appropriate to extend liability to the employer.
(Citing **Prell v Antonacci**.) These two observations are essentially codified in NRS
41.745(1)(a) and (b).

19 Here, the Court makes clear that the law announced in **Prell** is the law in Nevada when it
20 specifies that NRS 41.745(1)(a) and (b) are a codification of the holding in **Prell**.

21 In **Wood**, the Court also made clear that when the "willful tort is committed in the course
22 of the very task assigned to the employee," the act, by definition, is not an independent venture.
23 Rather, the employee, while serving his employer — meaning at least part of what he is doing is
24 not "truly independent" — engages in misconduct, liability will lie.

25 **Wood** discussed three Nevada cases to illustrate the point. Citing **Prell**, the court stated:

26 ...this court held an employer vicariously liable when its employee, a blackjack
27 dealer, hit a customer in the face while dealing. The altercation occurred when the

28 ¹⁴ According to Ms. Murray, the door was closed and the lights were off. The staff heard yelling from the room such that she wanted Farmer out of the room. She did no further investigation of these events. See Exhibit 4. While that may be negligent, and relevant to the issue of Centennial's own negligence, the incident alone provides the foreseeability prong of **Wood**'s respondeat superior analysis.

1 customer, who had apparently consumed a number of free drinks, became
2 belligerent and insulted the dealer. The dealer proceeded to deal the next round of
3 cards and then hit the customer without leaving his position behind the blackjack
4 table. This court affirmed a judgment holding the casino liable because the
altercation occurred within the scope of the very tasks assigned to the employee, in
that particular case dealing blackjack.

5 Citing **J. C. Penney Co. v. Gravelle**, 62 Nev. 439, 155 P.2d 477 (1945), the Court stated:

6 ...this court held that the employer was not vicariously liable in **J. C. Penney Co. v.**
7 **Gravelle**, when a store clerk assaulted a third-party bystander because the bystander
8 attempted to prevent the clerk from catching a shoplifter whom the clerk had
9 pursued outside of the store. The bystander followed the employee back to the
store, and the two continued to argue, resulting in an ensuing altercation where the
bystander was injured.

10 **Wood** distinguished **Prell** and **Gravelle**, stating:

11 This court held that the employer was not responsible because after the clerk had
12 returned to the store and turned over the merchandise, his actions in assaulting the
13 bystander no longer concerned his employment. This court reasoned that based on
14 the circumstances, the assault was "an independent adventure" for the employee's
15 own purposes and was not taken on the employer's behalf or arising from a sense of
16 duty to the employer. The distinguishing fact in **Gravelle** is that the altercation
occurred after the clerk returned to the store and returned the stolen merchandise to
the manager.

17 It should be noted that **Gravelle** was decided in 1945. **Prell** was decided twenty-four years
18 later in 1970. The court in **Prell** emphasized that the rules relating to whether vicarious liability
19 should be imposed upon an employer for an employee's willful misconduct had previously been
20 too strict and that the law was becoming more liberal in this regard. The court in **Prell** stated:

21 Early doctrine would not admit that a willful tort could be within the scope of
22 employment. This inflexible, arbitrary view has gradually been eroded, and the
concept of scope of employment enlarged.

23 This expansion of the rule by the court in **Prell** explains any discrepancy that one may read into
24 these two cases.

25 **Wood** discussed a third Nevada case on this point, **Rockwell v. Sun Harbor Budget**
26 **Suites**, 112 Nev. 1217 (Nev. 1996), that clearly follows the enlarged concept of scope
27 employment announce in **Prell** as opposed to the more restrictive analysis in **Gravelle**. The Court
28 in **Wood** made clear that if an off-duty security guard was required to remain in radio contact with

1 the employer, and respond to emergency calls, then the employer would be liable when he shot
2 and his girlfriend eighteen times, killing her.

3 In **Rockwell**, Sun Harbor was managed by Bigelow Management, who hired Thamar as a
4 security guard. Londa, her husband and son, lived at Sun Harbor. Londa met Thamar one day by
5 the pool, and they began having a sexual affair. After several months, Londa attempted to end the
6 affair. While off-duty, Thamar picked Londa up from her work; the two of them returned to
7 Thamar's apartment at Sun Harbor, where Londa told Thamar the affair was over. Thamar got
8 angry and killed her by shooting her eighteen times. Thamar then used his radio to call another
9 Sun Harbor security guard and reported the murder.

10 With this factual background, **Wood** cited **Rockwell**, stating:

11 ...this court, citing **Prell** and **Gravelle**, reversed the district court's order granting
12 summary judgment in favor of the employer when an off-duty security guard shot
13 and killed a woman on the employer's premises. We reversed in that case because
14 conflicting evidence raised a genuine issue of material fact concerning whether the
15 off-duty guard was acting within the scope of his employment when the shooting
16 occurred. Specifically, the evidence and affidavits produced by the parties
17 conflicted over whether security guards were required to remain in radio contact
18 with the employer and respond to emergency calls when they were off-duty.

19 **Wood** at 738.

20 By reversing the summary judgment because of conflicting facts, what the court in **Wood**
21 clearly said was that if the facts as argued by Londa's family were found to be true by the jury —
22 that is Thamer was required to remain in radio contact with the employer, and respond to
23 emergency calls — then Sun Harbor would be vicariously liable — as a matter of law. Even
24 though Thamer's motive was personal, because the "willful tort is committed in the course of the
25 very task assigned to the employee," it is not "a truly independent venture of the employee."

26 By discussing these three cases our Court went to great lengths to make the point that the
27 issue of whether the tort is "a truly independent venture of the employee" can only be decided in
28 the context of whether it was done "in the course of the very task assigned to the employee." So
while Farmer's motive in sexually assaulting the decedent was personal, it occurred while he was
doing **exactly** what his employer had assigned him to do — treat and care for the decedent.

1 As has been stated, Mr. Farmer was a CNA. As such, he had the duty to clean patients,
2 bathe patients, cleanup feces and urine, and provide bed pans. Performing these exact tasks is
3 when Jane Doe was assaulted. Jane Doe testified that:

4 Q. Now, Ms. Doe, you indicated that the Defendant introduced himself as
5 Steve; is that correct?

6 A. **He said: Hi, I'm Steve and I've been assigned to you tonight. So, I'll be**
7 **looking in on you.**

8

9 Q. Ms. Doe, you indicated that there were multiple instances. Can you
10 describe one of those instances that you remember for the Court?

11 A. On of – I woke up **and I was aware that my nipples were being pinched,**
12 **and I looked straight into his face because he was that close to me, and**
13 **he said: Oh, one of the leads has come off on your heart monitor.** But
14 the thing about my heart or the telemetry buttons that they put on, it makes
a noise if one becomes detached so that telemetry is advised as well. That
was one instance.

15

16 Q. Okay. Now were there any other instances that you can tell the Court about
17 besides when he pinched your nipples?

18 A. Yes. I woke up and he was walking around the left side of my bed and he
19 pulled the sheets down off of me, and all I had on was my gown, and he
20 lifted my gown up. You know how you go to billow something, you know,
a sheet, but he kept it up high so that it was – if I was laying down it was up
high like that.

21 Q. Now are you talking about the sheet or your gown?

22 A. The sheet. He's already pulled off of me my gown; he had lifted up high
23 enough to see my entire body.

24

25 Q. Did he tell you at that point why he was taking up the sheets or what he was
26 doing? Did he say anything to you?

27 A. No, not at that point. **But he then walked around to my right, to the**
28 **right side of my bed and he said: Oh, you have some feces, and he took**
my right leg and instead of rolling me to my side he took my right leg

1 and brought it all the way up and -- he had nothing to clean me with.
2 He had not gotten new pads to put under me or wipes or anything.
3 And that's when I became aware of a very uncomfortable feeling and
 realization that he had his thumb in my anus.

4 Transcript of Proceedings: Preservation of Witness Testimony, dated January 20, 2012, at 6:18-24,
5 8:2-8, 11:3-11, and 12:4-11.

6 Accordingly, the actions were done in **exactly** the type of tasks that were assigned to Mr.
7 Farmer as a CNA at Centennial/UHS which were described by Nurse Goodhart, *supra*.

8 **3. California Law Differs From Nevada Law and is Not Persuasive**

9 Defendants seek support from California law to help them. But these arguments fail
10 because California does not follow the standards enunciated in **Prell**, and reaffirmed in **Wood** that
11 "the concept of scope of employment enlarged." Rather, California takes a much more restrictive
12 approach, contrary to Nevada law. Consequently, California cases on respondeat superior liability
13 for intentional torts do not aid this court.

14 In **Lisa M. v. Henry Mayo Newhall Memorial Hospital**, 12 Cal.4th 291, 907 P.2d 358
15 (1995), the court had before it an ultrasound technician who sexually assaulted a patient. The
16 Court found that this was not in the "course and scope" because it was not foreseeable. The case
17 does not provide support for Defendants.

18 First, the case is from 1995. Once this case was published, if they weren't before,
19 Defendants were on notice that sexual assaults on patients do occur. That equals foreseeability in
20 general.¹⁵

21 Most important, however, are the factual and legal distinctions. Factually, the technician
22 had completed his exam when the sexual assault occurred:

23 Tripoli first conducted the prescribed examinations. Plaintiff pulled up her shirt and
24 pushed her shorts down to expose the area to be examined. The obstetrical or
25 "general pelvic" examination requires passing an ultrasound-generating wand
26 across the patient's lower abdomen. The sound waves must be mediated by a gel,
 which Tripoli testified must be worked into the skin somewhat to displace all the

27 ¹⁵ As cases appeared more and more often, it has become clearer that hospital and medical staffing employee sexual
28 abuse of patients is an unfortunate but not startling event within the context of the environment. So, one could argue
that in California in 1995, perhaps the issue was not so elucidated. But, as time has moved on, and the cases more
prevalent and publicized, employee/patient sexual abuse is foreseeable. Indeed, when healthcare companies can
procure insurance for the very act, it is axiomatic that such is foreseeable.

1 air. The exact placement and movement of the wand varies with the patient's body
2 type, and on some patients the best images are obtained by passing the wand as
3 much as an inch below the pubic hairline. Tripoli found it necessary to do so in
4 plaintiff's case. In performing the upper right quadrant examination (to see the
5 liver), Tripoli had to lift plaintiff's right breast, which he did through a towel with
6 the back of his hand.

7 **After conducting the ordered examinations**, Tripoli left the room for about 10
8 minutes to develop the photographic results. On his return, Tripoli asked plaintiff if
9 she wanted to know the sex of the baby, and she said she did. He told her, falsely,
10 that to determine the sex he would need to scan "much further down," and it would
11 be uncomfortable. This is when the assault occurred.

12 **Lisa M. at 295.**

13 This is unlike what happened in the case at bar. Here, the sexual assault occurred while
14 Farmer was fixing the heart monitor leads and cleaning Jane Doe from feces and urine. It was
15 during these tasks that he digitally penetrated her and fondled her. This assault occurred
16 immediately incidental to his official tasks as described by Centennial/UHS Nurse Goodhart,
17 *supra*.

18 Next, the California Court raised the specter of "policy" considerations of insurance
19 coverage and was concerned about respondeat superior liability and insurance. The Court said it
20 did not know if health care providers could reasonably obtain coverage for sexual assaults:

21 As for ensuring compensation, the briefing does not enable us to say with
22 confidence whether or not insurance is actually available to medical providers for
23 sexual torts of employees and, if so, whether coverage for such liability would
24 drastically increase the insurance costs--or, if not, the uninsured liability costs--of
25 nonprofit providers such as Hospital. The second policy consideration is therefore
26 also of uncertain import here; imposing vicarious liability is likely to provide
27 additional compensation to some victims, but the consequential costs of ensuring
28 compensation in this manner are unclear.

29 **Lisa M. at 305.** In other words, the Court did not want to mandate liability where there could be
30 no insurance coverage. That problem no longer exists.

31 Here, as discussed *supra*, **ANS had this insurance coverage**. See Exhibit 1. Having
32 insurance coverage establishes two things — insurability and foreseeability. Hence, the economic
33 issues that concerned the Court are not present herein. The policy reasons implicated by the
34 California Court simply are not present herein.

1 Finally, there are significant legal differences in the case law. **Lisa M.** is contrary to what
2 our Court in **Wood** has explained regarding **Rockwell**. In **Wood**, the janitor raped the clerk. In
3 **Rockwell**, the employer was liable for the off duty security guard who killed his mistress if he was
4 on call and was required to maintain radio contact. **Lisa M.**'s holding would overrule **Rockwell**.
5 Had Nevada wanted to follow the California courts, and **Lisa M.** in particular, in determining
6 respondeat superior liability, our court could have done so when deciding **Wood**, which was
7 decided ten years after the **Lisa M.** decision. Instead, the Nevada Supreme Court merely used its
8 own precedent of **Prell** and **Rockwell**, and the Legislature's addition of foreseeability, and came
9 to its decision. In Nevada, the hospital will be liable for the CNA who is touching the patient in
10 her private areas and then goes further and assaults her.

11 Pointedly, **Wood**'s analysis also relies upon the workers compensation analysis for course
12 and scope questions because, in order to be covered under the worker's compensation system in
13 Nevada (the NIIA), the employee's conduct must be in the course and scope. Regarding same,
14 **Wood** held: "If the nature of the work or the workplace contributes to or increases the risk of
15 injury more than that of the general public, the injury is covered by the NIIA." **Wood**, 121 Nev. at
16 736, 121 P.3d at 1034. Under Nevada law, in a worker's compensation analysis, Farmer would be
17 found to be acting in the course and scope of his employment when he was performing his duties
18 at the hospital. Staff/patient genital and private area contact was part of his work. This clearly
19 increased the risk much more than that of the general public, and certainly, much greater than a
20 janitor with a store clerk; respondeat superior liability must be had.

21 Finally, even **Lisa M.** recognizes that sexual assaults are not all "per se unforeseeable."
22 **Lisa M.** at 300. As long as the assault is "fairly attributable to work related events or conditions,"
23 even California would grant respondeat superior. As demonstrated by the Affidavits of both Dr.
24 Hofmann and Mr. Tatalovich, as well as the facts which make clear that Mr. Farmer's actions
25 were fairly attributable to cleaning feces, moving monitor leads, and fixing a catheter, even under
26 the restrictions of California law, not present in Nevada, respondeat superior liability would be
27 had.

28 To be sure, as **Lisa M** concedes, sexual assaults may form the basis for respondeat superior
liability as such analysis is fact specific. For example, in **Samuels v. Southern Baptist Hosp.**,

1 594 So. 2d 571 (La. App. 4th Cir. 1992), a nursing assistant raped a patient. The Court found the
2 hospital liable per respondeat superior because taking care of a patient's well-being was part of
3 employee's duties and rape was reasonably incidental to the performance of these duties, even
4 though the act was unauthorized. Mr. Farmer's duties included taking care Jane Doe's well-being
5 and needs. Hence, his sexual assault was incidental to the performance of those duties. See, also,
6 **Marston v. Minneapolis Clinic of Psychiatry & Neurology, Ltd.**, 329 N.W.2d 306, 311 (Minn.
7 1983) (noting testimony that sexual relations between a patient and a therapist was a well-known
8 hazard and "thus, to a degree, foreseeable and a risk of employment").

9 **4. Defendants Improperly Rely Upon Unpublished Opinions**

10 In what can only be described as desperation for their points and authorities, both
11 Defendants feel the need to violate Court Rules by citing unpublished orders. This Court should
12 not tolerate these intentional acts.

13 In an incredibly willful and brazen violation of Nevada Supreme Court Rules,
14 Centennial/UHS cites to an unpublished Nevada order for support, then files an "errata" (after it
15 was caught by Plaintiff's counsel) advising that it made a "mistake" in doing so but refusing to
16 withdraw the citation and argument.¹⁶ This Court should reprimand Centennial/UHS and sanction
17 counsel for their intentional violation of SCR 123.¹⁷

18 Nevertheless, because Centennial/UHS relies on it, Plaintiff will discuss the case. In
19 **Vaughan v. Harrah's Las Vegas, Inc.**, 2008 Nev. Unpub. LEXIS 3 (Nev. 2008), Sharon
20 Afflerback, a casino porter, apparently assaulted and battered Kathleen Vaughn. Unfortunately,
21 because it is an unpublished order, there are no facts laid out in the Order. So, neither Plaintiff,
22 nor this Court, knows what the facts were regarding course and scope. While, certainly, the Court
23 determined that Ms. Afflerback wasn't in the course and scope of her casino porter job when the
24

25 ¹⁶ See Exhibit 5.

26 ¹⁷ SCR 123 states: "Citation to unpublished opinions and orders. An unpublished opinion or order of the Nevada
27 Supreme Court shall not be regarded as precedent and shall not be cited as legal authority except when the opinion or
28 order is (1) relevant under the doctrines of law of the case, res judicata or collateral estoppel; (2) relevant to a criminal
or disciplinary proceeding because it affects the same defendant or respondent in another such proceeding; or (3)
relevant to an analysis of whether recommended discipline is consistent with previous discipline orders appearing in
the state bar publication." None of these reasons for citing an unpublished order is present or even close. Hence, the
conduct of Centennial is intentional in violating the Rules. Mr. Murdock specifically demanded that counsel retract
the cite completely. Centennial refused, implicitly acknowledging their intentional violation of Court rules.

1 assault took place, there are no facts stated which would tell the reader why. However, what the
2 Court did do is rely upon **Wood**, just as Plaintiff has herein for its analysis.

3 Similarly, ANS violated California Rule of Court 977¹⁸ when it cited **Robert D. v.**
4 **Paradise Valley Hosp.**, 2004 Cal. App. Unpub. LEXIS 4285 (Cal. App. 4th Dist. Apr. 28, 2004)
5 an appellate court decision which merely followed **Lisa M.** without any analysis. Robert sued
6 Paradise Valley as a result of a nurse's fondling of him, and performing fellatio upon him during a
7 sponge bath. However, there was a legal issue in that Robert did not allege sufficient facts to
8 support certain conclusions. As the Order is unpublished, the Order does not make clear what is
9 missing. But, clearly, the Court's phrasing of the central issue of the case, "Here, we analyze
10 whether a hospital can, as a matter of law, be vicariously liable for a sexual assault committed by a
11 nurse on a patient during the course of a sponge bath, without facts supporting conclusions of
12 consent, authorization, or a desire to serve the employer's interest" makes clear that something was
13 missing. *Id.* Regardless, the Court cited **Lisa M.** and found that the allegations were not "fairly
14 attributable to work-related events or conditions."

15 As has been stated, Nevada law is quite different. The analysis under Nevada law would
16 be whether the assault was done in the task given to the employee. Under Nevada law, **Robert D.**
17 would be decided completely different.

18 ///

19 ///

21 ¹⁸ Rule 977 of the California Rules of Court provides, in pertinent part:

22 [Unpublished opinions] An opinion of a Court of Appeal or an appellate department of the superior
23 court that is not certified for publication or ordered published shall not be cited or relied on by a
court or a party in any other action or proceeding except as provided in subdivision (b).

24 [Exceptions] Such an opinion may be cited or relied upon:

25 when the opinion is relevant under the doctrines of law of the case, res judicata, or
26 collateral estoppel; or

27 when the opinion is relevant to a criminal or disciplinary action or proceeding because it
28 states reasons for a decision affecting the same defendant or respondent in another such
action or proceeding.

Just like with Centennial, the exceptions to the Rule do not apply.

1 Both ANS and Centennial/UHS make the same mistake and argue that Plaintiff will use
2 the foreseeability related to Farmer's history of abuse of patients to establish same.¹⁹ While
3 Plaintiff could, specific foreseeability of an individual is not the issue. The Nevada Supreme
4 Court made this quite clear when it stated that, "where the question is one of vicarious liability, the
5 inquiry should be whether the risk was one 'that may fairly be regarded as typical of or broadly
6 incidental' to the enterprise undertaken by the employer." **Wood**, 121 Nev. at 740 fn 53. This is a
7 general inquiry...not a specific one. Moreover, this Court should not confuse the vicarious
8 liability of ANS and Centennial/UHS with their direct liability in this matter. The issue at hand is
9 foreseeability for the **Wood** respondeat superior analysis—not foreseeability related to negligence.

10 That being said, if this Court is concerned about this, as to both ANS and Centennial/UHS,
11 Farmer's conduct was specifically foreseeable. Dr. Hofmann and Mr. Tatalovich have both
12 testified that Farmer's conduct was specifically foreseeable to both ANS and Centennial/UHS. In
13 addition, uncontested facts make this clearer.

14 **F. ANS WAS AWARE OF ABUSE ALLEGATIONS AGAINST FARMER**

15 In or around late December of 2007, an issue arose as to Mr. Farmer at his job at Rawson
16 Neal Psychiatric Hospital, where he was sent by ANS.

17 On January 7, 2008, an ANS Nurse Performance Evaluation from Rawson Neal stated that
18 Farmer had "called a female client [another word for Patient], on the clients' phone—on two
19 occasions. The pt [patient], EM, was familiar with Mr. Farmer's living situation (renting a room
20 in a house). This agency does not support fraternizing with clients." See Exhibit 6.

21 On January 28, 2008, Rontraniece Theard, a nurse, wrote an Incident Report regarding
22 Farmer: "The patient stated, 'My boyfriend works here, his name is Steve, he's a Tech.' The
23 patient also said, 'he calls me on the phone and said we are going to live together.' She told me
24 that he kissed her. I told Anita on swing shift what the patient told me and Anita said, 'Marion the
25 Nurse III is aware of it.' It was said that Marion stated that he [Steve] could never work on G3B
26 again." See Exhibit 7.

27
28 ¹⁹ The specific foreseeability that both ANS and Centennial had regarding Farmer could also be the basis for liability against both Defendants that is not vicarious in nature. Though the facts related to the sexual assault have been conclusively determined, issues related to Defendants own negligent acts (as opposed to vicarious acts) are not at issue herein. However, they are also uncontested.

1 Linda Elrington, an LPN at Rawson Neal, stated: "Pt who was on full view and under my
2 responsibility got off the phone and came dancing to the table. Pt said 'That was my boyfriend
3 Steve, the bearded Tech that work here.' Unit Tech Rontraniece and I looked at each other and
4 asked 'Are you sure that was Steve that works here?' Pt said 'Yes we are moving in together' and
5 for me to tell the social worker but not to mention his name. She look at Rontraniece and said
6 'Remember I told you that we kiss yesterday.'" See Exhibit 8.

7 **ANS had all of the statements, including Theard's and Elrington's, in its possession.**
8 Deposition of Michele Simmons, R.N., at 164-165.

9 Steven Farmer was placed on "Do Not Return" status from Rawson Neal due to allegations
10 of an "improper relationship" with a patient. ANS classified this "improper relationship" as
11 **"abuse."** See Exhibit 9. Michele Simmons, the Director of Clinical Operations at ANS, on ANS
12 forms, described Mr. Farmer's conduct at Rawson Neal as "Abuse" and "Alleged violations as
13 defined in Practice Acts of respective regulatory body." Deposition of Michele Simmons, R.N., at
14 69-71; ANS00305. **Regardless, she did not report the abuse to an appropriate agency (i.e.,**
15 **Metro or other agencies) and decided not to report the violations to the Nursing Board. Id.²⁰**

16 Instead, ANS sent Mr. Farmer to Centennial/UHS, and, did so without telling
17 Centennial/UHS about the issues with Mr. Farmer. ANS never disclosed to Centennial/UHS that
18 Rawson was DNR'ed (do not return) at his former place for "Abuse." Deposition of Michele
19 Simmons, R.N., at 158.

20 Accordingly, ANS was well aware that Farmer posed a risk to patients. ANS had **actual**
21 **notice**—not just constructive notice—and did nothing but allow him to continue his abuse on
22 patients—but now at Centennial/UHS.

23 ///

24 ///

25 ///

26 ///

27
28 ²⁰ This was an absolute violation of the Nursing Practices Act Section 632.472. It also violated ANS's own rules which stated that "Any aberrant or illegal behavior will be reported by the Compliance Office or the Human Resource Department to the appropriate professional board or law enforcement agency." See ANS0055-ANS00551.

1 **G. CENTENNIAL/UHS REQUIRED REFERENCES FROM THE LAST PRIOR JOB.**
2 **DESPITE NOT RECEIVING THEM, CENTENNIAL/UHS LET FARMER WORK**
3 **WITH ITS PATIENTS.**

4 Obviously, Centennial/UHS has admitted that if they had known about those issues, he
5 would not have been working there. See Response to Request for Admission Set 5. The director
6 of Human Resources at Centennial/UHS has testified similarly:

7 Q. Okay. And so similar to the questions I was asking you, based on the dates
8 here of January 25th, 2008, it looks like this incident was reported possibly
9 a little less than a month before he started working at Centennial Hills
10 Hospital. Is this the type of information Centennial Hills Hospital would
11 have wanted?

12 A. Yes.

13 Q. And had you had this information, would Centennial Hills Hospital have
14 made any different decision about taking on Mr. Farmer?

15 A. Had I personally seen this information, I would have wanted to get
16 additional information about that incident before making a decision to bring
17 him on.

18 Q. At least until that time occurred that you received that additional
19 information that satisfied your concerns, would you have taken on Mr.
20 Farmer?

21 A. We would not have.

22 Deposition of Lisa Doty at P. 78, line 10, to page 79, line 3.

23 That, however, does not let Centennial/UHS off the hook.

24 Crystal Johnson started working at Centennial/UHS before it opened on December 17,
25 2007. Deposition of Crystal Johnson at 8. Ms. Johnson's job classification at Centennial/UHS
26 was "Staffing Coordinator." *Id.* at 11. Her duties included, "We find out the needs on each floor,
27 each department, and we call the agencies and let them know how many nurses we need, CNAs,
28 and we try to fill the floors. We also gather applications, background checks, put orientation
packets together." *Id.* at 13-14. When using agency CNAs, Centennial/UHS would rely on the
agencies to perform background checks. *Id.* at 14-15. In addition to misdemeanors and felonies,
the background check was also for past job performance. *Id.* at 16.

1 Centennial/UHS would send over a sheet to the agency with all of the items that it would
2 need, including references. *Id.* at 15-16. While Centennial/UHS could not ask if the individual
3 was allowed back at the last place of employment, Centennial/UHS instead asked if they had a
4 good reference from the prior work place. *Id.* at 16-17. **The specific reference Centennial/UHS**
5 **wanted was from the prior job.** *Id.* at 17.

6 Centennial/UHS had a format (Document CHH00326) showing what was needed for
7 working at Centennial/UHS for Steven Farmer. *Id.* at 18. The document states that
8 Centennial/UHS had the “application” but did not have the “references.” *Id.* at 19, 23. Ms.
9 Johnson’s habit would be that if the references were ever provided that she would check them off.
10 *Id.* at 20. The “references” item was never checked off. *Id.* at 20.

11 The “references” that Centennial/UHS was asking for were work related, **at least one of**
12 **which was from the last position placed at ANS.** *Id.* at 20. Of course, the last position was
13 Rawson Neal, where Farmer was placed on “Do Not Return” for an improper patient relationship
14 which was termed “abuse” by ANS. They never received this last reference nor did they insist
15 upon having it before letting Farmer work at the hospital.

16 Without the references provided, Ms. Johnson testified that they “**should not have**”
17 allowed the person to work at Centennial/UHS. *Id.* at 21. Ms. Johnson did not receive the
18 references and specifically wrote the word “need” with regard to the references. *Id.* at 21. Ms.
19 **Johnson does not know how Steven Farmer was working at Centennial/UHS without the**
20 **required references.** *Id.* at 25-26. Ms. Johnson testified that Mr. Farmer should not have
21 been working at Centennial/UHS until they had the references. *Id.* at 26. Centennial/UHS
22 never received them.

23 **H. THE HOSPITAL CAUGHT FARMER 2 MONTHS EARLIER, BUT BLAMED AS** 24 **“OLD CRAZY LADY” INSTEAD OF FARMER**

25 Additionally, a Centennial/UHS patient had caught Mr. Farmer weeks before this
26 incident...but Centennial/UHS decided to blame a “crazy old lady” instead of investigating.
27 While this certainly is part of their own negligence, **it also shows that Farmer’s conduct was**
28 **foreseeable and not surprising.**

1 Christine Murray, a nurse at Centennial/UHS, gave a statement to the LVMPD.²¹ In or
2 around February or March of 2008, Mr. Farmer was working as a “sitter” in an older patient’s
3 room. Ms. Murray stated that this means that a doctor ordered someone to be in the room with her
4 at all times. Nevertheless, Mr. Farmer was alone with her and had the door shut with all of the
5 lights out. Centennial/UHS staff heard yelling from the room to the effect that she did not want
6 him near her. Instead of investigating what occurred, Ms. Murray and the Centennial/UHS staff
7 basically blamed the incident on a “crazy old lady.”

8 The point is, whether this Court uses the Nevada Supreme Court’s interpretation of
9 foreseeability which is general, or Defendants, which is specific, Farmer’s actions were
10 foreseeable.

11 **I. DEFENDANTS HAVE FAILED TO PROVIDE ADMISSIBLE EVIDENCE TO**
12 **RAISE GENUINE ISSUES OF MATERIAL FACT**

13 Though Plaintiff has produced significant admissible evidence regarding course and scope.
14 Defendants have produced **no evidence** whatsoever regarding same (admissible or not). Plaintiff
15 submits that, as a matter of law, there are no genuine issues of material fact and summary
16 judgment is proper that Farmer was in the course and scope of his employment at ANS and
17 Centennial/UHS allegedly cleaning Jane Doe from feces, fixing her catheter, and fixing her leads,
18 when he sexually assaulted her.

19 Nevertheless, Plaintiff understands that generally the issue of whether an employee is
20 acting within the scope of employment when the employee committed a tortious act is generally a
21 question of fact. **Evans v. Southwest Gas**, 108 Nev. 1002, 1005, 842 P.2d 719, 721 (1992),
22 overruled on other grounds by **GES, Inc. v. Corbitt**, 117 Nev. 265, 21 P.3d 11 (2001); see, e.g.,
23 **Rockwell**, 22 Nev. at 1217, 925 P.2d at 1181 (1996) (genuine issue of material fact whether off-
24 duty security guard was still actively guarding the premises when he shot a woman precluded
25 summary judgment in favor of employer based on course and scope of employment argument).
26 However, when undisputed evidence exists, such as in this case, demonstrating the employee’s
27 status at the time of the tortious conduct, the trial court should consider the issue as a matter of

28

²¹ This statement was just provided to Plaintiff’s counsel. Defendants knew about this for years but neglected to supplement the NRCP 16.1 Disclosure in this matter. Nevertheless, the Statement is attached hereto as Exhibit 4.

1 law. **Evans v. Southwest Gas**, 108 Nev. at 1005, 842 P.2d at 721. Plaintiff submits that this is the
2 case here. It is clear that Farmer was in the course and scope of his employment with ANS and
3 Centennial/UHS when he sexually assaulted Plaintiff. Defendants have failed to present any
4 admissible evidence to raise a genuine issue of material fact.

5 Regardless of how the Court rules on the issues of course and scope and respondeat
6 superior though, Plaintiff is entitled to an Order from this Court granting summary judgment on
7 the issue of the sexual assault and its component parts. The conviction alone is absolute evidence
8 that the sexual assault occurred and all of the facts of those sexual assaults have been decided as to
9 all parties, as a matter of law.

10 **J. BECAUSE THE HOSPITAL OWES A NON-DELEGABLE DUTY TO JANE DOE,**
11 **THE CONVICTION OF FARMER MANDATES STRICT LIABILITY AGAINST**
12 **THE HOSPITAL.**

13 Respondeat superior is not the only reason Centennial/UHS is strictly liable. The
14 uncontested facts establish that Jane Doe was a patient at Centennial/UHS. As such,
15 Centennial/UHS owed her a non-delegable duty to protect her *regardless* of whether the actions of
16 Farmer were within the scope of employment. Hence, Centennial/UHS is strictly liable for the
17 actions of Farmer regardless of respondeat superior.

18 § 214 Failure of Principal to Perform Non-Delegable Duty

19 A master or other principal who is under a duty to provide protection for or to have
20 care used to protect others or their property and who confides the performance of
21 such duty to a servant or other person is subject to liability to such others for harm
caused to them by the failure of such agent to perform the duty.

22 Restatement (Second) of Agency, § 214.

23 The illustrations make this clear. “5. The chambermaid at a hotel steals the clothes of a
24 traveler stopping at the hotel. The hotel keeper is subject to liability although he reasonably
25 believed the chamber-maid to be honest.” **Id.** The reason the hotel is automatically liable is that
26 the hotel had a non-delegable duty to protect the belongings of the traveler. So, when the
27 chambermaid steals the clothes, the hotel cannot “blame” the chambermaid despite there being no
28 reason to suspect her as a thief.

1 This Court well knows that:

2 [A] nondelegable duty imposes upon the principal not merely an obligation to
3 exercise care in his own activities, **but to answer for the well-being of those**
4 **persons to whom the duty runs."**

5 **Alcantara v. Wal-Mart Stores, Inc.**, 321 P.3d 912, 916 (Nev. 2014). **"Even the use of utmost**
6 **care in hiring and delegating the duty to an independent contractor, such as a security**
7 **company, will not discharge the duty. Id.**

8 A hospital certainly has a duty to provide for the protection of its patients. There is a
9 special relationship between a hospital and its patients such that the duty to protect from criminal
10 attacks from third parties:

11 However, courts have imposed liability where a "special relationship" exists
12 between the parties, including landowner-invitee, businessman-patron, employer-
13 employee, school district-pupil, **hospital-patient**, and carrier-passenger. Id. at 482-
14 83. The rationale behind the imposition of liability is that: Since the ability of one
15 of the parties to provide for his own protection has been limited in some way by his
16 submission to the control of the other, a duty should be imposed upon the one
possessing control (and thus the power to act) to take reasonable precautions to
protect the other one from assaults by third parties which, at least, could reasonably
have been anticipated.

17 **Scialabba v. Brandise Constr. Co.**, 112 Nev. 965, 968-969 (Nev. 1996). "[A] non-delegable
18 duty imposes upon the principal not merely an obligation to exercise care in his own activities, but
19 to answer for the well-being of those persons to whom the duty runs." **Alcantara v. Wal-Mart**
20 **Stores, Inc.**, 321 P.3d 912, 916 (Nev. 2014). The Nevada Supreme Court has explained that "a
21 non-delegable duty is a strict liability concept." **Renown Health, Inc. v. Vanderford**, 235 P.3d
22 614, 617 (Nev. 2010).²²

23 In **Stropes v. Heritage House Childrens Center, Inc.**, 547 N.E.2d 244 (Ind. 1989), the
24 Court had before it David, a child of 14 years of age who was mentally challenged and was placed
25 at a center to live. A nurse's aide there, whose job it was to bathe and clean the child, was
26 convicted of sexual assault of the boy. The Court found that the home had a non-delegable duty to

27 ²² **Renown** held that a hospital did not have a "non-delegable duty" to provide "competent" medical care. Id. at 616.
28 That is certainly not the issue in this case. Here, the non-delegable duty is the protection of patients. "Competent"
medical care is in the eye of the beholder. The protection of patients is objective—Jane Doe was sexually assaulted
by an employee and thus there is absolute liability. This has to do with the issue of control and the fact that Jane Doe
gave up total control of her safety to Centennial.

1 protect the boy from such assaults based upon the fact that control was given away to the home to
2 protect the boy. The Court analogized the contract it had between it and the boy as a “contract of
3 passage” which,

4 ...contemplated that the entire responsibility for David's comfort, safety and
5 maintenance would be on Heritage and that the performance of these tasks would
6 be delegated to its employees. Given the degree of David's lack of autonomy and
7 his dependence on Heritage for care and the degree of Heritage's control over
8 David and the circumstances in which he found himself, we find that Heritage
assumed a non-delegable duty to provide protection and care so as to fall within the
common carrier exception.

9 **Id.** at 254.

10 The Court explained:

11 Under respondeat superior, employer liability is coextensive with the powers and
12 advantages engendered by the employment relationship. Because liability is
13 predicated conceptually on the employer's ability to command or control his
14 employee's acts, an employer can be held responsible only for those acts of his
15 employee which are committed within the scope of their employment relationship.
16 **Under the common carrier exception to respondeat superior, however, the**
17 **range of employee activities deemed to be under the employer's dominion is**
18 **irrelevant. Liability is predicated on the passenger's surrender and the**
19 **carrier's assumption of the responsibility for the passenger's safety, the ability**
20 **to control his environment, and his personal autonomy in terms of protecting**
21 **himself from harm; therefore, the employer can be held responsible for any**
22 **violation by its employee of the carrier's non-delegable duty to protect the**
23 **passenger, regardless of whether the act is within the scope of employment.**

19 **Stropes v. Heritage House Childrens Center, Inc., 547 N.E.2d 244, 253 (Ind. 1989).**

20 The Common Carrier “exception” is Section 214 of the Restatement (Second) of Agency,
21 discussed above, which Nevada has implicitly accepted. See **Alcantara v. Wal-Mart Stores,**
22 **Inc., 321 P.3d 912, 916 (Nev. 2014)** (citing United States Supreme Court case accepting Section
23 214).²³

24 The point of the common carrier exception is that the passenger has given up control of her
25 surroundings. The Captain is piloting the ship. The bus driver is driving the bus. In each of these
26

27 ²³ Plaintiff is not stating that a hospital is a common carrier. It is simply an analogy regarding the issue of control.
28 However, this Court knows that Nevada has accepted an elevator as being a “common carrier” and all of the attendant
duties with same. See **Smith v. Odd Fellows Bldg. Ass'n, 46 Nev. 48 (Nev. 1922)**. Had Jane Doe’s sexual assault
occurred in an elevator (as did another one of his victim’s at Centennial), then the issue would be clearer. Regardless,
the issue is one of control, not location. Geography should not be the issue. Jane Doe gave up control to the hospital.
She is no different than a passenger on a boat or on an elevator.

1 scenarios, liability has been non-delegable and strict when, for example, a crewman sexually
2 assaults a passenger on a cruise ship (**Doe v. Celebrity Cruises, Inc.**, 394 F.3d 891 (11th Cir.
3 2004), or a crewman on a train sexually assaults a passenger (**Gilstrap v. Amtrak**, 998 F.2d 559
4 (8th Cir. 1993). See, also, **Morton v. De Oliveira**, 984 F.2d 289, 292 (9th Cir. Cal.
5 1993)(passenger on cruise ship raped by crew man, strict liability based upon Section 214 holding
6 “a carrier is liable to its passengers for assaults by employees prompted by purely personal
7 motives.”)

8 Again, it is the rationale for Section 214 that this Court should apply to hospitals as Indiana
9 did to an institution. Our court in **Scialabba** made it clear that the reasoning of the Indiana court
10 is consistent with Nevada law as it applies to hospital/patients relationships. The patient gives up
11 control to the hospital. Everything is done for the patient. Even the private cleansing of one’s
12 anus from feces is done by those who the hospital hire. Some patients are on pain medication or
13 other medication such that they have no idea of their surroundings and may even be unconscious.
14 The patient cannot lock the door. The patient cannot stop someone from coming in the room.
15 Even a cruise ship has locks on doors, and passengers can decide who they allow in their room. A
16 hospital is completely open to provide care for patients, but the patient has no control, whatsoever,
17 for their own protection.

18 A hospital should be strictly liable for the intentional torts of staff. A hospital owes an
19 absolute duty of protection to their patients. A cruise ship or an Amtrak train, should not make a
20 person feel safer than patients in hospitals. Think of what could happen not just to a woman like
21 Jane Doe; think about infants, persons in comas, the most vulnerable persons in society. The
22 rationale for Section 214 justly applies in the hospital setting. The hospital can insure itself and
23 take numerous steps to protect patients who simply cannot take any steps to protect themselves in
24 this situation.

25 The case at bar is ripe for strict absolute liability against the hospital for this attack by its
26 own employee.

27 Jane Doe was a patient at the hospital.

28 Jane Doe gave up all of her control with regard to her person to the hospital.

1 She could not lock the door to her room. Deposition of Deposition of Douglas Nichols,
2 Person Most Knowledgeable of Valley Health System LLC, at 14.

3 There was no eyepiece on the door. *Id.* at 15.

4 There was no window on the door. *Id.*

5 During the relevant time period, Jane Doe was given intravenous Ativan (for seizures) and
6 Prozac.²⁴

7 The hospital (supposedly) looked at background and references from prior employment.
8 Deposition of Crystal Johnson at 16.

9 Centennial/UHS has conceded that Jane Doe could not have taken care of safety for her
10 own person herself because there was no lock on the door. Nichols Person(s) Most
11 Knowledgeable Deposition at 15.

12 Jane Doe surrendered all of her responsibility for her own safety to the hospital. The
13 hospital decided who it was going to allow to wash her, bathe her, and clean her feces and urine.
14 The hospital decided what persons it was going to allow on its premises to work for it. Jane Doe
15 had no control whatsoever. She gave it all to the hospital. Once that control is given up, the
16 hospital acts just like a common carrier...and its duty of protection, being non-delegable, once
17 there is a conviction of Farmer, was breached as a matter of law.

18 As a result, the hospital's non-delegable duty was breached based upon the conviction of
19 Steven Farmer and Centennial/UHS is liable therefor.

20 **K. THE HOSPITAL AND ANS RATIFIED THE ACTS OF FARMER AND CANNOT**
21 **NOW ARGUE THAT FARMER WAS NOT IN THE COURSE AND SCOPE**

22 One would think that if the hospital and/or ANS truly believed that Farmer was not acting
23 in the course and scope of his employment, that the hospital and ANS would have cooperated with
24 the police and district attorney's office to convict Farmer. They would not have been aiding and
25 abetting Mr. Farmer in his criminal defense if he was not their employee—acting within the course
26 and scope of his employment. But, they did. Yes, that is right. Both ANS and Centennial/UHS
27 provided assistance to Farmer before and during his criminal trial. As unbelievable as that sounds,
28 they did. Now, that is their right and their choice. But, their choice comes with a corresponding

²⁴ See Exhibit 10. The side effects of Ativan include sedation, dizziness and weakness.

1 problem — they cannot argue that he was not in the course and scope of his employment when the
2 sexual assault occurred. If Farmer was truly not in the course and scope, then his employers would
3 not have aided in his defense.

4 Centennial/UHS attorneys provided Mr. Farmer's trial clothing.²⁵

5 Both Centennial/UHS and ANS shared information back and forth regarding the victims
6 and defenses with Farmer's Public Defender. See Exhibit 11: Emails. Centennial/UHS and ANS
7 provided Farmer's criminal defense lawyers whatever assistance they needed to aid his defense.
8 Most important, Mr. Farmer's criminal defense lawyers consulted with lawyers for ANS and
9 Centennial/UHS:

10 Dear Messrs. McBride, Bemis, and Vogel and Ms. Hall:

11 We appreciate your consulting with us on the above-named case [State of Nevada
12 v. Steve Dale Farmer]. Enclosed, per our January 21, 2013 meeting, please find the
13 documents necessary for your review to assist with us on this case...

14 Letter from Amy Feliciano, Public Defender, dated January 31, 2013, Exhibit 12.

15 So, in other words, through their counsel, ANS and Centennial/UHS were actively aiding
16 and assisting the defense of Mr. Farmer. This is the essence of ratification. They were helping
17 Mr. Farmer in his defense of a charge of sexual assault against Jane Doe (along with six other
18 women). Why would employers who argue that he was not in the course and scope help the same
19 rapist? They can't have it both ways and they should have thought about the consequences of
20 their ratification before they actively aided and abetted.

21 Neither ANS nor Centennial/UHS repudiated the acts — instead, they both aided Farmer's
22 defense. A principal "is bound by [its] agent's previously unauthorized act if [it] ratifies the act by
23 accepting its benefits with full knowledge of the relevant facts, or, if upon learning of the act, [it]
24 fails to properly disavow it." *Kilby v. Pickurel*, 240 Va. 271, 396 S.E.2d 666, 668-69 (Va. 1990).
25 Here, both ANS and Centennial/UHS attempted to help Farmer prove that he did not do the
26 criminal acts of which he was charged. ANS never even fired Farmer! This clearly demonstrates
27 they did not disavow the acts — **they ratified them.**

28 ///

²⁵ See Affidavit of Mr. Murdock.

1 This is not the type of “help” where they just stood by and paid for a criminal defense
2 attorney. Here, they actively attempted to help Farmer by providing information back and forth,
3 by consulting with criminal defense counsel, and even providing clothing for the criminal
4 defendant’s trial. The aiding and abetting is what sets this apart. The actions are nothing but
5 ratification.

6 III. CONCLUSION

7 Summary judgment “shall be rendered forthwith if the pleadings, depositions, answers to
8 interrogatories, and admissions on file, together with the affidavits, if any, show that there is no
9 genuine issue as to any material fact and that the moving party is entitled to a judgment as a matter
10 of law.” Plaintiff seeks summary judgment on several issues related to Farmer’s conviction of
11 sexually assaulting Plaintiff under NRS 41.133.

12 First, there are no facts in dispute that Farmer was convicted of Sexually Assaulting
13 Plaintiff and committing Open and Gross Lewdness and Indecent Exposure upon her by:

- 14 a. Digitally penetrating, by inserting his finger(s) into the anal opening of Jane Doe,
15 Count 10;
- 16 b. Digitally penetrating, by inserting his finger(s) into the genital opening of Jane Doe,
17 Count 12;
- 18 c. Touching and/or rubbing the genital opening of Jane Doe with his hand(s) and/or
19 finger(s), Count 11;
- 20 d. Touching and/or rubbing and/or pinching the breast(s) and/or nipple(s) of Jane Doe
21 with his hand(s) and/or finger(s), Count 13 and 14;
- 22 e. Deliberately lifting the hospital gown of Jane Doe to look at her genital opening and/or
23 anal opening and/or breast(s), Count 15.

24 Accordingly, summary judgment must be granted finding all facts related to these convictions
25 necessary to impose civil liability for Plaintiff’s injuries have been conclusively established as a
26 matter of law, as to all related claims alleged in the Amended Complaint, as to all Defendants.

27 Second, based upon this finding, summary judgment on the issue of liability must be
28 granted as to Farmer, and all affirmative defenses related to liability must be dismissed.

1 Third, as to ANS and Centennial/UHS, Plaintiff is entitled to summary judgment on the
2 issue of vicarious liability, and all affirmative defenses related to vicarious liability must be
3 dismissed if at the time of the sexual assaults:

- 4 1. Farmer, the person causing the injury, was employed by ANS and/or Centennial/UHS,
5 who were corporation(s) responsible for the conduct of Farmer, the person causing the
6 injury, and,
- 7 2. (a) This conduct was not a truly independent venture of Farmer;
8 (b) The sexual assaults were committed in the course of the very task assigned to the
9 employee; and
10 (c) The sexual assaults were reasonably foreseeable under the facts and circumstances
11 of the case considering the nature and scope of Farmer's employment.

12 Regardless of whether this Court finds there are no genuine issues of material fact as to ANS
13 and/or Centennial/UHS under numbers 1 and 2 above, Plaintiff is entitled to a finding of summary
14 judgment that ANS and Centennial are liable if number 1 and 2 are found by a preponderance of
15 the evidence.

16 Fourth, Plaintiff is entitled to summary judgment that Farmer was employed by ANS, who
17 was responsible for his conduct at the time of the sexual assaults on Plaintiff. No genuine issue of
18 material fact has been raised to refute this issue, and summary judgment must be granted.

19 Fifth, Plaintiff is entitled to summary judgment that Farmer was employed by
20 Centennial/UHS, who was responsible for his conduct at the time of the sexual assaults on
21 Plaintiff. The undisputed facts, as set forth in detail hereinabove, make clear that Centennial/UHS
22 identified Farmer as working for them on the badge he was assigned to wear, and that they solely
23 controlled the method and manner of his work at the hospital. The law is clear that, based upon the
24 facts in this case, summary judgment must be granted on the issue that Farmer was employed by
25 Centennial/UHS, who was responsible for his conduct at the time of the sexual assaults on
26 Plaintiff.

27 Sixth, Plaintiff is entitled to summary judgment on the issue of foreseeability as to ANS in
28 that sexual assaults were reasonably foreseeable under the facts and circumstances of the case
considering the nature and scope of Farmer's employment. Though foreseeability is usually a

1 question of fact, here there are no facts in dispute on this issue. This Court is not being asked to
2 weigh evidence or credibility of witnesses on this point. The undisputed facts demonstrate two
3 things. It is well known that hospital staff have committed sexual assaults on patients; in fact,
4 insurance companies provide insurance coverage because this is such well known risk. ANS had
5 such coverage. Additionally in this case, ANS knew of Farmer's propensity to engage in
6 inappropriate contact with patients based upon his prior conduct. In this case, there are no genuine
7 issues as to any material fact and that the moving party is entitled to a judgment as a matter of law
8 on the issue of foreseeability as to ANS.

9 Seventh, Plaintiff is entitled to summary judgment on the issue of foreseeability as to
10 Centennial/UHS in that sexual assaults were reasonably foreseeable under the facts and
11 circumstances of the case considering the nature and scope of Farmer's employment. Though
12 foreseeability is usually a question of fact, here there are no facts in dispute on this issue. Again.
13 This Court is not being asked to weigh evidence or credibility of witnesses on this point. The
14 undisputed facts demonstrate two things. It is well known that hospital staff have committed
15 sexual assaults on patients; in fact, insurance companies provide insurance coverage because this
16 is such well known risk. Additionally in this case, Centennial/UHS knew of Farmer's propensity
17 to engage in inappropriate contact with patients based upon his prior conduct that was summarily
18 dismissed as being a "crazy old lady." Finally, Centennial/UHS had in place a screening process to
19 prevent a sexual deviant from being employed in a position where a patient could be assaulted;
20 they just did not follow their own procedures. While that may be an issue as to Centennial's own
21 negligence, it also demonstrates foreseeability. In this case there are no genuine issues as to any
22 material fact and that the moving party is entitled to a judgment as a matter of law on the issue of
23 foreseeability as to Centennial/UHS.

24 Eighth, Plaintiff is entitled to summary judgment as to ANS and Centennial/UHS on the
25 issue that the sexual assaults were committed in the course of the very task assigned to the Farmer
26 and were not a truly independent venture. The facts on this point are not in dispute. As part of his
27 assigned duties on the night of the sexual assaults, Farmer was assigned to care for patients on the
28 sixth floor of the hospital — undisputed. Plaintiff was on the sixth floor — undisputed. Some of a
CNA's tasks, such as Farmer, was to change bed pans, clean up a patient who had urinated or

1 defecate upon herself, check monitor leads attached to a patient's chest — undisputed. The
2 undisputed testimony provided by Plaintiff was that she was sexually assaulted and fondled as
3 Farmer was explaining to her he was doing each of these tasks — undisputed. It is also undisputed
4 that ANS and Centennial/UHS provided substantial assistance to Farmer during his criminal trial,
5 thereby waiving their right to contest whether Farmer was in the course and scope. This Court is
6 not being asked to weigh evidence, or credibility of witnesses on this point. Defendants have not
7 raised any genuine issue as to any of these material facts. The only question for this Court is
8 whether on these facts, the law in Nevada would find the sexual assaults were committed in the
9 course of the very task assigned to the Farmer and were not a truly independent venture. As
10 detailed above, under **Prell, Safeway and Rockwell**, our court is clear — these sexual assaults
11 were not truly independent ventures because they were committed in the course of the very task
12 assigned to the Farmer. While California law would differ on this point, Nevada courts would
13 categorically find these sexual assaults give rise to liability. Accordingly, the Court should grant
14 summary judgment in favor of Plaintiff and against ANS and Centennial/UHS on the issue that the
15 sexual assaults were committed in the course of the very task assigned to the Farmer and were not
16 a truly independent venture.

17 Ninth, Plaintiff is entitled to summary judgment as to Centennial/UHS because it owed a
18 non-delegable duty to Plaintiff and Farmer's convictions mandate liability against them. The facts
19 are undisputed that, as a patient in the hospital, Plaintiff had given the hospital control over her
20 safety and well-being, all decisions concerning the hospital employees providing for her care, and
21 total control over her environment. As such, the law requires the hospital to be held strictly liable
22 for the acts of its employees.

23 Tenth, Plaintiff is entitled to summary judgment on the issue of liability against ANS and
24 Centennial/UHS, and all affirmative defenses related to liability must be dismissed because ANS
25 and Centennial/UHS have ratified Farmer's acts and have waived their right to argue that he was
26 not an employee or that the sexual assaults were not committed in the course of the very task
27 assigned to the Farmer and were a truly independent venture. It is undisputed that ANS and
28 Centennial/UHS provided substantial assistance to Farmer during his criminal trial, thereby
waiving their right to contest whether Farmer was an employee acting within the course and scope

1 of his employment. The law is clear – employers who provide this type of assistance to aid
2 Farmer, instead of disavowing his heinous conduct, binds ANS and Centennial/UHS to the
3 previously unauthorized acts.

4 Wherefore, based upon all of the foregoing, it is respectfully requested this Honorable
5 Court grant to Plaintiff summary judgment on each and every of the foregoing issues.

6 Respectfully submitted,

7 MURDOCK & ASSOCIATES, CHTD.
8 ECKLEY M. KEACH, CHTD.

9 /s/ Robert E. Murdock
10 Robert E. Murdock Bar No. 4013
11 Eckley M. Keach Bar No. 1154
12 521 South Third Street
13 Las Vegas, NV 89101
14 Attorneys for Plaintiff
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AFFIDAVIT OF ROBERT E. MURDOCK

STATE OF NEVADA }
COUNTY OF CLARK } ss.

ROBERT E. MURDOCK, being first duly sworn deposes and says:

1. I am an attorney duly licensed to practice law in the State of Nevada and, along with Eckley M. Keach, am the attorney for Plaintiff in the captioned action.

2. I have personal knowledge of the facts set forth herein and am capable and willing to testify to same if called upon to do so.

3. Attached hereto as Exhibit 1 is a true and correct copy of ANS' insurance policy showing ANS had coverage for sexual assaults.

4. Attached hereto as Exhibit 2 is a true and correct copy of the Affidavit and Curriculum Vitae of Paul B. Hoffman, Dr. P.H., FACHE.

5. Attached hereto as Exhibit 3 is a true and correct copy of the Affidavit and Curriculum Vitae of E. Dwayne Tatalovich, an expert in crime prevention.

6. Attached hereto as Exhibit 4 is a true and correct copy of Christine Murray's statement to the LVMPD.

7. Attached hereto as Exhibit 5 is a true and correct copy of the Bemis/Murdock correspondence.

8. Attached hereto as Exhibit 6 is a true and correct copy of an ANS Nurse Performance Evaluation from Rawson Neal regarding Steven Farmer, dated January 7, 2008.

9. Attached hereto as Exhibit 7 is a true and correct copy of a January 28, 2008 Incident Report written by Rontraniece Theard.

10. Attached hereto as Exhibit 8 is a true and correct copy of a Statement by Linda Elrington, LPN at Rawson Neal.

11. Attached hereto as Exhibit 9 is a true and correct copy of ANS' Incident Report completed by Michele Simmons, R.M. on January 25, 2008 (ANS00305).

12. Attached hereto as Exhibit 10 is a true and correct copy of Jane Doe's pharmaceutical records evidencing intravenous administration of Ativan.

1 13. Attached hereto as Exhibit 11 is a true and correct copy of the emails between
2 Centennial/UHS, ANS, and Farmer's criminal defense lawyer.

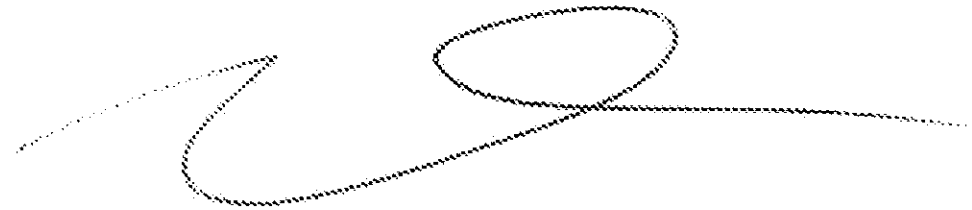
3 14. Attached hereto as Exhibit 12 is a true and correct copy of a letter from Amy
4 Feliciano, Public Defender, dated January 31, 2013.

5 15. Attached hereto as Exhibit 13 are the relevant pages from the Deposition
6 Transcripts of Michele Simmons, R.N.; Salvatore Sparacino; Karen Goodhart, R.N.; Douglas
7 Nichols; Lisa Doty; and Crystal Johnson.

8 16. Upon information and belief, the clothes worn by Steven Farmer at his criminal
9 trial were all provided by the law firm of Hall, Prangle, Centennial/UHS's counsel.

10 FURTHER YOUR AFFIANT SAYETH NAUGHT.

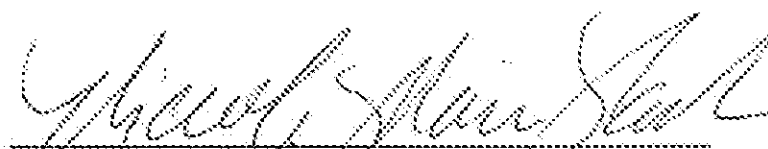
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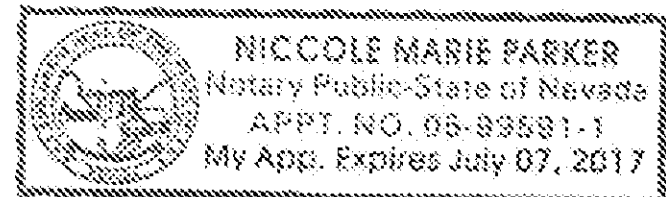
ROBERT E. MURDOCK

15 Subscribed and sworn to before
16 me this 21st day of November, 2014.

17
18



19 Notary Public in and for said
20 County and State



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Las Vegas, NV 89106

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EXHIBIT 1

BRANCH	B/A	PRODUCER NUMBER
23		0004441

DATE OF ISSUE	PRIOR CERTIFICATE NUMBER
10/16/2007	NEW

HEALTHCARE PROFESSIONAL LIABILITY CLAIMS-MADE POLICY

NOTICE: THIS IS A CLAIMS-MADE POLICY, PLEASE READ THE POLICY CAREFULLY.

Item	DECLARATIONS	POLICY NUMBER ASC- 1002072
1.	<i>Named Insured</i> American Nursing Services, Inc. (see UME-8086)	
2.	MAILING ADDRESS 3012 E. 26th st. Metairie, LA 70002	
3.	Policy Period: 12:01 A.M. Standard Time From: 10/01/2007 To: 10/01/2008 At Location of Mailing Address shown above	
4.	Prior Acts Date: 02/03/2002	
5.	COVERAGE	LIMITS OF LIABILITY
	Professional Liability	\$ 1,000,000 each Incident \$ 3,000,000 Aggregate \$
6.	Deductible (if applicable)	\$ 25,000 each Incident
7.	The Named Insured is: <input type="checkbox"/> Sole Proprietor (including Independent Contractors) <input type="checkbox"/> Partnership <input checked="" type="checkbox"/> Corporation <input type="checkbox"/> Other:	
8.	Business or Occupation of the Named Insured: Temporary Staffing	
9.	This policy is made and accepted subject to the printed conditions in this policy together with the provisions, stipulations and agreements contained in the following form(s) or endorsement(s): See Forms Endorsement XSE-1001 (01/96)(Ed.01/98).	
	INTERSTATE FIRE & CASUALTY COMPANY 33 WEST MONROE STREET, CHICAGO, ILLINOIS 60603 REPRESENTATIVE: Agent or Broker: • CRC Insurance Services, Inc. Office Address: • 10901 West Teller Dr. Ste. 205 Town and State: • Littleton CO 80127	

POLICY NUMBER: ASC 1002072

THIS ENDORSEMENT CHANGES THE POLICY. PLEASE READ IT CAREFULLY.

**SEXUAL MISCONDUCT / PHYSICAL ABUSE
LIMITED COVERAGE ENDORSEMENT**

In consideration of the premium charged, exclusion M of Section VIII. EXCLUSIONS, is deleted in its entirety and replaced with the following:

- M. to any claims made or Suits brought against any Insured alleging in whole or in part Sexual Misconduct or Physical Abuse committed by any client, patient or any other person whose care has been entrusted to the Insured.

The policy is further amended as follows:

The Company will pay on behalf of the Insured under the COVERAGE section of the policy, all sums which the Insured shall become legally obligated to pay as Damages for Claims first made against the Insured and reported to the Company during the Policy Period as a result of an Incident alleging sexual misconduct or physical abuse that occurs during the Policy Period including assertions of improper or negligent hiring, employment or supervision, failure to protect or warn the other party, failure to prevent the sexual misconduct and/or physical abuse, failure to prevent assault and battery, or failure to discharge the employee, and that was committed, or alleged to have been committed by the Insured or by any person for whom the Insured is legally responsible.

Limits of liability for this coverage are indicated below. Claims Expenses are included within this limit of liability and are not in addition thereto. Damages and Claims Expenses paid under the coverage provided by this endorsement shall reduce the applicable limits of liability indicated in the policy declarations.

LIMITS OF LIABILITY

\$	1,000,000	each Incident or Occurrence
\$	1,000,000	in the aggregate

The DEFINITIONS Section of the policy is amended by the addition of the following:

"Sexual Misconduct" means sexual assault, abuse or molestation, or licentious, immoral, amoral or other behavior which was threatened, intended to, lead to or culminated in, any sexual act whether committed intentionally, negligently, inadvertently or with the belief, erroneous or otherwise, that the other party is consenting and has the legal and mental capacity to consent thereto arising out of the professional treatment and care of any client, patient or any other person whose care has been entrusted to the Insured.

"Physical Abuse" means physical assault, abuse, molestation or intentional neglect arising out of the professional treatment and care of any client, patient or any other person whose care has been entrusted to the Insured.

Multiple episodes of Sexual Misconduct or Physical Abuse to one person shall be deemed to be one Incident and shall be subject to the coverage and limits in effect at the time of the first Incident even if some of such Incidents take place after expiration of this policy.

The obligation to defend shall extend until a final judgment or adjudication shall establish that such behavior caused in whole or in part, the injury claimed. The Company shall not be required to appeal a judgment or final adjudication adverse to the Insured.

ALL OTHER TERMS AND CONDITIONS OF THE POLICY REMAIN UNCHANGED.

September 16, 2009

CERTIFIED MAIL – NO. 7000 1670 0011 9024 1357
RETURN RECEIPT REQUESTED

Thomas J. Eppling
Staines & Eppling
3500 North Causeway Boulevard, Suite 820
Metairie, LA 70002

Re: Insured: American Nursing Services, Inc.
Claimants: Roxanne Cagnina and Jane Doe
Claim Nos.: 00508498351 and 00509640986
Issuing Company: Interstate Fire and Casualty Insurance
Company
Your File No.: 0565-002

Dear Mr. Eppling:

As you know, I am the claim representative who has been assigned to handle the action brought by Roxanne Cagnina and the action Jane Doe vs. Centennial Hills Hospital Medical Center Auxiliary; Valley Health System LLC; Universal Health Services Foundation; American Nursing Services, Inc.; and Steven Dale Farmer; Clark County Case No. A-09-595780-C ("the Doe action"). In that capacity I am writing in response to your correspondence dated August 5, 2009, in which you demanded, on behalf of your client, American Nursing Services ("ANS"), that Interstate Fire and Casualty Insurance Company ("IFCC") settle Ms. Cagnina's claim for an amount up to the remaining \$1,000,000.00 limit of the policy. In addition, this letter will provide the insured with IFCC's position concerning the litigation brought by Jane Doe.

At the outset, I note that IFCC does not agree with the assessment that "it is clear that the potential value of this claim far exceeds the \$1,000,000 policy limits." IFCC is monitoring this litigation and will continue to communicate with defense counsel and the insured regarding its evaluation. However, in light of the lawsuit that was recently filed by Ms. Doe and the information provided by ANS regarding other potential claimants it is important for your client to be aware that only the policy in effect for the 2007 – 2008 policy period will provide defense and indemnity for all of the claims allegedly arising out of Mr. Farmer's sexual misconduct. Accordingly, if IFCC exhausts the remaining limit of liability under that policy to resolve Ms. Cagnina's claim there will be no coverage afforded to the insured by IFCC for the Doe claim or any other claims that may be brought by Mr. Farmer's alleged victims.

Fireman's Fund
Insurance Companies

33 West Monroe Street
12th Floor Suite 1200
Chicago, IL 60603

Toll free (800) 628-8574 ext. 457463
Direct: (312) 456-7463
E-fax: (800) 301-2688
E-mail: caguda@ffic.com

ANS000754

Thomas J. Eppling
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It is my understanding that all communications, including reservations of rights, relating to insurance coverage for this matter should be directed to you and pursuant to Ms. Spellman's request, all communications relating to the underlying litigation should be directed to Ms. Spellman with a carbon copy to you. If this understanding is not correct, please advise me.

Both the Cagnina action and the recently filed Doe action arise out of sexual assaults allegedly committed by Steven Dale Farmer, a nursing assistant provided to Centennial Hills Hospital by ANS. The action, brought by Roxanne Cagnina, was reported to IFCC under policy number ASC-1002072 that was in effect for the period October 1, 2007 – October 1, 2008. The coverage applied on a "claims made" basis and was subject to a retroactive date of February 3, 2002. In July of 2008, while policy number ASC-1002072 was still in effect, IFCC was advised by ANS of additional potential claimants including Jane Doe who is believed to be Marcia Peterson. The action brought by Jane Doe arises out of a sexual assault that is also alleged to have occurred "in or around" May of 2008. According to the recently filed Complaint Ms. Doe was recovering from seizures, when Mr. Farmer entered her hospital room and assaulted her. The Causes of Action asserted in the Doe Complaint are not separately denominated. However, it appears that Ms. Doe is seeking to recover damages for Premises Liability (First Cause of Action); Negligence (Second Cause of Action); and Sexual Assault (Third Cause of Action). The Complaint seeks both compensatory and punitive damages based on the Defendants' alleged "willful, malicious and oppressive conduct".

As noted above, IFCC issued a Healthcare Professional Liability Claims-Made Policy, number ASC-1002072, to American Nursing Services, Inc. for the policy period October 1, 2007 – October 1, 2008. IFCC also issued a Healthcare Professional Liability Claims-Made Policy, number ASC-1002072-01, to ANS that was in effect for the policy period October 1, 2008 – October 1, 2009. During both policy periods the coverage was provided through form number 1-PL-4002(03/04) as modified by the Sexual Misconduct/Physical Abuse Limited Coverage Endorsement, form DME-0002(1/1/95).

The Sexual Misconduct/Physical Abuse Limited Coverage Endorsement limits IFCC's liability for all claims arising out of sexual or physical abuse to \$1,000,000. This limit of liability applies to both defense and indemnity.

The Insuring Agreement that applied to the professional liability insuring agreement during both years provided:

The Company agrees with the Named Insured, in consideration of the payment of the premium, and in reliance upon the statements in the Declarations and in the application, and subject to the limit of liability, exclusions, conditions and other terms of this policy, as follows:

I. COVERAGE

The Company will pay on behalf of the Insured those sums which the Insured shall become legally obligated to pay as Damages for

ANS000755

Claims first made against the Insured and reported to the Company during the Policy Period, as a result of Bodily Injury, Property Damage or Personal Injury caused by an Incident, provided always that such Incident happens:

- A. on or after the policy effective date shown on the Declarations; or
- B. at any time prior to the policy effective date shown on the Declarations if:
 - 1. such Incident happens on or subsequent to the "prior acts date" on the Declarations, and
 - 2. no Insured knew or could have reasonably foreseen that such Incident might be expected to be the basis of a Claim or Suit on the effective date of this policy.

The Company will pay on behalf of the Insured all sums which the Insured shall become legally obligated to pay as Damages to which this insurance applies and the Company shall have the right and duty to defend any Suit against the Insured seeking Damages on account of such Bodily Injury, Property Damage or Personal Injury, even if any of the allegations of the Suit are groundless, false or fraudulent, but the Company shall not be obligated to pay any Claim or Claims Expenses or judgments or continue to defend any Suit after the applicable limit of the Company's liability has been exhausted by payment of judgments or settlements.

The Company shall have the right and duty to defend any suit against the Named Insured seeking Damages to which this insurance applies even if any of the allegations of the suit are groundless, false or fraudulent. The Company, with the consent of the Insured, shall select and assign defense counsel, as per endorsement, provided that such counsel agree to comply with the Company's litigation management guidelines and agree to accept the Company's hourly fee payment. The Named Insured may engage additional counsel, solely at their expense, to associate in their defense of any Claim covered hereunder. Claims Expenses incurred by the Company shall be paid in addition to the applicable limit of liability. The Company shall also have the right to investigate any Claim or Suit and/or negotiate the settlement thereof, as it deems expedient and does not need the consent or approval of the Insured to settle. The Insured shall not assume any

obligations, incur any costs, charges, or expenses or enter into any settlement without the company's written consent.

...

The term "incident is defined by endorsement as follows:

"Incident" means any act or omission in the furnishing of professional health care services to a patient or client including the furnishing of food, beverages, medications, or appliances in connection with such services and the postmortem handling of human bodies.

The policy defined the term "bodily injury" as follows:

"Bodily Injury" means bodily injury, sickness or disease, mental anguish, psychological injury or emotional distress sustained by any person, including death at any time resulting therefrom;

The policy incorporated a Home Health Care Agency Endorsement that re-defined the term "incident" as follows:

II. Section IX, **DEFINITIONS**, is amended by the deletion of **"Incident"** in its entirety and its replacement with:

"Incident" means any act or omission in the furnishing of professional health care services to a patient or client including the furnishing of food, beverages, medications, or appliances in connection with such services and the postmortem handling of human bodies.

Sexual assault cannot be considered an act or omission in the furnishing of professional healthcare services.

The policy incorporated a Punitive Damages Amendatory Endorsement that provided:

"Damages" means compensatory judgments, settlement or awards, including punitive or exemplary Damages, fines or penalties, the return of fees or other consideration paid to the Insured, or the portion of any award or judgment caused by the multiplication of actual Damages under federal or state law. If a Suit is brought against the Insured with respect to a Claim for alleged acts or omissions falling within the scope of coverage afforded by this insurance seeking both compensatory and punitive or exemplary Damages, then the Company will afford a defense

to such action, without liability however, for payment of such punitive or exemplary damages;

Punitive damages are not insurable as a matter of public policy in Nevada.
Professional liability insurance issued by IFCC during both years incorporated the following exclusion:

This insurance shall not apply:

...

M. to any Claims made or Suits brought against any Insured alleging, in whole or in part:

1. physical assault, abuse, molestation, or habitual neglect, or licentious, immoral, amoral or other behavior that was committed, or alleged to have been committed, by the Insured or by any person for whom the Insured is legally responsible, and/or
2. sexual assault, abuse, or molestation, or licentious, immoral, amoral or other behavior which was threatened, intended to, lead to or culminated in, any sexual act whether committed intentionally, negligently, inadvertently or with the belief, erroneous or otherwise, that the other party is consenting and has the legal and mental capacity to consent thereto, that was committed, or alleged to have been committed by the Insured or by any person for whom the Insured is legally responsible.

This exclusion applies regardless of the legal theory or basis upon which the Insured is alleged to be legally liable or responsible, in whole or in part, for any Damages arising out of sexual and/or physical abuse, including but not limited to assertions, of improper or negligent hiring, employment or supervision, failure to protect or warn the other party, failure to prevent the sexual abuse and/or physical abuse, failure to prevent assault and battery or failure to discharge the employee;

Coverage is provided for the Cagnina and Doe claims through the Sexual Misconduct/Physical Abuse Limited Coverage Endorsement, which incorporated the following insuring agreement:

The Company will pay on behalf of the Insured under the COVERAGE section of the policy, all sums which the Insured shall become legally obligated to pay as Damages for Claims first made against the Insured and reported to the Company during the Policy Period as a result of an Incident alleging sexual misconduct or physical abuse that occurs during the Policy Period including assertions of improper or negligent hiring, employment or supervision, failure to protect or warn the other party, failure to prevent the sexual misconduct and/or physical abuse, failure to prevent assault and battery, or failure to discharge the employee, and that was committed, or alleged to have been committed by the Insured or by any person for whom the Insured is legally responsible.

Limits of liability for this coverage are indicated below. Claims Expenses are included within this limit of liability and are not in addition thereto. Damages and Claims Expenses paid under the coverage provided by this endorsement shall reduce the applicable limits of liability indicated in the policy declarations.

LIMITS OF LIABILITY

\$ 1,000,000 each Incident or Occurrence

\$ 1,000,000 in the aggregate

The DEFINITIONS Section of the policy is amended by the addition of the following:

"Sexual Misconduct" means sexual assault, abuse or molestation, or licentious immoral, amoral or other behavior which was threatened, intended to, lead to or culminated in, any sexual act whether committed intentionally, negligently, inadvertently or with the belief, erroneous or otherwise, that the other party is consenting and has the legal and mental capacity to consent thereto arising out of the professional treatment and care of any client, patient or any other person whose care has been entrusted to the Insured.

"Physical Abuse" means physical assault, abuse, molestation or intentional neglect arising out of the professional treatment and care of any client, patient or any other person whose care has been entrusted to the Insured.

Multiple episodes of Sexual Misconduct or Physical Abuse to one person shall be deemed to be one Incident and shall be subject to the coverage

and limits in effect at the time of the first Incident even if some of such Incidents take place after expiration of this policy.

The obligation to defend shall extend until a final judgment or adjudication shall establish that such behavior caused in whole or in part, the injury claimed. The Company shall not be required to appeal a judgment or final adjudication adverse to the Insured.

(Emphasis added.)

To fall within the coverage afforded under this endorsement the following requirements must be met:

- ☐ The "insured" must be legally obligated to pay "damages";
- ☐ The "claim" must be first made and reported to the Company during the policy period;
- ☐ The "damages" must result from an "incident" alleging sexual misconduct or physical abuse; and
- ☐ The sexual misconduct or physical abuse must occur during the policy period.

Damages awarded to Ms. Doe as a result of the sexual misconduct that allegedly occurred in May of 2008 could not be covered under policy number ASC-1002072-01 that was in effect for the policy period October 1, 2008 – October 1, 2009 because the assault did not occur during that policy period as required by the insuring agreement.

During both the 2007 – 2008 and 2008 – 2009 periods the policy incorporated the following provision that describes when a claim would be deemed to have been "first made".

WHEN A CLAIM IS TO BE CONSIDERED AS FIRST MADE

(Incident Redefined Endorsement)

A Claim shall be considered as being first made at the earlier of the following times:

- A. When the Company first receives written notice from the Insured that a Claim has been made; or
- B. When the company first receives written notice from the Insured of specific circumstances involved in [sic] a particular person or entity, which may result in a Claim.

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All Claims arising out of the same or related Incident shall be considered as having been made at the time the first such Claim is made, and shall be subject to the same limit of liability and only a single deductible, if any, shall apply.

There is a typographical error in the endorsement. Paragraph B. should read: "When the Company first receives written notice from the Insured of specific circumstances involving a particular person which may result in a claim."

In light of the reports that IFCC received from ANS in July of 2008 concerning the other alleged victims of sexual assault it will treat Ms. Doe's claim as if it had been first made and reported during the 2007 – 2008 policy period.

The IFCC policies incorporated the following exclusion:
This insurance shall not apply:

...

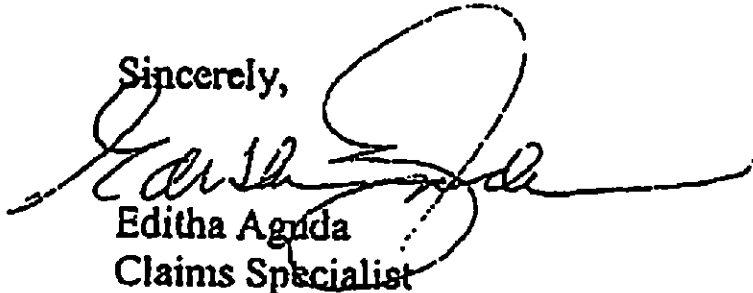
- D. to any dishonest, fraudulent, criminal or malicious acts or omissions of any Insured;

IFCC reserves the right to rely on Exclusion D to deny coverage to the extent it is determined that the injury complained of was the result of the dishonest, fraudulent, criminal or malicious acts or omissions of any insured.

For the reasons set out above, IFCC will be providing ANS with a defense in the Cagnina action and the Doe action under the Sexual Misconduct/Physical Abuse endorsement to policy number ASC-1002072. IFCC's liability for all claim expenses and damages resulting from these claims is \$1,000,000.

Please advise me of any information you have that you believe may affect the determination concerning the coverage available under the policy. IFCC's position is based upon the facts that have been made available to us to date. IFCC expressly reserves the right to modify its determination concerning the potential for coverage.

Sincerely,



Editha Aguda
Claims Specialist
Medical Professional Liability
Interstate Fire and Casualty Company,
One of the Firemans Fund's Insurance Companies

cc: Johnette Spellman, HR Director American Nursing Services

ANS000761

EXHIBIT 2

1 **AFFIDAVIT OF PAUL B. HOFMANN, DR. P.H., FACHE**

2 STATE OF NEVADA)
3 COUNTY OF CLARK) ss.

4 PAUL B. HOFMANN, Dr. P.H., FACHE, being first duly sworn, deposes and says:

5 1. That I am a Doctor of Public Health with an extensive background in hospital
6 administration, including experience in the development, implementation and monitoring of
7 policies, and have been retained as an Expert Witness in Jane Doe v. Valley Health System LLC,
8 et al.

9 2. That my Curriculum Vitae is attached hereto and made a part hereof.

10 3. That for this Affidavit, I have reviewed the testimony of Jane Doe, the testimony of
11 Michelle Simmons (and Exhibits), the Judgment of Conviction of Steven Farmer, the deposition of
12 Crystal Johnson (and Exhibits), and base my opinions herein on same, as well as my experience
13 and employment.

14 4. That while I have significant opinions regarding the conduct of both American
15 Nursing Services and Centennial Hills Hospital/Universal Health Services, the principal issue is
16 whether it is foreseeable in general that a certified nursing assistant could sexually assault a
17 patient, particularly patients who are severely compromised, physically and/or emotionally.

18 5. That the answer to this question is – absolutely.

19 6. That it is well known in the health care field that sexual abuse by staff against
20 patients does occur. Hospital departments of human resources and staffing agencies clearly have
21 an undeniable professional and ethical obligation to employ personnel who would not engage in
22 such activity, but the serious possibility for sexual abuse still exists. Sexual assaults of patients by
23 staff is a known foreseeable risk for which most insurance companies that insure hospitals and
24 their staffing agencies offer coverage riders. In this case, I have been made aware that ANS
25 maintained such coverage.

26 7. That although there is a potential for sexual abuse in every organization, hospitals
27 and other health care facilities must be especially vigilant to ensure that vulnerable patients like
28 Jane Doe are not at risk because of the very nature of the tasks required of the clinical staff of a

1 hospital which, for certified nursing assistants, includes bathing patients, cleaning feces and urine
2 from patients, and other activities where patients have their bodies exposed.

3 8. That because the sexual assaults of patient is a known foreseeable risk, most
4 hospitals and staffing agencies have appropriate policies to prevent sexual abuse of patients in
5 place, but they are truly meaningless if they are not followed consistently. When those policies are
6 breached, a sexual assault is not startling or unusual because the very policy instituted to protect
7 patients against the sexual assault has not been followed. While it is certainly a horrific event, it is
8 foreseeable that when policies are breached, patients can be irreversibly compromised. Hence, the
9 reason for the policies in the first place.

10 9. That codes of ethics, codes of conduct and/or value statements have been adopted
11 by almost every health care institution, but if their eloquent content is not matched by daily and
12 consistent compliance, they simply create the illusion that patients are safe and free from harm.

13 10. That with regard to the specific foreseeability concerning Steven Farmer's
14 behavior, it is evident American Nursing Services was on notice of a prior issue of alleged abuse
15 of a patient. An institution identified Mr. Farmer as "Do not return" due to both "Alleged
16 violations as defined in Practice Acts of respective regulatory body" and "Abuse of client and/or
17 patient or other caregivers" (per American Nursing Services' Incident Report signed on January
18 25, 2008 by Ms. Simons, Clinical Director of Clinical Operations), and an investigation was still
19 underway on February 12, 2008. Nonetheless, Mr. Farmer was assigned by American Nursing
20 Services to Centennial Hills Hospital on February 18, 2008. This action directly contributed to
21 placing Jane Doe at a preventable risk of harm.

22 11. That the Hospital was not told about the prior abuse by Mr. Farmer nor the related
23 incomplete investigation, but the Hospital should not have relied exclusively on American Nursing
24 Services for its background check. According to Ms. Johnson, who was then the Hospital's
25 staffing coordinator, the organization requires receipt of references prior to allowing agency staff
26 to work at the Hospital. However, in this instance, that policy was not followed. Ms. Johnson
27 admitted the Hospital would not have allowed Mr. Farmer to work there if it had known of the
28 prior abuse. Furthermore, Ms. Johnson could not explain why his references were not checked,
and she confirmed Mr. Farmer should not have been working at the Hospital until references were

1 provided. The reason for background checks is to confirm a candidate's qualifications,
2 competence and personal behavior meet the organization's performance standards and
3 expectations. Since sexual assaults by hospital staff is a known foreseeable risk, one of the reasons
4 hospitals, such as Centennial Hills, conduct background checks is to insure that a person with a
5 history of sexual assaults is not allowed to work in a situation that could place a patient at risk.
6 The Hospital's failure to comply with its own policies directly contributed to placing Jane Doe at a
7 preventable risk of harm.

8 12. While I anticipate having other opinions based upon review of additional
9 information, as to the issue of foreseeability, it is my opinion, to a reasonable degree of
10 probability, that Mr. Farmer's actions were foreseeable in general and specifically to both
11 American Nursing Services, Inc., and Centennial Hills Hospital/Universal Health Services.

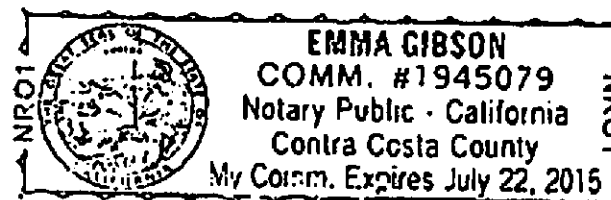
12 13. That I reserve the right to change, modify, or add to my opinions herein as the facts
13 warrant.

14 FURTHER AFFIANT SAYETH NAUGHT.

15
16
17 
18 PAUL B. HOFMANN, Dr. P.H., FACHE

19
20 Subscribed and sworn to before me
21 this 17 day of November, 2014

22
23 
24 Notary Public in and for said
25 County and State



Curriculum Vitae

Paul B. Hofmann, Dr. P.H., FACHE

Office Address: 1042 Country Club Drive, Suite 2D
Moraga, California 94556

Home Address: 133 Greenbriar
Moraga, California 94556

Telephone: (925) 247-9700 (office)
(925) 376-9671 (home)

Educational Background:

1994 Doctor of Public Health
University of California
School of Public Health
Berkeley, California

1965 Master of Public Health
University of California
School of Public Health
Berkeley, California

1963 Bachelor of Science
University of California
School of Public Health
Berkeley, California

Professional Experience:

9/05 – President
Hofmann Healthcare Group
Moraga, California

1/01 – 9/05 Provenance Health Partners
Moraga, California

1/00 – 12/00 President
Hofmann Healthcare Group
San Francisco, California

6/97 – 12/99 Senior Vice President
Healthcare Industry Practice
Aon Consulting
San Francisco, California

9/94 - 6/97	Senior Consultant Strategic Health Care Practice Alexander & Alexander Consulting Group (acquired by Aon) San Francisco, California
2/93 - 7/97	Distinguished Visiting Scholar Stanford University Center for Biomedical Ethics Palo Alto, California
6/92 - 1/95	Consultant Health Care Unit Alexander & Alexander San Francisco, California
2/93 - 7/94	Senior Fellow Stanford University Hospital Stanford, California
6/91 - 6/92	Consultant Alta Bates Corporation Emeryville, California
9/87 - 6/91	Executive Vice President and Chief Operating Officer Alta Bates Corporation Emeryville, California
1/78 - 9/87	Executive Director Emory University Hospital Atlanta, Georgia
1/78 - 9/87	Associate Professor Department of Community Health Emory University School of Medicine Atlanta, Georgia
4/74 - 1/78	Director Stanford University Hospital and Clinics Stanford, California
9/72 - 1/78	Lecturer Department of Family, Community and Preventive Medicine Stanford University Medical School Stanford, California
6/72 - 4/74	Deputy Director Stanford University Hospital Stanford, California

6/70 - 6/72	Associate Administrator San Antonio Community Hospital Upland, California
4/70 - 6/72	Lecturer in Hospital Administration University of California, Los Angeles School of Public Health Los Angeles, California
3/69 - 6/70	Assistant Administrator San Antonio Community Hospital Upland, California
7/68 - 3/69	Instructor in Computer Applications Harvard University School of Public Health Boston, Massachusetts
7/68 - 3/69	Assistant Director Laboratory of Computer Science Massachusetts General Hospital Boston, Massachusetts
7/66 - 7/68	Research Associate in Hospital Administration Laboratory of Computer Science Massachusetts General Hospital Boston, Massachusetts
1/66 - 7/66	Administrative Resident Thayer Hospital Waterville, Maine
7/65 - 1/66	Administrative Resident New England Medical Center Hospitals Boston, Massachusetts
7/64 - 9/64	Administrative Assistant Kaiser Foundation Hospital Oakland, California
7/63 - 7/64	Administrative Intern Herrick Memorial Hospital Berkeley, California

Professional Affiliations:

Alumni Association, Graduate Program in Health Management, University of California,
Berkeley (1965-) Past President
American College of Healthcare Executives (Fellow) - Education Committee (1976-1979),
Nominating Committee (1979-1984), Ethics Committee (1992-1993), Leadership Advisory

Committee (1994-2002), Judging Committee for Hill-Rom Management Essay Competition in Healthcare Administration (2001), Code of Ethics Task Force (2002-2003), Consultant in Healthcare Management Ethics (1994-)
 American Hospital Association - Council on Research and Development (Chairman 1976-1978), Special Committee on Biomedical Ethics (Chairman 1983-1985), Advisory Committee on Biomedical Ethics (Chairman 1986-1988), Governing Council for Section on Metropolitan Hospitals (1987-1989), Institutional Practices Committee (1988-1990), Technical Panel on Biomedical Ethics (1989-1993, Chairman 1992-1993), Committee on Education and Programs for Section for Health Care Systems (1990-1992), Organizational Ethics Task Force (1995-1997), Circle of Life Awards Committee (1999- 2004), Quest for Quality Prize Criteria Work Group (2004), AHA McKesson Quest for Quality Prize Committee (2004-)
 American Medical Association - Work Group on Evaluation, Assessment and Control, Health Policy Agenda for the American People (1983-1986)
 American Physical Therapy Association - Committee on Accreditation in Education (1981), Advisory Council on Physical Therapy Education (1983-1986)
 Association of Schools of Public Health – DrPH Concepts Identification and Specification Task Force (2008)
 California AIDS Leadership Subcommittee on Health Care Financing and Service Issues (1988-1989)
 California Hospital Association – Committee on Hospital Licensure (1974), Committee on Insurance (1975)
 Carter Center Task Force for Health Policy (1983-1987)
 Center for Clinical Medical Ethics, University of Chicago - National Advisory Board (Chairman 1985-1990)
 Council of Teaching Hospitals - Representative to American Association of Medical Colleges Assembly (1979-1981)
 Duke University Department of Health Administration - Board of Visitors (1983-1985)
 Education Development Center - Bioethics Advisory Board (1987-1993), Board of Trustees (2011-), Finance and Management Committee (2012-)
 Georgia Hospital Association - Council on Nursing (Chairman 1980-1982), Strategic Planning Committee (1983-1984), North Central District Executive Committee (1984-1986)
 Georgia State University Institute of Health Administration - Preceptor (1980-1987)
 Greater Atlanta Coalition on Health Care, Inc. - Data Project Committee (Vice Chairman 1983-1986)
 Healthcare Executives Study Society – President 2002 (1984-)
 HealthCPA Advisory Board (2011-)
 Health Research and Educational Trust – Senior Fellow (2009-2012)
 Hospital Community Benefit Standards Program - National Steering Committee (1989-1992)
 Healthcare Research and Development Institute (1984-1992)
 Hospital Research and Educational Trust - Advisory Council (Chairman 1976-1978)
 International Bioethics Institute - Board of Directors (1991-1995)
 Joint Commission International - Standards Subcommittee (2006-2011), Standards Advisory Panel (2012-)
 Lumetra Medicare Mediation Advisory Group (2004-2005)
 MedShare International – Board of Trustees (2007-), Executive Committee (2008-2012), MedShare West Regional Council (2007-), Board of Trustees Nominating and Governance Committee (2010-), Programs Committee (Chairman 2012-)
 National Commission for Health Certifying Agencies - Advisory Committee (1984-1986)
 New Century Healthcare Institute - Board of Directors (1995 – 2002, Chairman 1997- 2002)

On Lok Ethics Committee – Chairman (2005-2011)
 Operation Access - Board of Directors (Vice Chairman 1993-2002), Advisory Council (2004-2007), Board of Directors (Chairman 2008-)
 Pew Health Professions Commission (1993-1995)
 Practice Fusion – Advisory Board (2007-)
 Seton Hall University – Adjunct Professor (2001-2002)
 Society of Critical Care Medicine - Ethics Committee (1988-1995), Business Ethics Subcommittee (1992-1995)
 Southeastern Hospital Conference - Program Committee (1985)
 Sun Alliance - Charter Board Member (1979-1985), Chairman of the Board (1983-1985)
 Sun Health - Board of Directors (1986-1987)
 University of California, San Francisco, The Center for Health Professions – Integrated Nurse Leadership Program Advisory Council (2004-2006)

Editorial Boards:

ADMINISTRATIVE RADIOLOGY (1989-1990)
 AMERICAN COLLEGE OF HEALTHCARE EXECUTIVES MANAGEMENT SERIES (1988-1992), (1994-1998)
 ASSN. OF UNIVERSITY PROGRAMS IN HEALTH ADMIN. PRESS (1986-1992)
 CAMBRIDGE QUARTERLY OF HEALTHCARE ETHICS (2002-2012)
 COMPUTERS IN HOSPITALS (1982-1983)
 HEALTH MANAGEMENT QUARTERLY (1985-1994)
 HEALTH PROGRESS (1981- 2001)
 HOSPITAL ETHICS (1985-1995)
 MANAGED CARE OUTLOOK (1989-1991)
 MEDICAL ETHICS ADVISOR (2001-)

Honors:

Recipient of the Robert S. Hudgens Memorial Award for the Young Hospital Administrator of the Year in 1976, sponsored by American College of Hospital Administrators and Alumni Association, School of Hospital Administration, Virginia Commonwealth University
 Recipient of the 1982 Cover Story Award from *Computers in Hospitals* for "Hospital Computer Planning: Beyond Rhetoric"
 U.S. Delegate to the International Seminar for Administrators, initiated in 1975 and sponsored by King Edward's Hospital Fund for London (selected 1975 through 1983)
 Distinguished Visiting Faculty Member, Intensive Colloquy on Biomedical Ethics for Health Care Executives, June 11-16, 1989, University of Virginia, Charlottesville, VA
 Recipient of the American College of Healthcare Executives 1999 Senior Level Executive Regent's Award
 Recipient of 2004 Distinguished Leadership Award from the University of California Graduate Program in Health Management Alumni Association
 Recipient of 2009 Award of Honor from the American Hospital Association
 Recipient of 2012 Schweitzer Leadership Award from the Albert Schweitzer Fellowship

Military Service:

U.S. Army, Active Duty, February - August 1959. Active Reserve until November 1962 as a medical corpsman (reserve obligation completed)

Publications:

- Gouveia, W.A., P.B. Hofmann and G.O. Barnett. Computers: Basic Principles and Hospital Pharmacy Implications, *American Journal of Hospital Pharmacy*, Vol. 25, pp. 4-11, January 1968.
- Hofmann, P.B. and G.O. Barnett. Time-sharing Increases Benefits of Computer Use, *Hospitals*, Vol. 42, pp. 62-67, June 16, 1968.
- Hofmann, P.B., W.A. Gouveia and G.O. Barnett. Computers: Great Future, Perilous Present, *Modern Hospital*, Vol. III, No. 1, pp. 98-100, July 1968. Also published in *The Hospital Data Processing Review*. Edited by B.G. Alford and F.E. Colvin. New York: Medical Examination Publishing Co., 1970.
- Barnett, G.O. and P.B. Hofmann. Computer Technology and Patient Care: Experiences of a Hospital Computer Project, *Inquiry*, Vol. V., No. 3, pp. 51-57, September 1968.
- Hofmann, P.B., J.H. Grossman, B.J. Thoren and G.O. Barnett. An Automated Patient Census Operation: Design, Development and Evaluation, *Hospital Topics*, Vol. 47, No. 5, pp. 39-41, May 1969.
- Hofmann, P.B. and J.F. Rockart. Implications of the No-Show Rate for Scheduling OPD Appointments, *Hospital Progress*, Vol. 50, No. 8, pp. 35-40, August 1969.
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EXHIBIT 3

1 **AFFIDAVIT OF E. DWAYNE TATALOVICH, ICPS**

2 STATE OF ARIZONA)
3 COUNTY OF Maricopa) ss.

4 E. DWAYNE TATALOVICH, ICPS, being first duly sworn, deposes and says:

5 1. That I am an International Crime Prevention Specialist (ICPS) designated by the
6 International Society of Crime Prevention Practitioners (ISCPP), and Chairman of Tatalovich &
7 Associates Incorporated.

8 2. That my CV is attached hereto and made a part hereof.

9 3. That for this Affidavit I have reviewed the testimony of Jane Doe, the testimony of
10 Michelle Simmons (and Exhibits), the Judgment of Conviction of Steven Farmer, the deposition of
11 Crystal Johnson (and Exhibits), the deposition of Douglas Nichols, insurance information, part of
12 the LVMPD file, and base my opinions herein on same, as well as my experience and
13 employment.

14 4. That I have been awaiting various documents from American Nursing Services
15 regarding Steven Farmer and have been told that I may be receiving at least some of them shortly.
16 I am similarly awaiting much of the LVMPD reports and other information. However, based upon
17 what I have thus far, I can testify to the following.

18 5. That, unfortunately, the hospital industry is plagued with persons who commit
19 crimes, including the crime of sexual assault on patients. That this comes about for many reasons,
20 including the fact that patients are in compromised positions with staff, and exposing their most
21 private parts and functions.

22 6. That Hospital Risk Management Journals, books and media reports discuss patient
23 sexual abuse and the need for prevention of same.

24 7. That because the prevalence of such sexual abuse is significant, hospitals and
25 medical staffing agencies routinely perform background and reference checks.

26 8. That, when a hospital or staffing agency fails to perform such checks, criminal
27 behavior is often the result, and thus such is foreseeable.

1 9. That as a security analyst for various entities, including healthcare entities, I am
2 frequently called upon to review security needs. One of the first areas that I review are employee
3 policies and procedures. I am aware that most hospitals will have policies in place to investigate
4 employees and their prior behavior. The issue is generally not writing the policy; the problem is
5 that many healthcare entities fail to implement those very policies designed to look out for
6 dangerous people.

7 10. That patient sexual abuse by nursing assistants and clinical staff in hospitals is
8 foreseeable, not shocking and not surprising. I am aware that most healthcare entities will insure
9 against this loss and ANS did in this instance.

10 11. That my review of the documentation and evidence makes clear that American
11 Nursing Services was on notice of Mr. Farmer's predatory background issues.

12 12. That American Nursing Services should have notified the authorities when it was
13 put on notice, in January of 2008, that Mr. Farmer had abused a patient at Rawson Neal
14 Psychiatric Hospital. Notification to authorities allows for an impartial and proper investigation.
15 ANS' failure to do so was negligent, if not reckless.

16 13. That since it was foreseeable to American Nursing Services that Mr. Farmer was a
17 danger to patients, American Nursing Services should never have sent Mr. Farmer to Centennial
18 Hills Hospital. It seems as though ANS was more interested in dollars than patient safety.

19 14. That Mr. Farmer's conduct was also foreseeable to the hospital.

20 15. While the hospital was allegedly not made aware of the Rawson Neal situation, it
21 also failed to ask about for a job reference from the last place of employment for Mr. Farmer,
22 which was Rawson Neal. So, had they properly asked the questions, they would have known
23 about the issues. This goes back to my statement earlier that if policies are not implemented,
24 foreseeable actions that those policies were put in place to prevent, will occur.

25 16. The Staffing Coordinator at Centennial, Crystal Johnson, stated that asking for a
26 job reference from the last employer was a policy of Centennial.

27 17. That Ms. Johnson testified that Centennial never received the reference.

28 18. That Ms. Johnson testified that without the reference, Mr. Farmer should not have
been working at Centennial.

1 19. That since hospitals like Centennial are well aware of patient sexual abuse by
2 CNA's and clinical staff, and since Centennial had a policy about receiving the last job reference,
3 which when combined with background checks is a good way of attempting to weed out problem
4 employees like Steven Farmer, but yet they failed to implement this policy, sexual abuse of a
5 patient by Steven Farmer was plainly foreseeable. As I have stated, when entities fail to adhere to
6 policies put in place to specifically weed out issues, criminal or other, those issues are readily
7 foreseeable. While Centennial certainly should have been upset about what Mr. Farmer did, it
8 cannot be said to be surprised.

9 20. In addition, Centennial was aware of incident regarding Mr. Farmer but did nothing
10 about it. I have reviewed the LVMPD statement of Christine Murray. Ms. Murray, a nurse at
11 Centennial, testified that a couple months earlier to Farmer's assault on Jane Doe, an incident took
12 place whereby Mr. Farmer was sitting with a patient with the door closed. She, and other
13 Centennial staff, apparently heard yelling to the effect that the woman wanted him out of the
14 room. Instead of completing an incident report or starting an investigation, Nurse Murray stated
15 that because she was a "crazy old lady", she and Centennial staff did not put any credence into
16 what she was saying. So, just like at Rawson Neal, instead of investigating properly, they just
17 blamed the patient. Accordingly, based upon this incident, I believe that Centennial (through its
18 Nurses, including but not limited to Ms. Murray) was well aware of Mr. Farmer's foreseeable
19 criminal nature. But, instead of doing anything about it, they blamed a "crazy old lady." Hence,
20 his criminal conduct later on should not be surprising or startling.

21 21. That while I have significant other opinions and issues that I will be requiring
22 additional information for in this matter, as to the issue of foreseeability, it is my opinion, to a
23 reasonable degree of probability, that Mr. Farmer's actions were foreseeable in general and
24 specifically to both American Nursing Services, Inc., and Centennial Hills Hospital.

22. That I reserve the right to change, modify, or add to my opinions herein as the facts warrant.

FURTHER AFFIANT SAYETH NAUGHT.

~~E. DWAYNE TATALOVICH, ICPS~~

Subscribed and sworn to before me
this 17th day of November, 2014

Notary Public in and for said
County and State



**E. Dwayne Tatalovich, ICPS
FORENSIC SECURITY EXPERT**

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CURRICULUM VITAE

Introduction

My name is E. Dwayne Tatalovich. I am an International Crime Prevention Specialist (ICPS) designated by the International Society of Crime Prevention Practitioners (ISCPP)¹ and Chairman of Tatalovich & Associates Incorporated, which I founded in 1968 as the Tatt Investigating Firm (hereinafter "Tatt"). Tatt was registered with the Arizona Secretary of State on April 1, 1968, registration number 092483. Tatt subsequently evolved into Tatt Companies International, Tatt/Pedus, an International security firm World Headquarters Munich, Germany, and Tatalovich & Associates Incorporated. Tatt Companies International was the largest security, investigative and consulting firm in Arizona, and was one of the twenty largest firms in the United States. Tatt/Pedus, when combined, was one of the ten largest security firms in the United States.

Tatt provided security services in Arizona, Colorado, New Mexico, Oregon, Texas, Utah, Washington State, and Wyoming. Tatt employed approximately 1,500 security personnel. Tatt's seven service divisions included: 1) security, patrol, and loss prevention for a variety of industries which encompassed vulnerability studies, risk analysis, threat assessments, security surveys, security signage, executive protection, special events, workplace violence, nuclear security, and many others; 2) truth verification (Psychological Stress Evaluation - P.S.E. and Polygraph) pre-employment screening, periodic testing, and specific examinations; 3) electronic detection systems, residential and commercial, security and fire detection systems, electronic access controls, Closed-Circuit Television (hereinafter "CCTV") design and installation, barrier design, perimeter fence detection, security signage, others; 4) nuclear security services, providing nuclear qualified security guards, employee and vendor background screening, criminal background inquiries for nuclear and non-nuclear clients; 5) electronic countermeasures and secure communications, telephonically and within buildings, offices, etc; 6) consulting services including vulnerability studies, risk and threat assessments, surveys, audits, staffing

¹ ISCPP is an offshoot of the nationally and internationally recognized National Crime Prevention Institute (NCPI) located at the University of Louisville, Louisville, Kentucky, that was founded in approximately 1970. Crime prevention training was originally conducted at the university; however, to promote updated training, an alumni association was formed and for three years met in Louisville. The NCPI was known throughout the world as a premiere crime prevention center, and many attended from around the world. As the group began to grow, in 1977 the Alumni Association separated from NCPI and formed ISCPP. The organization has been involved in pro-active security, law enforcement, and crime prevention since. ISCPP have members throughout the world from the public and private sectors. The ISCPP provides a training symposium every other year and the organization provides crime prevention updates to its members on a regular basis. The ISCPP provides formal training and testing. Applicants are rigorously tested on "15 core chapters", "14 electives", and "7 resource chapters". Applicants who successfully pass a 200-question examination are designated as "International Crime Prevention Specialists."

analysis, barrier design, special events, guard deployment, security policies and procedures, post orders, and numerous other security related services; and, 7) investigations involving fraud, workers' compensation, medical malpractice, wrongful death, automobile and construction accidents, product liability, others.

Tatt Specialized Services

In 1979, at the request of Arizona's two largest utility companies, Tatt formed an eight-man Special Weapons and Tactical Response Team to respond in the event of an attempted takeover by a radical dissident group of two power-generating stations located on the Navajo Nation. The Team was comprised of highly trained former military personnel, led by retired Lieutenant Colonel, United States Army, Joseph E. Griffith, Tatt's Director of Security, a highly decorated combat veteran of World War II, Korea, and Vietnam. I established the policies, procedures, training criteria, rules of engagement, type of weapons issued, use and continuum of force. Colonel Griffith reported directly to me. The Team was featured in Phoenix Magazine in May 1977. This engagement enhanced my experience in security policies, procedures, adequate training, communications, chain of command, guard deployment, and use and continuum of force.

Tatt Merged with Pedus Services, World Headquarters Munich West Germany, United States Headquarters, Los Angeles, California

On January 1, 1984, Tatt merged with Pedus Services, World Headquarters Munich West Germany, United States Headquarters, Los Angeles, California. The Tatt/Pedus Group's headquarters were located in Scottsdale, Arizona. I was the Chairman of Tatt/Pedus, an Arizona based group during 1984 and a Consultant to Pedus through 1987.² Tatt/Pedus was one of the ten largest security firms in the United States employing approximately 3,000 security personnel with services ranging from the multi-housing industry to nuclear generating plants, presidential libraries, security guard and patrol services, electronic detection systems, access controls, barrier design and others. My position and experience with this international security organization enhanced my knowledge of the national and international security industries.

Management Qualifications as an Expert in Security and Business Management

My former firm, Tatt Companies International was the largest security firm in the State of Arizona, and one of the twenty largest security firms in the United States. Subsequent to the 1984 Tatt/Pedus merger, the combined Tatt/Pedus companies were one of the ten largest security firms in the United States employing approximately three thousand people.

Firstar Bank and Trust (U.S. Bank)

My business management experience also includes: chairman of the Metropolitan Bank and Trust, its subsidiaries, a board member of Metropolitan Bank and subsequently Firstar Bank and Trust, which is now U.S. Bank, spanning from approximately 1986 through 1999. My management responsibilities included oversight of loan committee, examining committee,

² 1984 Press Release by Pedus Services.

directors trust committee, compliance with the Federal Bank Protection Act of 1968 as amended, required security procedures, security measures and devices, which I consulted with the bank as requested. *Refer to following section of vitae regarding the "banking industry" requirements for greater detail.*

ILX Resorts

During 1989, I was chairman of ILX a national real estate time-share and real estate development company, and a board member from 1987 through 1992. I was involved in the day-to-day management of the Los Abrigados Resort located in Sedona Arizona and the Craig's Lodge located in Estes Park, Colorado. *Refer to following section of vitae for details.*

Paragon Publishing Company

I was the president of Paragon Publishing Company, which owned the Zane Grey publishing rights from 1987 through 1991. I was accountable for day-to-day operations.

Across the Road Adventures (ARA)

I was the chairman of ARA, a real estate, bar, and restaurant development company, which owned and operated two bars and restaurants located in Crown King, Arizona, from 1995 through 2006. The revenue of ARA was approximately \$700,000.00 annually. *Refer to following section of vitae for details.*

Nutatt/Phoenix Law Enforcement Association (PLEA)

1991 - NUTATT - PHOENIX LAW ENFORCEMENT ASSOCIATION (PLEA) – Former Chairman and Managing Partner of the joint venture with PLEA to provide off-duty police officers to private industries throughout Arizona including the multi-dwelling unit industry, exterior areas of bars, clubs and restaurants, traffic control, special events, resort, hotel and motel, special events, retail shopping centers, construction sites, parking structures, parking lots, the exteriors of bars and restaurants, fast food restaurants, convenience stores, and others. Accordingly, I am familiar and experienced with the utilization of off-duty police officers, the gold standard of security guards in the private sector, off-duty policies, practices and procedures, use and continuum of force, supervision policies and restrictions for services to the private sector. I am experienced in the practices and policies of law enforcement and have worked in conjunction with the public sector throughout my 40-plus year career.

Maricopa County Sheriff's Office (MCSO) Advisory Posse, Former Chief of Operations, Currently Secretary to the Memorial Fund

I am currently on the board of the MCSO Advisory Posse and was appointed chief of operations in 2008, 2009, and chief administrative officer for 2010, 2011, 2012, 2013, and 2014. I have also been involved in numerous other business ventures and investments. I have 40-plus years of uninterrupted management experience in security and other industries, which includes

all aspects of management operations. My management experience and expertise speaks for itself.

Practice Specializations

1983 to present - TATALOVICH & ASSOCIATES INCORPORATED - I specialize as a trial expert and/or consultant with regard to premises liability primarily related to third-party criminal acts. With over 40-plus years of experience (I started at age 21), practice areas include, however, are not limited to: multi-dwelling units, hotel, motel, and resort industry, hotel and casino security, parking structures and parking lots, security officers, off-duty police officers, pre-employment practices, including criminal background checks in compliance with the Fair Credit Reporting Act (FCRA) and Equal Employment Opportunity Commission (EEOC) rules and regulations, NFPA 730 standards and ASIS pre-employment background screening guidelines, security officer training, supervision, deployment, special events, concerts, motocross and vehicle racing, crowd control, crowd dynamics, demonstrations, security barriers, labor disputes, bank and Automatic Teller Machine (ATM) security, Regulation H security measures and device requirements, false arrest, civil rights violations, adequate illumination levels, retail shopping centers, loss prevention security, shoplifting, (reasonable cause, manner, and duration), cocktail lounges, bar and restaurant security, security policies and procedures, standard of care regarding investigations, adequate pre-employment practices, use and continuum of force, fast food outlets, convenience stores, electronic alarm and fire detection systems, crime statistics analysis, notice and foreseeability of violent crimes, including: 1) homicide; 2) aggravated assault; 3) sexual assault; 4) robbery; 5) kidnapping; and, 6) major property losses.

I have extensive experience regarding private sector and proprietary security officers, loss prevention agents, investigators, and the utilization of off-duty police officers as security guards. I have performed over twenty-five hundred security surveys to include vulnerability assessments, risk analysis, threat assessments and management audits. I have supervised or been involved in over two thousand security stops. My security and investigative expertise also encompasses other related areas of private, commercial, industrial, nuclear and electronic security.

Investigative

I also practice as an expert, consultant and investigator that reflects my 40-plus years of experience in the following areas: litigation, witness interviews, workplace violence, Department of Defense contractor investigative or security requirements, in-depth background investigations, criminal background checks, pre-employment policies, procedures, practices, industry standards of care, generally accepted investigative practices and procedures, management audits, sexual harassment, libel and slander, securities fraud, product liability, acquisition and sale of businesses, commercial transactions, environmental matters, contract and partnership disputes, fraud, representations and warranties, labor disputes, criminal matters and electronic countermeasures. My broad range of experience and expertise reflects 40-plus years of practice.

States where I have been Engaged or Consulted as a Forensic Security Expert

Arizona, Arkansas, California, Colorado, Connecticut, Florida, Hawaii, Idaho, Illinois, Indiana, Iowa, Kentucky, Louisiana, Maryland, Michigan, Minnesota, Missouri, Mississippi, Nevada, New Mexico, New Jersey, New York, Oklahoma, Oregon, Pennsylvania, South Carolina, Tennessee, Texas, Washington D.C., Washington State, and West Virginia, a total of 31 states.

Summary of Experience and Credentials

September 1984 through the present date, President, Chairman and Chief Executive Officer of Tatalovich & Associates Incorporated, a security consulting and investigative firm.

September 1984 to 1987. PEDUS SERVICES - Consulted as an expert to this international corporation, U.S. Headquarters Los Angeles, California; World Headquarters Munich, Germany. Consultations have included various areas of security management and national multi-state operations. Specialized consulting services included: utility security, loss prevention, security policies, procedures and practices, security for retail centers, special events, labor disputes, demonstrations, electronic protective systems, multi-dwelling unit security, parking structures and related areas, executive protection, multi-story buildings, vulnerability assessments, security audits and surveys, industrial, governmental, utility and nuclear security.

January 1984 to August 1984. TATT/PEDUS GROUP, PHOENIX, ARIZONA - President, Chairman and Chief Executive Officer. Pedus Services acquired Tatt on January 1, 1984, forming one of the ten largest security, consulting and investigation firms in the United States. Tatt Companies International and Pedus Services jointly employed approximately three thousand security professionals throughout nine states with combined annual revenues for 1984 of approximately \$30,000,000.00.

April 1968 to December 1983. TATT COMPANIES INTERNATIONAL AND/OR AFFILIATES - President, Chairman and Chief Executive Officer. Tatt's U.S. Headquarters were located in Scottsdale, Arizona. I founded each of the firm's seven operating divisions. All vice presidents and division directors reported directly to me. The divisions included; however, were not limited to: 1) security, patrol and loss prevention including vulnerability assessments to include industrial, retail and corporate security, risk analysis, threat assessment, executive protection, special events, labor disputes, crowd control, crowd dynamics, and workplace violence; 2) truth verification (Psychological Stress Evaluation - P.S.E. and Polygraph) a pre-employment requirement for Tatt security officers. Services were also provided to the public; 3) electronic protective systems, access controls, security barriers, design and installation of monitored and unmonitored CCTV systems; 4) nuclear security services providing nuclear qualified security officers and enhanced security for employees, contractors and executives, performing all employee and vendor background screening including criminal history checks; 5) electronic countermeasures (debugging) for secure on-site and electronic communications; 6) consulting services to include vulnerability assessments, risk and threat assessments, security surveys, audits, staffing analysis, pre-employment policies, practices, training, supervision, deployment, policies, procedures, post orders; and, 7) investigations involving workers'

compensation fraud, medical malpractice, workplace violence, product liability, pre-employment practices including criminal background checks, wrongful death, and business disputes to mention a few of Tatt's services.

Tatt was one of the twenty largest security firms in the United States, and the largest in the State of Arizona, which employed approximately fifteen hundred professionals in nine states. The firm's offices were located in: 1) San Diego, California; 2) Farmington, New Mexico; 3) Houston, Texas; 4) Denver, Colorado; 5) Dallas, Texas; 6) Scottsdale and Tucson, Arizona; 7) Portland, Oregon; 8) Austin, Texas; 9) Seattle, Washington; and, 10) operations in the States of Wyoming and Utah. Tatt's annualized fees in 1984 were approximately \$15,000,000.00.

The Following Represents a Brief Summary, in Inverse Chronological Order of Significant Developments of Tatt Companies International and my Career Spanning 40-plus Years

1980 - The Nuclear Service Division provided nuclear qualified security officers at Palo Verde Nuclear Generating Plant, conducted level one and level two employee and vendor pre-employment background investigations, including criminal history checks. During 1980, the responsibility for non-nuclear client background screening was transferred from the Investigation Division to the Nuclear Division. Tatt also provided security for nuclear demonstrations at the plant. All services were in compliance with the Nuclear Regulatory Commission (NRC) regulations, federal and state laws for the Palo Verde and Nuclear Generating Plant located approximately thirty-five miles west of Phoenix, Arizona. Tatt also provided executive protection, intelligence services, electronic countermeasures, loss prevention, fraud, risk analysis and threat assessment services for Arizona Public Service Company (APS), the managing partner for Palo Verde. The Palo Verde Nuclear Generating Station was and is the largest nuclear generating facility in the United States. All services met or exceeded all applicable nuclear regulatory standards.

1978 - The Systems Consulting Division offered; however, was not limited to, expert consultation in various areas of security, including electronic protective systems, security policies and procedures, training, post orders including multi-dwelling units, resort and retail security, security barriers, parking structures and surface parking lot security, special events, concerts, adequate illumination levels, security officer deployment (quantity and quality), vulnerability assessments, security surveys, audits, risk analysis, notice and foreseeability of third-party criminal acts, and other areas. During 1981, I was first engaged as a security expert and provided testimony in Arizona regarding a premise liability case related to private sector security issues.

1977 - The Electronic Countermeasures Division provided counter-electronic surveillance for commercial and residential buildings, including telephonically secure communications. This division also coordinated and performed related risk analysis, threat assessment and intelligence services regarding external and/or internal eavesdropping threats to private sector clients.

1976 - The Electronic Protective Systems Division designed, installed, and monitored commercial and residential, burglary, robbery, fire, duress and medical alert systems. Tatt's

commercial and residential systems were monitored by Tatt's hardened 24-hour state-of-the-art bullet and intrusion resistant Operations Center located in Scottsdale, Arizona. Services also included: access control, CCTV, mechanical locking mechanisms, structure design, and physical protective barriers. By 1984, the firm's Electronic Division was ranked in the top ten full service electronic alarm providers in the State of Arizona and provided electronic systems for other selected offices throughout the United States. Tatt was also the first computerized radionics central station in Arizona, and was one of the ten largest alarm companies in Arizona and the southwest.

1975 - The Truth Verification Division combined the use of polygraph and psychological stress evaluation (P.S.E.) for pre-employment, specific examinations, and to detect deception and fraud. Clients included: utility companies, restaurant chains, security companies, insurance carriers, law firms and others. As part of the firm's pre-employment screening policies, all security applicants were pre-tested as a condition of employment and retested as required as a condition of continuing employment. Tatt was the first firm in the State of Arizona to utilize P.S.E.

1972 - The Security, Patrol and Loss Prevention Division provided; however, were not limited to: retail, resort, special events, concerts, industrial, retail, and corporate security services to the Phoenix and Tucson metropolitan areas. I received the 007th security license issued by the State of Arizona, license #75-01007. Clientele ultimately included banks, multi-dwelling units, hotels, motels, resorts, high-rise buildings, government facilities, special events, concerts, utility companies, aviation, fossil and nuclear generating plants, manufacturing, the retail industry, defense contractors, high-tech electronic firms, convenience stores, fast food restaurants, airports, a presidential library, and various other clients throughout the nine states. This division ultimately provided armed executive protection agents and specialized in workplace violence, special events, and crime prevention.

Investigative

1968 - Tatt was originally formed as a private investigation firm on April 1, 1968. The firm was registered with the Arizona Secretary of State, Trade Name Registration Number 092483. *I received the fifty-first investigative license issued by the State of Arizona, license number 10051.* Services included litigation related investigation primarily for law firms, corporations and insurance carriers. Specializations included: workers' compensation fraud, wrongful death, personal injury, product liability, loss prevention, and criminal investigations. During 1977, I was selected by both Arizona Public Service Company and Salt River Project, Arizona's largest utility companies, to develop and implement a power diversion program (theft of electricity and/or natural gas) leading to numerous unprecedented successful criminal prosecutions. Annual fees for the firm in 1968 were approximately \$9,600.00.

Security and Investigative Licensing

I have been the principal for licensing, license holder and/or appointed a qualifying party where applicable, for licensing in security, investigation and electronics for the States of: 1) Arizona; 2) California; 3) Colorado; 4) New Mexico; 5) Oregon; 6) Texas; 7) Utah; 8)

Washington; and, 9) Wyoming. During my career, my companies or companies I managed and/or had an interest in and have earned in excess of approximately \$100,000,000.00 in professional fees.

Related Industry Experience in Specific Areas; However, not Limited to

Parking Lots and Multi-Level Structures

The vast majority of clients that I have represented during the prior 40-plus years had parking lots and/or parking structures. The types of businesses ranged from multi-housing, high-rise office buildings, industrial facilities, special events, hotels, motels, bars, restaurants, retail centers, fast food, convenience stores, a presidential library, and the Palo Verde Nuclear Generating Station, the largest nuclear power plant in the United States.

Tatt and Tatt/Pedus routinely provided security services to retail industries, multi-housing communities, including strip-type centers, regional shopping centers, parking lots, and parking structures, all of which had parking structures and/or parking lots. I am experienced and familiar with the NFPA 730 2006, 2008 or 2011 ANSI national premises security standards, ASIS, and other organizations' guidelines, practices, and specifically the industry standards of care as applied to premises liability involving third-party criminal acts occurring within multi-level parking structures and/or surface parking areas.

A significant number of my engagements are related to parking areas. My experience in this area was developed by providing security and vulnerability assessments on a national basis to hundreds of parking structures and/or parking lots throughout the United States.

Healthcare Industry Experience

I have been engaged as a workplace violence consultant by the Mayo Clinic and Scottsdale Memorial Hospital located in Scottsdale, Arizona. In the course of my examinations, I performed limited vulnerability, threat and risk assessments. I subsequently arranged executive protection for staff members.

I was also selected to perform management audits, including vulnerability, risk, and threat assessments for St. Joseph's Hospital and the Barrow Neurological Institute located in Phoenix, Arizona. My examination included a comprehensive review of security staffing, training, supervision, security measures, security policies, procedures, emergency room design, and interviews with executive management, beginning with the chief executive officer.

I have been engaged as a forensic security expert in the healthcare industry on six occasions to include, Arizona, Tennessee, Connecticut, Florida, and New Mexico. I was engaged on four occasions as a plaintiff's expert and twice as a defense expert.

Most recently, on March 28, 2013, I was accepted as a defense expert in healthcare security by the First Judicial District Court, County of Santa Fe, State of New Mexico. I am experienced in healthcare security both as a practitioner and as a forensic security expert.

Navajo Nation Security Experience

I am experienced in the security practices of the sovereign Navajo Nation, which is located within the States of Arizona and New Mexico. I was offered and accepted as a forensic security expert in the matter of Jensen v. Giant Industries, in the District Court of the Navajo Nation, Judicial District of Chinle. I provided security to Arizona Public Service, Four Corners Power Plant and to the New Mexico Public Service Company, San Juan Generating Station located near Farmington, New Mexico; and the Salt River Project, Navajo Generating Station located in Page, Arizona. Tatt and Tatt/Pedus employed an average of approximately one hundred fifty Navajo security officers on the Navajo Nation from approximately 1978 through 1988. I am one of the very few security experts with security experience on the Navajo Nation.

Retail Industry, Loss Prevention Agents, Merchants Statutes, Adequate Policies, Procedures, and Training

Tatt provided loss prevention agents and security guards to the retail industry. The scope of Tatt's services were to develop adequate security policies and procedures, particularly continuum and use of force in order to detain shoplifters, recover stolen merchandise, monitor CCTV systems to detect and observe shoplifters in the act of removing and/or concealing merchandise, and provide uniformed security guards to deter, detect and prevent crimes.

All stops were performed in compliance with the industry standards of care and applicable merchant statutes, specifically reasonable cause, manner, and duration of shoplifter detentions, including documentation, preservation of evidence, and preparation for prosecution.

Convenience Store Industry

Tatt provided security guards, loss prevention agents, designed and installed alarm and CCTV systems, bandit barriers, robbery deterrence practices and procedures, performed vulnerability assessments and prepared security plans for the convenience store industry. I am familiar with the industry as both security practitioner and forensic security expert.

Special Events, Concerts and Arena Security

I am a member of International Festival and Events Association (IFEA). I am very familiar with the security standards, guidelines and practices of the industry including emergency management planning and emergency response, including evacuations. I have been engaged as both a plaintiff and defense expert in litigation regarding concerts, arena security, special events, race and motocross events.

Tatt provided special event security to include: concerts, arena security, motocross, racing events, celebrations, providing crowd control, parking areas and accessing crowd dynamics. Tatt routinely utilized security barriers and other security measures and/or devices to control large crowds often comprised of aggressive individuals including concert attendees in order to deter, detect, prevent accidents, injuries and/or violent acts. Other services included:

special events, retail sales and/or facility closures, labor disputes, nuclear and other demonstrations, protests, annual board meetings where shareholder protests were predictable, and others.

Resort, Hotel, Motel, Lodging and Multi-Dwelling Unit Industries' Experience

In 1988, a group of investors and myself formed a publicly traded company to purchase the Los Abrigados Resort located in Sedona, Arizona, which had 195 units and was situated on 20 acres.

Our business plan was to convert the resort to a timeshare property, which is similar to a multi-housing community, except the residents generally stay from one week to six months. I was a member of the board of directors, and was appointed to and served on the executive committee from 1988 to 1992. I was elected chairman of the board in 1989. During 1989 and 1990, I was directly responsible for the oversight of day-to-day management operations of Los Abrigados located in Sedona, Arizona; The Historic Crags Lodge located in Estes Park, Colorado; and, The Ventura Resort located in Boca Raton, Florida. My responsibilities specifically included oversight of security, safety, parking, common areas, bars and/or lounges that served alcoholic beverages, restaurants, live entertainment, special events at Los Abrigados and The Historic Crags Lodge. I was ultimately responsible for the success and profitability of the company. ILX went on to purchase numerous timeshare properties in Arizona, Nevada, Indiana, and Mexico.

ILX's Premiere Vacation Club (PVC) was formerly located at 4813 Paradise Road, Las Vegas, Nevada, which was situated on approximately forty-four acres. ILX has an interest in The Carriage House Hotel, which is located at 105 East Harmon Avenue, Las Vegas, Nevada. The Carriage House Hotel is a one hundred fifty-five room multi-story hotel. ILX formerly operated Joey's Bistro, a gourmet restaurant that was located on the top floor overlooking the Las Vegas Strip. I consulted with ILX on security issues from my Phoenix office until the sale of ILX in 2012. ILX also owns and/or operates resorts which include: The Los Abrigados Resort, Los Abrigados Lodge, The Inn at Los Abrigados, and The Bell Rock Inn and Suites, which are located in Sedona, Arizona; Kohl's Ranch and Lodge located near Payson, Arizona; The Historic Crags Lodge at the Golden Eagle Resort, Estes Park, Colorado; the Varsity Clubs of America, South Bend, Indiana and Tucson, Arizona chapters; and an international resort in San Carlos, Mexico – Sea of Cortez.

My management and security experience with ILX has enhanced my knowledge of the hotel, motel, resort, and multi-dwelling unit industries. Very few security practitioners have both board and property level management experience in combination with experience as a security practitioner. I remain a security consultant to ILX.

Hotel and Casino Experience

I have been engaged as a defense forensic security expert on behalf of Gold Coast Hotel and Casino, Silverton Hotel and Casino, Texas Station and Casino, Sam's Town Hotel and Casino, Suncoast Hotel and Casino, Orleans Hotel and Casino, Orleans Arena, Imperial Palace

Hotel and Casino, Aztec Inn, Moulin Rouge, Stratosphere Tower Casino and Hotel, and Grand Sierra Resort. I am familiar with hotels' and casinos' flat surfaces and multi-level parking area designs and security measures.

I have been engaged as a plaintiffs' expert in three actions filed against Riverside Hotel and Casino located in Laughlin, Nevada, the Bellagio, and the Riviera Hotel and Casino located in Las Vegas, Nevada.

My practice includes, however, is not limited to: security officer operations, pre-employment practices, security policies and procedures, use and continuum of force, detention practices, procedures, investigative policies, procedures and practices, training, recurring training, supervision, traffic control, and parking area security.

Bar, Restaurant and Alcoholic Beverage Industries

May 1995 to 2006. Chairman - Crown King Investment Group, Inc., (hereinafter "CKIG"), an Arizona real estate, restaurant and bar development company.

CKIG owned a partnership interest in Across the Road Adventures, LLC (hereinafter "ARA"). ARA formerly owned and operated two bars and restaurants, the Crown King Saloon, a 100-year-old historic site, and the Switchback Grill and Saloon located in Crown King, Arizona. Both bars dispensed spirituous beverages and provided live entertainment to patrons. I have been a party to three Arizona liquor licenses including the Los Abrigados Resort located in Sedona, Arizona, and The Historic Craggs Lodge that provided a full service bar located at the Golden Eagle Resort, Estes Park, Colorado. I was also a limited partner in the Pastaria Grill and Bar, which was located at Central Avenue and Clarendon in Phoenix, Arizona. My respective relationship with CKIG and ILX have enhanced my experience and operating knowledge of the alcoholic beverage, bar, and restaurant industries, particularly statutory regulations governing the alcohol beverage industry, dram shop laws, security standards, guidelines, practices, and/or recommendations relating to security measures. I am familiar with alcohol awareness practices, duties, and responsibilities of a licensee, security and pre-employment practices, adequate security policies and procedures, adequate staffing, security training and supervision for employees, security guard qualifications, training, staffing, security coverage, CCTV systems, robbery deterrence, prevention and detection, limitations regarding use and continuum of force, reasonable cause and manner for the ejection of disorderly and/or patrons involved in violent acts from an establishment and beyond the establishment's premises when and if possible in a safe manner, and overall invitee and employee safety and security.

Banking Industry

1986 to 1999. FIRSTAR METROPOLITAN BANK AND TRUST - I served on and consulted with the board of directors for Metro Bancorp, Inc. from 1986 through 1989 and its subsidiaries Metropolitan Bank, MB Mortgage Company, and MB Residential Services. I was elected Chairman of Metropolitan Bank and Metro Bancorp in 1987 and served through 1989. I provided consulting to the bank on security, safety, investigation, and related issues.

Firststar Corporation

During 1989, I was active in the negotiations regarding the sale of Metro Bancorp to Firststar Corporation and subsequently was offered a Firststar director's position. From 1989 through 1999, I served on the Firststar Metropolitan Bank & Trust Board of Directors, Loan Committee, Examining Committee, Directors Trust Committee, and continued to advise the Arizona based bank on security matters.

Firststar was the fourteenth largest bank in the United States with over seventy-three billion dollars in assets. During late 1999, all wholly owned subsidiaries of Firststar Bank & Trust merged into the Firststar Corporation. On October 21, 1999 at 4:50 p.m., the Phoenix, Arizona Firststar Metropolitan Bank Board of Directors approved the Arizona Firststar merger. Accordingly, the legal board for Arizona Firststar was dissolved as of November 12, 1999. I was offered a position by Firststar as an advisory director, which I declined. Firststar acquired U.S. Bancorp in February 2001, becoming the ninth largest bank in the United States.

I am experienced in bank management and security as a former thirteen-year board member of a major national bank and as a security practitioner. Very few security experts have board-level management experience in the banking industry.

Federal Banking Requirements Pursuant to the Bank Protection Act of 1968 as Amended

The Bank Protection Act as amended, Part 326, Minimum Security devices and Procedures and Bank Secrecy Act Compliance, Subpart A, Minimum Security Procedures under section 326.0 Authority, purpose, and scope requires the following:

(a) This part is issued by the Federal Deposit Insurance Corporation ("FDIC") pursuant to section 3 of the Bank Protection Act of 1968 (12 U.S.C. 1882.). It applies to insured state banks that are not members of the Federal Reserve System. It requires each bank to adopt appropriate security procedures to discourage robberies, burglaries, and larcenies and to assist in identifying and apprehending persons who commit such acts.

(b) It is the responsibility of the bank's board of directors to comply with this part and ensure that a written security program for the bank's main office and branches is developed and implemented.

(Emphasis added).

Section 362.2 Designation of security officer requires "Upon the issuance of federal deposit insurance, the board of directors of each insured nonmember bank shall designate a security officer who shall have the authority, subject to the approval of the board of directors, to develop, within a reasonable time, but no later than 180 days, and to administer a written security program for each banking office." (Emphasis added).

Under Section 326.3 Security program required compliance with (a) (1) through (5) (vi), and under Section 326.4 Reports requires The security officer for each insured nonmember bank shall report at least annually to the bank's board of directors on the implementation, administration, and effectiveness of the security program. (Emphasis added).

The board, which I served on for thirteen years, was ultimately responsible for the bank's security policies, procedures, security measures, devices, employee training, and the overall security program. My experience with Metropolitan Bank and Firststar Bank & Trust has enhanced my credentials in bank management, security, bank secrecy laws, ATM's, illumination, CCTV systems, cash management, robbery deterrent policies and procedures, robbery prevention policies and procedures to follow during a robbery, security guards, alarm systems, parking area security, bandit barriers and bullet resistant glass, financial analysis, asset searches, commercial lending, related areas of security and investigation.

Restaurant and Fast Food Industry

Tatt provided security services and security guards to the fast food industry throughout the states where Tatt operated. Other services provided were: robbery prevention, employee training, vulnerability assessments, security policies, procedures, CCTV systems, barriers, and Crime Prevention Through Environmental Design (CPTED) principles and practices.

Pre-Employment Industry Standards of Care, Guidelines, Policies, Practices, and Background Screening

I specialize in pre-employment background screening regulations, policies, procedures, and criminal background checks. As an expert, I examine the adequacy of pre-employment policies, procedures, background screening, regulatory issues, risk assessments, criminal history checks, and compliance with the industry standards of care.

The firm also provides background investigations for a variety of employment and non-employment issues, including but not limited to: 1) review of employment applications for adequacy and for omissions; 2) criminal background checks; 3) credential and education verification, particularly on expert witnesses; 4) interviews of employees and verification of references listed on an employment application; 5) sex offender registration; 6) outstanding warrants; 7) civil record examination; and, 8) assessment of qualifications of an applicant for the position applied for.

I was personally responsible to provide nuclear approved security services to Arizona Public Service (APS), the managing utility company for the Palo Verde Nuclear Generating Plant, the largest nuclear plant in the United States. Aside from providing nuclear qualified security officers, Tatt, under my direction, performed all level one and level two employee and vendor pre-employment background investigations including local and national criminal history checks.

All services are in compliance with the Fair Credit Reporting Act (FCRA) and the Equal Employment Opportunity Commission (EEOC) rules and regulations.

Experience Utilizing Off-Duty Police Officers as Private Sector Security Officers

1991 - NUTATT - PHOENIX LAW ENFORCEMENT ASSOCIATION (PLEA) – Former Chairman and Managing Partner of the joint venture with PLEA to provide off-duty police officers to private industries throughout Arizona including the multi-dwelling unit industry, exterior areas of bars, clubs and restaurants, traffic control, special events, resorts, hotels and motels, special events, retail shopping centers, construction sites, parking structures, parking lots, bars and restaurants, fast food restaurants, convenience stores, and others. Accordingly, I am familiar and experienced with the utilization of off-duty police officers in the private sector, off-duty policies, practices and procedures, use and continuum of force, supervision policies and restrictions for services to the private sector. PLEA is the certified bargaining representative for approximately twenty-three thousand certified Phoenix Police Officers. I am experienced in the practices and policies of law enforcement and have worked in conjunction with the public sector throughout my 40-plus year career.

I have also testified twice as an expert before the Arizona Industrial Commission regarding acts of off-duty police officers, which resulted in serious injury or death. The issues in both cases were the officers' acts outside or within the course and scope of off-duty employment. **Robertson v. Sixpense Inn** and **Wargo v. Riddle Group/Maricopa Court/State Compensation Fund**.

Special Event Experience

I am a member of the International Festivals and Events Association (IFEA). I am very familiar with the industry standards of care for the special event industry, including the service of alcoholic beverages, crowd control, crowd management, adequate policies, procedures, training, supervision, and security posts. I have been engaged as both a plaintiff and defense expert relative to special events to include concerts, arena security, providing temporary retail security services, celebrations, and emergency management planning.

Tatt specialized in special events to include: concerts, arena security, motocross, racing events, celebrations, sales of merchandise, store closings, exterior parties utilizing temporary liquor extension permits, vulnerability assessments, crowd control, crowd dynamics, and emergency responses and evacuations, if necessary. Tatt routinely utilized security barriers and other security measures and/or devices to manage large crowds often comprised of aggressive individuals including concert and/or special event attendees in order to deter, detect, prevent accidents, injuries, and/or violent acts. Other services included: emergency management planning, labor disputes, nuclear and other non-nuclear demonstrations, protests, annual board meetings where shareholder protests were predictable, and others.

Racing and Motocross Events

I am experienced in racing events. I was involved in semiprofessional drag racing, both as a pit crewmember and driver from 1967 through 1970. My last non-semi professional race occurred in 1981. During 1970, I was featured in a Champion Spark Plug Commercial and printed media advertisements including TV Guide, Esquire, Time Magazine, and others. My

opinions are based on experience as a security practitioner, expert, pit crewmember, driver and spectator. *Refer to Champion Spark Plug Advertisement and Champion Television Commercial.*

I have a unique understanding of special events as a practitioner and a forensic security expert.

Industrial Facilities, Truck Stops, and Equipment Storage Yards

Tatt and Tatt/Pedus provided security to industrial-type facilities and truck stops that included: manufacturing, enclosed equipment storage areas, semi-truck pick up and/or drop off storage yards/overnight parking, exterior fixed or mobile-type industrial equipment areas, aerospace, warehouses, and open storage exterior areas, utilizing a variety of security and safety measures and/or electronic devices including CCTV systems.

Law Enforcement Related Experience, Maricopa County Sheriff's Office Advisory Posse

The Maricopa County Sheriff's Office (hereinafter "MCSO") is one of the largest sheriff's offices in the nation with law enforcement responsibilities for Maricopa County, one the largest counties in the nation, encompassing nine thousand two hundred square miles, an area larger than some states.

In September 2006, Mr. Leroy Schneider, the former Chairman of Security Title of Arizona and Commander of the Advisory Posse recommended me for consideration by the MCSO as a sworn posse member.

The MCSO performed a comprehensive background investigation to determine if I met the posse's criteria as a member of the MCSO Advisory Posse. On September 8, 2006, Sheriff Joe Arpaio, a nationally recognized sheriff, administered my oath as a sworn member of the MCSO Advisory Posse. My rank is Captain, Serial No.: PA0196.

On October 18, 2007, I was nominated and elected to the Advisory Posse Board of Directors and appointed Chief of Operations for the years 2007 and 2008. I was re-nominated in October 2008 and elected to the Board as Chief of Operations for 2009. I was re-nominated in 2010 and 2011 and re-elected to the Advisory Posse Board as the Chief Administrative Officer. In 2012, I was re-nominated and elected to the Advisory Posse Board, Memorial Fund for 2013 as secretary.

MCSO policy G-J27 governs the posse. The policy sets forth in part:

Due to the limited staff available, and his extensive responsibilities, the Sheriff has the authority to call upon qualified personnel to assist him as members of recognized posses.

The principal purpose of posse groups is to provide the Sheriff with a force of volunteers to assist in carrying out the duties of the Office. ...

Since the Sheriff, or his designee, must call upon the individual or posse group for assistance, THE POSSE COMMISSION CARRIES NO LAW ENFORCEMENT AUTHORITY UNTIL AN INDIVIDUAL IS ACTIVATED. At that time the authority is established. Authority is limited to the conditions of the call out. A posse member is only vested with law enforcement powers of arrest when a Maricopa County Sheriff's Deputy or reserve deputy directs him to make an arrest. ...

(Emphasis added).

According to the sheriff's office information, the posse performs the following functions; however, not limited to, which I quote in part:

Posse members provide valuable assistance to virtually every division within the Sheriff's Office. Posse members assist the patrol deputies by providing back-up on dangerous calls, transport prisoners to jail, and provide traffic control at accident scenes. Posse members are also used to process paperwork for the Civil/Criminal Process Sections, Records and Identification Section, Enforcement Support Division, and the special Investigations Division. www.mcso.org/submenu.asp?file=posse

The primary purpose of the MCSO Advisory Posse was to establish and continue to raise funds for the MCSO memorial fund for fallen officers. The Advisory Posse to date has raised in excess of \$800,000.00 for the MCSO memorial fund. The fund is disbursed to the families of seriously injured or fallen deputies of the MCSO, or any police officer employed by any Arizona police agency. The purpose of the fund is to assist the surviving family members in a time of crisis. The board is responsible for raising additional memorial funds, the management of and distribution of the fund.

Sheriff Joe Arpaio also meets with the posse members biannually to discuss various law enforcement or other topics. The board consults with senior officers of the MCSO on a biannual basis and/or as required, regarding various requirements to support field operations to include requests for specialized training, equipment or other requirements.

My position with the MCSO Advisory Posse provides valuable law enforcement interaction and experience with the law enforcement community, and provides the availability for continued law enforcement training, which is offered to posse members. I remain available for a "call out as an advisor," and serve at the pleasure of Joe Arpaio, Sheriff of Maricopa County.

Professional Memberships

Former member American Nuclear Society (ANS) - April 1983 through December 31, 2010

American Society for Industrial Security (ASIS) - January 1, 1977 through December 31, 2014

Arizona Multihousing Association (AMA) - October 1, 1998 through September 30, 2015

Arizona Crime Prevention Association (ACPA) - January 1999 through December 31, 2018

Arizona Lodging & Tourism Association (AzLTA) - 1999 through December 2014

Former member Forensic Expert Witness Association - June 2009 through December 2013

Illuminating Engineering Society of North America (IESNA) - February 1999 through January 31, 2014

International Association for Healthcare Security and Safety (IAHSS) - October 12, 1998 through November 1, 2015

National Association of Chiefs of Police (NACP) - 1987 through December 1, 2014

International Council of Shopping Centers (ICSC) - October 10, 1998 through September 30, 2015

International Festivals and Events Association (IFEA) - June 2003 through December 2014. The IFEA today is The Premiere Association Supporting and Enabling Festival & Event Professionals Worldwide.

International Society of Crime Prevention Practitioners, Inc. (ISCPP) - October 12, 1998 through December 31, 2014

Former member International Special Events Society (ISES)

National Apartment Association (NAA) - February 2000 through September 1, 2014

National Criminal Justice Association (NCJA) - November 2000 through December 31, 2014

National Fire Protection Association (NFPA) - July 1994 through July 31, 2015

Maricopa County Sheriff's Office Advisory Posse - September 2006 through December 31, 2014

Industry Publications Routinely Reviewed in my Continuing Education Regarding the Standards, Guidelines, Practices and Recommendations of the Private Sector Security Industry

8th Edition, Illuminating Engineers Society North America Lighting Handbook

9th Edition, Illuminating Engineers Society North America Lighting Handbook

10th Edition, Illuminating Engineering Society of North America, The Lighting Handbook Reference and Application, Lighting for Emergency, Safety, and Security

An ICSC White Paper, International Council of Shopping Centers

Apartment News, Official Publication of the Arizona Multi-Housing Association

Arizona Hotel & Lodging Association

Arizona Multi-Housing Association Newsletter

ASIS Newsletters

ASIS Security Management Daily Briefing

Crime Prevention Curriculum by International Society of Crime Prevention Practitioners (ISCPP)

HospitalityLawyer.com – Loss Prevention Newsletter

International Association for Health Care Security and Safety Newsletter (IAHSS)

International Council of Shopping Centers Publications (ICSC)

ICSC Asia and Euro Briefs

ISCPP Enews

Journal of Health Care Protection Administration

Lighting Design and Application by IESNA

National Fire Protection Association (NFPA) 2006, 2008 and 2011 ANSI Premises Security Standards

Morgan Quitno City Crime Rankings from 2002 through 2012

Protection of Assets Manual by ASIS

SCT Xtra, a Publication of Shopping Centers Today

Shopping Center Management Insider

Special Event Risk Management Manual, Volume I

Special Event Security Management, Loss Prevention and Emergency Services, Volume II

The Chiefs of Police, National Association of Chiefs of Police

The Practitioners, International Society of Crime Prevention Practitioners, Inc. (ISCPP)

Units, Publication of the National Apartment Association (NAA)

The firm invests in excess of \$3,000.00 annually for membership and/or association dues, including publications, reference materials, educational seminars and internet access, in order to access industry publications, research, databases, security standards, guidelines, practices, recommendations and/or emerging security, standards, guidelines, practices and trends.

Industry Recognition

"Who's Who in American Law Enforcement," 1983

Former member of ASIS Nuclear Utilities Sub-Committee, 1983 - 1987

Former member ASIS Standing Committee on Utility Security, 1983 - 1987

Moderator, American Society for Industrial Security, Chattanooga, Tennessee.

"Facility Drug Abuse", 1987

Contributed to and consulted in the publication of the Utility Security Managers' Handbook (ASIS) published, January 1, 1988

Consultant, ASIS Standing Committee on Utility Security, 1988 - 1990

"Who's Who in American Law Enforcement," 1989

Tatalovich & Associates Incorporated was chosen to consult and audit the Arizona State Lottery for compliance with existing security standards of care, guidelines, practices and operations, May 1996

I was approved by the City of Phoenix City Attorney's Office to provide investigative services, 1997-1998.

Lorman Education Services faculty member regarding premises liability related to third parties, 2003 and 2004

I was sworn in as a Maricopa County Sheriff's Office Advisory Posse Member by Sheriff Joe Arpaio on September of 2006. I have served on the Advisory Board of Directors from 2007 through 2011 and was reelected to the board for 2012.

I was invited on January 18, 2011 to lecture at the American Association of Justice (AAJ) annual convention to be held in New York, New York. On July 10, 2011, my lecture included "Using an Expert in Security Cases: Why, When and How" and a discussion of the NFPA 730 national ANSI premises security standards of care.

Papers

On May of 2011, I prepared a paper on Why, When and How to utilize a premises security expert and the application of industry standards of care to determine adequate or inadequate security.

Continuing Education, Seminars, Lectures and Workshops

1970 - Officed at Johnson & Tucker, a prominent Phoenix law firm. During a one and one-half year internship, I received instruction and supervision in investigations relating to premises and general liability, negligence, wrongful death, auto accidents, burglaries, product liability, witness interviews and written statements by Kenneth L. Tucker, a lawyer since 1967, and Arthur Johnson, a legendary Arizona trial lawyer. Mr. Tucker is A.V. Martindale Hubble rated, and is listed in the National Registry of Who's Who - 1999 Edition. Mr. Tucker is also recognized by Woodward/White, Inc. National Survey: Selected as one of the Top 3000 Lawyers in America 1997 – 1998, and is certified as a specialist in personal injury and wrongful death by the State Bar of Arizona.

1971 - Accident Scene Investigation and Reconstruction, Buckeye, Arizona, by Lieutenant Lowell Hicks, Expert Reconstructionist, Phoenix Police Department.

1971 - 1972 Two year internship with Debus, Busby & Green, Ltd., a prominent Phoenix law firm, now Debus, Kazan & Westerhausen, Ltd. The firm is A.V. Martindale Hubble rated and Mr. Debus is listed in the publication Best Lawyers in America. The internship provided training in civil and criminal investigations, security issues, interviewing techniques, crime scene examinations, custody and control of evidence, search and seizure, use and continuum of force and police procedures. Mr. Debus, a lawyer since 1971, was a former Phoenix Police Detective, Maricopa County Prosecutor and Criminal Justice Professor at Glendale Community College.

1972 - Educational seven day seminar regarding patrol procedures, facilities security, and security officer placement by Detective Ronald W. Cherry, Narcotics Division, Maricopa County Sheriff's Office.

1973 - Educational five day seminar regarding training criteria, firearms training, and range qualification with classroom instruction for security officers, by Detective Ronald W. Cherry, Narcotics Division, Maricopa County Sheriff's Office.

1976 - American Society for Industrial Security, Annual Convention Exhibits and Security Workshops.

1976 - Educational five day seminar regarding industrial security, post orders and patrol techniques by Lieutenant Colonel Joseph E. Griffith, Retired United States Army.

1976 - Educational seminar regarding electronic alarm system design and digital reporting by Security Corporation of America (SCOA).

1976 - Five day workshop regarding the design of alarm systems to include panic, holdup, mobile transmitter, smoke detectors, rate of rise detectors, under carpet mats, glass breakage detection, and digital technology, by Douglas A. Knall, former President, Bay Shore Security, Industry Expert.

1977 - Workshop regarding power diversion, theft of natural gas, vulnerability to tampering as defined by A.R.S. Title §13, presented by Arizona Public Service.

1977 - Workshop regarding power diversion, theft of electricity, vulnerability to tampering, as defined by A.R.S. Title §13, presented by Arizona Public Service.

1977 - American Society for Industrial Security (ASIS), Annual Convention Exhibits and Security Workshops.

1977 - Lecture regarding security requirements for a 24-hour operations center, including telecommunications, by Jerry L. Grissom, Chief Investigator, Salt River Project.

1979 - International Security Conference and Exposition on state-of-the-art security products, Anaheim, California.

1979 - Lecture regarding construction security, warehouse inventory control, search and seizure by Doug Nelson, former Assistant Chief, Phoenix Police Department and Director of Nuclear Security, Palo Verde Nuclear Generating Station.

1979 - American Society for Industrial Security (ASIS), Annual Convention Exhibits and Security Workshops.

1979 - Workshop seminar by Blue Grass Manufacturing regarding glass breakage detectors and sound discriminators.

1980 - Workshop regarding law enforcement general orders, and the application to the private sector, by P. Michael Napier, Attorney for the Phoenix Law Enforcement Association (PLEA).

1980 - Educational workshop for security guard training as required by the State of Arizona by retired officer James Smith, Department of Public Safety, formerly assigned to the state licensing department for security and investigation licensing.

1980 - American Society for Industrial Security (ASIS), Annual Convention Exhibits and Security Workshops.

1981 - Workshop regarding preparation of post orders, security surveys, parking structures and lighting, by Rodney Chapin, Assistant Director of Security, Arizona Public Service Company.

1981 - Educational workshop regarding radionics products for electronic security, by Radionics.

1981 - American Society for Industrial Security (ASIS), Annual Convention Exhibits and Security Workshops.

1981 - Educational workshop on interviewing techniques and use of polygraph, by M. John Morris, Certified Polygraphist.

1981 - Workshop seminar by Koyo and Panasonic regarding CCTV.

1981 - Workshop seminar by Card Key, regarding access control.

1982 - Lecture regarding nuclear and coal fired utility security practices by, G. Carl Agdognini, former Vice President of Nuclear Operations, Arizona Public Service.

1982 - Workshop regarding Radionics Central Station computer operation, by Radionics.

1982 - American Society for Industrial Security (ASIS), Annual Convention Exhibits and Security Workshops.

1983 - Educational workshop regarding multi-housing security, by Lieutenant Colonel Joseph E. Griffith, Retired United States Army.

1983 - Lectures regarding nuclear security standards, including tour of the Palo Verde Nuclear Generating Station Reactor and Operations Center. The lecture included: background requirements of employees, visitors and contractors of the industry, by G. Carl Agdognini, Vice President of Nuclear Operations, Arizona Public Service and Doug Nelson, Security Director for Palo Verde security and former Assistant Chief of Police for the Phoenix Police Department.

1983 - Educational seminar regarding nuclear security practices and standards, Albuquerque, New Mexico.

1983 - American Society for Industrial Security (ASIS), Annual Convention Exhibits and Security Workshops.

1984 - Lecture regarding security techniques of multi-story buildings and parking structures, by William T. Luse, former Director of Security, Arizona Public Service.

1984 - American Society for Industrial Security (ASIS), Annual Convention Exhibits and Security Workshops.

1986 - American Society for Industrial Security (ASIS), Annual Convention Exhibits and Security Workshops.

1988 - Educational workshop regarding community based policing, by Norman Harris, Officer, Louisville Police Department.

1991 - Bank Security, Audit, Robbery Procedures and ATM placement, by Paul F. Muscenti, President and Chairman, Firstar Metropolitan Bank and Trust, Phoenix, Arizona.

1995 - Update on electronic sensors to include dual tech sensors, radio-frequency transmitter, CCTV systems, and technology available regarding outdoor security systems, by Douglas A. Knall, President PMS Security Systems.

1995 - International Security Conference and Exposition of state-of-the-art security products and practices, Anaheim, California.

1996 - Jones, Skelton & Hochuli, Annual Update of Arizona Law Seminar.

1997 - Jones, Skelton & Hochuli, Annual Update of Arizona Law Seminar regarding Municipal Liability and Risk, Phoenix, Arizona.

1998 - Premises Liability Lecture, American Society for Industrial Security (ASIS), by Chris E. McGoey, CPP.

1998 - Educational seminar regarding executive protection, utility security and parking structures, by Jerry L. Grissom, CPP, retired Director of Security, Salt River Project.

1998 - Educational workshop regarding electronic countermeasures, by Timothy Johnson, Expert and former Office of Special Investigations (OSI) Agent, United States Air Force.

1998 - Workshop regarding Arizona Crime Free Multi-Housing Association, by Officer Tim Zehring, Mesa Police Department.

1998 - Lecture regarding executive protection practices of the United States Government, by Richard E. White, retired Phoenix Police Department, former special agent, Office of Special Investigations (OSI), United States Air Force.

January 1999 - Illuminating Engineers Society of North America (IESNA), Arizona Section Conference on Outdoor Lighting, by Melissa Klein, Clark Engineers.

1999 - Lecture regarding Arizona Crime Statistics, to include: analysis of grids, calls for service, population tract, and crime indexes, by Dale Norris, a retired Phoenix Police Officer, former Chief Negotiator for Phoenix Law Enforcement Association (PLEA), and currently a practicing Arizona lawyer specializing in public sector law enforcement.

1999 - Update regarding Bank Security, Audit, Robbery Procedures and ATM placement by Paul F. Muscenti, President and Chairman, Firststar Metropolitan Bank and Trust, Phoenix, Arizona.

1999 - 45th Annual American Society for Industry Security (ASIS), Seminar and exhibits regarding state-of-the-art security products and practices, Las Vegas, Nevada.

1999 - Lecture regarding Preventing Leasing Employee Assault and Sexual Endangerment (PLEASE) sponsored by the Arizona Multi-Housing Association.

2000 - "School Violence: A Threat Assessment Perspective" Workshop with topics including: Origins and Types of Violent Behavior, Specific Risk Factors of Students, Framework for Assessment of Risk Level, Referral and Assessment Protocol and Legal and Liability Issues, by Stephanie Orr, M.A., School Psychologist and Dean Pickett, J.D., Esquire, Phoenix, Arizona.

2000 - Jones, Skelton & Hochuli, Annual Update of Arizona Law Seminar regarding Municipal Liability; specifically, the 1983 Civil Rights Act, Anatomy of a Trial and Employment Law, Phoenix, Arizona.

2000 - International Conference of Shopping Centers Security Conference (ICSC), Las Vegas, Nevada.

February 2001 - American Society for Industrial Security (ASIS), Lecture on workplace violence, risk and threat assessment by Captain Jay Swart, Capital Police, State of Arizona.

2001 - Jones, Skelton & Hochuli, Annual Update of Arizona Law Seminar.

2002 - Familiarization and demonstration of portable network video CCTV system, digital transmission and storage by Tim Lee, Micro Technology Services.

2002 - Jones, Skelton & Hochuli, Annual Update of Arizona Law Seminar, specifically premises liability presented by Jeffrey T. Bergin, Esquire and Jefferson T. Collins, Esquire.

August 12, 2003 – Lorman Seminar, premises liability in Arizona regarding: 1) trip/slip and fall from the plaintiff's side; 2) trip/slip and the fall from the defense side; 3) premises

liability related to third-party criminal acts; 4) inadequate security claims; and, 5) falling objects and merchandise.

August 10, 2004 – Lorman Seminar, premises liability in Arizona regarding: 1) trip/slip and fall from the plaintiff's side; 2) trip/slip and fall from the defense side; 3) premises liability related to third-party criminal acts; 4) inadequate security claims; and, 5) falling objects and merchandise.

November 1st, 2nd and 3rd, 2004 – International Society of Crime Prevention Practitioners, three days training and testing to include:

Section I: Introduction to Crime Prevention

History – Concept to Crime Prevention

Three Lines of Defense

Section II: Core Subjects

Armed Robbery

Check Fraud

Child Safety

Credit Card Fraud

CPTED

Crimes against the Elderly

Domestic Violence

Identity Theft

Lighting for Security

Neighborhood Watch & Homeland Security

Public Speaking

Security Surveys

Sexual Assault

Section III: Elective Subjects

Auto Theft (Car Jackings)

Con Games (Mail and Telemarketing Fraud)

Construction Site

Crime Analysis

Gang Awareness

Internet Safety

Multi-Housing

Operation Identification

Personal Safety

Rural Crime Prevention

School Safety – Emergency Preparedness Plan

Shoplifting & Internal Theft

Volunteers

Section IV: Resources

Alarm Systems

Dealing with the Media
 Locks
 Managing Conflict (Safe Workplace)
 Selling Crime Prevention
 Sexual Assault (Interview)
 Sexual Assault (Sub-types)

September 1, 2005 - Reviewed proposed draft of the NFPA 730 2006 ANSI standards for premises security, all chapters.

October 1, 2005 - Reviewed the NFPA 730 Guide for Premises Security 2006 edition, all chapters.

March 21, 2007 – Maricopa County Sheriff's Office Advisory Posse meeting to include a demonstration by SWAT team/K-9, jail response team, and lake patrol divers, general discussion of law enforcement practices, and in particular, immigration enforcement with Sheriff Joe Arpaio.

October 18, 2007 – Maricopa County Sheriff's Office Advisory Posse meeting - nominated and elected to the Advisory Posse Board of Directors, and appointed Chief of Operations for the years 2007 and 2008. The meeting included a general discussion with the sheriff, election of Board of Directors, status of the Advisory Posse memorial fund.

January – February 29, 2008 – Reviewed all material changes to various chapters of the ASIS Protection of Assets Manual regarding the private sector security industry.

March – April 2008 – Reviewed all ASIS standards and guidelines to include: 1) Business Continuity Guideline; 2) Chief Security Officer Standard; 3) Facilities Physical Security Measures Guideline; 4) Facilities Physical Security Management Standard; 5) General Security Risk Assessment Guideline; 6) Information Asset Protection Guideline; 7) Organizational Resilience: Security, Preparedness and Continuity, Management Systems – Requirements with Guidance for Use Standard; 8) Pre-employment Background Screening Guideline; 9) Private Security Officer Selection and Training Guideline; 10) Threat Advisory System Response Guideline; and, 11) Workplace Prevention and Response Guideline.

March 10, 2008 – Maricopa County Sheriff's Office Advisory Posse meeting. General discussions with Sheriff Joe Arpaio, in particular, immigration laws and enforcement, which was followed by a tactical shooting demonstration at the Scottsdale Gun Club.

August 5, 2008 – ASIS International Webinars, CPTED Outside the Box: Creative Combinations of Environmental and Physical Security that Reduce the Cost of Preventing Crime.

October 15, 2008 – Maricopa County Sheriff's Office Advisory Posse meeting. The board consulted with management representatives from the sheriff's office regarding a request and justification of funds for: 1) enhanced specialized physical training for the SWAT team; 2)

repairs for the shooting simulator; and, 3) replacement uniforms for the detail assigned to special events. All expenditures were approved. The board subsequently approved a memorial fund payout to a fallen Phoenix Police Officer.

January 1, 2008 – Reviewed the NFPA 730 Guide for Premises Security 2008 edition, all chapters.

April 8, 2009 – Maricopa County Sheriff's Office Advisory Posse meeting. General discussions and approval of board decisions and status of memorial fund.

October 20, 2009 – Maricopa County Sheriff's Office Advisory Posse meeting. Election of officers, review memorial fund payout policy for injured or fallen officers, tactical demonstration by the sheriff's office special detention recovery team regarding techniques utilized in the apprehension of escaped inmates. General discussion with Sheriff Joe Arpaio.

October 13, 2010 – Maricopa County Sheriff's Office Advisory Posse meeting. Election of officers and status of memorial fund. Discussion with Sheriff Arpaio regarding crime in Maricopa County, and demonstration by the airborne search and rescue posse members.

January 10, 2011 – Reviewed the NFPA 730 Guide for Premises Security 2011 edition, all chapters.

April 13, 2011 – Maricopa County Sheriff's Office Advisory Posse meeting, which included a tour of the Tent City incarceration facility.

July 10, 2011 – Seminar on premises security presented by the AAJ in New York, New York, regarding: 1) How to evaluate premises security cases; 2) Effective use of an expert in security cases; and, 3) Using a trial consultant in security cases by John Elliott Leighton, Esquire and Charlotte A. Morris, Jury Consultant.

September 28, 2011 - Maricopa County Sheriff's Office Advisory Posse meeting. Election of officers, review memorial fund and general discussion with Sheriff Joe Arpaio.

October 1, 2011 – Purchased and reviewed Litigating Premises Security Cases, Volumes 1 and 2 by John E. Leighton, Esquire.

June 1, 2012 – Review of revised Protection of Assets publications to include: 1) information security; 2) crisis management; 3) applications; 4) security officer operations; and, 5) investigations.

March 2013 – Maricopa County Sheriff's Office Advisory Meeting. Consultation with executive management regarding funding issues for families of fallen officers.

Lecture Engagements

Guest speaker of the American Society for Industrial Security (ASIS), Orlando, Florida.

"Legal Aspects of Security Liability," 1986.

Guest speaker with Burns International and Phoenix Holdings, Inc. regarding: premises liability, corporate and residential security, response to dangerous or life threatening situations, and other related areas. 1985 through 1995.

Guest speaker of Legal Assistants of Metropolitan Phoenix (L.A.M.P), Phoenix, Arizona regarding: premises liability, negligent hiring, employment, supervision, and background investigations. 3-95.

Guest speaker at Westwood High School, Mesa, Arizona regarding false arrest and use of excessive force. 4-95.

Guest speaker as a premises liability expert for the law firm of Jones, Skelton & Hochuli, Annual Update of Arizona Law. My lecture focused on premises liability and security practices, Phoenix, Arizona. 5-96.

I provided a three-credit student business internship approved by the College of Georgetown, Georgetown, Kentucky, to include risk analysis and premises liability. 5-99.

Guest lecturer, National Association of Legal Investigators, mid-winter conference. My lecture focused on premises liability and investigation related to third-party criminal perpetrators. Other speakers included Janet Napolitano, former United States Attorney for Arizona, Grant Woods, former Arizona Attorney General, and William J. Flynn, Forensic Document Examiner. 1-01.

Lecturer for ILX International Resorts on premises liability related to third-party criminal acts. The lecture and consultation was presented to ILX resort managers at the annual 2003 management conference in Sedona, Arizona. ILX management representatives included: The Los Abrigados Resort, Los Abrigados Lodge, The Inn at Los Abrigados, and The Bell Rock Inn and Suites which are all located in Sedona, Arizona; Kohl's Ranch and Lodge located near Payson, Arizona; The Historic Craggs Lodge at the Golden Eagle Resort, Estes Park, Colorado; the Varsity Clubs of America, South Bend, Indiana and Tucson, Arizona chapters; and an international resort in San Carlos, Mexico – Sea of Cortez. 2-03.

Lorman faculty instructor on premises liability in Arizona, specifically, liability related to third-party criminal perpetrators. Continuing Legal Education (CLE) credits were presented to attendees. Other faculty instructors included: Sean P. Healy, Esquire, Mack T. Jones, Esquire, Sara J. Powell, Esquire and Benjamin C. Thomas Esquire. 8-03.

Lecturer for ILX International Resorts on premises liability related to third-party criminal acts. The lecture and consultation was presented to ILX resort managers at the annual 2004 management conference in Sedona, Arizona. ILX management representatives included: The Los Abrigados Resort, Los Abrigados Lodge, The Inn at Los Abrigados, and The Bell Rock Inn and Suites which are all located in Sedona, Arizona; Kohl's Ranch and Lodge located near Payson, Arizona; The Historic Craggs Lodge at the Golden Eagle Resort, Estes Park, Colorado;

the Varsity Clubs of America, South Bend, Indiana and Tucson, Arizona chapters; and an international resort in San Carlos, Mexico – Sea of Cortez. 2-04.

Lorman faculty instructor on premises liability in Arizona, specifically, liability related to third-party criminal perpetrators. Continuing Legal Education (CLE) credits were presented to attendees. Other faculty instructors included: Mack T. Jones, Esquire, Sara J. Powell, Esquire and Johnny J. Sorenson, Esquire. 8-10-04.

I consulted with Eagle's Eyre III Homeowners' Association and advised its members on basic and advanced crime prevention measures to include generally accepted Crime Prevention Through Environmental Design (CPTED) principles and practices to prevent burglaries. 10-8-07.

Lecturer at the American Association of Justice (AAJ) annual legal convention in New York, New York. The association is the world's largest trial bar for attorneys. My lecture included "Using an Expert in Security Cases: Why, When and How" and a discussion of the national industry standards of care. Attorneys were awarded continuing legal education credits for attendance. 7-10-11.

Media Interviews

2004, interview by the Fox Network, Phoenix, as an expert in transit stop security.

2004, interview by Channel 4, Tucson, as an expert in university multi-level parking garage security.

2005, interview by the Fox Network, Phoenix, as an expert in parking area security.

December 31, 2008, I was interviewed by the Baltimore Sun as an expert in bank security. The article was published under the caption "Bank Holdup Trend: Kidnapping Manager's Family".

January 6, 2009, I was interviewed by NBC affiliate, Channel 12, as an expert in courthouse security. The interview aired on January 6, 2009 during the 10:00 p.m. news as a feature story regarding the trial of Dale Hausner, the alleged Phoenix serial shooter and killer who was charged with 87 crimes, including 8 homicides, several drive-by shootings, attempted murder, and aggravated assault.

December 2009, interview by Fox 10 News, Phoenix to air on December 19, 2009 as an expert in shoplifting, the effect and annual cost to the retail industry, compliance with the merchant's statute, and security measures to deter, detect and/or prevent shoplifting by Sandra Kotzambasis.

August 23, 2012, interview by Michael Mayko, Reporter for the CT Post, a Hearst Publication, (Connecticut) regarding a threat to Producer Harvey Weinstein (and his relatives) who hosted a \$35,800.00 per plate fundraiser at his beachside residence for President Obama. I was interviewed regarding, "So did that, along with the money demand and the threat on Weinstein's relatives, persuade Secret Service to go beyond normal security arrangements?"

January 2013, interview by Barbara Villa of Arizona News Radio regarding workplace violence.

May 26, 2014, interview by Linda Williams of Fox 10 News. How to safely travel if at all to Nogales, Mexico after the U.S. Government issued a travel warning.

Faculty Membership

I am a faculty member of Lorman Education Services located in Eau Claire, Wisconsin. Lorman conducts Legal Education Seminars throughout the United States. I am recognized by Lorman as a premises liability expert regarding third-party criminal perpetrators. I present seminars to attorneys, risk managers, real estate insurance agents, and others on premises liability related to third-party criminal acts.

Attorneys may qualify for up to six hours of Continuing Legal Education (CLE) credits which may be counted towards their state bar requirements. This seminar has also been approved by the Arizona Department of Real Estate and the Arizona Department of Insurance for seven hours of continuing education.

Special Clearances

United States Secret Clearance - Department of Defense (Inactive)

Arizona State Department of Banking (Inactive)

Arizona Department of Liquor Licenses & Control (Inactive)

Maricopa County Sheriff's Office Background Investigation for a sworn posse member

Licenses and Permits

State of Arizona Concealed Weapons Permit Number 28929249 issued August 11, 1994 - sixteen hours of training, four hours re-certified training on August 11, 1998, eight hours re-certification on December 7, 2002. My Concealed Weapons Permit was reissued on September 15, 2006 and is current through September 15, 2016. The firm requires qualifying practice quarterly.

State of Arizona Private Investigator's license number 884026 originally issued February 20, 1974, license number 10051, which was the fifty-first license issued by the state. Current Arizona license number 1537164. Tatalovich & Associates Incorporated license number 1003690.

Former principal or qualifying party for security and/or investigation licenses where applicable to include:

- a. Arizona
- b. California
- c. Colorado

- d. New Mexico
- e. Oregon
- f. Texas
- g. Utah
- h. Washington State
- i. Wyoming

Jurisdictions where I have Given Testimony as an Expert Witness in Premises Liability and/or Negligence-Related Issues of Private and/or Public Sector Security

2nd Judicial District Court, State of Nevada, Washoe County

229th Judicial District Court, State of Texas, Jim Hogg County

Arizona Industrial Commission

Circuit Court of the First Circuit, State of Hawai'i

Circuit Court of the 8th Judicial Circuit, Alachua County, Florida

Circuit Court of the 9th Judicial Circuit, Orange County, Florida

Circuit Court of the 11th Judicial Circuit, Miami-Dade County, Florida, General Jurisdiction Division

Circuit Court of the 15th Judicial Circuit in and for Palm Beach County, Florida

Circuit Court of the 16th Judicial Circuit, Monroe County, Florida Civil Division

Circuit Court of the 18th Judicial Circuit, Brevard County, Florida

Circuit Court of Pulaski County, Arkansas, Third Division

Circuit Court of Shelby County, Tennessee for the Thirtieth Judicial District at Memphis

Circuit Court of the Twentieth Judicial Circuit in and for Lee County, Florida, General Jurisdiction Division

Circuit Court of Jackson County, Missouri, at Kansas City

Court of Common Pleas Berks County, Pennsylvania

District Court of the Navajo Nation, Judicial District of Chinle

District Court, Clark County, Nevada

District Court of the Second Judicial District, County of Nez Perce, State of Idaho

First Judicial District Court, County of Santa Fe, State of New Mexico

Iowa District Court, Boone County, State of Iowa

Maricopa County Superior Court, Arizona

Pima County Superior Court, Arizona

Santa Cruz County Superior Court, Arizona

Superior Court, Judicial District of Norwalk/Stamford at Stamford, Connecticut

United States District Court, 9th Circuit, Arizona

United States District Court, Southern District of Florida

United States District Court for the Western District of Tennessee, Western Division

United States District Court for the Eastern District of Texas, Marshall Division

United States District Court, Western District of Kentucky at Paducah

United States District Court for the District of Maryland (Southern Division)

United States District Court for the Western District of Michigan

United States District Court for the Middle District of Tennessee at Nashville³

Testimony at a Minimum for Ten Prior Years Pursuant to the Federal Rules of Civil Procedure and/or Other State Rules of Civil Procedure

- 1) *Foxfire Apts. adv. Hair, La Resa*, 2nd Judicial District Court, County of Washoe, State of Nevada, November 21, 1995.
- 2) *Bartoletti vs. Albertson's Inc., a Delaware corporation authorized to transact business in Arizona; Reliant Protective Services, Inc., an Arizona corporation; and Does I through X, inclusive*, Maricopa County Superior Court, State of Arizona, July 10, 1998.
- 3) *Richard Earl Downing, a married man; Savello Vera Downing, his wife vs. Ornda Healthcorp of Phoenix, Inc., a California corporation*, Maricopa County Superior Court, State of Arizona, January 14, 1999.

³ The federal rules in this jurisdiction did not allow expert depositions; rather, written opinions were required and submitted. The defense did not file a Daubert challenge or any motions in limine, September 10, 2010.

- 4) *Burnett v. Executive Tower Condominiums*, Maricopa County Superior Court, State of Arizona.
- 5) *Dacalor v. Johnston, Maynard, Grant & Parker*, Maricopa County Superior Court, State of Arizona.
- 6) *Galvan v. Leeco Investment Company*, Maricopa County Superior Court, State of Arizona.
- 7) *Doyle v. Famous Sam's*, Santa Cruz County Superior Court, State of Arizona.
- 8) *McCullough v. Mid-America Apartment Communities*, United States District Court for the Western District of Tennessee, Western Division, October 4, 2002.
- 9) *Mohammed v. Bobby McGee's*, Maricopa County Superior Court, State of Arizona, October 10, 2002.
- 10) *Mitsch/Pazdernik v. Cameron Creek*, Maricopa County Superior Court, State of Arizona, June 5, 2003 and a trial September 10, 2003.
- 11) *Price v. CityPlace PV, Inc., et al.*, Maricopa County Superior Court, State of Arizona, June 19, 2003 and a trial September 30, 2003.
- 12) *Robinson v. Boone Speedways, Inc.*, District Court for Boone County, Iowa, August 8, 2003.
- 13) *Michalski v. We3, et al.*, Maricopa County Superior Court, State of Arizona, September 12, 2003, a mediation.
- 14) *Stokes v. Circle K*, Maricopa County Superior Court, State of Arizona, July 16, 2004.
- 15) *Heintz v. State of Arizona*, Pima County Superior Court, State of Arizona, July 19, 2004 and a trial October 14th, 15, and 19th, 2004.
- 16) *Wargo v. Maricopa County*, Industrial Commission of Arizona, July 23, 2004 and August 13, 2004.
- 17) *Moore v. Oak Park Apartments* United States District Court for the Western District of Tennessee, Western Division, July 28, 2004.
- 18) *Medina/Gonzales v. Ranch Rescue Texas, et al.*, District Court, 229th Judicial District, Jim Hogg County, Texas, September 13, 2004.
- 19) *Lois Giesel v. UpChurch Management Company, Inc., et al.*, United States District Court, Southern District of Florida, U.S. Magistrate Brown, November 9, 2004.

- 20) *Alaeric Tevon Birge, a minor, by mother and next friend, Pheniqueski S. Mickens v. Dollar General Corporation, Dolgencorp, Inc., Tommy Lee Turley, Jeremy Garrett, Corey Richmond*, United States District Court for the Western District of Tennessee, September 8, 2005.
- 21) *Tiana Marie Grafitti-Valenzuela, by and through her parent and legal guardian Marie Grafitti v. City of Phoenix, a political subdivision of the State of Arizona*, Maricopa County Superior Court, State of Arizona, September 22, 2005.
- 22) *Kron v. Apartment Investment and Management Co., et al.*, Maricopa County Superior Court, State of Arizona, October 5, 2005.
- 23) *Anderson v. Schnuck Markets*, United States District Court, Western District, Tennessee Western Division, December 8, 2005.
- 24) *Filip Petrovic v. CBNC, Inc., et al.*, Maricopa County Superior Court, State of Arizona, December 16, 2005, arbitration.
- 25) *Lever v. Pavilion Partners, L.L.C., et al.*, Maricopa County Superior Court, State of Arizona, February 24, 2006 and April 13, 2006.
- 26) *Sheri Kay Dunlap, individually and as Administratrix of the Estate of Megan Leann Holden, deceased, and James Vincent Holden v. Wal-Mart Stores, Inc., and The Wackenhut Corporation*, United States District Court for the Eastern District of Texas, Marshall Division, July 20, 2006.
- 27) *The Estate of Crystal Ledesma by and through its Executrix, Maria L. Cogburn, Keoni Lee Ledesma-Beinto, by and through his Guardian ad Litem, Maria L. Cogburn, John Benito, and Michelle Piatt vs. Miguel Cano, a convicted felon, McDonald's Stanollie, McDonald's Restaurants of Nevada, Inc., McDonald's Corporation, Inc. a Delaware Corporation, Thomas M. and Linda Arlt, and Does I through XX, inclusive; and Roe Corporations, I through II, inclusive*, District Court, Clark County, Nevada, August 25, 2006.
- 28) *Teresa Day Chance v. AMLI/BMPT Breckenridge Partnership, AMLI Residential Properties, L.P., AMLI Residential Properties Trust & AMLI Management Company*, in the United States District Court for the Eastern District of Texas, Marshall Division, September 14, 2006.
- 29) *John Michael Son and Kathy Son the parents of Heather Suzanne Son, deceased, and as personal representatives of the Estate of Heather Suzanne Son vs. Realty Partners, Ltd., a Nevada Limited Partnership; Realty Partners Corporation, a Nevada Corporation; Property Management and Development Corporation, a Nevada corporation; Leo R. Frey and Jane Doe Frey, husband and wife; John Does I through X, inclusive*, District Court, Clark County, Nevada, September 22, 2006.

- 30) Elaine Friedman, as next of kin for Robert Friedman, deceased v. Allright Corporation, a Delaware corporation, composed of Central Parking System of Memphis, Inc., a Tennessee Corporation, Central Parking of Tennessee, Inc., a Tennessee Corporation, Myron Zimmerman, Trustee for the Zimmerman Revocable Trust and Freeman Real Estate Company, Inc., a Tennessee Corporation, Circuit Court of Shelby County, Tennessee for the Thirtieth Judicial District of Memphis, October 18, 2006.
- 31) Katherine Gile Smith, a single woman v. Pillar Communities, L.L.C., an Arizona limited liability company; Pillar at Desert View, L.L.C., a Washington limited liability company; Does I through X; Black Corporations I-X, Maricopa County Superior Court, State of Arizona, December 5, 2006.
- 32) E. E. v. Tannex Development Corp. d/b/a Hilton Resort and Marina, a Florida for profit corporation and Mark Jason Holmes, individually, Circuit Court of the 16th Judicial Circuit, Monroe County, Florida Civil Division, May 25, 2007.
- 33) Todd and Janna Childress, Individually and as Administrator of the Estate of Michael Childress, deceased v. The Cafaro Company, an Ohio Corporation, and/or d/b/a Kentucky Oaks Mall, Co., an Ohio Corporation, and National Security Consultants, Inc., an Ohio Corporation, United States District Court for the Western District of Kentucky at Paducah, July 27, 2007.
- 34) Larry Richard Finley and Sue Ellen Finley v. Kroger Company and Union Realty Company, G.P. and Argenbright Security, Inc., in the Circuit Court of Shelby County, Tennessee for the Thirtieth Judicial District at Memphis, August 9, 2007, a deposition and December 10, 2007, a trial.
- 35) J.J. v. Hyatt Vacation Management Corp., d/b/a Hyatt Vacation Club, a Florida for profit corporation and Etta Elizabeth Bernhard, individual, d/b/a Majestic Security & Investigations and Mark Jason Holmes, individually, in the Circuit Court of the 16th Judicial Circuit, in and for Monroe County, Florida, August 23, 2007 and September 20, 2007.
- 36) Kelli L. Riding and Kent L. Riding v. McDonald's Corporation, McDonald's Restaurants of Tennessee, Inc., Broadmoor Investment Corp., and General Motors, in the Circuit Court of Shelby County, Tennessee for the Thirtieth Judicial District at Memphis, January 7, 2008.
- 37) Simmons v. Wal-Mart, in the Circuit Court, Eighth Judicial Circuit in and for Alachua County, Florida, March 13, 2008.
- 38) Ronald Crampton v. CBC Financial Corporation, a Nevada Corporation d/b/a Moulin Rouge Hotel Apartments and Desert Breeze Apartments, Inc.; Barton Maybie, Does I through X and Roe Corporations I through XX, inclusive, District Court, Clark County, Nevada, March 17, 2008, a trial.

- 39) *Tommie Smith v. Target Corporation, Wackenhut Services, Incorporated, and Dayton-Hudson Corporation*, in the Circuit Court of Shelby County, Tennessee for the Thirtieth Judicial District at Memphis, April 11, 2008.
- 40) *The Estate of Lidia Giangrandi, by and through Lili Carissa Giangrandi, as Personal Representative of the Estate vs. 50 State Security Service, Inc., Loch Lomond Homeowners Association, Inc., Town of Miami Lakes and Miami-Dade County, Florida*, in the Circuit Court of the 11th Judicial Circuit in and for Miami-Dade County, Florida, General Jurisdiction Division, April 24, 2008.
- 41) *Henry Lynn Vance by and through his Guardian, Wanda Susan Vance, and Wanda Susan Vance, individually vs. Eastview Terrace Limited Partnership; Monarch Properties, Inc. d/b/a Westmark Management Company; Cynthia Brown; Arthur Dean; Ron McCarty; GCL Assets, III, LLC; GCL Holdings, LLC; Eastview-2004, LLC; American Community Developers; and John Does 1 through 10*, in the Circuit Court of Pulaski County, Arkansas, Third Division, July 10, 2008.
- 42) *Simmons v. Wal-Mart*, in the Circuit Court, Eighth Judicial Circuit, in and for Alachua County, Florida, August 6, 2008, a trial.
- 43) *Henry Lynn Vance by and through his Guardian, Wanda Susan Vance, and Wanda Susan Vance, individually vs. Eastview Terrace Limited Partnership; Monarch Properties, Inc. d/b/a Westmark Management Company; Cynthia Brown; Arthur Dean; Ron McCarty; GCL Assets, III, LLC; GCL Holdings, LLC; Eastview-2004, LLC; American Community Developers; and John Does 1 through 10*, in the Circuit Court of Pulaski County, Arkansas, Third Division, August 22, 2008.
- 44) *Patricia Krause and Steven Krause, her husband vs. Wal-Mart Stores, Inc. a foreign corporation, Wal-Mart Stores East, Inc., a foreign limited partnership, and National Security and Intelligence Agency, LLC a Florida limited liability corporation*, in the Circuit Court of the Twentieth Judicial Circuit in and for Lee County, Florida, General Jurisdiction Division, September 11, 2008.
- 45) *Jayant Patel and Rahki Patel v. Kuber-Patel Properties, LLC, an Arizona Limited Liability Corporation, d/b/a Sleep Inn; Alpha Corporations 1-10; Beta Entities 1-10; John/Jane Does 1-10*, Maricopa County Superior Court, State of Arizona, November 18, 2008.
- 46) *Bruce Northrup and Roberta Saltzberg, a married couple vs. Accor North America, Inc., a foreign corporation; Glasjar Property, LLC, a foreign limited liability company; Michelle Rene Smith and John Doe Smith, a married couple*, Maricopa County Superior Court, State of Arizona, January 28, 2009.
- 47) *Paul D. Plass v. Danver's, LLC*, in the Circuit Court of Shelby County, Tennessee for the Thirtieth Judicial District at Memphis, March 11, 2009.

- 48) Beate Thelen and Jeorg Knoppke, vs. Davis Brothers Incorporated a/k/a Davis Brothers of Georgia, Incorporated d/b/a Howard Johnson Inn International Drive, in the Circuit Court of the Ninth Judicial Circuit, Orange County, Florida, June 22, 2009.
- 49) Joseph Antonio, et al., vs. Security Services of America, LLC., et al., in the United States District Court for the District of Maryland (Southern Division), September 30, 2009.
- 50) Patrick Scott and Joy Scott, husband and wife vs. The Scottsdale Plaza Resort, L.L.C., an Arizona Limited Liability Company; and State of Arizona, Maricopa County Superior Court, State of Arizona, December 17, 2009.
- 51) Nicholas Skiadiotis and Angie Skiadiotis vs. MGM Mirage, a Delaware corporation; Bellagio, LLC, a Nevada limited liability company, doing business as Bellagio; Mario Deandre Howard, individually; Roe corporations I through X, inclusive; and Does I through X, inclusive, District Court, Clark County, Nevada, January 20, 2010.
- 52) Jane Doe, Girl Doe, and Boy Doe v. Stamford Marriott Hotel and Spa, HD Realty Associates, LLC, Meyer Jabara Hotels, and Marriott International, Inc., Superior Court, Judicial District of Norwalk/Stamford at Stamford, Connecticut, January 29, 2010.
- 53) Patricia Krause and Steven Krause, her husband vs. Wal-Mart Stores, Inc. a foreign corporation, Wal-Mart Stores East, Inc., a foreign limited partnership, and National Security and Intelligence Agency, LLC a Florida limited liability corporation, in the Circuit Court of the Twentieth Judicial Circuit in and for Lee County, Florida, General Jurisdiction Division, March 19, 2010, a trial.
- 54) Frank Gumina, III, and Ellise Gumina, his wife vs. Morgans Hotel Group Co., a Delaware Corporation, Morgans Hotel Group, LLC, a Delaware Limited Liability Company, Aquiles Rodriguez, Mario Alcantara, Luis Varga, Jhoan Durd and George Calhous, in the Circuit Court in and for the 11th Judicial Circuit, Dade County, Florida, April 16, 2010.
- 55) Lequitta Higgins v. American Management Services, LLC, d/b/a Pinnacle, American Management Services East, LLC, d/b/a Pinnacle, Village Square I, LLC, Cascade Affordable Housing, LLC, CAH/RED Capital Affordable Housing I, LP, Village Square II, LLC, CAH/RED Capital Affordable Housing II, LLC, CAH/RED Capital Affording Housing II, LP, Ambassador Worldwide Protection Agency, Inc. and Raymond Howard, in the Circuit Court of Shelby County, Tennessee for the Thirtieth Judicial District at Memphis, June 23, 2010.
- 56) Shawn D. Williams and Lanora Richard v. Food 4 Less, LLC., Internal Security Protection Specialists, Inc., Joey Ahuna, Does I through X, and Rose I through X, inclusive, District Court, Clark County, Nevada, Mediation Hearing, July 28, 2010
- 57) Olga Jimenez v. RW Eastgate d/b/a Eastgate Apartments, an Arizona limited liability company; Doe Assailants; AMC Apartment Management Consultants, LLC, a Utah

- limited liability company; and Does I through X, inclusive, in the District Court, Clark County, Nevada, August 25, 2010.
- 58) Lancaster v. Imperial Guard Services and American Home Assurance, University Park, Inc., Ferrell Paving, Inc., and John Doe Property Owner, in the Circuit Court of Shelby County, Tennessee, for the Thirtieth Judicial District of Memphis, September 8, 2010.
- 59) Francisco Garcia vs. Brentwood Oaks Apartments, L.P. and its successor in interest, Brentwood General Partnership, Sentinel Real Estate Corporation, Associated Security and Patrol, LLC, and John Does 1-3, in the United States District Court for the Middle District of Tennessee at Nashville. The federal rules in this jurisdiction did not allow expert depositions; rather, written opinions were required and submitted. The defense did not file a Daubert challenge or any motions in limine, September 10, 2010.
- 60) Michael J. Bruce v. Katherine L. Woods, d/b/a Kactus Kate's and John Doe Woods, wife and husband; Donald Glenn Looney and Jane Doe Looney, husband and wife, Maricopa County Superior Court, State of Arizona, October 4, 2010.
- 61) Garfield Johnson vs. Macy's Florida Stores, LLC d/b/a Macy's, and City of Boynton Beach, in the Circuit Court of the 15th Judicial Circuit in and for Palm Beach County, Florida, October 28, 2010.
- 62) John Horrell and Marea Horrell, as Conservators of Olivia Horrell vs. CEC Entertainment, Inc., d/b/a Chuck E. Cheese, United States District Court for the Western District of Michigan, December 10, 2010.
- 63) Deanna Ramirez, Surviving Mother of Daniel Ramirez vs. The Retreat, an Arizona Apartment Complex; Equity Residential Management Co., an Illinois Corporation; John Does I through V, inclusive; Jane Does I through V, inclusive; RED Partnerships I-X; Black Corporations I-X inclusive, Maricopa County Superior Court, State of Arizona, February 18, 2011 and March 15, 2011, both depositions.
- 64) Jamison Hendricks and Jessica Haas vs. Domain on Highland, LLC d/b/a The Stratum on Highland, JPI Management and Security One, Inc., in the Circuit Court of Shelby County, Tennessee for the Thirtieth Judicial District at Memphis, March 10, 2011.
- 65) Jesus Cano and Elena Cano, husband and wife, for themselves and all statutory beneficiaries of Luz Estela Navarro, deceased vs. Southgate Center Devco I, L.L.C., an Arizona Limited Liability Corporation; Southgate Center Devco II, L.L.C., an Arizona Limited Liability Corporation; Eisenberg Company, an Arizona corporation; K Mart Corporation, a foreign corporation; et al., Maricopa County Superior Court, State of Arizona, April 20, 2011.
- 66) Ms. Vanessa Moore vs. Firetree, Ltd., and Mr. Ben T. Rice, In the Court of Common Pleas Berks County, Pennsylvania, a trial June 6, 2011.

- 67) Shawn D. Williams and Lanora Richard v. Food 4 Less, LLC., Internal Security Protection Specialists, Inc., Joey Ahuna, Does I through X, and Rose I through X, inclusive, District Court, Clark County, Nevada, a trial July 1, 2011
- 68) Stephanie Inouye vs. University Of Hawai'i, Michael Kaptik, John Does 1-10; Jane Does 1-10; Doe Corporations 1-10; Doe Partnerships 1-10; Doe Limited Partnerships 1-10; Doe Joint Ventures 1-10; Doe Limited Liability Companies 1-10; and Doe Government Entities 1-10, in the Circuit Court of the First Circuit, State of Hawai'i, July 29, 2011, a trial.
- 69) Kirby G. Ockwell, a single man and Clayton R. Ockwell, a minor vs. Edward N. Jackson a single man; Weber, Inc., an Idaho Corporation dba Alibi/Sports Edition/2 Doors Down; T&R Rental, LLC, an Idaho limited liability company; and John and Jane Does 1 through 50, in the District Court of the Second Judicial District of the State of Idaho, in and for the County of Nez Perce, August 11, 2011.
- 70) The Estate of Lidia Giangrandi, by and through Lili Carissa Giangrandi, as Personal Representative of the Estate vs. 50 State Security Service, Inc., Loch Lomond Homeowners Association, Inc., Town of Miami Lakes and Miami-Dade County, Florida, in the Circuit Court of the 11th Judicial Circuit in and for Miami-Dade County, Florida, General Jurisdiction Division, September 20, 2011, a trial.
- 71) Felicia Holland and Denise M. Holland v. Safeway, Inc., in the Superior Court of the State of Washington for Snohomish County, December 2, 2011.
- 72) Michael McQuade vs. New York Community Bank, a foreign for profit corporation, doing business in Florida as Am Trust Bank, Silverhut Associates, a Florida for profit corporation and MCAVA Real Estate, Inc., in the Circuit Court of the 17th Judicial Circuit in and for Broward County, Florida, December 13, 2011.
- 73) Robert Gonzales, an individual; Nicole L. Raudenbush, an individual vs. The Vons Companies, Inc. dba Vons Super Market, Michigan corporation; Las-Cal Corporation dba Taco Bell, a Nevada corporation; Royal Security, Inc. dba Brownstone Security, a California corporation; Brownstone Security, Inc., a California corporation; Janette D. Nelson, an individual; Nicole Nelson, an individual, Maryland Park Place, LLC, a Nevada limited liability company; Roe Property Management Company I; Roe Security Company I; Doe Security Guard I; Does I through X; and Rose I through X, inclusive, District Court, Clark County, Nevada, February 29, 2012.
- 74) Vanessa D. Boykin vs. Lakhani Commercial Corporation, et al., in the Circuit Court of Jackson County, Missouri, at Kansas City, April 5, 2012.
- 75) Troy Anderson and Paula Anderson, his wife vs. Hilton Hotels Corporation, a foreign corporation, doing business at Embassy Suites Orlando at International Drive and Jamaican Court, also doing business as Hilton Worldwide, Securamerica LLC, a foreign corporation, a/k/a Securamerica LLC, W2007 Equity Inns Realty, LLC, a foreign

- corporation, and Interstate Hotels Resorts, Inc., a Florida Corporation, in the Circuit Court of the Ninth Judicial Circuit, in and for Orange County, Florida, May 3, 2012 and August 17, 2012.
- 76) Kadeem Angus vs. Bow Tie Cinemas, LLC, et al., Superior Court, Judicial District of Stamford/Norwalk at Stamford, July 26, 2012.
 - 77) J.G., individually, and on behalf of Her Minor Daughter, T.G. vs. G4S Secure Solutions USA, Inc., f/k/a and/or d/b/a G4S Wackenhut, individually, and as Successor in Interest to, The Wackenhut Corporation, in the Circuit Court of the 11th Judicial Circuit in and for Miami-Dade County, Florida, August 20, 2012.
 - 78) Wanda Wisniewski vs. Coast Casinos dba Suncoast, Doe Defendants 1 through 10, inclusive, District Court, Clark County, Nevada, September 6th and 7th, 2012, an arbitration.
 - 79) Trenton Barkhurst vs. Dambar & Steakhouse, L.L.C., an Arizona limited liability company; Fork in the Road, Inc., an Arizona corporation; The Kingsmen of Route 66, Inc., an Arizona corporation; Security Intelligence Service, P.L.C., an Arizona professional liability corporation d/b/a State Security Service; Billy Singleton, a single person; Benjamin James Fancher, a single person; Kenneth Tyrell Devore, a single person; John Does I-V; Jane Does VI-X; ABC Corporations XI-XV and XYZ Partnerships XVI-XXII, Maricopa County Superior Court, State of Arizona, September 19, 2012.
 - 80) Mark William Franklin, an individual vs. Jason John Clemett and Dawn M. Clemett, husband and wife; Daniel Blanchard and Jane Doe Blanchard, husband and wife; Jane and John Does I-X; Black and White Partnerships I-X; and ABC Corporations I-X, Maricopa County Superior Court, State of Arizona, November 29, 2012.
 - 81) Brian Coleman and Tina Coleman vs. Pro-Vigil, Inc., John Does I-5, United States District Court for the Western District of Oklahoma, December 20, 2012.
 - 82) Tangela Dixon, as Personal Representative of the Estate of Nathaniel Jones, Jr., on behalf of the Estate and on behalf of the survivors, Tangela Dixon, individually, and Nathaniel Jones, Sr., individually vs. Big League Properties, LLC, a Florida limited liability company, Big League Management, LLC, a Florida limited liability company, and Big League Ventures, LLC, a Florida limited liability company, in the Circuit Court of the 11th Judicial Circuit in and for Miami-Dade County, Florida, February 22, 2013
 - 83) Carlton Grant, Jr. vs. Dade Corners Plaza, Inc., in the Circuit Court of the 11th Judicial Circuit in and for Miami-Dade County, Florida, March 22, 2013.
 - 84) Julie Perez vs. Paul Maes; and Christus St. Vincent Regional Medical Center, First Judicial District Court, County of Santa Fe, State of New Mexico, March 28, 2013, a trial.

- 85) Albert Charles Hamper, a single adult male vs. Royale Lounge, Inc., an Arizona Corporation; John Does I-V; Jane Does I-V; Black Partnerships I-V; and White Corporations I-V, Maricopa County Superior Court, State of Arizona, April 4, 2013.
- 86) Andrew C. Hearne vs. Ernie of Kansas City, LLC, et al., in the Circuit Court of Jackson County at Kansas City, July 23, 2013.
- 87) Shabnam Amiri, an unmarried woman vs. State of Arizona; Black Corporations I-X; John Does I-X, Maricopa County Superior Court, State of Arizona, September 25, 2013.
- 88) Mahogany L. Johnson, individually and as Mother and Natural Guardian of Jacque'ze R. Johnson, Deceased Minor vs. Maruti Somerset Park, LLC d/b/a Somerset Park Apartments, Complex Security Services, Climax Security Services, Memphis Light, Gas & Water Division, Memphis Fire Department, a Division of the City of Memphis, and Sherwin Short, in the Circuit Court of Shelby County, Tennessee for the Thirtieth Judicial District at Memphis, October 9, 2013.
- 89) Ted Theodoropoulos vs. MJW LLC, dba PHX Nightclub; John and Jane Does I-XX; ABC Limited Liability Business Entities I-X; XYZ Partnerships I-XX; Black and White Corporations I-XX, Maricopa County Superior Court, State of Arizona, November 25, 2013, a trial.
- 90) Mike Sherman vs. Hotel St. Francis, LLC, a New Mexico Limited Liability Company, and Heritage Hotel and Resorts, Inc., a New Mexico Corporation, First Judicial District Court, County of Santa Fe, State of New Mexico, April 25, 2014.
- 91) Frank Genna and Donna Genna vs. Captain's Cove Marina of Bridgeport, Inc., et al., Judicial District of Fairfield/Bridgeport at Bridgeport, State of Connecticut Superior Court, July 15, 2014.
- 92) Kimberly McCloud, as Personal Representative of the Estate of Kenneth McCloud, Jr. vs. Choice Hotels International, a foreign profit corporation, Leslie Lurken d/b/a Clarion Hotel, Josh Weber, Misty Beasley, Claden West, Roderick West, Claudia West and Jacksonville Aviation Authority, in the Circuit Court, Fourth Judicial Circuit, in and for Duval County, Florida, September 11, 2014.

State of Tennessee, McClung Supreme Court Decision

I was the substitute security expert engaged on the McClung Case that changed premises liability laws in the State of Tennessee, United States District Court for the Western District of Tennessee, Western Division, Roger L. McClung v. Delta Square Group, Inc., and Wal-Mart by Bruce S. Kramer, Esquire of Borod & Kramer, P.C. of Memphis, Tennessee. Mr. Kramer changed Tennessee law regarding premises liability related to third-party criminal acts, which is now commonly referred to in Tennessee as the McClung Law.

Education, Designations and Certifications

From the fall of 1966 through 1968, I attended Glendale Community College, Glendale, Arizona, Business Administration, and Police Science. I earned 68 college credits. My focus was police science and criminal investigation.

During 1979, I also attended Arizona State University, Center for Executive Development, regarding management principles and practices.

1969-1971 - Legal internships with two prominent Phoenix, Arizona law firms in civil and criminal litigation, specifically including premises liability.

March 10, 2000 - Certified Security Executive (CSE). Certified by the Security Management Institute, Charlotte, North Carolina.

October 20, 2005 - International Crime Prevention Specialist (ICPS) tested and designated by the internationally and nationally recognized International Society of Crime Prevention Practitioners, an offshoot of the International Crime Prevention Specialist (ICPS) designated by the International Society of Crime Prevention Practitioners (ISCPP).

1970 – 2013 Continuing education seminars, lecturers, webinars, and industry publications to include: security measures and devices, security tests, studies, industry authorities and publications regarding security, premises liability, standards of care, vulnerability and risk assessment to include the standards, guidelines, practices and recommendations of the private sector security industries. I have completed approximately 2,000 hours of continuing education during my 40-plus year career.

Revised: September 30, 2014

EXHIBIT 4

LAS VEGAS METROPOLITAN POLICE DEPARTMENT
VOLUNTARY STATEMENT
PAGE 1

CONFIDENTIAL

EVENT #:080516-1021

SPECIFIC CRIME: SEXUAL ASSAULT; OPEN AND GROSS LEWDNESS

DATE OCCURRED:

TIME OCCURRED:

LOCATION OF OCCURRENCE:

CITY OF LAS VEGAS

CLARK COUNTY

NAME OF PERSON GIVING STATEMENT: MURRAY, CHRISTINE

DOB:		SOCIAL SECURITY #:	
RACE:		SEX:	Female
HEIGHT:		WEIGHT:	
HAIR:		EYES:	
WORK SCHEDULE:		DAYS OFF:	
HOME ADDRESS:	3350 N. Durango #1120 Las Vegas, Nevada 89149	HOME PHONE:	734-624-2755
WORK ADDRESS:		WORK PHONE:	

BEST PLACE TO CONTACT:

BEST TIME TO CONTACT:

The following is the transcription of a tape-recorded interview conducted by Detective M. Saunders, P# 6076, LVMPD Sexual Assault Detail, on 06/13/2008 at 0635 hours.

Q. Good morning, Operator, this is Detective M. Saunders, S-A-U-N-D-E-R-S. A conducting one taped interview reference event number 080516-1021. This interviews taking place at 6900 North Durango Las Vegas, Nevada 89149.

LAS VEGAS METROPOLITAN POLICE DEPARTMENT
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EVENT #:080516-1021

STATEMENT OF: MURRAY, CHRISTINE

Centennial Hills Hospital, sixth floor, um, nurse, nurses supervisors room. A it is approximately 0635 hours on the thirteenth of June, 2008. Present for this interview um, last name of Murray, M-U-R-R-A-Y, first name of Christine, C-H-R-I-S-T-I-N-E. Date of birth of 04-0 - or, 04/20/1950, a address of 3350 North Durango Drive #1, 120 Las Vegas, Nevada 89129. She has a contact phone number of 734- a 624-2755. Is that information true and correct?

A. Um-hum, yes it is.

Q. Okay. And is it alright if I call you Christine or -

A. Chris is fine.

Q. Chris is fine, okay.

A. Um-hum.

Q. Um, Chris, I=m here to speak to you about an ongoing investigation that I have um, a reference a CNA that a was arrested out of this hospital. Are, are you familiar with what I=m talking about?

A. Yes, I am.

Q. Okay. And do you know the name of that individual?

A. Yes.

Q. That CNA?

A. Steve Farmers.

LVMPD0168

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EVENT #:080516-1021

STATEMENT OF: MURRAY, CHRISTINE

- Q. Okay. And I wanna direct your attention back to the sixteenth of May, a 2008.
Were you working that night?
- A. Yes, I was.
- Q. In which capacity were you working?
- A. Registered nurse.
- Q. Okay.
- A. On the seventh floor.
- Q. On the seventh floor. And that, that particular morning did you have a patient brought up from the ER by the name of Roxanne Cagnina (phonetic)?
- A. Yes, I did.
- Q. Okay, and do you remember, by chance, what room number she went into?
- A. I believe it was 727.
- Q. 727, okay, it could of been 725?
- A. Yes.
- Q. Okay, 725, okay. Um, when she was brought up, um, can you, can you explain to me the, the details um, of the first time that you had contact with her. As, as best you remember.
- A. With her?
- Q. Well, yes, we=ll, we=ll get back to Mr. Farmer.
- A. Okay.

LVMPD0169

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**LAS VEGAS METROPOLITAN POLICE DEPARTMENT
VOLUNTARY STATEMENT**

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EVENT #:080516-1021

STATEMENT OF: MURRAY, CHRISTINE

Q. But we just, like what time was she brought up to the floor, that you remember?

A. She came up to the floor about four-twenty. The first that I saw her was when myself and the CNA, Corrine, walked in. We had been told that she had, had seizures. So we wanted to pad the bed rails. We found um, Mr. Farmer, walking her into the bathroom. We said, we would take it from there and he left immediately. And we walked her back, back to the bedroom. Back a, to the bed, after.

Q. Okay. Did she say anything to you after Mr. Farmer left? Did she appear distraught, distressed, anything?

A. She seemed confused. A when somebody has a lot of a drugs in them -

Q. Um-hum.

A. -a like that. Um, she did say, when we were walking her back, from the bathroom to the bed, are, is it all girls here? And we said, yes. And she said, oh good, I wanna pull my gown this way so when I sit down, I don=t choke myself. Which a lot of people do.

Q. Okay.

A. And so we said, oh yes, it=s all girls here, you go right ahead. And she did and then she got into bed.

LVMPD0170

AA0250

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STATEMENT OF: **MURRAY, CHRISTINE**

- Q. Okay. Um, when she was first brought, you say she got in, in about four-twenty. Was that the first time you physically saw her or did you see him like coming off the elevator with her at four-twenty?
- A. No, that was the first time I saw her, in her room, was the first time I saw her.
- Q. Okay. Saw her, okay. And how did you know that she was a put into her room? She was brought-
- A. Because - well, I was standing in another patients room, speaking to the family members.
- Q. Um-hum.
- A. Mr. Farmer came into the other patients room and told me that the patient he had just brought up and put in a room twenty-five was um, on a lot of drugs, pain killers and such and that she was kinda loopy and that she wouldn=t notice if I didn=t come right over there to see her.
- Q. Okay. And is that common? Has he, has he ever -
- A. I -
- Q. - done something like that before?
- A. I had never had him do that before.
- Q. Okay, and how long would you say, I know you didn=t work directly with him, but how often, a how long have Mr. Farmer - had you seen Mr. Farmer at the hospital?

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STATEMENT OF: MURRAY, CHRISTINE

A. I=d say for at least two months on and off, you know, cause we work different days but I=d seen him around quite a bit.

Q. Right. Okay, so he=d been there awhile?

A. Yea.

Q. And that was the first time he ever made a comment to you like that about a -

A. Yes.

Q. -a patient.

A. Yes.

Q. Okay, did you find that odd?

A. I found that strange, first of all, cause their not supposed to just walk into another patients room. You=re not supposed to walk into a patients room unless you have business in there. And he didn=t have business in there, he could of told that to my charge nurse.

Q. Okay. Um, at um, okay and he told you _____ that, that she=s ready, ready to go be seen and then when you went in, um, in the room that=s when you found him about to take her to the bathroom and you guys -

A. He actually was walking her into the bathroom.

Q. Okay. Was she exposed in any way?

A. No.

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**LAS VEGAS METROPOLITAN POLICE DEPARTMENT
VOLUNTARY STATEMENT
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EVENT #:080516-1021

STATEMENT OF: MURRAY, CHRISTINE

- Q. Okay. Um, and that was at, you said about four-twenty.
- A. Um-hum.
- Q. Okay.
- A. Yes.
- Q. And what time, do you, do you recall what time that you annotated on your notes, for arrival?
- A. A around a quarter to five.
- Q. Okay. And is, would this um, I=m gonna show you this paper right here and it=s a - it=s a, looks like nurses notes.
- A. Um-hum.
- Q. It=s um, given to me by Centennial Hills. It says, 0445 a, patient to floor on stretcher. A vi., _____.
- A. Vital signs stable.
- Q. Okay. Heavily sedated, needed assistance to walk to bathroom, stated my headache is still not gone.
- A. Um-hum.
- Q. Okay. Alright. Now, did she disclose or she say anything to you at that time about anything that a, a might of happened to her or occurred?
- A. No.
- Q. And did she seem distressed or scared?

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STATEMENT OF: MURRAY, CHRISTINE

- A. No, she seemed, the thing that she seemed the most was distress cause her headache. She had come in with a headache, she=d had it for a couple days. And that was the one thing, she said it doesn=t seem to matter what their, they=re giving me, it=s not getting rid of this headache.
- Q. Okay. Alright. So, um, you had made a comment to me earlier that a - when you were _____ the gur..., the gurney was outside the door .
- A. Um-hum.
- Q. Can you explain that to me? What, what was the -
- A. When he came to me and I finished talking to the patients.
- Q. Um-hum.
- A. The other patients and a it took me, I=d say, three to five minutes to finish up there and walk around where her room was.
- Q. Um-hum.
- A. It was on the other side. And I noticed his gurney was still there, which surprised me because our transport people usually bring the person up. Get them into the bed as quickly as possible, and then get back downstairs because we don=t have a lot of transporters and we, their usually called on their walkie talkies, like come on down. We=ve got somebody else to transport. So you usually don=t see a gurney and a trans..., and a transporter hanging around.

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STATEMENT OF: MURRAY, CHRISTINE

Q. Okay.

A. So when we walked in and we saw him, and we said, we would take over from here - a Corrine and I, the CNA. He um, disappeared. He like grabbed the gurney and went.

Q. Okay. Cause normally he did, he wouldn't of even been there, he would of already -

A. Right, right, he would of gotten her into the bed, handed her the call light, and showed her how to use it, and been gone.

Q. Okay. And was that um, and that was at about, what time do you think, four-twenty?

A. Probably about, yea, around four-twenty.

Q. Okay. Um, lets see, _____. Um, as far as, well, _____ well, back to that. Did um, at about seven a.m, did you go and check on the patient again?

A. No, I had been in there around six-thirty. A I was trying to find out if she had had a seizure, I was trying to anticipate what her - um, her needs were for the next shift when they were coming on.

Q. Yea.

A. If she needed anymore medicine or if she could have anymore medicine. At about six-thirty, she seemed like she was kind of dozing off so, I didn't wanna interrupt

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STATEMENT OF: MURRAY, CHRISTINE

her. Cause sometimes sleep will get rid of the headache. So, I left her about six-thirty and I, I did not see - I was not looking toward her room.

Q. Okay.

A. The majority of my patients were on the other side.

Q. Okay.

A. So, I really didn't ch., I figured she had gone to sleep. We weren't gonna disturb her.

Q. Okay. Do you ever recall seeing Mr. Farmer back up on the floor, anytime between six-thirty, seven o'clock?

A. No, I do not.

Q. Okay.

A. But then I wasn't looking for him.

Q. Did, has any other nurses or anyone else said anything to you that they saw him at about seven o'clock, standing in her room?

A. No.

Q. Walked in on, _____.

A. Nobody mentioned that to me.

Q. Okay. Um, did - when did you first find out about the allegations of that, the patient Roxanne Cagnina, had against Mr. Farmer?

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STATEMENT OF: MURRAY, CHRISTINE

- A. When I woke up the next day and there were a couple messages from you, on my phone, and I called you because of course, the first thing I thought was my daughters, my granddaughter.
- Q. Okay.
- A. Those were the things I thought because nobody had the courtesy from here, to call and say that something had happened and they had given you my telephone number. Which I was really upset about.
- Q. Okay. You=re -
- A. Not that I gave you the number -
- Q. Right.
- A. -but that they didn=t call me and tell me so I -
- Q. That they didn=t bother to no..., notify you on -
- A. Yea.
- Q. -on what was happening.
- A. Yea.
- Q. Did um, okay. On a - did Ms. um, Cagnina, at any time, make any disclosures to you about anything that Mr. Farmer had done to her?
- A. No, she did not.
- Q. Okay. Alright. And can, what are - well let me, let me back up. You had made a comment earlier um, that he seemed to be very um, attentive.

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**LAS VEGAS METROPOLITAN POLICE DEPARTMENT
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STATEMENT OF: MURRAY, CHRISTINE

A. Um-hum.

Q. Can you, can you go over those details with me. What, what was it that you o..., you observed about um, Mr. Farmer?

A. Well, when he brought a patient up, if they had to have a _____ on, he would offer to put the _____ on. Which means of course, you know, behind the chest and a they have to go on the rib cages. So of course, on women it=s usually, you have to move the breast to put the, underneath the breast and stuff. He would always say, oh I=ll do that for you, you know, and you do what you have to do. He was always very complementary to everybody. He was always willing to do something extra if you wanted to. Very um, you know, just very helpful. He just wouldn=t -

Q. Did it seem to be more for female patients or any patient?

A. Actually, I think it was more for female patients.

Q. Okay, and when you say he had to put on the to..., _____ -

A. Um-hum.

Q. -how many, how many points of um, these, these leads?

A. There=s five leads.

Q. There=s five leads.

A. On our portable monitors, _____.

LVMPD0178

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**LAS VEGAS METROPOLITAN POLICE DEPARTMENT
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STATEMENT OF: MURRAY, CHRISTINE

Q. And there=s, so one on basically on top of a, a below the clavicle -

A. Right here.

Q. -above, above the breast.

A. Yea, by the belly area here.

Q. And then two, one under each side of the breast -

A. Right.

Q. -and then one in between the breast.

A. Right.

Q. Okay. And he always seemed more than willing to -

A. Oh, I=ll put that on for you, yup.

Q. Did um, as far as his job, um, a is - where a CNA is concerned, does that normally does, when somebody puts on the _____, is that usually conduc..., um, completed by a nurse?

A. No, we do have the CNA=s do that.

Q. _____ (inaudible, both talking).

A. So, see that=s not really out of the realm of his responsibilities.

Q. Um-hum.

A. So, nobody thought anything of it.

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STATEMENT OF: MURRAY, CHRISTINE

Q. Okay. Would, does CNA duties change from floor to floor? Like if somebody, like would ER have their own set of, of things that CNA=s can do and things that they can=t as compared to a CNA that was assigned to a, a floor for recovery?

A. I think they would, yes.

Q. Okay.

A. I=am not positive.

Q. Um-hum.

A. Because I=ve never worked ER. Um, but I would think they would because that=s the first assessment is to _____ first everything that their coming in and their usually pretty serious down there.

Q. Oh, okay. Um, can you think of anything else that I didn=t ask you or I might not be aware of that you feels important, that might assist me in my investigation or something that I need to be made aware of?

A. The only thing I can think of like I said, is the older lady that he did the one to one sittings with.

Q. Um-hum.

A. Which means that the doctor ordered for somebody to be in the room with her at all times. He was in there, on the evening shift, it was dark because he has the lights out. The door was closed. Which usually for a one to one, I, if I had been the

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STATEMENT OF: MURRAY, CHRISTINE

nurse, which I wasn't. I would want the door open. I wanna see what=s going on. But we did hear her yelling. I don=t want you by me, get outta here. And we thought, she=s a little crazy.

Q. Um-hum.

A. She=s a little crazy, old lady, that=s why she has the sitter.

Q. Um-hum.

A. So we didn=t put any credence into what she was saying.

Q. Okay. Do you remember when that occurred?

A. I don=t.

Q. Okay. Before or after this incident, that we=re talking about?

A. Before. Before.

Q. Okay. A couple of weeks, couple of days?

A. A it had to be more toward the beginning of when we opened up because it was on the sixth floor here and we didn=t open the seventh floor until about two in a half, three months after we opened. So, obviously, it have to be probably in February or March, something like that.

Q. Okay. Do you remember what she was um, in for, what that victim -

A. I don=t know.

Q. -or _____ the patient, _____.

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AA0261

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STATEMENT OF: MURRAY, CHRISTINE

- A. Cause I, you know what, I never had her as a patient.
- Q. Okay.
- A. So.
- Q. Um, ever observe or see anything else that just didn't seem right with you? A
anything that Mr. Farmer ever did that was, a out of the scope or realm of his duties
or anything else that just appeared - professional. From, from your professional
opinion and, and your knowledge of the, the nursing field. Of something that he
wasn't doing that was correct with patients?
- A. No. But you know what, I didn't pay much attention to him.
- Q. Okay. Alright. Is there anything else?
- A. No.
- Q. Okay. Operator, this will end the interview. The time is approximately 0649
hours, on the 13th of June, 2008. Same people present, same location. Thank
you.

**THIS VOLUNTARY STATEMENT WAS COMPLETED AT 6900 N. DURANGO ON THE
13th DAY OF JUNE, 2008 AT 0649 HOURS.**

MS:sl

LVMPD0182

EXHIBIT 5



Niccole Parker <keachmurdock2@gmail.com>

Rule 111 message

Robert E. Murdock, Esq. <lasvegasjustice@aol.com>
To: jbemis@hpslaw.com
Cc: keachmurdock2@gmail.com, emkeach@yahoo.com

Wed, Oct 15, 2014 at 3:01 PM

John,

This email is being sent with regard to Rule 11. As you well know, you cited a case (twice) that is Unpublished by the Nevada Supreme Court, **Vaughan v. Harrahs**.

While you have provided the case (and the case itself states it is unpublished), the body of the pleading, in both places, does not advise the Court that the case is unpublished. The latter would certainly not cure the issue at all. Indeed, what it does is cement the fact that you have intentionally attempted to deceive the Court.

Demand is hereby made that you withdraw the pleading immediately and withdraw the citation. Failing that, be advised that we will be filing a Rule 11 application and ask for harsh sanctions against you, your firm, and your client. John, you and your firm know better. Nevertheless, your are hereby on notice.

Robert E. Murdock, Esq.
MURDOCK & ASSOCIATES
521 S. 3rd Street
Las Vegas, Nevada 89101
702-685-6111 office
702-685-6222 fax
702-497-7560 cell

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John F. Bemis, Esq.
jbemis@hpslaw.com

October 16, 2014

ELECTRONICALLY SERVED
10/16/2014 04:08:10 PM

VIA ELECTRONIC SERVICE

Robert Murdock, Esq.
521 South Third Street
Las Vegas, Nevada 89101

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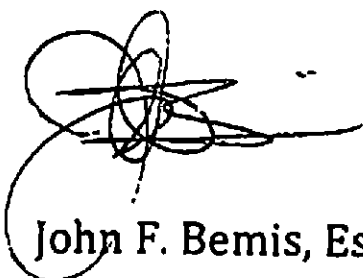
Re: Estate of Jane Doe vs. Centennial Hills Hospital

Dear Mr. Murdock,

Please allow this correspondence to respond to your October 15, 2014 correspondence requesting we withdraw our Opposition to your client's Motion for Summary Judgment. As you are aware, we filed an Errata to our Opposition on October 16, 2014. We believe this has correctly identified the *Vaughan v. Harrahs* case as an unpublished opinion. As articulated in the Errata, the case is cited for purposes consistent with SCR 123.

Sincerely,

HALL PRANGLE & SCHOONVELD, LLC



John F. Bemis, Esq.

JFB/djc

4820-6046-5439, v. 1

From: Robert E. Murdock, Esq. <lasvegasjustice@aol.com>

To: jbemis <jbemis@hpslaw.com>

Cc: emkeach <emkeach@yahoo.com>

Subject: Citation to Unpublished Decision

Date: Mon, Oct 20, 2014 2:50 pm

Mr. Bemis,

I am in receipt of your letter and "errata." You must be looking at a different SCR 123 than I am for your excuses. This is not the Ninth Circuit. You have absolutely no basis at all to cite an Unpublished Nevada Supreme Court opinion per SCR 123.

And, your "errata" drawing even more attention to it, is even more evidence of the intentional nature of the citation and violation of the Rule. Your reasoning therein is flawed. Most important, you know better.

You are in absolute violation of Rule 11 and we will be requesting the severest of sanctions for your flagrant violation of the Rules.

Robert E. Murdock, Esq.
MURDOCK & ASSOCIATES
521 S. 3rd Street
Las Vegas, Nevada 89101
702-685-6111 office
702-685-6222 fax
702-497-7560 cell

EXHIBIT 6



American Nursing Services INC.

PROFESSIONALS WHO CARE

NURSE PERFORMANCE EVALUATION

NAME: Steve Farmer TITLE: CNA

DATE OF HIRE: 1/1 SHIFT DATE: 1/2/08

FACILITY: SNAMHS Unit G3B UNIT: G3B

INSTRUCTIONS:

1. Evaluate the American Nursing Services nurse assigned to your area by using the criteria below.
2. Place a check mark in the appropriate column. Please provide details on any "Below Average" ranking so that we may discuss it with the nurse appropriately.
3. Return the completed form to fax number ()

	Above Average	Average	Below Average
PERSONAL ATTRIBUTES			
• Arrives Promptly for work and returns from breaks on time			
• Demonstrates a Positive Attitude			
NURSING PROCESS			
• Follows Universal Precautions Guidelines			
• Demonstrates comprehensive patient assessment skills			
• Establishes priorities for patient care activities based on acuity			
• Maintains a safe and therapeutic patient environment			
• Performs procedures and administers medications according to Facility Standards			
• Provides patient/family teaching			
• Responds to patient requests with promptness, empathy, and genuine interest			
• Recognizes deviations from patient norms and takes appropriate action			
• Seeks out Charge Nurse for clarification of assignment			
• Maintains confidentiality and patient rights			
• Provides pertinent data and completes shift report in an accurate, legible, and timely manner			
• Reports changes in patient condition to Charge Nurse, Physician, Nurse Manager/Supervisor			

Evaluator Comments:

Staff informed me that Mr. Farmer called
a client on the client's phone - on two occasions
The pt, EM, was familiar with Mr. Farmer's
living situation (renting a room in a house).
This agency does not support fraternizing with clients.

Evaluator Signature & Title: M. Zoss RN III

Date: 1-7-08

Employee Signature: _____ Date: _____

PHS Depo. Exh. 1
 Carol O'Malley, CCR No. 176, RMR

TOTAL P.01

Tina Hovenkamp

From: Matthew Ross
Sent: Wednesday, January 09, 2008 9:31 AM
To: Mary Jo Solon
Cc: Tina Hovenkamp
Subject: FW: Steve Farmer

Hello Mary Jo,

After searching through the dailies as far back as 12-25-07 with Cynthia Holman, we were unable to verify that Steve had actually been assigned to work this unit (G3B).

He did work G3A on 1-3-08, however. Patient [REDACTED] is bipolar and could conceivably strike up a conversation with anyone instantly.

Matthew Ross RN III

Matthew Ross RN III
Unit G 3B
(702) 486-4447
Cell (702) 250-1600
MattRoss@SNAMHS.nv.gov
6150 Community College Dr.
Rawson-Neal Psychiatric Facility

P.H.S. Depo. Exh. # 2
Carol O'Malley, CCR No. 178, RMR

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From: Matthew Ross
Sent: Tue 1/8/2008 12:45 PM
To: Mary Jo Solon
Cc: Tina Hovenkamp
Subject: Steve Farmer

Hello Mary Jo,

Further investigation helped to clarify the situation somewhat:

- 1) Lorraine Ehrington LPN stated that she was told by pt [REDACTED] that Steve was her boyfriend, that he rents a room from Nurse Katalina LPN, that he had previously called her on the clients' phone, & that he would "take her (Ethel) in" when he moves out.
- 2) Rontranece Theard MHT II said that she also was present when the above conversation occurred.
- 3) Cynthia Holman AA stated that nurse Katalina (sp?) is agency, & is currently DNR'd (do not return).
- 4) Pt Ethel reported these phone calls to Lorraine & Rontranece last January 2, 2008.

1/10/2008

5) Cynthia is currently at lunch, but I'll try to find out from her when the last date was that Steve worked this unit.

Matthew Ross RN III
Unit G 3B
(702) 486-4447
Cell (702) 250-1600
MattRoss@SNAMHS.nv.gov
6150 Community College Dr.
Rawson-Neal Psychiatric Facility

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1/10/2008

EXHIBIT 7

January 28, 2008

PHJ Depo. Exh. # B
Carol O'Malley, CCP No. 178, RMR

Dear Mary Jo,

The patient [REDACTED] stated, "My boyfriend works here, his name is Steve he's a tech". The patient also said, "he calls me on the phone and said we are going to live together." She also told me that he kissed her. I told Annita on swing shift what the patient told me and Annita said, "Marion the nurse is aware of it. It was said that Marion stated that he Steve could never work on G3B again

Respectfully Rontraneice Theard

Rontraneice Theard M.D.

EXHIBIT 8

To: Whom it may concern.

PT [redacted] who was on full view and under my responsibility got off the phone and came dancing to the table. PT [redacted] said "It was my boyfriend Steve, the hearded tech that work here." Unit Tech Rontrancee and I looked at each other and ~~said~~ ^{asked} "Are you sure that was Steve that works here?" PT [redacted] said "Yes we are moving in together and for me to tell the social worker but not to mention his name. She look at Rontrancee and said "Remember I told you we kiss yesterday."

Sincerely,

H. Elington LPN

P.S. Unit Nurse III Matt was informed by us of PT statement!

P/Hs Depo. Exh. 12
Carol O'Malley, CCR No. 178 RHP

EXHIBIT 9



American Nursing Services INC.

PROFESSIONALS WHO CARE

INCIDENT REPORT

Name: Steven Soumer C.N.A. ☒ ANS Employee ☐ Subcontractor ☐ Client
Name of Facility: Raymond M. Rich
Date of Occurrence: 11/9/08 Time of Occurrence: 3:41 PM AM ☐ PM ☒
Date Occurrence Reported: 11/24/08 Time Reported: 4:30 AM ☐ PM ☒
Physical Address of Occurrence: 1150 Community College Drive, LV NV 89410
Name of Facility Supervisor or contact person: Mark To Helen Don Phone number: (702) 486-6300
Description of place of Occurrence: Psychiatric Facility
Who was involved: Steven Soumer Contact #: 702-332-5894
Witness(s): _____ Contact #: _____

Nature of Incident:

- ☒ Alleged violations as defined in Practice Acts of respective regulatory body
- ☐ Mishaps due to faulty equipment or misuse of the equipment
- ☐ Client alleges theft
- ☐ Failure of staff/client to report accident causing hazards in the facility
- ☐ Damage to personal property of the client
- ☒ Abuse of client an/or patient or other caregivers
- ☐ Failure to respond to request for assistance, information, or treatment
- ☐ Any complaints the client voices regarding services
- ☐ Any unsafe situations in the facility
- ☐ Any threat to employee safety
- ☐ Any injury the employee sustains while delivering care or while en route or returning from the facility
- ☐ Non Compliance with Laws
- ☐ Misuse of company assets
- ☐ Inappropriate business gifts
- ☐ Conflicts of Interest

Description of exactly what happened: (If additional space or supporting documentation is needed, attach separately)

See attached write up

Branch Manager Notified: ☒ yes ☐ no Corporate Compliance Department Notified: ☐ yes ☐ no
Human Resources Department Notified: ☐ yes ☐ no

Signature of person completing report: Muriel Simmons RN Date: 11/25/08
Clinical Director

Rev. Date:

Effective Date: May 3, 2007

EXHIBIT 10

MEDICATION ADMINISTRATION RECORD

SITE CODES

 ① ABDOMEN
 ② RIGHT UPPER OUTER QUADRANT BUTTOCK
 ③ LEFT UPPER OUTER QUADRANT BUTTOCK

PATIENT NAME	BED NO.	AGE	WEIGHT	BSA m ²	ADM. DATE	DOSE PERIOD
	614 01	05/09/1957	63.504 kg	1.746 M2	05/13/2008	05/14/08-05/15/08

MEDICAL RECORD NO.	ACCOUNT NO.	PHYSICIAN	DIAGNOSIS
7002358	8000115926	Bazemore, Curtis.	SEIZURES

ALLERGIES	MEDICATION ADMINISTRATION TIMES
-----------	---------------------------------

5-ALFA REDUCTASE INHIBITOR, AZASTEROIDS, ACETAMINOPHEN, BENZODIAZEPINES, CARBAMAZEPINE DER *MORE*	ORDER CHECK NURSE	07:01-19:00			19:01-07:00					
		TIME	SITE	INITIAL	TIME	SITE	INITIAL	TIME	SITE	INITIAL

Ativan 2mg IV Q4° PRN for seizure	24				2345 445	IV	ms			
--------------------------------------	----	--	--	--	-------------	----	----	--	--	--

Kcl 20mg IV per protocol	HLK	1420	PO	HLK						
-----------------------------	-----	------	----	-----	--	--	--	--	--	--

Tylenol 1gm P.O. Q4° PRN for H/A	HLK	1420	PO	HLK	21:30	PO	HLK	0300	PO	HLK
-------------------------------------	-----	------	----	-----	-------	----	-----	------	----	-----

prozac 20mg P.O. daily	PO	1600	PO	HLK						
---------------------------	----	------	----	-----	--	--	--	--	--	--

Lerothyroxine 0.15mg P.O. daily	PO	1600	PO	HLK						
------------------------------------	----	------	----	-----	--	--	--	--	--	--

--	--	--	--	--	--	--	--	--	--	--

DATE & TIME	OMISSIONS/RESPONSE TO MEDS/ADVERSE EFFECTS/ETC.	DATE & TIME	OMISSIONS/RESPONSE TO MEDS/ADVERSE EFFECTS/ETC.

24-HR VALIDATION CHECK NURSE:	
-------------------------------	--

PATIENT NAME	BED NO.								
	614 01								

EXHIBIT 11

Subject: Cagnina v. ANS/Steve Farmer et al.
Date: Thu, 09 Apr 2009 15:55:03 -0700
From: "Brent Vogel" <bvogel@lbbslaw.com>
To: roundtsa@co.clark.nv.us
Attachments: cagnina mot compel 20090409154419.pdf

Stacey,

It was a pleasure speaking with you today. Attached is the Motion to Compel Mrs. Cagnina filed against Metro seeking the statements, DNA/Rape kit records, etc. It is set before the Discovery Commissioner on 4/22 at 10:00 a.m. Mrs. Cagnina's depo remains set for 4/28 at 9:00 a.m. at Hall, Prangle & Schoonveld, 777 N. Rainbow Blvd., #225. Mr. Cagnina's depo is the same day at 1:00 p.m.

I would appreciate copies of any statements, medical records, etc., that you have that may help our investigation. I am happy to share whatever information I can. Thank you.

Yours truly,

S. Brent Vogel
LEWIS BRISBOIS BISGAARD & SMITH LLP
400 South Fourth Street
5th Floor
Las Vegas, Nevada 89101

702.693.4320 - Direct
702.893.3383 - Main
702.893.3789 - Facsimile
bvogel@lbbslaw.com
www.lbbslaw.com

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Please consider the environment before printing this e-mail

Subject: RE: Steven Farmer
Date: Mon, 14 Sep 2009 14:42:54 -0700
From: "Jane Everitt" <everittj@co.clark.nv.us>
To: "Brent Vogel" <bvogel@lbbslaw.com>
Cc: "Stacey Roundtree" <roundtsa@co.clark.nv.us>

Hello Brent,

I spoke with Stacey and Wednesday at 2:00 will work fine for both us. We will meet at your office. Thank you very much for your assistance.

Jane

From: Brent Vogel [mailto:bvogel@lbbslaw.com]
Sent: Monday, September 14, 2009 2:19 PM
To: Jane Everitt
Subject: Steven Farmer

Jane,
This is to follow up on our phone conversation this afternoon and the voice mail message I just left for you. Are you and Stacey available this Wednesday, 9/16 at 2:00 p.m. to meet with Michele Simmons from American Nursing? She can meet you at my office at that time. Thank you.

Yours truly,

S. Brent Vogel, Esq.
LEWIS BRISBOIS BISGAARD & SMITH LLP
400 South Fourth Street
5th Floor
Las Vegas, Nevada 89101
702.693.4320 - Direct
702.893.3383 - Main
702.893.3789 - Facsimile
bvogel@lbbslaw.com
www.lbbslaw.com

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Please consider the environment before printing this e-mail

Subject: Steven Farmer

Date: Wed, 27 Jan 2010 15:10:54 -0600

From: "Dave Ferrainolo" <dferrainolo@HPSLAW.COM>

To: "Stacey Roundtree" <roundtsa@co.clark.nv.us>

Cc: "Bob McBride" <bob@mandelbaumschwarz.com>, "Brent Vogel" <bvogel@lbbslaw.com>

Hi Stacey:

Hope all is well with you. Just wanted to let you know that Christine Murray (the former nurse of Centennial Hills who received Cagnina from Farmer on the floor after the alleged assault occurred) is being deposed right now. I think she has a lot of information that will help you. She is a bit difficult to get in touch with so I'd be happy to share the details with you when you get some time.

Also, I have a question. Can you tell me where there was any DNA evidence to support the claims of Cagnina? With her assertion that he was licking his fingers and using them on her I would have expected to see some DNA. Can you let me know?

Thanks.

David P. Ferrainolo, Esq.
HALL PRANGLE & SCHOONVELD, LLC
777 North Rainbow Blvd., Ste. 225
Las Vegas, NV 89107
702.889.6400 (office)
702.384.6025 (fax)

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Let me know if you have any time the begging of March or whenever it is most helpful to you in the criminal case.

David P. Ferrainolo, Esq.

HALL PRANGLE & SCHOONVELD, LLC

777 North Rainbow Blvd., Ste. 225

Las Vegas, NV 89107

702.889.6400 (office)

702.384.6025 (fax)

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Subject: RE: Cagnina

Date: Thu, 11 Feb 2010 20:48:16 -0800

From: "Stacey Roundtree" <roundtsa@co.clark.nv.us>

To: "Dave Ferrainolo" <dferrainolo@HPSLAW.COM>

Thanks for keeping me in loop. When you open in FLA, are you going to have a SEX TEAM? If so, I know someone who's interested, and would LOVE to re-locate. =)

From: Dave Ferrainolo [mailto:dferrainolo@HPSLAW.COM]

Sent: Wednesday, February 10, 2010 2:59 PM

To: Stacey Roundtree

Cc: John Bemis

Subject: Cagnina

Hi Stacey:

Subject: RE: Cagnina
Date: Wed, 19 May 2010 10:37:20 -0700
From: "Stacey Roundtree" <roundtsa@ClarkCountyNV.gov>
To: "John Bemis" <JBemis@HPSLaw.com>

Thanks. Haven't connected (telephonically) with the DNA expert yet! I confess that because I begin trial next week, I've been scarce around here. Will let you know when I do.

From: John Bemis [mailto:JBemis@HPSLaw.com]
Sent: Wednesday, May 19, 2010 9:03 AM
To: bob@mandelbaumschwarz.com; Stacey Roundtree
Subject: Cagnina

Bob and Stacy:

I am attaching Plaintiff's counter-motion to open discovery in Mr. Farmer's criminal case. It is being heard in front of the Discovery Commissioner this Friday at 9:30 a.m.

We moved the hearing from Walsh to Bonnie as Dave had a conversation with Bonnie for another issue and she intimated she would kick the trial and not allow the discovery to be opened. I wanted you to be aware of this, especially in light of the recent Doe hearing where Bonnie would not allow Murdoch to conduct discovery until the criminal trial is over.

Call me with any questions

Thanks,

John F. Bemis, Esq.

HALL PRANGLE & SCHOONVELD, LLC

777 North Rainbow Blvd., Ste. 225

Las Vegas, NV 89107

702.889.6400 (office)

702.384.6025 (fax)

Subject: RE: Steven Farmer
Date: Fri, 21 Sep 2012 07:58:56 -0700
From: Jeffrey Maningo <maningis@ClarkCountyNV.gov>
To: John Bemis <JBemis@HPSLaw.com>

Hi John:

No results yet, testing still not done. Still trying to find a common ground between Steve and DA for negotiations, so might need your help there once we find a reasonable deal. Otherwise just waiting on trial date. I'm sure myself and Jane(investigator) will be contacting you soon for clarification on some of this discovery we have.

Thanks for all your help and interest. I will keep you updated.

Jeff

From: John Bemis [<mailto:JBemis@HPSLaw.com>]
Sent: Thursday, September 20, 2012 4:54 PM
To: Jeffrey Maningo
Subject: RE: Steven Farmer

Hi Jeff,

I hope all is well. I wanted to follow up on this matter with the new criminal trial date. Do we know whether the retesting of the DNA has been completed? do we know any results?

Is there anything going on in this matter or is it just waiting for trial?

Please let me know if there is anything we can help you with.

Thanks and have a nice evening,

John

From: Jeffrey Maningo [<mailto:maningis@ClarkCountyNV.gov>]
Sent: Friday, June 01, 2012 12:21 PM
To: John Bemis
Subject: RE: Steven Farmer

well, so far it's a go, however, we are still waiting for the DNA to be retested. That was at the DA's request and was recently litigated. So depending on timing and results, and possible need for our own expert to review the results...

but I'll keep you updated when I know for sure.

have a good weekend
JSM

From: John Bemis [<mailto:JBemis@HPSLaw.com>]
Sent: Friday, June 01, 2012 10:03 AM
To: Jeffrey Maningo

Subject: RE: Steven Farmer criminal trial
Date: Wed, 16 Jan 2013 14:06:00 -0800
From: Bob McBride <bob@memlaw.net>
To: 'Amy Feliciano' <johnsoaa@ClarkCountyNV.gov>
Cc: Jeffrey Maningo <maningis@ClarkCountyNV.gov>, "JBemis@HPSLaw.com" <JBemis@HPSLaw.com>, "bvogel@lbbslaw.com" <bvogel@lbbslaw.com>

Amy,

Thanks for the quick response. Absolutely! We would be happy to help out in any way we can. Mr. Bemis has been involved with the Cagnina case after the Plaintiff's attorney, for some reason, dismissed Steven and his employer, so he has the most information about her that I am sure he will gladly share. I previously gave Jeff the name of our expert for the Petersen (Doe) case. I thought he had retained her already. All of us are available to meet Monday morning if that works. I would suggest my office which has plenty of room and is easily located behind UMC hospital, off Tonopah. 2012 Hamilton Lane. What time works? 9? 10? Let us know.

Thanks.
Bob

From: Amy Feliciano [<mailto:johnsoaa@ClarkCountyNV.gov>]
Sent: Wednesday, January 16, 2013 1:28 PM
To: Bob McBride
Cc: Jeffrey Maningo
Subject: FW: Steven Farmer criminal trial

Hi Bob - Jeff's in trial right now on another case, so I told him I would get back to you. I'm the second chair on this case and am entrenched in nothing but this file right now trying to get everything up to speed. As of right now, we are hoping to be ready for the 03/04/13 trial setting, but there's a lot left to do. I would really like to meet with you and the others in the civil case to talk about about the status of our file. We are missing a lot of documents, have witnesses to interview, and experts to retain, and it would be great if you and the others could help us out with that.

Do you have time for a meeting early next week with us and the the others in the civil case, and do you mind coordinating the meeting? I'm available any day next week, anytime, except for early Wednesday morning. Jeff may or may not be finished with trial and able to join us. We can come to your office or we can all meet here - whatever is easiest for you and everyone else.

Please let me know if we can meet up next week. Thanks so much.

Amy A. Feliciano
Deputy Public Defender
Clark County Public Defender's Office
(702) 455-5733 (direct)
(702) 366-9370 (fax)

From: Jeffrey Maningo
Sent: Wednesday, January 16, 2013 1:10 PM
To: Amy Feliciano
Subject: Fwd: Steven Farmer criminal trial

Subject: RE: Steven Farmer criminal trial

Date: Wed, 16 Jan 2013 14:09:09 -0800

From: Amy Feliciano <johnsoaa@ClarkCountyNV.gov>

To: 'Bob McBride' <bob@memlaw.net>

Cc: Jeffrey Maningo <maningis@ClarkCountyNV.gov>, "JBemis@HPSLaw.com" <JBemis@HPSLaw.com>, "bvogel@lbbslaw.com" <bvogel@lbbslaw.com>

Thanks so much, Bob. Monday morning at your office is perfect. Either 9 or 10 works for us - what does everyone else prefer? And we have retained the Petersen expert (Higelin), but we need additional experts that hopefully you can help us with. Thanks so much - and just let me know what time works the best for everyone. I really appreciate the help!

From: Bob McBride [<mailto:bob@memlaw.net>]

Sent: Wednesday, January 16, 2013 2:06 PM

To: Amy Feliciano

Cc: Jeffrey Maningo; JBemis@HPSLaw.com; bvogel@lbbslaw.com

Subject: RE: Steven Farmer criminal trial

Importance: High

Amy,

Thanks for the quick response. Absolutely! We would be happy to help out in any way we can. Mr. Bemis has been involved with the Cagnina case after the Plaintiff's attorney, for some reason, dismissed Steven and his employer, so he has the most information about her that I am sure he will gladly share. I previously gave Jeff the name of our expert for the Petersen (Doe) case. I thought he had retained her already. All of us are available to meet Monday morning if that works. I would suggest my office which has plenty of room and is easily located behind UMC hospital, off Tonopah. 2012 Hamilton Lane. What time works? 9? 10? Let us know.

Thanks.

Bob

From: Amy Feliciano [<mailto:johnsoaa@ClarkCountyNV.gov>]

Sent: Wednesday, January 16, 2013 1:28 PM

To: Bob McBride

Cc: Jeffrey Maningo

Subject: FW: Steven Farmer criminal trial

Hi Bob - Jeff's in trial right now on another case, so I told him I would get back to you. I'm the second chair on this case and am entrenched in nothing but this file right now trying to get everything up to speed. As of right now, we are hoping to be ready for the 03/04/13 trial setting, but there's a lot left to do. I would really like to meet with you and the others in the civil case to talk about the status of our file. We are missing a lot of documents, have witnesses to interview, and experts to retain, and it would be great if you and the others could help us out with that.

Do you have time for a meeting early next week with us and the the others in the civil case, and do you mind coordinating the meeting? I'm available any day next week, anytime, except for early Wednesday morning. Jeff may or may not be finished with trial and able to join us. We can come to your office or we can all meet here - whatever is easiest for you and everyone else.

Please let me know if we can meet up next week. Thanks so much.

Subject: RE: Steven Farmer criminal trial
Date: Wed, 16 Jan 2013 14:10:54 -0800
From: Bob McBride <bob@memlaw.net>
To: 'Amy Feliciano' <johnsoaa@ClarkCountyNV.gov>
Cc: Jeffrey Maningo <maningis@ClarkCountyNV.gov>, "JBemis@HPSLaw.com" <JBemis@HPSLaw.com>, "bvogel@lbbslaw.com" <bvogel@lbbslaw.com>

Amy,
Why don't we shoot for 10? Is that good for you Brent and John?

Bob

From: Amy Feliciano [<mailto:johnsoaa@ClarkCountyNV.gov>]
Sent: Wednesday, January 16, 2013 2:09 PM
To: Bob McBride
Cc: Jeffrey Maningo; JBemis@HPSLaw.com; bvogel@lbbslaw.com
Subject: RE: Steven Farmer criminal trial

Thanks so much, Bob. Monday morning at your office is perfect. Either 9 or 10 works for us - what does everyone else prefer? And we have retained the Petersen expert (Higelin), but we need additional experts that hopefully you can help us with. Thanks so much - and just let me know what time works the best for everyone. I really appreciate the help!

From: Bob McBride [<mailto:bob@memlaw.net>]
Sent: Wednesday, January 16, 2013 2:06 PM
To: Amy Feliciano
Cc: Jeffrey Maningo; JBemis@HPSLaw.com; bvogel@lbbslaw.com
Subject: RE: Steven Farmer criminal trial
Importance: High

Amy,

Thanks for the quick response. Absolutely! We would be happy to help out in any way we can. Mr. Bemis has been involved with the Cagnina case after the Plaintiff's attorney, for some reason, dismissed Steven and his employer, so he has the most information about her that I am sure he will gladly share. I previously gave Jeff the name of our expert for the Petersen (Doe) case. I thought he had retained her already. All of us are available to meet Monday morning if that works. I would suggest my office which has plenty of room and is easily located behind UMC hospital, off Tonopah. 2012 Hamilton Lane. What time works? 9? 10? Let us know.

Thanks.
Bob

From: Amy Feliciano [<mailto:johnsoaa@ClarkCountyNV.gov>]
Sent: Wednesday, January 16, 2013 1:28 PM
To: Bob McBride
Cc: Jeffrey Maningo
Subject: FW: Steven Farmer criminal trial

Hi Bob - Jeff's in trial right now on another case, so I told him I would get back to you. I'm the second chair on this case and am entrenched in nothing but this file right now trying to get everything up to speed. As of right now, we are hoping to be ready for the 03/04/13 trial setting, but there's a lot left to do. I would really like to

Subject: RE: Steven Farmer criminal trial

Date: Wed, 16 Jan 2013 14:21:52 -0800

From: Amy Feliciano <johnsoaa@ClarkCountyNV.gov>

To: 'John Bemis' <JBemis@HPSLaw.com>, Bob McBride <bob@memlaw.net>

Cc: Jeffrey Maningo <maningis@ClarkCountyNV.gov>, "bvogel@lbbslaw.com" <bvogel@lbbslaw.com>

10 is perfect for us. We are missing almost all of the civil filings - the Responses to RFPDs, Answers to Interrogatories (if any), depositions (we only have a few transcripts), etc. My secretary can access some docs on Odyssey and is working on getting what's been filed for me. Let's talk on Monday and I'll let you know what depositions we have and what we don't and we can talk about if you have other things we don't have (and vice versa).

Also, we don't have Cagnina's records from when she was Legal 2000'd, her Monte Vista records, the records from when she OD'd and was in a coma, and the records from Las Vegas Recovery Center. If you have those, that would shortcut so much for us.

Thank you so much, everyone.

From: John Bemis [<mailto:JBemis@HPSLaw.com>]

Sent: Wednesday, January 16, 2013 2:16 PM

To: Bob McBride; Amy Feliciano

Cc: Jeffrey Maningo; bvogel@lbbslaw.com

Subject: RE: Steven Farmer criminal trial

10 sounds just fine for me. Are there any documents that are needed?

Thanks,

John

From: Bob McBride [<mailto:bob@memlaw.net>]

Sent: Wednesday, January 16, 2013 4:11 PM

To: 'Amy Feliciano'

Cc: Jeffrey Maningo; John Bemis; bvogel@lbbslaw.com

Subject: RE: Steven Farmer criminal trial

Amy,

Why don't we shoot for 10? Is that good for you Brent and John?

Bob

From: Amy Feliciano [<mailto:johnsoaa@ClarkCountyNV.gov>]

Sent: Wednesday, January 16, 2013 2:09 PM

To: Bob McBride

Cc: Jeffrey Maningo; JBemis@HPSLaw.com; bvogel@lbbslaw.com

Subject: RE: Steven Farmer criminal trial

Thanks so much, Bob. Monday morning at your office is perfect. Either 9 or 10 works for us - what does everyone else prefer? And we have retained the Petersen expert (Higelin), but we need additional experts that hopefully you can help us with. Thanks so much - and just let me know what time works the best for everyone. I really appreciate the help!

Subject: RE: Farmer

Date: Tue, 22 Jan 2013 11:18:58 -0800

From: Amy Feliciano <johnsoaa@ClarkCountyNV.gov>

To: 'John Bemis' <JBemis@HPSLaw.com>

Cc: Diana Cox <DCox@HPSLaw.com>

You are the best. Thanks so much.

I'll get together the police files for those cases. Do you have their voluntary statements to the police or do you need those too?

From: John Bemis [<mailto:JBemis@HPSLaw.com>]

Sent: Tuesday, January 22, 2013 11:15 AM

To: Amy Feliciano

Cc: Diana Cox

Subject: RE: Farmer

Thanks Amy,

I am putting all the depositions on a disk and getting the video depo of Scott copied for you. I will also be putting all the divorce files on a disk, including the settlement information. I am working with our nurses (in house) to get expert names for you. I am in mediation all day, so I won't be able to get that to you until tomorrow.

I would appreciate the Peterson, Cagnina and Francis Rose police files.

I am going to be going through my record summaries and get everything I have to you.

Thanks, and don't hesitate to ask if you need anything.

Have a great day,

John

From: Amy Feliciano [<mailto:johnsoaa@ClarkCountyNV.gov>]

Sent: Tuesday, January 22, 2013 1:08 PM

To: Heather Hall; 'Bob McBride'; bvogel@lbbslaw.com; John Bemis

Cc: Jeffrey Maningo

Subject: Farmer

Hi All - It was a pleasure meeting with everyone yesterday, and I really appreciate your time and all of your help. I'm attaching a copy of the Sorenson DNA report, the State's Fifth Supplemental Notice of Witnesses, and the list of witnesses that I compiled (Heather printed this out at the meeting for us). Just FYI. . . the list of witnesses that I compiled is still in a very rough state - it's basically my thoughts and notes made as I've been going through the file.

My work contact info is below, and my cell is (702) 465-7365. Please don't hesitate to contact me anytime.

Bob - I hope that your brother is okay, and I'm sending my best wishes to you and your family.

John - I know you wanted police reports - do you need them for all six cases (including Frances Rose) or just for the Marcia Peterson case? Let me know what you need, and I'll get it to you.

Also, if anyone else needs police reports, etc., please let me know, and I will get them to you.

Thank you so much.

**Amy A. Feliciano
Deputy Public Defender
Clark County Public Defender's Office
(702) 455-5733 (direct)
(702) 366-9370 (fax)**

Subject: RE: Farmer

Date: Tue, 22 Jan 2013 11:27:58 -0800

From: Amy Feliciano <johnsoaa@ClarkCountyNV.gov>

To: "'Vogel, Brent'" <bvogel@lbbslaw.com>, Heather Hall <Heather@memlaw.net>, 'Bob McBride' <bob@memlaw.net>, 'John Bemis' <JBemis@HPSLaw.com>

Cc: Jeffrey Maningo <maningjs@ClarkCountyNV.gov>

Will do. Same cases? And do you have the voluntary statements to police or do you need them?

From: Vogel, Brent [<mailto:bvogel@lbbslaw.com>]

Sent: Tuesday, January 22, 2013 11:25 AM

To: Amy Feliciano; Heather Hall; 'Bob McBride'; 'John Bemis'

Cc: Jeffrey Maningo

Subject: RE: Farmer

Thank you!

I like to have all the police reports please.

**LEWIS
BRISBOIS
BISGAARD
& SMITH LLP** Brent Vogel, Esq.
Las Vegas Administrative Partner
LEWIS BRISBOIS BISGAARD & SMITH LLP
6385 S. Rainbow Blvd., Suite 600, Las Vegas, Nevada 89118
Main: (702) 893.3383 | Direct: (702) 693.4320 | Fax: (702) 893.3789
bvogel@lbbslaw.com <http://www.lbbslaw.com>

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If you think that you have received this e-mail message in error, please e-mail the sender at bvogel@lbbslaw.com.

From: Amy Feliciano [<mailto:johnsoaa@ClarkCountyNV.gov>]

Sent: Tuesday, January 22, 2013 11:08 AM

To: Heather Hall; 'Bob McBride'; Vogel, Brent; 'John Bemis'

Cc: Jeffrey Maningo

Subject: Farmer

Hi All - It was a pleasure meeting with everyone yesterday, and I really appreciate your time and all of your help. I'm attaching a copy of the Sorenson DNA report, the State's Fifth Supplemental Notice of Witnesses, and the list of witnesses that I compiled (Heather printed this out at the meeting for us). Just FYI. . . the list of witnesses that I compiled is still in a very rough state - it's basically my thoughts and notes made as I've been going through the file.

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Bob - I hope that your brother is okay, and I'm sending my best wishes to you and your family.

John - I know you wanted police reports - do you need them for all six cases (including Frances Rose) or just for the Marcia Peterson case? Let me know what you need, and I'll get it to you.

Subject: RE: Farmer

Date: Tue, 22 Jan 2013 11:40:17 -0800

From: Amy Feliciano <johnsoaa@ClarkCountyNV.gov>

To: 'John Bemis' <JBemis@HPSLaw.com>

Cc: Diana Cox <DCox@HPSLaw.com>

I'll get you the voluntary statements too.

From: John Bemis [mailto:JBemis@HPSLaw.com]

Sent: Tuesday, January 22, 2013 11:35 AM

To: Amy Feliciano

Cc: Diana Cox

Subject: RE: Farmer

We don't have any police information

From: Amy Feliciano [mailto:johnsoaa@ClarkCountyNV.gov]

Sent: Tuesday, January 22, 2013 1:19 PM

To: John Bemis

Cc: Diana Cox

Subject: RE: Farmer

You are the best. Thanks so much.

I'll get together the police files for those cases. Do you have their voluntary statements to the police or do you need those too?

From: John Bemis [mailto:JBemis@HPSLaw.com]

Sent: Tuesday, January 22, 2013 11:15 AM

To: Amy Feliciano

Cc: Diana Cox

Subject: RE: Farmer

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I would appreciate the Peterson, Cagnina and Francis Rose police files.

I am going to be going through my record summaries and get everything I have to you.

Thanks, and don't hesitate to ask if you need anything.

Have a great day,

John

From: Amy Feliciano [mailto:johnsoaa@ClarkCountyNV.gov]

Sent: Tuesday, January 22, 2013 1:08 PM

Subject: RE: Farmer

Date: Tue, 22 Jan 2013 19:24:51 +0000

From: "Vogel, Brent" <bvogel@lbbslaw.com>

To: 'Amy Feliciano' <johnsoaa@ClarkCountyNV.gov>, Heather Hall <Heather@memlaw.net>, 'Bob McBride' <bob@memlaw.net>, 'John Bemis' <JBemis@HPSLaw.com>

Cc: Jeffrey Maningo <maningis@ClarkCountyNV.gov>

Thank you!

I like to have all the police reports please.

LEWIS Brent Vogel, Esq.
BRISBOIS Las Vegas Administrative Partner
BISGAARD LEWIS BRISBOIS BISGAARD & SMITH LLP
 6385 S. Rainbow Blvd., Suite 600, Las Vegas, Nevada 89118
 Main: (702) 893.3383 | Direct: (702) 693.4320 | Fax: (702) 893.3789
bvogel@lbbslaw.com <http://www.lbbslaw.com>

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From: Amy Feliciano [<mailto:johnsoaa@ClarkCountyNV.gov>]
Sent: Tuesday, January 22, 2013 11:08 AM
To: Heather Hall; 'Bob McBride'; Vogel, Brent; 'John Bemis'
Cc: Jeffrey Maningo
Subject: Farmer

Hi All - It was a pleasure meeting with everyone yesterday, and I really appreciate your time and all of your help. I'm attaching a copy of the Sorenson DNA report, the State's Fifth Supplemental Notice of Witnesses, and the list of witnesses that I compiled (Heather printed this out at the meeting for us). Just FYI. . . the list of witnesses that I compiled is still in a very rough state - it's basically my thoughts and notes made as I've been going through the file.

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Also, if anyone else needs police reports, etc., please let me know, and I will get them to you.

Thank you so much.

Amy A. Feliciano
 Deputy Public Defender
 Clark County Public Defender's Office
 (702) 455-5733 (direct)
 (702) 366-9370 (fax)

Subject: RE: Farmer criminal docs

Date: Thu, 31 Jan 2013 15:11:02 -0800

From: Heather Hall <Heather@memlaw.net>

To: 'Amy Feliciano' <johnsoaa@ClarkCountyNV.gov>, Bob McBride <bob@memlaw.net>, John Bemis <JBemis@HPSLaw.com>, "bvogel@lbbslaw.com" <bvogel@lbbslaw.com>

That works for us. Thanks for doing this!

From: Amy Feliciano [mailto:johnsoaa@ClarkCountyNV.gov]

Sent: Thursday, January 31, 2013 2:58 PM

To: Bob McBride; Heather Hall; John Bemis; bvogel@lbbslaw.com

Subject: Farmer criminal docs

Hi All - the Farmer criminal docs and audio files are ready and on a disc. They will go out in the mail tomorrow, and you should have them by Monday. If you would like to send a runner over to our office to pick them up so you can have them faster, please let me know. Thanks.

Amy A. Feliciano
Deputy Public Defender
Clark County Public Defender's Office
(702) 455-5733 (direct)
(702) 366-9370 (fax)

EXHIBIT 12



Office of the Public Defender

309 So. Third St. • Second Floor • PO Box 552810 • Las Vegas NV 89155-2610

(702) 455-4685 • Fax (702) 455-5112

Philip J. Kohn, Public Defender • Daren B. Richards, Assistant Public Defender

PRIVILEGED AND CONFIDENTIAL

January 31, 2013

Robert C. McBride, Esq.
Heather S. Hall, Esq.
Mandelbaum, Ellerton & McBride
2012 Hamilton Lane
Las Vegas, Nevada 89106

John F. Bemis, Esq.
Hall, Prangle & Schoonveld LLC
777 North Rainbow Boulevard, #225
Las Vegas, Nevada 89107

S. Brent Vogel, Esq.
Lewis, Brisbois, Bisgaard & Smith
6385 South Rainbow Boulevard, #600
Las Vegas, Nevada 89118

RE: State of Nevada v. Steven Dale Farmer
Case No. C245739

Dear Messrs McBride, Bemis, and Vogel and Ms. Hall:

We appreciate your consulting with us on the above-named case. Enclosed, per our January 21, 2013 meeting, please find the documents necessary for your review to assist with your consultation with us on this case. If you have any questions, please do not hesitate to contact me at (702) 455-5733. Thank you.

Very truly yours,

PHILIP J. KOHN
CLARK COUNTY PUBLIC DEFENDER

Amy A. Feliciano
Deputy Public Defender

/saf
Enclosure(s)

EXHIBIT 13

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DISTRICT COURT
CLARK COUNTY, NEVADA
JANE DOE,
Plaintiff,
vs.
CASE NO. 09-A-595780
VALLEY HEALTH SYSTEM LLC,
a Nevada limited
liability company, d/b/a
CENTENNIAL HILLS HOSPITAL
MEDICAL CENTER; UNIVERSAL
HEALTH SERVICES, INC., a
Delaware corporation;
American Nursing
SERVICES, INC., a
Louisiana corporation;
STEVEN DALE FARMER, an
individual; DOES I
through X, inclusive; and
ROE CORPORATIONS I
through X, inclusive,
Defendants.
~~~~~

DEPOSITION OF  
MICHELE SIMMONS, RN  
Thursday, November 15, 2012  
9:30 a.m.  
520 South Fourth Street  
Las Vegas, Nevada  
Carol O'Malley, CCR 178, RMR

1 BY MR. MURDOCK:

2 Q. You did. Who did you speak to?

3 A. Connie Brown.

4 Q. How did you notify Connie Brown about this?

5 A. I'm not sure a hundred percent. I believe  
6 it was through the phone. I believe.

7 Q. Did you email her?

8 A. I'm not sure.

9 Q. Now, of course when you were filling out  
10 this form, you certainly were being honest, correct?

11 A. I was gathering information and what I had  
12 in front of me.

13 Q. And you were being honest?

14 A. Yes.

15 Q. Just as you are here today, correct?

16 A. Yes.

17 Q. So under "Nature of Incident" you put an X  
18 next to this one, "Abuse of client and/or patient  
19 and/or other caregivers." Do you see that?

20 A. Yes.

21 Q. You checked that off, correct?

22 A. Yes.

23 Q. You didn't have to check it off, correct?

24 MR. VOGEL: I object to form.

25 THE WITNESS: This is asking me the



1 nature of the incident and what the incident came in  
2 as.

3 BY MR. MURDOCK:

4 Q. Right.

5 A. And that is defined as -- one of the  
6 options was that that was the allegation, as far as  
7 that would be an abusive situation.

8 Q. What would be an abusive situation?

9 A. Fraternizing with clients would be a  
10 boundary.

11 Q. Do you believe that's abusive?

12 MR. VOGEL: I object to form.

13 THE WITNESS: Only if an act had been  
14 done.

15 BY MR. MURDOCK:

16 Q. So if an act had been done, you believe  
17 it's abusive, correct?

18 A. If an act had been done, yes.

19 Q. Certainly. And on January 25, 2008 you  
20 actually checked off, "Abuse of client and/or patient  
21 or other caregivers," with regard to the information  
22 you had before you with regard to Steven Farmer,  
23 correct?

24 MR. VOGEL: I object to form.

25 THE WITNESS: It's checked off, yes.

1 BY MR. MURDOCK:

2 Q. You checked it off, correct?

3 A. Yes.

4 Q. Now, if you turn to the second page, it's  
5 got your signature again on the second page, correct?

6 A. Yes.

7 Q. This is what's called the "Incident Report  
8 Investigation" page, correct?

9 A. Yes.

10 Q. And it says, "This section to be completed  
11 by the branch manager," is that correct?

12 A. Yes.

13 Q. And you were acting as the branch manager  
14 when you filled this out, correct?

15 A. Correct.

16 Q. And so let's see. Under the first line it  
17 says, "Are there any factors that caused the  
18 occurrence?" What did you write down?

19 A. I did not write anything, because I  
20 attached a write-up. I didn't fill out everything,  
21 because I attached a write-up to this form, as to  
22 what my investigation was.

23 Q. The second question asked you, "What  
24 actions were necessary to resolve the occurrence?"

25 Your answer was, "Followed up with

1                   So what I'm getting at is, the  
2                   allegation was "abuse of a patient." You had your  
3                   side of the story. I got that. You got Steven's  
4                   side.

5                   But the investigation was not  
6                   complete at Rawson-Neal, and you still sent him out  
7                   to another hospital knowing that, correct?

8                   A. He was staffed at other facilities. He was  
9                   not DNR'd at all facilities. He was DNR'd at  
10                  Southern Nevada Adult Mental Health. So yes, he  
11                  worked at other facilities.

12                 Q. Okay. So Centennial needs a CNA.

13                         You got the contract, right? You  
14                   were the one who actually went out and got the  
15                   contract with Centennial, didn't you?

16                 A. It was signed by our corporate office.

17                 Q. Right, it was signed by, but you were the  
18                   one who referred it and got it set up, right?

19                 A. Yes.

20                 Q. Okay. And as a matter of fact, Centennial  
21                   at some point I guess told you they needed a CNA,  
22                   right?

23                 A. That's how it would work, yes.

24                 Q. Would they make a phone call? Or how would  
25                   that work?

1 Q. Now, while he was on hold during this  
2 investigation, would you have sent him out to another  
3 facility?

4 MR. VOGEL: I object to form. It calls  
5 for speculation.

6 BY MR. MURDOCK:

7 Q. Well, would there be any reason why you  
8 wouldn't send him out? He's a good employee, isn't  
9 he?

10 A. I mean this -- no, we did not send him out.

11 Q. Would you have sent him out?

12 MR. VOGEL: I object to form.

13 BY MR. MURDOCK:

14 Q. In other words, if he wasn't arrested and  
15 all you had is this, would you have sent him out  
16 to -- I don't know, Sunrise Hospital?

17 MR. McBRIDE: I object to form.  
18 Incomplete hypothetical.

19 MR. VOGEL: Foundation. Argumentative.

20 THE WITNESS: I followed the  
21 recommendation of the HR.

22 BY MR. MURDOCK:

23 Q. I understand what you did.

24 What I'm asking you is, would you  
25 have?

1 Services' possession, is that correct?

2 A. We have copies of this in his file, yes.

3 Q. And so would you agree with me that it's  
4 more likely than not that you had these Exhibits 12  
5 and 13 in the file of Mr. Farmer prior to May 18th --  
6 or May 16th, 2008?

7 A. I'm not sure about when they came in the  
8 file.

9 Q. Would you expect that they came in before  
10 he was arrested?

11 A. I'm not sure when they came into the file  
12 actually. There's no facts. There's nothing to show  
13 when they were actually put into the file.

14 Q. In other words, similar to Plaintiff's  
15 Exhibit 10; is that correct?

16 A. Like I think I stated, I'm not sure exactly  
17 when this was put into the file. To say the exact  
18 date and time, it's hard for me to know that.

19 Q. All right. All I'm asking you is, is it  
20 before a certain date, but before he was arrested?  
21 He wasn't working for you anymore at that point.

22 So what I'm saying is, I would  
23 assume the documents are in the file, Exhibits 12 and  
24 13, prior to him being arrested, correct?

25 A. I believe so, but I'm not --

1 Q. Is it more likely than not?

2 A. More likely than not.

3 Q. Thank you.

4 Have you ever attempted to speak  
5 with any of the women who were sexually assaulted?

6 MR. VOGEL: I object to form.  
7 Allegedly sexually assaulted.

8 MR. MURDOCK: Okay.

9 I don't have anything further at  
10 this time.

11 MR. McBRIDE: No questions.

12 MR. BEMIS: I don't have any questions.

13 MR. VOGEL: You're done.

14 MR. MURDOCK: Michele, thank you very  
15 much.

16

17 (The deposition concluded at 1:45 p.m.)

18

19

20

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24

25

REPORTER'S CERTIFICATE

STATE OF NEVADA     )  
                              )     ss.  
COUNTY OF CLARK     )

I, Carol O'Malley, Nevada Certified Court  
Reporter 178, do hereby certify:

That I reported the taking of the deposition  
of MICHELE SIMMONS, RN on November 15, 2012  
commencing at the hour of 9:30 a.m.

That prior to being examined, the witness was by  
me duly sworn to testify to the truth, the whole  
truth, and nothing but the truth;

That I thereafter transcribed my said  
shorthand notes into typewriting and that the  
typewritten transcription of said deposition is a  
complete, true, and accurate transcription of my said  
shorthand notes taken down at said time. Review of  
the transcript was requested.

I further certify that I am not a relative or  
employee of an attorney or counsel involved in said  
action, nor financially interested in said action.

IN WITNESS WHEREOF, I have hereunto set my hand  
in my office in the County of Clark, State of Nevada,  
this 2nd day of December, 2012.

Carol O'Malley, CCR No. 178

CONTRACT NO. GA-474

**AGREEMENT**

**FOR**

**SUPPLEMENTAL STAFFING SERVICES  
[DESERT]**

**between**

**BROADLANE, INC.**

**and**

**AMERICAN NURSING SERVICES, INC.**

**DATED: August 12, 2007**



**EXHIBIT E**  
**CUSTOMER LIST**  
**MARKET: LAS VEGAS**

| Facility Name                          | Street Address                                       |
|----------------------------------------|------------------------------------------------------|
| Desert Springs Hospital Medical Center | 2075 East Flamingo Road Las Vegas, Nevada 89119      |
| Spring Valley Hospital                 | 5400 South Rainbow Boulevard Las Vegas, Nevada 89118 |
| Summerlin Hospital Medical Center      | 657 Town Center Drive Las Vegas, Nevada 89144        |
| Valley Hospital Medical Center         | 620 Shadow Lane Las Vegas, Nevada 89106              |
| Centennial Hills                       | 6900 North Durango Dr., Las Vegas, NV, 89149-4409    |

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DISTRICT COURT  
CLARK COUNTY, NEVADA  
JANE DOE,  
Plaintiff,  
vs.  
CASE NO. 09-A-595780  
VALLEY HEALTH SYSTEM LLC,  
a Nevada limited  
liability company, d/b/a  
CENTENNIAL HILLS HOSPITAL  
MEDICAL CENTER; UNIVERSAL  
HEALTH SERVICES, INC., a  
Delaware corporation;  
AMERICAN NURSING  
SERVICES, INC., a  
Louisiana corporation;  
STEVEN DALE Farmer, an  
individual; DOES I  
through X, inclusive; and  
ROE CORPORATIONS I  
through X, inclusive,  
Defendants.  
~~~~~

DEPOSITION OF
SALVATORE SPARACINO
Tuesday, March 12, 2013
9:30 a.m.
520 South Fourth Street
Las Vegas, Nevada
Carol O'Malley, CCR 178, RMR

1 "HRN Staffing." That's another company?

2 MR. BEMIS: Correct.

3 BY MR. MURDOCK:

4 Q. So at American Nursing it would say
5 "American Nursing Services?" Or what would it say?

6 A. Usually the company's name is spelled out,
7 however they chose to be called. If it was HRN it
8 was HRN, and we would keep the abbreviation.

9 If it was American Nursing
10 Services, it would be spelled that way. So if he was
11 working for American Nursing Services, that's what it
12 would say on the badge.

13 MR. MURDOCK: MR. MURDOCK: Why don't
14 we mark this as 2.

15 (Plaintiff's Exhibit 2 marked.)

16 BY MR. MURDOCK:

17 Q. So we're looking at Plaintiff's Exhibit 2.
18 On the bottom where it says "HRN Staffing 2," in
19 Mr. Farmer's instance it would say "American Nursing
20 Services" on the bottom?

21 A. Yes, sir, right below "Contract Staff."

22 Q. But on the top it would still say
23 "Centennial Hills Hospital Medical Center," is that
24 correct?

25 A. Yes.

1 Q. Okay. What does "Contract Staff" mean?

2 A. To the best of my knowledge, "Contract
3 Staff" at that time meant personnel that were not
4 part of our system. They were not part of us. That
5 would be agencies, traveling nurses, that sort of
6 thing.

7 Q. How are the patients told what a contract
8 staff individual is?

9 A. They're not instructed one way or the
10 other. It's simply just a badge identification.

11 Q. So in other words, if a patient sees
12 someone wearing his badge, unless they ask, they're
13 not going to know whether they're an employee of the
14 hospital or not, right?

15 A. No.

16 Q. Is that correct?

17 A. Yes. They don't get instructions one way
18 or the other.

19 Q. Thank you.

20 Now, Mr. Farmer. Let's go to
21 Mr. Farmer. Mr. Farmer started working at Centennial
22 Hills through American Nursing in I believe March of
23 2008. Would that be correct?

24 A. I believe it was late winter, if I recall.
25 He was with us for a few months on and off. He was a

REPORTER'S CERTIFICATE

STATE OF NEVADA)
) ss.
COUNTY OF CLARK)

I, Carol O'Malley, Nevada Certified Court
Reporter 178, do hereby certify:

That I reported the taking of the deposition
of SALVATORE SPARACINO on March 12, 2013 commencing
at the hour of 9:30 a.m.;

That prior to being examined, the witness was by
me duly sworn to testify to the truth, the whole
truth, and nothing but the truth;

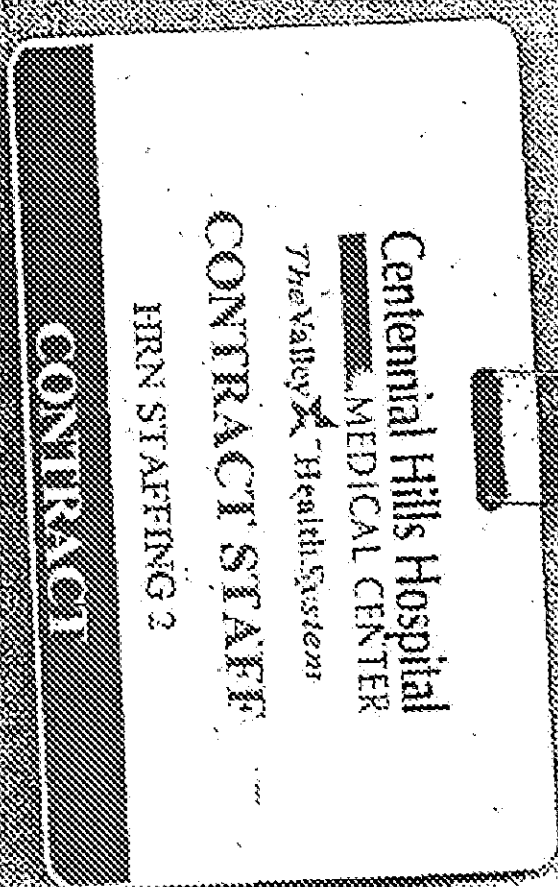
That I thereafter transcribed my said
shorthand notes into typewriting and that the
typewritten transcription of said deposition is a
complete, true, and accurate transcription of my said
shorthand notes taken down at said time. Review of
the transcript was requested.

I further certify that I am not a relative or
employee of an attorney or counsel involved in said
action, nor financially interested in said action.

IN WITNESS WHEREOF, I have hereunto set my hand
in my office in the County of Clark, State of Nevada,
this 24th day of March, 2013.

Carol O'Malley, CCR No. 178

P.H.S. Depo. Exh. # 2
Carol D. Mailey, CCR No. 178, RMR



DISTRICT COURT
CLARK COUNTY, NEVADA

ROXANNE CAGNINA, an individual,)
)
Plaintiff,)

vs.)

Case No.
A570756

CENTENNIAL HILLS HOSPITAL MEDICAL)
CENTER AUXILIARY, a Nevada)
corporation; VALLEY HEALTH SYSTEM)
LLC, Limited Liability Company;)
VALLEY HOSPITAL MEDICAL CENTER,)
INC., a Nevada corporation;)
UNIVERSAL HEALTH SERVICES)
FOUNDATION, a Pennsylvania)
corporation; AMERICAN NURSING)
SERVICES, INC., a Louisiana)
corporation; STEVEN DALE FARMER,)
an individual; DOES INDIVIDUALS)
1 through 10 and ROE BUSINESS OR)
GOVERNMENTAL ENTITIES 1 through)
10, inclusive,)
)
Defendants.)

DEPOSITION OF KAREN SUE GOODHART

Taken on January 27, 2010

At 9:03 A.M.

1640 West Alta Drive, Suite 4

Las Vegas, Nevada

LST 117315A

Reported by: Jennifer A. Caton, RDR, CRR, CCR #422



1 that a CNA would do in the ER in this type of
2 situation? I mean, when would a CNA interact with a
3 patient?

4 A. When -- no, sir. That's a very
5 difficult question to answer, sir.

6 Q. Could a registered nurse like yourself
7 ask a CNA to assist in treating a patient?

8 A. Assist in what manner, sir?

9 Q. In doing anything, getting the patient
10 blankets or adjusting IVs, whatever, I mean, just
11 some assistance.

12 A. They can assist in non-nursing -- or
13 non-RN functions.

14 Q. Okay. Can we narrow that down a little
15 bit? I mean, they obviously can't treat a patient
16 medically.

17 A. Correct. They can get a blanket.

18 Q. Okay.

19 A. They can get a water.

20 Q. Can they --

21 A. If it was -- with permission.

22 Q. Can they touch a patient? Can they
23 handle a patient, you know, physically touch a
24 patient?

25 A. They can give a bed bath. They can

1 clean up stool and urine. They can give a bedpan.

2 Q. With a female patient like Roxanne
3 Cagnina -- who we have already established was
4 changed into a hospital gown; correct?

5 A. Correct.

6 Q. Would she have any undergarments
7 underneath that gown?

8 MR. FERRAINOLO: Object to form.

9 THE WITNESS: She could have.

10 BY MR. HYMAN:

11 Q. Would the records indicate that?

12 A. No, sir.

13 Q. Fair to say a CNA or a nurse's assistant
14 is not supposed to be touching underneath a female
15 patient's gown, especially a male CNA?

16 MR. FERRAINOLO: Object to form.

17 THE WITNESS: That's another difficult
18 question to answer, sir, because there are things
19 that they do have to do, and sometimes that requires
20 basically -- I'm not sure where -- what you're
21 trying to ask.

22 BY MR. HYMAN:

23 Q. Okay. Maybe -- you know, you said you
24 were kind of familiar with the facts of this case,
25 but do you understand that the plaintiff was

CERTIFICATE OF REPORTER

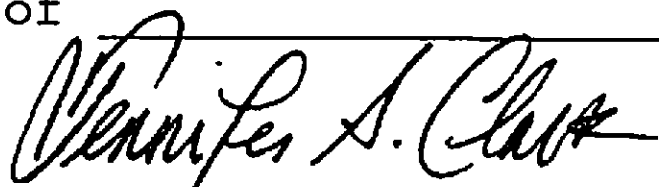
STATE OF NEVADA)
 SS:
COUNTY OF CLARK)

I, Jennifer A. Caton, a Certified Court Reporter licensed by the State of Nevada, do hereby certify: That I reported the deposition of Karen Sue Goodhart, commencing on January 27, 2010.

That prior to being deposed, the witness was duly sworn by me to testify to the truth. That I thereafter transcribed my said stenographic notes into written form, and that the typewritten transcript is a complete, true, and accurate transcription of my said stenographic notes. That review of the transcript was requested.

I further certify that I am not a relative, employee, or independent contractor of counsel or of any of the parties involved in the proceeding, nor a person financially interested in the proceeding, nor do I have any other relationship that may reasonably cause my impartiality to be questioned.

IN WITNESS WHEREOF, I have set my hand in my office in the County of Clark, State of Nevada, this _____ day of _____, 2010.



Jennifer A. Caton, RDR, CRR, CCR 422

DISTRICT COURT

CLARK COUNTY, NEVADA

JANE DOE,

Plaintiff,

vs.

CASE NO. 09-A-595780

VALLEY HEALTH SYSTEM LLC,
a Nevada limited
liability company, d/b/a
CENTENNIAL HILLS HOSPITAL
MEDICAL CENTER; UNIVERSAL
HEALTH SERVICES, INC., a
Delaware corporation;
AMERICAN NURSING
SERVICES, INC., a
Louisiana corporation;
STEVEN DALE FARMER, an
individual; DOES I
through X, inclusive; and
ROE CORPORATIONS I
through X, inclusive,

Defendants.

~~~~~

DEPOSITION OF

DOUGLAS NICHOLS

Thursday, February 14, 2013

2:00 p.m.

520 South Fourth Street

Las Vegas, Nevada

Carol O'Malley, CCR 178, RMR

1 Q. Yeah.

2 A. No.

3 Q. You never read anything about it?

4 A. No.

5 Q. You've never been taught anything about it?

6 A. I mean probably in some of the training  
7 that the hospital staff does -- there may be  
8 something in there concerning assaults on patients or  
9 on staff themselves, but that's about it.

10 Q. But I mean specific to --

11 A. Specifics, no. No.

12 Q. Let me just state that again. -- specific  
13 to Las Vegas hospitals?

14 A. No.

15 Q. Do patient doors have locks on them?

16 A. No, sir.

17 Q. And let me just be specific here.

18 Do patient doors at Centennial  
19 Hills Hospital have locks on them?

20 A. No, not that I'm aware of.

21 Q. So in other words -- I'm going to call her  
22 Jane Doe for purposes of this case, but you know her  
23 real name, I assume; is that correct?

24 A. No, I do not.

25 Q. Well, my client's name --

1 MR. MURDOCK: Off the record for a  
2 second.

3 (Discussion off the record.)

4 BY MR. MURDOCK:

5 Q. So in other words, Jane Doe could not have  
6 taken care of things for herself, and locked the door  
7 to stop people from coming in and out of her room; is  
8 that correct?

9 A. If there's no lock on the door, yes.

10 Q. Is there an eyepiece on the door?

11 A. No.

12 Q. Is there a window in the door?

13 A. No, sir.

14 Q. Okay. Now, you're aware of the room that  
15 Jane Doe was in?

16 A. No, sir.

17 Q. If I told you she was on the sixth floor,  
18 would that ring a bell?

19 A. Yeah. I know the sixth floor, yes.

20 Q. I assume you do.

21 Now, the sixth floor -- what kind  
22 of patients are on the sixth floor? Do you know?

23 A. I believe they call them sort of a medical  
24 med-surg floor. Just basic patients are on 6.

25 Q. Right. Okay. And the hospital has nurses,

1 CNAs, and other stuff, correct?

2 A. Yes.

3 Q. How do you identify somebody who actually  
4 works in the hospital? How would a patient identify  
5 them?

6 A. By their badge.

7 Q. If a nurse wanted to come in the room of a  
8 patient, does the nurse need to swipe their badge?

9 A. No, sir.

10 MR. BEMIS: And you're speaking for the  
11 sixth floor, correct?

12 MR. MURDOCK: Yeah, for the sixth  
13 floor.

14 THE WITNESS: No, sir.

15 BY MR. MURDOCK:

16 Q. Now, there's a nurses' station on the sixth  
17 floor, is that correct?

18 A. Yes, sir.

19 Q. And do you know how many patient rooms  
20 there are on the sixth floor?

21 A. I believe approximately like 30 to 35.

22 Q. Are they all private, semi private? What  
23 are they?

24 A. There's a couple rooms -- or I'd say maybe  
25 eight rooms that are sort of contact precaution

1 MR. HYMAN: Would you like to look at that?  
 2 THE WITNESS: Yes.  
 3 \*\*\*  
 4 (BRIEF RECESS)  
 5 \*\*\*  
 6 BY MR. HYMAN:  
 7 Q. Okay. So during the brief break, you had an  
 8 opportunity to review ANS 195 through 199?  
 9 A. Yes.  
 10 Q. Okay. And so similar to the questions I was  
 11 asking you, based on the dates here of January 25th,  
 12 2008, it looks like this incident was reported  
 13 possibly a little less than a month before he started  
 14 working at Centennial Hills Hospital. Is this the  
 15 type of information Centennial Hills Hospital would  
 16 have wanted?  
 17 A. Yes.  
 18 Q. And had you had this information, would  
 19 Centennial Hills Hospital have made any different  
 20 decision about taking on Mr. Farmer?  
 21 A. Had I personally seen this information, I  
 22 would have wanted to get additional information about  
 23 that incident before making a decision to bring him  
 24 on.  
 25 Q. At least until that time occurred that you

1 information about Mr. Farmer, what he did, or  
 2 anything like that?  
 3 A. No.  
 4 Q. Then when this incident occurred -- or at  
 5 least allegedly occurred -- and was reported sometime  
 6 around May 16th or 17th, 2008, did you have any  
 7 personal involvement or anything to do with Mr.  
 8 Farmer and these allegations?  
 9 A. I had no personal involvement with Mr.  
 10 Farmer. I was asked to review the agency file to see  
 11 that everything was in place.  
 12 Q. So do you mean the ANS agency file?  
 13 A. The file that was in our office submitted to  
 14 us by ANS.  
 15 Q. Does that include what we were just talking  
 16 about?  
 17 A. Yes.  
 18 Q. I mentioned that ANS provided us with  
 19 voluminous documents. Those aren't also in your  
 20 file, are they?  
 21 A. No.  
 22 Q. There was a police investigation that's  
 23 ongoing. Were you interviewed?  
 24 A. No.  
 25 Q. And I'm not going to ask you anything about

1 received that additional information that satisfied  
 2 your concerns, would you have taken on Mr. Farmer?  
 3 A. We would not have.  
 4 Q. Do you at least feel that whatever  
 5 contractual or other relationships you had with  
 6 American Nursing Services or indirectly through a  
 7 middleman company -- do you feel that their  
 8 obligations owed to the hospital were breached?  
 9 MR. FERRAINOLO: Object to form.  
 10 A. I don't specifically know the terms of the  
 11 contract, but I do know that I would have wanted to  
 12 have had this information.  
 13 MR. HYMAN: Okay. For the purposes of the  
 14 record, we'll go ahead and mark this as an exhibit to  
 15 your deposition.  
 16 BY MR. HYMAN:  
 17 Q. Before we conclude this deposition, most of  
 18 the questions I asked you were kind of a general  
 19 nature. Do you recall any personal dealings with Mr.  
 20 Farmer yourself?  
 21 A. No.  
 22 Q. Have you ever actually seen him in person?  
 23 A. Not that I'm aware of.  
 24 Q. And before this incident happened in or  
 25 around mid-May of 2008, you don't have any personal

1 what you talked to attorneys or anything like that,  
 2 but as far as other people at Centennial Hills  
 3 Hospital, have you talked to them about this case?  
 4 A. Our quality person asked me where she could  
 5 find the file, and I directed her to the Nurse  
 6 Staffing Office.  
 7 Q. Who was that? Who is the quality person?  
 8 A. Yvette Wilson is currently. I believe at  
 9 the time it was Janet Callahan.  
 10 Q. The file is the same file we talked about?  
 11 A. Yes.  
 12 Q. Was there anything else that wasn't in the  
 13 file that you provided her?  
 14 A. No.  
 15 Q. And from a human resources standpoint, are  
 16 you aware of any new policies that evolved due to  
 17 this specific incident?  
 18 MR. FERRAINOLO: Object to form.  
 19 A. I'm not aware of any new policies.  
 20 MR. HYMAN: Okay. That's all I have.  
 21 MR. FERRAINOLO: E-Tran, please, and the  
 22 exhibit.  
 23 (Exhibit 1 was marked.)  
 24 (Proceedings concluded at 10:49 a.m.)  
 25





PHS Depo. Exh. # 1  
 Carol O'Malley, CCR No. 178, RME

CENTENNIAL HILLS  
 AGENCY FILE REQUIREMENTS  
 JOB CLASS:  
 AGENCY:  
 2008

*Garner, Steven*      *CNA*      *American Nurse*

| SECTION # | FILE REQUIREMENTS                     | EXPIRATION DATES     | COMMENTS             |
|-----------|---------------------------------------|----------------------|----------------------|
| 1         | APPLICATION / REFERENCES              | <i>OK</i>            |                      |
|           | BACKGROUND CHECK                      | <i>OK</i>            |                      |
|           | SIGNED JOB DESCRIPTION - AGENCY       |                      |                      |
| 2         | SKILLS COMPETENCY CHECKLIST           | <i>OK</i>            |                      |
|           | IV CERTIFICATION (LPN'S ONLY)         |                      |                      |
| 3         | CERTIFICATIONS: Front / back signed   |                      |                      |
|           | NEVADA NURSING LICENSE                | <i>CNA 3/16/09</i>   | <i>CNA 021509 PS</i> |
|           | CPR/BLS                               | <i>10/30/09</i>      |                      |
|           | ACLS (ICU, IMC, ER)                   | <i>NA</i>            |                      |
|           | NRP (2ND FLR)                         | <i>N/A</i>           |                      |
|           | PALS (ER, PICU)                       | <i>N/A</i>           |                      |
|           | NALS Level 2 & 3 only                 | <i>N/A</i>           |                      |
| 4         | PHYSICAL                              | <i>done 9/21/09</i>  |                      |
|           | DRUG TEST (URINE TOX. SCREEN)         | <i>done 10/21/07</i> |                      |
|           | MANTOUX (ANNUALLY)                    | <i>done 10/29/07</i> |                      |
|           | CHEST XRAY (TB SURVEILLANCE) ANNUALLY | <i>NA</i>            |                      |
| 5         | *DEPARTMENT ORIENTATION               |                      |                      |
|           | VHS ORIENTATION SHEET                 |                      |                      |
| 6         | *ANNUAL REVIEW                        |                      |                      |
|           | MED TEST / RN / LPN                   |                      |                      |
|           | *CURRENT EVALUATIONS                  |                      |                      |

\* = FOR HOSPITAL USE ONLY

CHH00326

**In the Matter Of:**

**JANE DOE vs. VALLEY HEALTH**

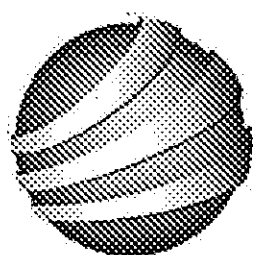
09-A-595780

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**CRYSTAL JOHNSON**

*May 28, 2013*

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**ESQUIRE**  
S O L U T I O N S

800.211.DEPO (3376)  
[EsquireSolutions.com](http://EsquireSolutions.com)

1 at Centennial Hills.

2 Q. Where did you work in California?

3 A. Western Medical Center, Santa Ana.

4 Q. Is that a UHS hospital?

5 A. No.

6 Q. Western Medical, Santa Ana. Where is that?

7 A. It's off the 57 and Tustin, I believe.

8 Q. Are you from there?

9 A. Yes.

10 Q. Are you a high school graduate?

11 A. Yes.

12 Q. College graduate?

13 A. No. Some courses.

14 Q. Where did you take the courses?

15 A. At Huntington Beach.

16 Q. Community college?

17 A. Yes.

18 Q. And you said you also worked at Centennial  
19 Hills?

20 A. Yes.

21 Q. When did you work at Centennial Hills?

22 A. I started December 17th, '07, before they  
23 opened.

24 Q. How do you know that exactly?

25 A. I was excited. I was excited to open the

1 A. No.

2 Q. Did he live here for awhile?

3 A. No.

4 Q. Are you married?

5 A. No.

6 Q. Do you have any children?

7 A. No.

8 Q. How did you get your job with UHS, the  
9 first one?

10 A. I worked through the agency.

11 Q. What agency?

12 A. Apple.

13 Q. Apple Staffing or something like that?

14 A. I think so. They needed help in HR, so  
15 that's how I got in with UHS.

16 Q. So you moved over to Centennial Hills and  
17 you opened the hospital, correct?

18 A. Yes.

19 Q. And what was your job classification when  
20 you opened the hospital at Centennial Hills?

21 A. Staffing coordinator.

22 Q. What is a staffing coordinator?

23 A. We find out the needs on each floor, each  
24 department, and we call the agencies and let them  
25 know how many nurses we need, CNAs, and we try to

1 A. I think Steve was from there.

2 Q. And that was a poor question on my part.

3 Do you remember any of the  
4 individuals that you would have spoken with at  
5 American Nursing?

6 A. No.

7 Q. Do you remember a Michele Simmons?

8 A. Michele sounds familiar. I do not  
9 recognize the last name.

10 Q. Okay. Would your contacts have been all  
11 telephonic with these companies like American  
12 Nursing, or would they have also been via email?

13 A. We did not use email, but we would fax over  
14 needs to all the agencies, and telephone.

15 Q. Do you use email now?

16 A. Yes.

17 Q. When did you start using email?

18 A. Not until I went to Summerlin.

19 Q. Okay. So during all your time at  
20 Centennial you were using faxes to send over the  
21 needs, things like that, correct?

22 A. Yes, correct.

23 Q. Were there any emails sent back and forth?

24 A. Maybe for travelers, but I do not remember  
25 doing it for everyday staffing.

1 Q. What is travelers?

2 A. They would have a contract for 8 weeks, 12  
3 weeks in a certain department, so they were  
4 guaranteed shifts.

5 Q. Traveling nurses?

6 A. Yes. No CNAs.

7 Q. Okay. But would that be through an agency  
8 as well?

9 A. Yes.

10 Q. Is it possible that you used email with  
11 American Nursing for even non-traveling nurses?

12 A. It's possible.

13 Q. Okay. Did you have an email address when  
14 you were at Centennial?

15 A. Yes.

16 Q. What was it?

17 A. That I don't remember. I believe it was  
18 Crystal.Johnson@UHSinc.com.

19 Q. Okay. Now, you said one of the things you  
20 would do is background checks, billings, things like  
21 that; is that correct?

22 A. Yes.

23 Q. How would you perform a background check?

24 A. Well, we would not actually do the  
25 background checks. The agencies were required to do

1 the background checks and send us the printout.

2 Q. What were you looking for when a background  
3 check was ordered or requested?

4 A. Misdemeanors, felonies.

5 Q. Anything else?

6 A. No.

7 Q. How about like past job performance?

8 A. We would look at that, yes.

9 Q. And that's something though that would have  
10 to be given from the company, correct?

11 A. Yes.

12 Q. From like ANS to you, correct?

13 A. Yes.

14 Q. Would that be something you normally would  
15 have to ask for, or is that something they would just  
16 give you?

17 A. They should give it to us.

18 Q. And when you say "they should," how do they  
19 know they should?

20 A. We would let them know that this is what we  
21 would need. We would send them a sheet with all the  
22 requirements, the paperwork that they would need to  
23 send us.

24 Q. And would that sheet have on there  
25 something about past employment, background?

1 A. It would have references.

2 Q. Just references?

3 A. Uh-huh.

4 Q. Is that a yes?

5 A. Yes. I'm sorry.

6 Q. But what if they were, for instance, not  
7 allowed back at their prior job that they worked at  
8 before coming to Centennial? Is that something that  
9 you would know about?

10 A. No.

11 Q. Is that something you would ask about?

12 A. We would, but it wasn't required for us to  
13 ask that.

14 Q. Well, how would you ask that, if it wasn't  
15 required?

16 A. You know, if they were good employees, had  
17 good references from their employers. We wouldn't  
18 come right out and say, "Are they allowed back  
19 there?" We were not allowed to do that. But we  
20 would ask if they had a good reference from the  
21 employers.

22 Q. Who said you weren't allowed to do that?

23 A. Our managers.

24 Q. But you would ask about references instead?

25 A. (Witness nods.)



1 Q. Is that a yes?

2 A. Yes. Sorry.

3 Q. Now, when you were talking about  
4 references, were you asking about references from the  
5 prior job they had before Centennial Hills?

6 A. Yes.

7 Q. Not some references from 2005 or that kind  
8 of stuff, right?

9 A. Correct.

10 (Plaintiff's Exhibit 1 marked.)

11 BY MR. MURDOCK:

12 Q. Let me show you what's been marked as  
13 Plaintiff's Exhibit 1. Have you ever seen a document  
14 like this before?

15 A. Yes.

16 Q. Have you ever seen this document before?

17 A. Yes.

18 Q. Okay. Now, it's got a stamp on the bottom.  
19 It says CHH00326. Do you see that?

20 A. Yes.

21 Q. Now, that's a stamp that's put on by the  
22 lawyers, so don't worry about that stamp. Okay?

23 A. Okay.

24 Q. Nevertheless, you said you've seen this  
25 document before?

REPORTER'S CERTIFICATE

STATE OF NEVADA     )  
                              )     ss.  
COUNTY OF CLARK     )

I, Carol O'Malley, Nevada Certified Court  
Reporter 178, do hereby certify:

That I reported the taking of the deposition  
of DOUGLAS NICHOLS on February 14, 2013 commencing at  
the hour of 2:00 p.m.;

That prior to being examined, the witness was by  
me duly sworn to testify to the truth, the whole  
truth, and nothing but the truth;

That I thereafter transcribed my said  
shorthand notes into typewriting and that the  
typewritten transcription of said deposition is a  
complete, true, and accurate transcription of my said  
shorthand notes taken down at said time. Review of  
the transcript was requested.

I further certify that I am not a relative or  
employee of an attorney or counsel involved in said  
action, nor financially interested in said action.

IN WITNESS WHEREOF, I have hereunto set my hand  
in my office in the County of Clark, State of Nevada,  
this 22nd day of February, 2013.

Carol O'Malley, CCR No. 178

DISTRICT COURT  
CLARK COUNTY, NEVADA

ROXANNE CAGNINA, )  
 )  
Plaintiff, )  
 )  
v. ) CASE NO. A570756  
 ) DEPT. NO. X  
CENTENNIAL HILLS HOSPITAL MEDICAL )  
CENTER AUXILIARY, a Nevada )  
Corporation; VALLEY HEALTH SYSTEM )  
LLC, a Nevada Limited Liability )  
Company; VALLEY HOSPITAL MEDICAL )  
CENTER, INC., a Nevada )  
Corporation; UNIVERSAL HEALTH )  
SERVICES FOUNDATION, a )  
Pennsylvania Corporation; )  
AMERICAN NURSING SERVICES, INC., )  
a Louisiana corporation; STEVEN )  
DALE FARMER, an individual; DOE )  
INDIVIDUALS 1 through 10, and ROE )  
BUSINESS OR GOVERNMENTAL ENTITIES )  
1 through 10, inclusive, )  
 )  
Defendants. )  
 )

---

DEPOSITION OF  
LISA DOTY  
LAS VEGAS, NEVADA  
TUESDAY, FEBRUARY 2, 2010

Reported By Kele R. Smith, NV CCR No. 672, CA CSR No.  
13405  
LIT Job No. 117317

1 A. Yes.

2 Q. When did you see this document last?

3 A. This exact one?

4 Q. Yes.

5 A. I don't know the exact date.

6 Q. Well, was it recent, in the last year?

7 A. No.

8 Q. Would it have been two years ago, three  
9 years ago?

10 A. Maybe three years ago, four years ago.

11 Q. Okay. And what is this document?

12 A. This is a sheet that we would have in our  
13 packets, and we would check off as we got the  
14 information that was needed.

15 Q. Okay. So for instance -- first of all,  
16 whose writing is on here?

17 A. This is mine.

18 Q. All the handwriting on this document is  
19 yours, is that correct?

20 A. Yes.

21 Q. Now, it says, "Farmer, Steven." Do you see  
22 that?

23 A. Yes.

24 Q. And it says "CNA." Do you see that?

25 A. Yes.

1 Q. And it says "American Nurse," is that  
2 right?

3 A. Yes.

4 Q. Now, American Nurse -- that was the agency,  
5 right?

6 A. Yes.

7 Q. Now, under Section 1, the "File  
8 Requirements," do you see where it says  
9 "Application?"

10 A. Yes.

11 Q. And that's circled?

12 A. (Witness nods.)

13 Q. Who circled that?

14 A. I did.

15 Q. And why did you circle it?

16 A. So I would know that I had the application  
17 and not the references.

18 Q. Because in fact where it says "2  
19 References," you put a little dash next to that and  
20 you wrote "need," is that correct?

21 A. Yes.

22 Q. And in fact your initials are under the  
23 expiration date. Do you see that?

24 A. Yes.

25 Q. Now, at some point were those references

1 ever given to you?

2 A. I'm not sure.

3 Q. But if they were, it would be your habit, I  
4 would assume, to check that off saying you got it,  
5 right?

6 A. Correct.

7 Q. Okay. But for some reason in this case  
8 it's not checked off as received, is that correct?

9 A. Correct.

10 Q. Now, what references were you asking for?

11 A. Two work-related references.

12 Q. And those work-related references, would  
13 you have expected that at least one of those would  
14 come from his last position while at American  
15 Nursing?

16 A. We would expect that, yes.

17 Q. Did you ever take any steps though to  
18 ensure that?

19 A. Yes.

20 Q. What steps did you take?

21 A. Well, usually American or any of the  
22 agencies would have their own evaluation that they  
23 would send to their jobs, and they would send them  
24 back, and all we could do was ask for them to make  
25 sure that they sent them, and keep bugging them.

1 Q. But would you allow the person to work even  
2 though you didn't have them?

3 A. We should not have.

4 Q. Now, it says "Background Check" underneath,  
5 and we're still in Section 1 here. What is the  
6 background check?

7 A. The background check is what the agencies  
8 run to see if they have any criminal history.

9 Q. Okay. And your initial is next to that.  
10 What does that mean?

11 A. Just that we received it.

12 Q. Okay. Well, when you have your initials  
13 above that, where it says "Application 2 References,"  
14 does that mean you received the references or not?

15 A. No, I don't believe I received it. It was  
16 that I received the application.

17 Q. Okay. And in fact that's why you wrote  
18 "need?"

19 A. Yes.

20 Q. Okay. "Signed job description." What is  
21 that?

22 A. That is a CNA job description that the  
23 agency has them sign, what is expected of them as  
24 being a CNA.

25 Q. And then Section 2 is a "Skills Competency

1 BY MR. MURDOCK:

2 Q. This is CHH00327. Is this your  
3 handwriting?

4 A. No.

5 Q. What is this document? Do you know?

6 A. This looks like a copy of our checkoff  
7 list. I'm not sure who wrote that.

8 Q. But why would there be two in the file?

9 A. I'm not sure.

10 Q. Is it normal for there to be two in the  
11 file?

12 A. No.

13 Q. Now, it says "Application," then it says  
14 "N/A." Do you see that?

15 A. Yes.

16 Q. Would there be any reason that that  
17 wouldn't be applicable?

18 A. No.

19 Q. Now, it says "Background Check." It says  
20 this was done July 29, 2007, if I'm reading it  
21 correctly. Do you see that?

22 A. Yes.

23 Q. But this isn't something that you would  
24 have filled out, correct?

25 A. No, this is not the one I filled out.



1 A. Yes.

2 Q. Why would that happen?

3 A. They would check it off to make sure they  
4 had everything and they sent us all the information.  
5 So we wouldn't pay attention to this part, because we  
6 would still go through everything and make our own.

7 Q. So there was really no reason for this  
8 document?

9 A. No.

10 Q. And in fact it's a little different than  
11 the document you actually filled out.

12 If you compare the two, for  
13 instance, on Section 1 it says "Application" on  
14 CHH327; and then if you flip back to CHH00326, it's  
15 got on there "Application/2 References."

16 Do you see that?

17 A. Yes.

18 Q. Do you recall a time when Centennial Hills  
19 only required an application, and not references?

20 A. No.

21 Q. Do you know why this form 327 would be  
22 different than 326?

23 A. No.

24 Q. How did Mr. Farmer start working, if you  
25 didn't have the references?

1 A. I'm not sure.

2 Q. Whose job was it to make sure that you had  
3 the references?

4 A. Staffing coordinators.

5 Q. Was that you?

6 A. Yes, I'm one of them.

7 Q. And you do not believe that you had the  
8 references, is that correct?

9 A. Correct.

10 Q. And as you testified before, he should not  
11 have been working until you had the references; is  
12 that correct?

13 A. Yes.

14 MR. BEMIS: I object to form.

15 BY MR. MURDOCK:

16 Q. Now, is your job as staffing coordinator  
17 solely -- and I don't mean this in a negative way --  
18 but solely to put the file together, and somebody  
19 else makes the decision on that person, or do you  
20 actually make the decision on that person?

21 A. No, I did not make the decision on that  
22 person.

23 Q. Who does, or who did back at Centennial  
24 Hills?

25 A. They would just go to the floors and start

REPORTER'S CERTIFICATE

STATE OF NEVADA     )  
                              )     ss.  
COUNTY OF CLARK     )

I, Carol O'Malley, Nevada Certified Court  
Reporter 178, do hereby certify:

That I reported the taking of the deposition  
of CRYSTAL JOHNSON on 28th commencing at the hour of  
1:00 p.m.;

That prior to being examined, the witness was by  
me duly sworn to testify to the truth, the whole  
truth, and nothing but the truth;

That I thereafter transcribed my said  
shorthand notes into typewriting and that the  
typewritten transcription of said deposition is a  
complete, true, and accurate transcription of my said  
shorthand notes taken down at said time. Review of  
the transcript was requested.

I further certify that I am not a relative or  
employee of an attorney or counsel involved in said  
action, nor financially interested in said action.

IN WITNESS WHEREOF, I have hereunto set my hand  
in my office in the County of Clark, State of Nevada,  
this 5th day of June, 2013.

*Carol O'Malley*

Carol O'Malley, CCR No. 178

**CASE NO. 70083**

---

**IN THE  
SUPREME COURT OF NEVADA**

Electronically Filed  
Aug 16 2016 09:24 a.m.  
Tracie K. Lindeman  
Clerk of Supreme Court

**VALLEY HEALTH SYSTEM, LLC, a Nevada limited liability company,  
d/b/a CENTENNIAL HILLS HOSPITAL MEDICAL CENTER; AND  
UNIVERSAL HEALTH SERVICES, INC., a Delaware corporation,**

Appellants,

vs.

**ESTATE OF JANE DOE, BY AND THROUGH ITS SPECIAL  
ADMINISTRATOR, MISTY PETERSON,**

Respondent.

---

**APPEAL FROM THE EIGHTH JUDICIAL DISTRICT COURT, CLARK  
COUNTY, NEVADA  
HONORABLE JUDGE RICHARD SCOTTI, CASE NO. A-09-595780-C**

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**APPELLANTS' APPENDIX TO OPENING BRIEF**

**VOLUME I of XVII**

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**APPENDIX TO APPELLANTS' OPENING BRIEF**

**VOLUME I of XVII**

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| 3                         | Defendant Universal Health Services, Inc.'s Answer to Plaintiff's Amended Complaint filed September 11, 2013                                                                                                                                                    | AA0013-<br>AA0021            |
| 4                         | Plaintiff's Motion for Summary Judgment Re: Liability filed September 29, 2014                                                                                                                                                                                  | AA0022-<br>AA0093            |
| 5                         | Defendant Steven Dale Farmer's Limited Opposition to Plaintiff's Motion for Summary Judgment Re: Liability filed October 13, 2014                                                                                                                               | AA0094-<br>AA0098            |
| 6                         | Plaintiff's Exhibit 18 – Defendants Centennial Hills Hospital and Universal Health Services, Inc.'s Opposition to Plaintiff's Motion for Summary Judgment Re: Liability and Joinder to Defendant Steven Dale Farmer's Limited Opposition filed October 14, 2014 | AA0099-<br>AA0112            |
| 7                         | Defendants Centennial Hills Hospital and Universal Health Services, Inc.'s Errata to their Opposition to Plaintiff's Motion for Summary Judgment Re: Liability and Joinder to Defendant Steven Dale Farmer's Limited Opposition October 16, 2014                | AA0113-<br>AA0116            |

**APPENDIX TO APPELLANTS' OPENING BRIEF**

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**TAB 1**

1 **COMP**

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 14 Attorneys for Plaintiff

FILED

JUL 23 11 25 AM '09

*Ed Smith*  
 CLERK OF THE COURT

15 **DISTRICT COURT**  
 16 **CLARK COUNTY, NEVADA**

17 JANE DOE,

18 Plaintiff,

19 vs.

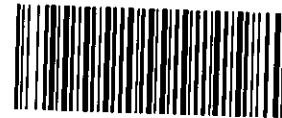
20 CENTENNIAL HILLS HOSPITAL MEDICAL )  
 21 CENTER AUXILIARY, a Nevada corporation; )  
 22 VALLEY HEALTH SYSTEM LLC, a Nevada )  
 23 limited liability company; UNIVERSAL HEALTH )  
 24 SERVICES FOUNDATION, a Pennsylvania )  
 25 corporation; AMERICAN NURSING SERVICES, )  
 26 INC., a Louisiana corporation; STEVEN DALE )  
 27 FARMER, an individual; DOES I through X, )  
 28 inclusive; and ROE CORPORATIONS I through )  
 X, inclusive, )

Defendants. )

CASE NO. A-09-595780-C  
 DEPT. NO. II

**COMPLAINT**

A-09-595780-C  
 268834



RECEIVED  
 RECEIVED  
 CLERK OF THE COURT  
 2009

COMES NOW Plaintiff Jane Doe, by and through her attorneys of record, Murdock & Associates, Chtd. and Eckley M. Keach, Chtd., and for her cause of action, alleges as follows:

1. This action is instituted for damages, attorney's fees, costs of suit and pre-judgment interest.

2. At all times mentioned herein, Plaintiff Jane Doe was and is a resident of Las Vegas, Clark County, Nevada.<sup>1</sup>

3. At all times mentioned herein, Defendant Centennial Hills Hospital Medical Center Auxiliary ("Centennial Hills") was a Nevada corporation, now dissolved, duly licensed in the State of Nevada, and conducting business in Las Vegas, Clark County, Nevada.

4. At all times mentioned herein, Defendant Valley Health System LLC ("Valley Health") was and is a Delaware limited liability company, duly licensed in the State of Nevada, and conducting business in Las Vegas, Clark County, Nevada.

5. At all times mentioned herein, Universal Health Services Foundation ("UHS") was and is a Pennsylvania non-profit corporation, duly licensed in the State of Nevada, and conducting business in Las Vegas, Clark County, Nevada.

6. At all times mentioned herein, Defendant American Nursing Services, Inc. ("American Nursing") was and is a Louisiana corporation, duly licensed in the State of Nevada, and conducting business in Las Vegas, Clark County, Nevada.

7. At all times mentioned herein, Defendant Steven Farmer was and is a resident of Las Vegas, Clark County, Nevada.

8. The true names and capacities, whether individual, corporate, associate, or otherwise, of Defendants Does I through X are unknown to Plaintiff, who therefore sues said Defendants by such fictitious names. Plaintiff is informed and believes and thereon alleges that each of the Defendants designated herein as a Doe is negligently responsible in some manner for the events and happenings herein referred to and negligently caused injury and damages proximately thereby to Plaintiff as herein alleged. Plaintiff will ask leave of court to amend this Complaint to insert the true names and capacities of said Doe Defendants when same have been

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<sup>1</sup> Plaintiff is using the fictitious name of Jane Doe because of the nature of the allegations. Under confidential arrangements, Plaintiff will furnish her true names to the Court and to Defendants.

1 ascertained by Plaintiff, together with the appropriate charging allegations, and to join such  
2 Defendants in this action.

3 9. The true names and capacities, whether individual, corporate, associate, or  
4 otherwise, of Defendants Roe Corporations I through X are unknown to Plaintiff, who therefore  
5 sues said Defendants by such fictitious names. Plaintiff is informed and believes and thereon  
6 alleges that each of the Defendants designated herein as a Roe Corporation is negligently  
7 responsible in some manner for the events and happenings herein referred to and negligently  
8 caused injury and damages proximately thereby to Plaintiff as herein alleged. Plaintiff will ask  
9 leave of court to amend this Complaint to insert the true names and capacities of said Roe  
10 Corporation Defendants when same have been ascertained by Plaintiff, together with the  
11 appropriate charging allegations, and to join such Defendants in this action.

12 **FIRST CAUSE OF ACTION**

13 10. Plaintiff repeats and realleges the allegations contained in paragraphs 1 through  
14 10 as though fully set forth herein at length.

15 11. In or around May 2008, when Plaintiff was a patient at Centennial Hills Hospital,  
16 Jane Doe was sexually assaulted, and otherwise injured and terrorized by Farmer. Upon  
17 information and belief, prior to the attack on Jane Doe, Mr. Farmer sexually assaulted and/or  
18 molested other patients

19 12. In or around May 2008, Plaintiff Jane Doe was a patient at Centennial Hills  
20 Hospital. Plaintiff Jane Doe was recovering from seizures which were quite severe in nature.  
21 Steven Farmer entered her room and sexually assaulted Jane Doe. Jane Doe could not scream  
22 out because of the damages from the seizures. However, she was conscious, terrorized, in fear,  
23 and in severe pain and shock.

24 13. At all relevant times, Plaintiff Jane Doe exercised due care and caution for her  
25 own safety.

26 14. The Defendants, as the owner, affiliate and/or operator of Centennial Hills  
27 Hospital, owed a duty to Plaintiff and to all others lawfully upon the premises to maintain the  
28 premises in a safe and secure fashion so that Plaintiff and others lawfully upon the premises

1 would not be subject to injury from perils known or unknown.

2 15. With regard to all of the actions leading up to, contributing to, and proximately  
3 causing the injury to Plaintiff, each of the named Defendants and all of the Doe/Roe Defendants  
4 acted as agents of one another and in concert with each other.

5 16. The corporate Defendants, and each of them individually and in their corporate  
6 capacities, and through their agents, servants and employees, maintained the premises in a  
7 negligent manner.

8 17. As a direct and proximate result of the negligent acts or omissions, more fully set  
9 forth herein, of the corporate Defendants, and each of them individually, and by and through  
10 their agents, servants, and employees, Plaintiff was sexually assaulted by Farmer.

11 18. The corporate Defendants are responsible for the acts and omissions of their  
12 employees consistent with the doctrine of *respondeat superior* and pursuant to Nevada statute.

13 19. As a direct and proximate result of the corporate Defendants' negligence as  
14 herein alleged, Plaintiff was injured in and about her head, neck, back, body, limbs, organs and  
15 nervous system and was otherwise injured and caused to suffer great pain of body and mind, all  
16 of which conditions may be permanent and disabling in nature, all to her general damage in an  
17 amount in excess of \$10,000.00.

18 20. Plaintiff's injuries were caused by the negligence, and gross negligence,  
19 recklessness, willfulness and wantonness of the corporate Defendants in that the corporate  
20 Defendants failed to properly provide adequate security, failed to maintain the premises in a  
21 safe condition, and failed to provide safe premises for its patients, despite the well known  
22 foreseeability of an event such as this occurring.

23 21. As a further and direct and proximate result of the corporate Defendants'  
24 negligence as herein alleged, Plaintiff has incurred expenses for medical care and treatment and  
25 expenses incidental thereto, all to her damage in a sum according to proof at trial; Plaintiff is  
26 informed and believes and thereon alleges that such expenses will continue in the future, all to  
27 her damage and in a presently unascertainable amount, and in this regard, Plaintiff prays leave  
28 of Court to insert all damages herein when the same have been fully ascertained.

1           22.    As a further direct and proximate result of the negligence of the corporate  
2 Defendants as described herein, Plaintiff has suffered physical and emotional injuries as herein  
3 set forth which has damaged Plaintiff in that she has suffered a loss of enjoyment of life;  
4 Plaintiff is informed and believes and thereon alleges that such expenses will continue in the  
5 future, all to her general damage in an amount in excess of \$10,000.00.

6           23.    It has become necessary for Plaintiff to retain the services of an attorney to  
7 prosecute this action, and Plaintiff is therefore entitled to attorney's fees and costs of suit.

8                               **SECOND CAUSE OF ACTION**

9           24.    Plaintiff repeats and realleges the allegations contained in paragraphs 1 through  
10 23 as though fully set forth herein at length.

11           25.    The corporate Defendants, and each of them, in their corporate capacities,  
12 individually, and by and through their agents, servants, and employees, knew or should have  
13 known of the substantial risk of harm which existed to persons lawfully upon the premises as  
14 patients. As a result of the acts and omissions of the corporate defendants, and each of them, in  
15 their corporate capacities, individually, and by and through their agents, servants and  
16 employees, harm and injury was certain to come to patients. The corporate Defendants, and  
17 each of them, consciously disregarded their duty of care which they owed to all patients with  
18 the sure knowledge of the consequences of such conscious disregard of the substantial injury to  
19 patients which would necessarily and certainly flow from such acts and omissions of the  
20 corporate Defendants, and each of them, in their corporate capacities, individually, and by and  
21 through their agents, servants and employees. Additionally, in so acting, the corporate  
22 Defendants acted with a conscious disregard for the rights of others, which constitutes an act  
23 subjecting Plaintiff to cruel and unjust hardship. Such willful, malicious and oppressive  
24 conduct gives rise to a cause of action for exemplary damages and an exemplary damage award  
25 appropriate to such conduct and deemed sufficient to punish the corporate Defendants, and each  
26 of them, for acting with such callous disregard for the health and safety of their patients and to  
27 deter others in the future from acting in a similar fashion is an amount in excess of \$10,000.00.

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**THIRD CAUSE OF ACTION**

26. Plaintiff repeats and realleges the allegations contained in paragraphs 1 through 25 as though fully set forth herein at length.

27. In or around May 2008, Defendant Farmer sexually assaulted Plaintiff.

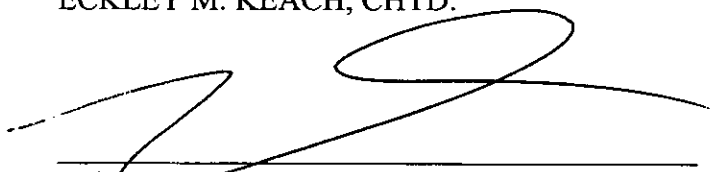
28. As a direct and proximate result thereof, Plaintiff was severely injured thereby.

29. It has become necessary for Plaintiff to retain the services of an attorney to prosecute this action, and Plaintiff is therefore entitled to attorney's fees and costs of suit.

WHEREFORE, Plaintiff prays for judgment against Defendants, and each of them, jointly and severally, as set forth below:

1. For general damages in an amount in excess of \$10,000.00;
2. For punitive damages in the amount in excess of \$10,000.00;
3. For all medical, hospitalization and incidental expenses incurred and to be incurred by Plaintiff in an amount in excess of \$10,000.00;
4. For damages for loss of enjoyment of life in an amount in excess of \$10,000.00;
5. For attorney's fees, costs incurred and interest; and
6. For such other and further relief as the Court deems just and proper.

MURDOCK & ASSOCIATES, CHTD.  
ECKLEY M. KEACH, CHTD.



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Robert E. Murdock Bar No. 4013  
Eckley M. Keach Bar No. 1154  
520 South Fourth Street  
Las Vegas, NV 89101  
Attorneys for Plaintiff

TAB 2



33

## ACOM

Robert E. Murdock, Esq.  
Nevada Bar No. 4013  
MURDOCK & ASSOCIATES, CHTD.  
520 South Fourth Street  
Las Vegas, NV 89101  
702-384-5563

FILED

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*Eckley M. Keach*  
CLERK OF THE COURT

Eckley M. Keach, Esq.  
Nevada Bar No. 1154  
ECKLEY M. KEACH, CHTD.  
520 South Fourth Street  
Las Vegas, NV 89101  
702-384-5563  
Attorneys for Plaintiff

A-09-595780-C  
343898



DISTRICT COURT  
CLARK COUNTY, NEVADA

JANE DOE,

Plaintiff,

vs.

VALLEY HEALTH SYSTEM LLC, a Nevada  
limited liability company, d/b/a CENTENNIAL  
HILLS HOSPITAL MEDICAL CENTER;  
UNIVERSAL HEALTH SERVICES, INC., a  
Delaware corporation; AMERICAN NURSING  
SERVICES, INC., a Louisiana corporation;  
STEVEN DALE FARMER, an individual; DOES I  
through X, inclusive; and ROE CORPORATIONS  
I through X, inclusive,

Defendants.

CASE NO. A-09-595780-C  
DEPT. NO. II

## AMENDED COMPLAINT

COMES NOW Plaintiff Jane Doe, by and through her attorneys of record, Murdock &  
Associates, Chtd. and Eckley M. Keach, Chtd., and for her cause of action, alleges as follows:

RECEIVED  
AUG 21 2009  
CLERK OF THE COURT

1           1.       This action is instituted for damages, attorney's fees, costs of suit and pre-  
2 judgment interest.

3           2.       At all times mentioned herein, Plaintiff Jane Doe was and is a resident of Las  
4 Vegas, Clark County, Nevada.<sup>1</sup>

5           3.       At all times mentioned herein, Defendant Valley Health System LLC  
6 ("Valley Health") was and is a Delaware limited liability company, duly licensed in the State of  
7 Nevada, and conducting business in Las Vegas, Clark County, Nevada, as Centennial Hills  
8 Hospital Medical Center.

9           4.       At all times mentioned herein, Universal Health Services, Inc. ("UHS") was and  
10 is a Delaware corporation, duly licensed in the State of Nevada, and conducting business in Las  
11 Vegas, Clark County, Nevada.

12           5.       At all times mentioned herein, Defendant American Nursing Services, Inc.  
13 ("American Nursing") was and is a Louisiana corporation, duly licensed in the State of Nevada,  
14 and conducting business in Las Vegas, Clark County, Nevada.

15           6.       At all times mentioned herein, Defendant Steven Farmer was and is a resident of  
16 Las Vegas, Clark County, Nevada.

17           7.       The true names and capacities, whether individual, corporate, associate, or  
18 otherwise, of Defendants Does I through X are unknown to Plaintiff, who therefore sues said  
19 Defendants by such fictitious names. Plaintiff is informed and believes and thereon alleges that  
20 each of the Defendants designated herein as a Doe is negligently responsible in some manner  
21 for the events and happenings herein referred to and negligently caused injury and damages  
22 proximately thereby to Plaintiff as herein alleged. Plaintiff will ask leave of court to amend this  
23 Complaint to insert the true names and capacities of said Doe Defendants when same have been  
24 ascertained by Plaintiff, together with the appropriate charging allegations, and to join such  
25 Defendants in this action.

26           8.       The true names and capacities, whether individual, corporate, associate, or  
27 otherwise, of Defendants Roe Corporations I through X are unknown to Plaintiff, who therefore  
28

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<sup>1</sup> Plaintiff is using the fictitious name of Jane Doe because of the nature of the allegations. Under confidential arrangements, Plaintiff will furnish her true names to the Court and to Defendants.

1   sues said Defendants by such fictitious names. Plaintiff is informed and believes and thereon  
2   alleges that each of the Defendants designated herein as a Roe Corporation is negligently  
3   responsible in some manner for the events and happenings herein referred to and negligently  
4   caused injury and damages proximately thereby to Plaintiff as herein alleged. Plaintiff will ask  
5   leave of court to amend this Complaint to insert the true names and capacities of said Roe  
6   Corporation Defendants when same have been ascertained by Plaintiff, together with the  
7   appropriate charging allegations, and to join such Defendants in this action.

8                                   **FIRST CAUSE OF ACTION**

9           9.       Plaintiff repeats and realleges the allegations contained in paragraphs 1 through 8  
10   as though fully set forth herein at length.

11           10.     In or around May 2008, when Plaintiff was a patient at Centennial Hills Hospital,  
12   Jane Doe was sexually assaulted, and otherwise injured and terrorized by Farmer. Upon  
13   information and belief, prior to the attack on Jane Doe, Mr. Farmer sexually assaulted and/or  
14   molested other patients

15           11.     In or around May 2008, Plaintiff Jane Doe was a patient at Centennial Hills  
16   Hospital. Plaintiff Jane Doe was recovering from seizures which were quite severe in nature.  
17   Steven Farmer entered her room and sexually assaulted Jane Doe. Jane Doe could not scream  
18   out because of the damages from the seizures. However, she was conscious, terrorized, in fear,  
19   and in severe pain and shock.

20           12.     At all relevant times, Plaintiff Jane Doe exercised due care and caution for her  
21   own safety.

22           13.     The Defendants, as the owner, affiliate and/or operator of Centennial Hills  
23   Hospital, owed a duty to Plaintiff and to all others lawfully upon the premises to maintain the  
24   premises in a safe and secure fashion so that Plaintiff and others lawfully upon the premises  
25   would not be subject to injury from perils known or unknown.

26           14.     With regard to all of the actions leading up to, contributing to, and proximately  
27   causing the injury to Plaintiff, each of the named Defendants and all of the Doe/Roe Defendants  
28   acted as agents of one another and in concert with each other.

1           15.    The corporate Defendants, and each of them individually and in their corporate  
2 capacities, and through their agents, servants and employees, maintained the premises in a  
3 negligent manner.

4           16.    As a direct and proximate result of the negligent acts or omissions, more fully set  
5 forth herein, of the corporate Defendants, and each of them individually, and by and through  
6 their agents, servants, and employees, Plaintiff was sexually assaulted by Farmer.

7           17.    The corporate Defendants are responsible for the acts and omissions of their  
8 employees consistent with the doctrine of *respondeat superior* and pursuant to Nevada statute.

9           18.    As a direct and proximate result of the corporate Defendants' negligence as  
10 herein alleged, Plaintiff was injured in and about her head, neck, back, body, limbs, organs and  
11 nervous system and was otherwise injured and caused to suffer great pain of body and mind, all  
12 of which conditions may be permanent and disabling in nature, all to her general damage in an  
13 amount in excess of \$10,000.00.

14           19.    Plaintiff's injuries were caused by the negligence, and gross negligence,  
15 recklessness, willfulness and wantonness of the corporate Defendants in that the corporate  
16 Defendants failed to properly provide adequate security, failed to maintain the premises in a  
17 safe condition, and failed to provide safe premises for its patients, despite the well known  
18 foreseeability of an event such as this occurring.

19           20.    As a further and direct and proximate result of the corporate Defendants'  
20 negligence as herein alleged, Plaintiff has incurred expenses for medical care and treatment and  
21 expenses incidental thereto, all to her damage in a sum according to proof at trial; Plaintiff is  
22 informed and believes and thereon alleges that such expenses will continue in the future, all to  
23 her damage and in a presently unascertainable amount, and in this regard, Plaintiff prays leave  
24 of Court to insert all damages herein when the same have been fully ascertained.

25           21.    As a further direct and proximate result of the negligence of the corporate  
26 Defendants as described herein, Plaintiff has suffered physical and emotional injuries as herein  
27 set forth which has damaged Plaintiff in that she has suffered a loss of enjoyment of life;  
28 Plaintiff is informed and believes and thereon alleges that such expenses will continue in the

1 future, all to her general damage in an amount in excess of \$10,000.00.

2 22. It has become necessary for Plaintiff to retain the services of an attorney to  
3 prosecute this action, and Plaintiff is therefore entitled to attorney's fees and costs of suit.

4 **SECOND CAUSE OF ACTION**

5 23. Plaintiff repeats and realleges the allegations contained in paragraphs 1 through  
6 22 as though fully set forth herein at length.

7 24. The corporate Defendants, and each of them, in their corporate capacities,  
8 individually, and by and through their agents, servants, and employees, knew or should have  
9 known of the substantial risk of harm which existed to persons lawfully upon the premises as  
10 patients. As a result of the acts and omissions of the corporate defendants, and each of them, in  
11 their corporate capacities, individually, and by and through their agents, servants and  
12 employees, harm and injury was certain to come to patients. The corporate Defendants, and  
13 each of them, consciously disregarded their duty of care which they owed to all patients with  
14 the sure knowledge of the consequences of such conscious disregard of the substantial injury to  
15 patients which would necessarily and certainly flow from such acts and omissions of the  
16 corporate Defendants, and each of them, in their corporate capacities, individually, and by and  
17 through their agents, servants and employees. Additionally, in so acting, the corporate  
18 Defendants acted with a conscious disregard for the rights of others, which constitutes an act  
19 subjecting Plaintiff to cruel and unjust hardship. Such willful, malicious and oppressive  
20 conduct gives rise to a cause of action for exemplary damages and an exemplary damage award  
21 appropriate to such conduct and deemed sufficient to punish the corporate Defendants, and each  
22 of them, for acting with such callous disregard for the health and safety of their patients and to  
23 deter others in the future from acting in a similar fashion is an amount in excess of \$10,000.00.

24 **THIRD CAUSE OF ACTION**

25 25. Plaintiff repeats and realleges the allegations contained in paragraphs 1 through  
26 24 as though fully set forth herein at length.

27 26. In or around May 2008, Defendant Farmer sexually assaulted Plaintiff.

28 27. As a direct and proximate result thereof, Plaintiff was severely injured thereby.

28. It has become necessary for Plaintiff to retain the services of an attorney to prosecute this action, and Plaintiff is therefore entitled to attorney's fees and costs of suit.

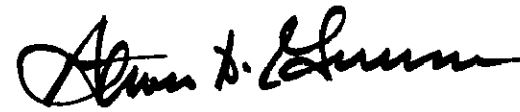
WHEREFORE, Plaintiff prays for judgment against Defendants, and each of them, jointly and severally, as set forth below:

1. For general damages in an amount in excess of \$10,000.00;
2. For punitive damages in the amount in excess of \$10,000.00;
3. For all medical, hospitalization and incidental expenses incurred and to be incurred by Plaintiff in an amount in excess of \$10,000.00;
4. For damages for loss of enjoyment of life in an amount in excess of \$10,000.00;
5. For attorney's fees, costs incurred and interest; and
6. For such other and further relief as the Court deems just and proper.

MURDOCK & ASSOCIATES, CHTD.  
ECKLEY M. KEACH, CHTD.

Robert E. Murdock Bar No. 4013  
Eckley M. Keach Bar No. 1154  
520 South Fourth Street  
Las Vegas, NV 89101  
Attorneys for Plaintiff

**TAB 3**



CLERK OF THE COURT

ANS  
MICHAEL E. PRANGLE, ESQ.  
Nevada Bar No. 8619  
JOHN F. BEMIS, ESQ.  
Nevada Bar No. 9509  
HALL PRANGLE & SCHOONVELD, LLC  
1160 North Town Center Drive, Suite 200  
Las Vegas, NV 89144  
702-889-6400 – Phone  
702-384-6025 – Facsimile  
[mprangle@hpslaw.com](mailto:mprangle@hpslaw.com)  
[jbemis@hpslaw.com](mailto:jbemis@hpslaw.com)  
*Attorneys for Defendants*  
*Centennial Hills Hospital and*  
*Universal Health Services, Inc.*

DISTRICT COURT  
CLARK COUNTY, NEVADA

JANE DOE,  
  
Plaintiff,

CASE NO. A595780  
DEPT NO. II

vs.

VALLEY HEALTH SYSTEM LLC, a Nevada  
limited liability company, d/b/a CENTENNIAL  
HILLS HOSPITAL MEDICAL CENTER;  
UNIVERSAL HEALTH SERVICES, INC., a  
Delaware corporation; AMERICAN NURSING  
SERVICES, INC., a Louisiana corporation;  
STEVEN DALE FARMER, an individual; DOES I  
through X, inclusive; and ROE CORPORATIONS I  
through X, inclusive,

Defendants.

**DEFENDANT UNIVERSAL HEALTH SERVICES, INC.'S**  
**ANSWER TO PLAINTIFF'S AMENDED COMPLAINT**

COMES NOW, Defendant, UNIVERSAL HEALTH SERVICES, INC. (hereinafter  
referred to as "UHS") by and through its counsel of record, the law office of HALL PRANGLE  
& SCHOONVELD, LLC, and hereby answers Plaintiff's Amended Complaint as follows:

HALL PRANGLE & SCHOONVELD, LLC  
1160 NORTH TOWN CENTER DRIVE  
SUITE 200  
LAS VEGAS, NEVADA 89144  
TELEPHONE: 702-889-6400 FACSIMILE: 702-384-6025



1. In Answering paragraphs 1, 2, 5, 6, 7, and 8 of Plaintiff's Amended Complaint, this answering Defendant states it is without sufficient information to form a belief as to the truth of the allegations contained in said paragraphs of Plaintiff's Amended Complaint and therefore denies the same.

2. In Answering paragraph 3 of Plaintiff's Amended Complaint, this answering Defendant admits that at all times mentioned herein, Defendant, Valley Health System, LLC was and is a Delaware limited liability company, duly licensed in the State of Nevada, and conducting business in Las Vegas, Clark County, Nevada, as Centennial Hills Hospital Medical Center.

3. In Answering paragraph 4 of Plaintiff's Amended Complaint, this answering Defendant denies each and every allegation contained therein.

**FIRST CAUSE OF ACTION**

4. In Answering paragraph 9 of Plaintiff's Amended Complaint, this answering Defendant repeats and repleads its answers to paragraphs 1 through 8 of Plaintiff's Amended Complaint.

5. In Answering paragraphs 10, 11, and 12 of Plaintiff's Amended Complaint, this answering Defendant states it is without sufficient information to form a belief as to the truth of the allegations contained in said paragraphs of Plaintiff's Amended Complaint and therefore denies the same.

6. In Answering paragraph 13 of Plaintiff's Amended Complaint, this answering Defendant admits only to those duties imposed by Nevada law.

1           7.     In Answering paragraphs 14, 15, 16, 17, 18, 19, 20, 21, and 22 of Plaintiff's  
2 Amended Complaint, this answering Defendant denies each and every allegation contained  
3 therein.

4                                   **SECOND CAUSE OF ACTION**

5           8.     In Answering paragraph 23 of Plaintiff's Amended Complaint, this answering  
6 Defendant repeats and repleads its answers to paragraphs 1 through 22 of Plaintiff's Amended  
7 Complaint.

8           9.     In Answering paragraph 24 of Plaintiff's Amended Complaint, this answering  
9 Defendant denies each and every allegation contained therein.

10                               **THIRD CAUSE OF ACTION**

11           10.    In Answering paragraph 25 of Plaintiff's Amended Complaint, this answering  
12 Defendant repeats and repleads its answers to paragraphs 1 through 24 of Plaintiff's Amended  
13 Complaint.

14           11.    In Answering paragraphs 26 and 27 of Plaintiff's Amended Complaint, this  
15 answering Defendant states it is without sufficient information to form a belief as to the truth of  
16 the allegations contained in said paragraphs of Plaintiff's Amended Complaint and therefore  
17 denies the same.

18           12.    In Answering paragraph 28 of Plaintiff's Amended Complaint, this answering  
19 Defendant denies each and every allegation contained therein.

20                               **FIRST AFFIRMATIVE DEFENSE**

21           Plaintiff's Amended Complaint on file herein fails to state a claim against this Defendant  
22 upon which relief can be granted.

23           ...

**SECOND AFFIRMATIVE DEFENSE**

The injuries, if any, complained of by Plaintiff in her Amended Complaint were proximately caused by the acts or omissions of unknown third parties, or other persons over whom this Defendant exercised no control, and over whom this Defendant has no right or duty to control, nor ever has had a right or duty to exercise control.

**THIRD AFFIRMATIVE DEFENSE**

Plaintiff did not exercise ordinary care, caution or prudence in the conduct of her affairs relating to the allegations of the Amended Complaint for damages herein in order to avoid the injuries or damages of which Plaintiff complains, and said injuries or damages, if any, were directly and proximately contributed to or caused by the fault, carelessness and negligence of the Plaintiff.

**FOURTH AFFIRMATIVE DEFENSE**

The risks and consequences, if any, attendant to the recommendations and treatment proposed by this Defendant, were fully explained to the Plaintiff who freely consented to such treatment and thereby assumed risks involved in such matter.

**FIFTH AFFIRMATIVE DEFENSE**

The damages, if any, alleged by Plaintiff, were not the result of any acts of omission, or commission, or negligence, but were the results of known risks which was consented to by the Plaintiff, such risks being inherent in the nature of the care rendered, and such risks were assumed by the Plaintiff when she consented to the treatment.

**SIXTH AFFIRMATIVE DEFENSE**

Pursuant to N.R.C.P. 11, as amended, all possible Affirmative Defenses may not have been alleged herein insofar as sufficient facts were not available after reasonable inquiry upon

1 the filing of Defendant's Answer, and therefore, Defendant reserves the right to amend its  
2 Answer to allege additional Affirmative Defenses, if subsequent investigation warrants.

3 **SEVENTH AFFIRMATIVE DEFENSE**

4 In all medical attention rendered by this Defendant to Plaintiff, this Defendant possessed  
5 and exercised that degree of skill and learning ordinarily possessed and exercised by the  
6 members of its profession in good standing, practicing in similar localities, and that at all times  
7 this Defendant used reasonable care and diligence in the exercise of its skills and the application  
8 of its learning, and at all times acted according to their best judgment; that the medical treatment  
9 administered by this Defendant was the usual and customary treatment for the physical condition  
10 and symptoms exhibited by Plaintiff, and that at no time was this Defendant guilty of negligence  
11 or improper treatment; that, on the contrary, this Defendant did perform each and every act of  
12 such treatment in a proper and efficient manner, and in a manner most thoroughly approved and  
13 followed by the medical profession generally and under the circumstances and conditions as they  
14 existed when such medical attention was rendered.

15 **EIGHTH AFFIRMATIVE DEFENSE**

16 The injuries complained of in the Amended Complaint, if any, were not the result of  
17 willful, malicious or deliberate conduct on the part of this answering Defendant.

18 **NINTH AFFIRMATIVE DEFENSE**

19 That it has been necessary for this Defendant to employ the services of an attorney to  
20 defend this action, and a reasonable sum should be allowed Defendants for attorneys' fees,  
21 together with costs of suit incurred herein.

22 ...

23 ...

**TENTH AFFIRMATIVE DEFENSE**

Defendant hereby incorporates by reference those affirmative defenses enumerated in Rule 8 of the Nevada Rules of Civil Procedure as if fully set forth herein. In the event further investigation or discovery reveals the applicability of any such defenses, Defendant reserves the right to seek leave of Court to amend its Answer to specifically assert the same. Such defenses are herein incorporated by reference for the specific purpose of not waiving the same.

**ELEVENTH AFFIRMATIVE DEFENSE**

This Defendant is liable for only that portion of the Plaintiff's claims that represents the percentage of negligence, if any, attributed to it.

**TWELFTH AFFIRMATIVE DEFENSE**

Plaintiff has failed to plead any acts or omissions of this answering Defendant sufficient to constitute gross negligence or punitive damages.

**THIRTEENTH AFFIRMATIVE DEFENSE**

By operation of NRS 41.745, Universal Health Services, Inc. cannot be held liable for the intentional torts of any employees, agents, ostensible agents or independent contractors, if any, including but not limited to any and all other Defendants.

**FOURTEENTH AFFIRMATIVE DEFENSE**

Any actions undertaken by any employees, agents, ostensible agents or independent contractors including but not limited to any and all other Defendants were truly independent ventures.

...

...

**FIFTEENTH AFFIRMATIVE DEFENSE**

Any actions undertaken by any employees, agents, ostensible agents or independent contractors including but not limited to any and all other Defendants were not committed in the course of the very task assigned to the employee.

**SIXTEENTH AFFIRMATIVE DEFENSE**

Any actions undertaken by any employees, agents, ostensible agents or independent contractors including but not limited to any and all other Defendants as alleged in Plaintiff's Amended Complaint were not reasonably foreseeable under the facts and circumstances considering the nature and scope of the employment.

**SEVENTEETH AFFIRMATIVE DEFENSE**

The facts alleged by Plaintiff do not state a cause of action for punitive damages; such damages are limited or prohibited by the Nevada Revised Statutes and the United States Constitution.

**EIGHTEENTH AFFIRMATIVE DEFENSE**

Universal Health Services, Inc. hereby incorporates by reference those affirmative defenses enumerated in Rule 8 of the Nevada Rules of Civil Procedure as if fully set forth herein. In the event further investigation or discovery reveals the applicability of any such defenses, Universal Health Services, Inc. reserves the right to seek leave of Court to amend this Answer to specifically assert any such defense. Such defenses are herein incorporated by reference for the specific purpose of not waiving any such defense.

**NINETEENTH AFFIRMATIVE DEFENSE**

Universal Health Services, Inc. is entitled to a limitation on any damages pursuant to Nevada Law including but not limited to Nevada Revised Statute 41A.035.

HALL PRANGLE & SCHOONVELD, LLC  
1160 NORTH TOWN CENTER DRIVE  
SUITE 200  
LAS VEGAS, NEVADA 89144  
TELEPHONE: 702-889-6400 FACSIMILE: 702-384-6025

TWENTIETH AFFIRMATIVE DEFENSE

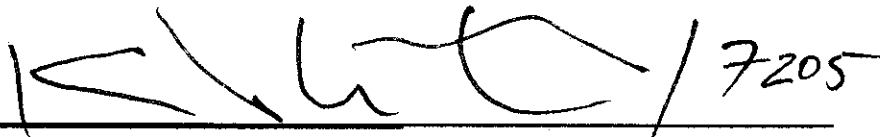
This answering Defendant lacks the minimum contacts to subject itself to personal jurisdiction in the State of Nevada

WHEREFORE, Defendant prays for judgment as follows:

1. That Plaintiff takes nothing by virtue of their Complaint;
2. For reasonable attorney's fees and costs of suit incurred herein; and
3. For such other and further relief as the Court deems just and proper.

DATED this 11<sup>th</sup> day of September, 2013.

HALL PRANGLE & SCHOONVELD, LLC



MICHAEL E. PRANGLE, ESQ.

Nevada Bar No. 8619

JOHN F. BEMIS, ESQ.

Nevada Bar No. 9509

HALL PRANGLE & SCHOONVELD, LLC

1160 North Town Center Drive, Suite 200

Las Vegas, NV 89144

*Attorneys for Defendants*

*Centennial Hills Hospital and*

*Universal Health Services, Inc.*

...

...

...

HALL PRANGLE & SCHOONVELD, LLC  
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SUITE 200  
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**CERTIFICATE OF SERVICE**


I HEREBY CERTIFY that I am an employee of HALL PRANGLE & SCHOONVELD, LLC; that on the 11<sup>th</sup> day of September 2013, I served a true and correct copy of the foregoing **DEFENDANT UNIVERSAL HEALTH SERVICES, INC.'S ANSWER TO PLAINTIFF'S AMENDED COMPLAINT** via facsimile and in a sealed envelope, via US Mail, first class postage pre-paid to the following parties at their last known address:

Robert E. Murdock, Esq.  
Murdock & Associates, Chtd.  
520 South Fourth Street  
Las Vegas, Nevada 89101  
*Attorneys for Plaintiff*

Eckley M. Keach, Esq.  
Eckley M. Keach, Chtd.  
520 South Fourth Street  
Las Vegas, Nevada 89101  
*Attorneys for Plaintiffs*

S. Brent Vogel, Esq.  
LEWIS BRISBOIS BISGAARD & SMITH  
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Las Vegas, NV 89118  
*Attorneys for Defendant*  
*American Nursing Services, Inc.*

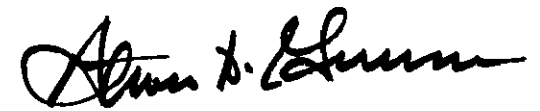
Robert C. McBride, Esq.  
MANDELBAUM ELLERTON &  
MCBRIDE  
2012 Hamilton Lane  
Las Vegas, Nevada 89106  
*Attorneys for Defendant*  
*Steven Dale Farmer*

  
An employee of HALL PRANGLE & SCHOONVELD, LLC

4843-4399-4901, v. 1



**TAB 4**



CLERK OF THE COURT

Robert E. Murdock, Esq.  
Nevada Bar No. 4013  
MURDOCK & ASSOCIATES, CHTD.  
521 South Third Street  
Las Vegas, NV 89101  
702-685-6111

Eckley M. Keach, Esq.  
Nevada Bar No. 1154  
ECKLEY M. KEACH, CHTD.  
521 South Third Street  
Las Vegas, NV 89101  
702-685-6111  
Attorneys for Plaintiff

**DISTRICT COURT**  
**CLARK COUNTY, NEVADA**

ESTATE OF JANE DOE, by and through its  
Special Administrator, Misty Petersen,

Plaintiff,

vs.

VALLEY HEALTH SYSTEM LLC, a Nevada  
limited liability company, d/b/a CENTENNIAL  
HILLS HOSPITAL MEDICAL CENTER;  
UNIVERSAL HEALTH SERVICES, INC., a  
Delaware corporation; AMERICAN NURSING  
SERVICES, INC., a Louisiana corporation;  
STEVEN DALE FARMER, an individual; DOES I  
through X, inclusive; and ROE CORPORATIONS  
I through X, inclusive,

Defendants.

CASE NO. 09-A-595780-C  
DEPT. NO. II

**PLAINTIFF'S MOTION FOR  
SUMMARY JUDGMENT  
RE: LIABILITY**

**DATE:  
TIME:**

COMES NOW Plaintiff Estate of Jane Doe, by and through its Special Administrator,  
Misty Petersen, by and through its attorneys of record, Murdock & Associates, Chtd., and Eckley  
M. Keach, Chtd., and hereby submits its Motion for Summary Judgment as follows.

1 This Motion is made and based upon the papers and pleadings on file herein, the attached  
2 Points and Authorities, Affidavit of Robert E. Murdock, Esq. and any oral argument as may be  
3 had by this Court.

4 DATED this 29<sup>th</sup> day of September, 2014.

5 MURDOCK & ASSOCIATES, CHTD.  
6 ECKLEY M. KEACH, CHTD.

7 /s/ Robert E. Murdock  
8 Robert E. Murdock Bar No. 4013  
9 Eckley M. Keach Bar No. 1154  
10 521 South Third Street  
11 Las Vegas, NV 89101  
12 Attorneys for Plaintiff

13  
14 **NOTICE OF MOTION**

15 TO: ALL INTERESTED PARTIES

16 PLEASE TAKE NOTICE that on the 3rd day of November, 2014 at  
17 9:00 a.m. in Department II of the District Court of Clark County, Nevada, Plaintiff will  
18 bring the foregoing Motion for Summary Judgment before this Court for hearing.

19 DATED this 29<sup>th</sup> day of September, 2014.

20 MURDOCK & ASSOCIATES, CHTD.  
21 ECKLEY M. KEACH, CHTD.

22 /s/ Robert E. Murdock  
23 Robert E. Murdock Bar No. 4013  
24 Eckley M. Keach Bar No. 1154  
25 521 South Third Street  
26 Las Vegas, NV 89101  
27 Attorneys for Plaintiff  
28

1 **POINTS AND AUTHORITIES**

2 **INTRODUCTION**

3 This is a motion for partial summary judgment on the issue of liability. NRS 41.133 says a  
4 “judgment of conviction is conclusive evidence of all facts necessary to impose civil liability for  
5 the injury.” Farmer sexually assaulted the deceased victim. He was convicted of this crime. The  
6 judgment of conviction is conclusive evidence of “all facts” necessary to establish civil liability  
7 for the injuries resulting from this crime. Furthermore, since the facts necessary to impose civil  
8 liability for the decedent’s injuries have been conclusively established, partial summary judgment  
9 on the issue of liability must be found as to Farmer, ANS his direct employer, and Centennial Hills  
10 who hired ANS to provide certified nursing assistants, like Farmer, to service its patients.  
11 Accordingly, the only remaining issue is what damages were proximately caused by the sexual  
12 assault. The Court will see there are no genuine issues of material facts that would prevent a  
13 finding of liability as to any defendant based upon the judgment of conviction. The law on this  
14 point is explicit, incontestable, and decisive.

15 Litigation in this multi-defendant case was initiated on July 23, 2009. This case concerns  
16 the battery by Mr. Farmer against Jane Doe. Jane Doe has testified that Farmer committed a  
17 battery against her while she was a patient at Centennial Hills Hospital and was suffering from the  
18 effects of seizure activity. Mr. Farmer, a CNA employed by American Nursing and working at  
19 Centennial Hills, pinched and rubbed her nipples, placed his thumb in her anus, and placed his  
20 finger inside her vagina.

21 As this Court knows, at various points in time, there was a stay of this case due to the  
22 criminal case against Mr. Farmer. However, in an Order dated May 20, 2013, Commissioner  
23 Bulla lifted the stay allowing all discovery to move forward. While Mr. Farmer asserted the Fifth  
24 Amendment during his deposition, now that he has been convicted, his testimony (or refusal to  
25 provide thereof) is meaningless.

26 A six (6) week jury trial in the criminal case against Mr. Farmer commenced on February  
27 3, 2014. On January 20, 2012, prior to said jury trial, Jane Doe provided cross-examined  
28 testimony in the criminal case in order to preserve her testimony. The entire testimony is attached

hereto as Exhibit 1 for the Court's convenience.<sup>1</sup> Her testimony is clear and absolute: Farmer committed a battery upon Jane Doe. It also details how she felt and how she was damaged.

On June 2, 2014, a Judgment of Conviction was filed in the criminal case against Mr. Farmer, which is attached hereto as Exhibit 2. In particular, Mr. Farmer was found guilty on all six (6) counts alleged against him by Jane Doe as reflected in the following table:

| SECOND AMENDED INFORMATION                                                                                                                                                                                                                                                                                                       | JUDGMENT OF CONVICTION                                                                                                                                                                        |
|----------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|-----------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|
| <b>Count 10 – Sexual Assault</b><br><br>Digital penetration, by inserting his finger(s) into the anal opening of Jane Doe, against her will, or under conditions in which Farmer knew, or should have known, that Jane Doe was mentally or physically incapable of resisting or understanding the nature of Farmer's conduct.    | <b>Count 10 – Sexual Assault (F – Category A) in violation of NRS 200.364, 200.366</b><br><br>Life with a minimum parole eligibility of Ten (10) Years in NDC                                 |
| <b>Count 11 – Open or Gross Lewdness</b><br><br>Touching and/or rubbing the genital opening of Jane Doe with his hand(s) and/or finger(s).                                                                                                                                                                                       | <b>Count 11 – Open or Gross Lewdness (GM) in violation of NRS 201.210</b><br><br>Twelve (12) Months in CCDC (Concurrent with Counts 13, 14, 15)                                               |
| <b>Count 12 – Sexual Assault</b><br><br>Digital penetration, by inserting his finger(s) into the genital opening of Jane Doe, against her will, or under conditions in which Farmer knew, or should have known, that Jane Doe was mentally or physically incapable of resisting or understanding the nature of Farmer's conduct. | <b>Count 12 – Sexual Assault (F – Category A) in violation of NRS 200.364, 200.366</b><br><br>Life with a minimum parole eligibility of Ten (10) Years in NDC (Concurrent with Counts 10, 11) |
| <b>Count 13 – Open or Gross Lewdness</b><br><br>Touching and/or rubbing and/or pinching the breast(s) and/or nipple(s) of Jane Doe with his hand(s) and/or finger(s).                                                                                                                                                            | <b>Count 13 – Open or Gross Lewdness (GM) in violation of NRS 201.210</b><br><br>Twelve (12) Months in CCDC (Concurrent with Counts 11, 14, 15)                                               |

///

<sup>1</sup> Plaintiff has redacted Jane Doe's name throughout.

|                                                                                                                         |                                                                    |
|-------------------------------------------------------------------------------------------------------------------------|--------------------------------------------------------------------|
| Count 14 – Open or Gross Lewdness                                                                                       | Count 14 – Open or Gross Lewdness (GM) in violation of NRS 201.210 |
| Touching and/or rubbing and/or pinching the breast(s) and/or nipple(s) of Jane with his hand(s) and/or finger(s).       | Twelve (12) Months in CCDC (Concurrent with Counts 11, 13, 15)     |
| Count 15 – Indecent Exposure                                                                                            | Count 15 – Indecent Exposure (GM) in violation of NRS 201.220      |
| Deliberately lifting the hospital gown of Jane Doe to look at her genital opening and/or anal opening and/or breast(s). | Twelve (12) Months in CCDC (Concurrent with Counts 11, 13, 14)     |

### UNCONTESTED FACTS

1. In May of 2008, Jane Doe was a patient at Centennial Hills Hospital. ANS Admission Number 1 (1<sup>st</sup> Set). Centennial Admission Number 1 (5<sup>th</sup> Set).

2. In May of 2008, Centennial Hills Hospital had a contractual agreement whereby American Nursing Services would provide certain hospital staff, which included Certified Nursing Assistants (CNA). Simmons Deposition at 115. Broadlane00001-50.

3. In May of 2008, Defendant Steven Farmer was an agency CNA working at Centennial Hills Hospital through American Nursing Services. Centennial Admission Number 2 (5<sup>th</sup> Set).

4. In May of 2008, Farmer wore an employee badge that had his name, American Nursing Services, and Centennial Hills Hospital written on it. Sparacino Deposition at 7- 8.

5. There was nothing on the badge to indicate to a patient that Farmer was not an employee of Centennial Hills Hospital. Id. at 8.

6. There was nothing about his clothing, his job performance, his duties, or anything he did that would indicate to a patient that Farmer was not an employee of Centennial Hills Hospital. Id. at 8.

7. At around 21:30 hours on May 14, 2008, Farmer was moved from the ER to the Sixth Floor to work by Centennial. Centennial Documents Staff00001; CHH00323; CHH Interrogatory Response No. 1 (7<sup>th</sup> Set).

1           8.       On May 14, 2008, Jane Doe was in Room 614 at Centennial Hills Hospital.  
2 Centennial Hills Chart.

3           9.       On May 14, 2008, in the course and scope of his employment with American  
4 Nursing Services as a CNA and in the course and scope of working at Centennial Hills Hospital,  
5 Farmer would enter patients' rooms on the Sixth Floor of Centennial Hills Hospital. In fact, that  
6 was his very task. CNA Skills Guidelines (Nevada State Board of Nursing); Centennial Hills  
7 Skills Competency Checklist.

8           10.      On May 14, 2008, Farmer entered Jane Doe's room, Room 614 at Centennial Hills  
9 Hospital. Testimony of Jane Doe at 8-14.

10          11.      Having contact with a patient, in the patient's room on the Sixth Floor of  
11 Centennial Hills Hospital, was in the course and scope of Farmer's employment with American  
12 Nursing Services as a CNA on May 14, 2008.

13          12.      Farmer had contact with Jane Doe in her room on the Sixth Floor of Centennial  
14 Hills Hospital. Testimony of Jane Doe at 8-14.

15          13.      Jane Doe suffers from seizures where she is completely aware of what is going on  
16 outside of her but cannot talk and move for up to 24 hours after. Testimony of Jane Doe at 3-4.

17          14.      Jane Doe woke up to find Steven Farmer pinching and rubbing her nipples. *Id.* at  
18 8-9.

19          15.      Farmer lifted up her hospital gown. *Id.* at 10-11.

20          16.      Farmer told her that she had some feces, and lifted up her leg. *Id.* at 12.

21          17.      Cleaning feces of patients is part of the job duties of a CNA such as Farmer.

22          18.      But, he did not change the pad beneath her. *Id.* at 13.

23          19.      Jane Doe felt Farmer's thumb enter her anus. *Id.* at 13.

24          20.      This was painful to Jane Doe. *Id.* at 13.

25          21.      Farmer then placed his finger inside her vagina. *Id.* at 14.

26          22.      As a result of these actions, Jane Doe felt pain, humiliation and embarrassment.  
27 She couldn't move or scream; she just had to lay there. *Id.* at 14.  
28

1           23.     Steven Farmer digitally penetrated Jane Doe's anus, vagina, and pinched and  
2 rubbed her nipples against the will of Jane Doe and while Jane Doe was physically unable to  
3 resist. Id at 8-14; Judgment of Conviction.

4           24.     Farmer was convicted in the Eighth Judicial District Court, Clark County, Nevada,  
5 in Case Number 08C245739, in Count 10 of Sexual Assault (F – Category A) in violation of NRS  
6 200.364, 200.366 for the digital penetration, by inserting his finger(s) into the anal opening of Jane  
7 Doe, against her will, or under conditions in which Farmer knew, or should have known, that Jane  
8 Doe was mentally or physically incapable of resisting or understanding the nature of Farmer's  
9 conduct. Judgment of Conviction.

10          25.     Farmer was convicted in the Eighth Judicial District Court, Clark County, Nevada,  
11 in Case Number 08C245739, in Count 12 of Sexual Assault (F – Category A) in violation of NRS  
12 200.364, 200.366 for the digital penetration, by inserting his finger(s) into the genital opening of  
13 Jane Doe, against her will, or under conditions in which Farmer knew, or should have known, that  
14 Jane Doe was mentally or physically incapable of resisting or understanding the nature of Farmer's  
15 conduct. Judgment of Conviction

16          26.     Farmer was convicted in the Eighth Judicial District Court, Clark County, Nevada,  
17 in Case Number 08C245739, in Count 11 of Open or Gross Lewdness (GM) in violation of NRS  
18 201.210 for touching and/or rubbing the genital opening of Jane Doe with his hand(s) and/or  
19 finger(s). Judgment of Conviction

20          27.     Farmer was convicted in the Eighth Judicial District Court, Clark County, Nevada,  
21 in Case Number 08C245739, in Count 13 of Open or Gross Lewdness (GM) in violation of NRS  
22 201.210 for touching and/or rubbing and/or pinching the breast(s) and/or nipple(s) of Jane Doe  
23 with his hand(s) and/or finger(s). Judgment of Conviction

24          28.     Farmer was convicted in the Eighth Judicial District Court, Clark County, Nevada,  
25 in Case Number 08C245739, in Count 14 of Open or Gross Lewdness (GM) in violation of NRS  
26 201.210 for touching and/or rubbing and/or pinching the breast(s) and/or nipple(s) of Jane Doe  
27 with his hand(s) and/or finger(s). Judgment of Conviction

28          29.     Farmer was convicted in the Eighth Judicial District Court, Clark County, Nevada,  
in Case Number 08C245739, in Count 15 of Indecent Exposure (GM) in violation of NRS 201.220



1 for deliberately lifting the hospital gown of Jane Doe to look at her genital opening and/or anal  
2 opening and/or breast(s). Judgment of Conviction

### 3 LAW AND ARGUMENT

4 Plaintiff files the instant Motion for Summary Judgment against Defendants on the issue of  
5 liability as provided in NRCP 56. NRCP 56 states, in pertinent part: “A summary judgment,  
6 interlocutory in character, may be rendered on the issue of liability alone although there is a  
7 genuine issue as to the amount of damages.”

8 Rule 56 is designed to allow summary judgment on the issue of liability. This means, the  
9 Legislature envisioned cases where liability was not conceded and where a defendant continued to  
10 contest liability, yet where the facts of the case are such that no “rational trier of fact could return a  
11 verdict for the nonmoving party.” **Wood v. Safeway, Inc.**, 121 P.3d 1026, 121 Nev. 724 (2005) at  
12 731. The instant matter is exactly the kind of case imagined when Rule 56 was written to include  
13 the language that summary judgment is an appropriate method for determining liability.

14 Since our Court’s decision in **Wood v. Safeway, Inc.**, 121 P.3d 1026, 121 Nev. 724 (2005),  
15 the standard for granting summary judgment has been changed. Now, summary judgment must be  
16 granted unless there is a genuine dispute as to a material fact. Simply showing “there is some  
17 metaphysical doubt as to the operative facts in order to avoid summary judgment being entered in  
18 the moving party’s favor” will no longer suffice. 121 Nev. at 732.

19 The non-moving party “must, by affidavit or otherwise, set forth specific facts  
20 demonstrating the existence of a genuine issue for trial or have summary judgment  
21 entered against him.” The non-moving party “is not entitled to build a case on the  
gossamer threads of whimsy, speculation, and conjecture.”

22 **Id.**

23 There are four elements in a negligence case: duty, breach of duty, proximate cause, and  
24 damages. See **Scialabba v. Brandise Constr. Co.**, 112 Nev. 965 at 968, 921 P.2d 928 at 930  
25 (1996) (“To prevail on a negligence theory, a plaintiff must generally show that: (1) the defendant  
26 owed a duty of care to the plaintiff; (2) the defendant breached that duty; (3) the breach was the  
27 legal cause of the plaintiff’s injury; and (4) the plaintiff suffered damages.”).

28 As this Honorable Court is aware, the Nevada statutes make clear that the conviction of a  
crime is conclusive evidence for liability:

1       **NRS 41.133 Conviction of crime is conclusive evidence of facts necessary to**  
2       **impose civil liability for related injury.** If an offender has been convicted of the  
3       crime which resulted in the injury to the victim, the judgment of conviction is  
4       conclusive evidence of all facts necessary to impose civil liability for the injury.

5       Hence, if the defendant is convicted of the crime which forms the basis for the civil claim,  
6       summary judgment on liability should be granted. The facts have been proved; there is nothing at  
7       issue.

8       The Nevada Supreme Court has made such clear. "We conclude that the language of NRS  
9       41.133 establishes a conclusive presumption of liability when an offender has been convicted of  
10      the crime that resulted in the injury to the victim." **Cromer v. Wilson**, 225 P.3d 788, 790 (Nev.  
11      2010).

12      NRS 41.133 "mandates that conviction of a crime resulting in injury to the victim is  
13      conclusive evidence of civil liability for the injury." **Langon v. Matamoros**, 121 Nev. 142, 143,  
14      111 P.3d 1077, 1077 (2005).

15      Importantly, this Court must not only grant summary judgment against Mr. Farmer, but  
16      also, against Centennial and ANS. There are no facts at issue here as against any of the parties.  
17      The reason is simple: one cannot have different facts established in a case against different  
18      parties. That would make no sense. **The facts are the facts.** Now, that may be hard to swallow  
19      for ANS and Centennial<sup>2</sup>, but, if the Court were to allow different facts to be found, inconsistent  
20      verdicts would be a possibility. The law does not allow this.

21      And, the Nevada Supreme Court illustrates the issue. In **Desert Cab v. Marino**, 108 Nev.  
22      32 (Nev. 1992), the Court had before it a situation where Edwards, an employee of Desert Cab,  
23      was convicted of assault and battery. The District Court admitted the conviction per NRS 41.133.  
24      The Nevada Supreme Court upheld the District Court and found that though the conviction  
25      mandated liability as against Edwards, Desert Cab could still argue that the actions were not in the  
26  
27  
28

---

<sup>2</sup> ANS and Centennial know this and that is why they both helped out in the criminal defense of Mr. Farmer to the point of even providing Farmer clothing for his trial.

1 course and scope per NRS 41.130. But, importantly, the facts of the assault and battery were  
2 still conclusively proved as to both the employee and employer.<sup>3</sup>

3 The language of NRS 41.133 also makes this clear: “If an offender has been convicted of  
4 the crime which resulted in the injury to the victim, the judgment of conviction is **conclusive**  
5 **evidence of all facts** necessary to impose civil liability **for the injury.**” The facts are proven via  
6 the statute. The statute, by its own words, does not limit the finding to the offender—it is “for the  
7 injury.” This makes sense because one cannot have different findings of fact for different parties.

8 In addition, how could there be a finding that Jane Doe was sexually assaulted in a  
9 criminal case where the standard is beyond a reasonable doubt, but in a civil case, Jane Doe could  
10 be found to not have been sexually assaulted? It cannot happen. The seminal defense of ANS and  
11 Centennial has been that Jane Doe was not sexually assaulted. A criminal finding has been made  
12 that she was. That is the end of the story. Otherwise, we would be allowing different findings  
13 where the higher standard resulted in the initial finding.<sup>4</sup>

14 Clearly, as the direct employer of Farmer, ANS is liable for his tortious acts committed  
15 within the course and scope of his employment. **Wood v. Safeway, Inc.** Even though raping a  
16 patient is not in Farmer’s list of job duties, that is not the appropriate inquiry.  
17 Rather, as long as the misconduct giving rise to the injury was committed while the employee is  
18 performing the task assigned to him, liability will be found as to the employer. This is exactly  
19 what the court explained in **Wood v. Safeway, Inc.** There, a security guard raped a customer.  
20 Here, a CNA, who is authorized to enter patients’ rooms and perform certain medical related  
21 functions, which require physical contact with the patient, sexually assaulted the patient. This is  
22 exactly what **Wood v. Safeway, Inc.** says is they type of conduct that will impose liability on the  
23 employer. It is consistent with Nevada law.

---

26 <sup>3</sup> While “comparative fault” would also still be an issue because such relates to damages and not liability (*Cromer v.*  
27 *Wilson*, 225 P.3d 788, 790 (Nev. 2010)). Jane Doe was a patient laying in her hospital bed. There can be no  
comparative fault as a matter of law. See *Buck v. Greyhound*, 105 Nev. 756, 783 P.2d 437 (1989).

28 <sup>4</sup> Assuming the civil case was heard first, a finding of liability would be irrelevant in the criminal case because there is  
a lower standard of proof. But, here, since there is a higher level of proof in the criminal case and the jury found that  
Farmer was guilty of sexual assault, that means that Jane Doe was sexually assaulted. ANS or Centennial cannot  
argue otherwise.

1 In **Prell v. Antonacci**, 86 Nev. 390, (1970), a guest of the Aladdin Hotel and Casino was  
2 knocked unconscious by a "blackjack" dealer in the course of a game. The guest was knocked  
3 unconscious and subsequently sued the casino. Plaintiff was an invited guest of the Aladdin Hotel  
4 and Casino where he was playing "21" at the time of the incident. During the game, Plaintiff was  
5 served several free drinks to encourage his continued presence and participation in gaming. When  
6 Plaintiff lost his money, he became angered and called the dealer a nasty name. The dealer dealt  
7 one card to each player all the way round, and then hit Plaintiff spontaneously, and with no  
8 warning whatsoever. The dealer did not leave his position behind the "21" table to accomplish the  
9 assault and battery. The Court then held that if the employee's tort is truly an independent venture  
10 of his own and *not* committed in the course of the very task assigned to him, the employer is not  
11 liable. **However, the Court held that where the willful tort is committed in the course of the**  
12 **very task assigned to the employee, liability may be extended to the employer.**

13 As to Centennial Hills Hospital, they are the principal of ANS. "A principal is bound by  
14 acts of its agent while acting in the course of his employment, and a principal is liable for those  
15 acts within the scope of the agent's authority." **Nevada Nat'l Bank v. Gold Star Meat Co.**, 89  
16 Nev. 427, 429 (Nev. 1973)(internal citations omitted). So, because ANS is an agent of Centennial,  
17 Centennial holds vicarious liability for the actions of ANS and its employees.

18 But, also, Farmer was working at Centennial Hills Hospital doing the very job assigned to  
19 him...he was directed to the Sixth Floor and was in a hospital room of Jane Doe as part of his job.  
20 As such, Centennial holds the exact same liability as ANS for the conduct of Farmer. Even if  
21 Farmer was not Centennial's direct employer, he was an indirect employee of Centennial. See  
22 **Richards v. Republic Silver State Disposal, Inc.**, 122 Nev. 1213, 1215 (Nev. 2006). And, the  
23 same **Prell v. Antonacci**, *supra*, analysis is done. Even if one wants to argue about whether  
24 Farmer was "this or that" type of employee, the fact is, he was acting as an agent for Centennial.  
25 Centennial allowed him into its hospital. Centennial ordered him to complete certain tasks.  
26 Centennial ordered him to the sixth floor and allowed him to be in patient rooms. As long as **the**  
27 **willful tort is committed in the course of the very task assigned to the employee, liability may**  
28 **be extended to the employer.** Centennial directed Farmer to be on the sixth floor and his duties  
included being in patient rooms. Hence, Farmer's intentional tort was completed in the very task

1 assigned to him by Centennial. Under employer-employee, or principal-agent, Centennial is  
2 vicariously liable for the actions of Farmer. See **Rockwell v. Sun Harbor Budget Suites**, 112  
3 Nev. 1217 (Nev. 1996).

4 While there are additional issues regarding apparent or ostensible authority and other  
5 issues, including, but not limited to ANS and Centennial's own liability outside of vicarious  
6 liability, at this point in the litigation, they are not necessary. One finding of liability is sufficient.  
7 As a matter of law, Farmer is liable. As a matter of law, ANS is liable for the torts of Farmer. As  
8 a matter of law, Centennial is liable for the torts of Farmer. Summary judgment should be  
9 granted.

10 Liability has been conclusively established. The **only** thing left for trial is damages.

11 Respectfully submitted,

12 MURDOCK & ASSOCIATES, CHTD.  
13 ECKLEY M. KEACH, CHTD.

14 /s/ Robert E. Murdock  
15 Robert E. Murdock Bar No. 4013  
16 Eckley M. Keach Bar No. 1154  
17 521 South Third Street  
18 Las Vegas, NV 89101  
19 Attorneys for Plaintiff  
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AFFIDAVIT OF ROBERT E. MURDOCK

STATE OF NEVADA        )  
                                  ) ss.  
COUNTY OF CLARK        )

ROBERT E. MURDOCK, being first duly sworn deposes and says:

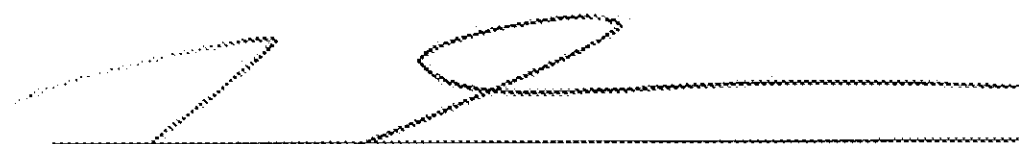
1. I am an attorney duly licensed to practice law in the State of Nevada and, along with Eckley M. Keach, am the attorney for Plaintiff in the captioned action.

2. I have personal knowledge of the facts set forth herein and am capable and willing to testify to same if called upon to do so.

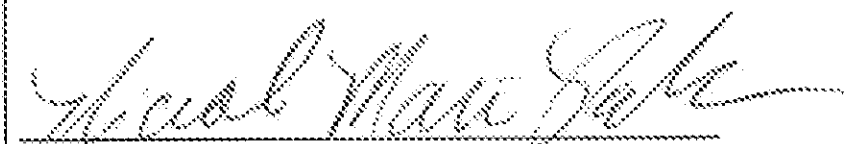
3. Attached hereto as Exhibit 1 is a true and correct copy of the testimony of Plaintiff Jane Doe on January 20, 2012 in the case of *State v. Farmer*, Case No. C245739.

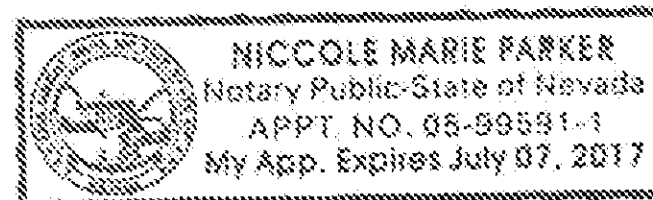
4. Attached hereto as Exhibit 2 is a true and correct certified copy of the June 2, 2014 Judgment of Conviction.

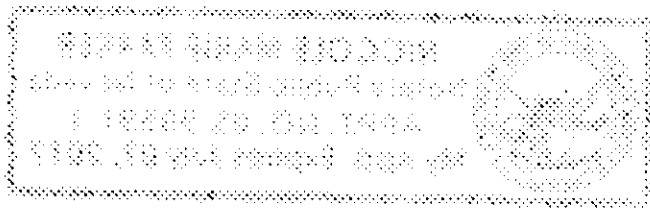
FURTHER YOUR AFFIANT SAYETH NAUGHT.

  
ROBERT E. MURDOCK

Subscribed and sworn to before  
me this 29<sup>th</sup> day of September, 2014.

  
Notary Public in and for said  
County and State





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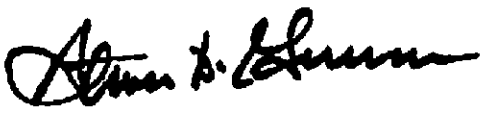
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# EXHIBIT 1



CLERK OF THE COURT

1 RTRAN

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DISTRICT COURT  
CLARK COUNTY, NEVADA

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THE STATE OF NEVADA,

9

Plaintiff,

CASE#: C245739

10

vs.

DEPT. V

11

STEVEN DALE FARMER,

12

Defendant.

13

14

BEFORE THE HONORABLE CAROLYN ELLSWORTH, DISTRICT COURT JUDGE  
FRIDAY, JANUARY 20, 2012

15

16

RECORDER'S TRANSCRIPT OF PROCEEDINGS  
HEARING: PRESERVATION OF WITNESS TESTIMONY

17

18

APPEARANCES:

19

For the State:

WILLIAM JAKE MERBACK, ESQ.  
Chief Deputy District Attorney

20

For the Defendant:

JEFFREY S. MANINGO ESQ.  
AMY FELICIANO, ESQ.  
Deputy Public Defenders

21

22

23

24

25

RECORDED BY: LARA CORCORAN, COURT RECORDER

1 FRIDAY, JANUARY 20, 2012 AT 10:11 A.M.

2  
3 THE COURT: All right. Case number C245739, State of Nevada versus  
4 Steven Dale Farmer. We are here to havr a hearing to preserve the witness  
5 testimony in this case. Is the State ready to proceed?

6 MR. MERBACK: We are Judge,

7 THE COURT: Proceed.

8 MR. MERBACK: Thank you. Does the Court want to swear in the witness?

9 THE COURT: Yes, of course.

10 MR. MERBACK: Okay.

11 THE COURT CLERK: Raise your right.

12 THE COURT: You're calling -- what's the witness's name?

13 MS. MERBACK: I'm sorry. The State's going to call [REDACTED] Judge.

14 THE COURT: [REDACTED].  
15 [REDACTED]

16 [having been called as a witness and being first duly sworn, testified as follows:]

17 THE COURT CLERK: Thank you. Could you please state your name and  
18 spell it for the record?

19 THE WITNESS: [REDACTED]

20 THE COURT: Thank you. Proceed.

21 MR. MERBACK: Thank you, Your Honor.

22 **DIRECT EXAMINATION**

23 BY MR. MERBACK:

24 Q Ms. [REDACTED], can you tell the Court something about your current  
25 medical condition?

1 A I didn't hear your last part.

2 Q What is your current medical condition? Do you have any medical  
3 issues right now?

4 A Yeah. I suffered brain trauma and its left me with seizures and  
5 uncontrollable sensory overload so my senses don't connect correctly any longer.

6 Q Okay. And is that condition a result of the brain trauma that you  
7 suffered?

8 A Yes.

9 Q Do you when it was when you suffered that brain trauma?

10 A March 12<sup>th</sup> of '08.

11 Q Of 2008 you said? Could you repeat that?

12 THE MARSHAL: Excuse me, counsel. Court's indulgence, Your Honor,  
13 please.

14 THE COURT: There you go.

15 THE WITNESS: March 12th of '08.

16 MR. MERBACK: Is that better? Okay.

17 BY MR. MERBACK:

18 Q And as a result of your condition you said that sometimes you'll have  
19 seizures; is that correct?

20 A Yes.

21 Q What kinds of things trigger you to have these seizures?

22 A Loudness, loud noises, riding in cars. I can't filter out the motion.

23 When the car stops my brain doesn't -- I keep feeling the motion and being startled;  
24 things outside the norm of my world.

25 Q When you have a seizure, are you aware of how long they normally

1 last?

2 A No.

3 Q Okay. Will you normally just have one seizure at a time or will you have  
4 multiple seizures?

5 A I have clonic-tonic style seizures and what that is is that I contract up,  
6 all of my body contracts up. So, my hands curl up, my arms curl up. I can seize --  
7 we've counted and I can seize anywhere from like minimum of maybe three times  
8 up to 42 times.

9 Q Okay. Now you indicated that that's your current medical condition.  
10 Now was that your condition as well back in 2008 after you had the brain trauma?

11 A It started with my hospitalization in May. That's when the seizures  
12 started.

13 Q Okay. Now after you've had a seizure, what condition is your body in  
14 after the seizure is over?

15 A I can't talk and I can't move for up to 24 hours.

16 Q Now when you're in that state, are you conscious? Can you -- do you  
17 know what's going on around you or are you completely unconscious?

18 A No, I'm aware of everything going on around me. I just can't participate  
19 in any of it.

20 Q Okay. Now are there times in that period after you had a seizure where  
21 you will come in and out of sleep?

22 A Yes, uh-huh.

23 Q Okay. But when you're awake, you indicated that you're aware of  
24 what's going on around you?

25 A Yes.

1 Q Now you talked about a hospitalization in May. Do you recall -- I'm  
2 going to call your attention to May 13<sup>th</sup> of 2008. Were you admitted to Centennial  
3 Hills Hospital on that day?

4 A Yes.

5 Q Okay.

6 A But I think I went there the 12<sup>th</sup>. I was admitted the 13<sup>th</sup>.

7 Q Okay. So, you went on the 12<sup>th</sup> and were admitted on the 13<sup>th</sup>?

8 A I believe so.

9 Q Okay. Is that Centennial Hills Hospital here in Las Vegas, Clark  
10 County, Nevada?

11 A Yes, I believe so.

12 Q Why did you go to Centennial Hills Hospital on that day? What  
13 occurred that caused you go there?

14 A I've been grocery shopping at Smith's and went out and felt funny. And  
15 I called my son and actually started having a seizure in the parking lot and  
16 Centennial is just down the parking lot from Smith's. And they called an ambulance  
17 and that's where I was taken.

18 Q Do you recall how long you stayed or how you were admitted to  
19 Centennial Hills Hospital on that occasion?

20 A I think it was about ten days.

21 Q If I said that you were there until May 20<sup>th</sup>, would that sound about  
22 right?

23 A May 20<sup>th</sup>, 23<sup>rd</sup>, somewhere in there.

24 Q Okay. Now did something happen to you during that stay at the  
25 hospital that causes you to be here in Court today?

1 A Yes.

2 Q What was that?

3 A Do you want me to --

4 Q What generally happened to you that causes you to be here today?

5 A I was assaulted by -- I believed him to be a nurse, nurse aide there.

6 Q Okay. Did you know the name of that person that assaulted you?

7 A He introduced himself as Steven.

8 Q Do you see that person here in this courtroom today?

9 A Yes.

10 Q Could you point to that person and describe something that they are  
11 wearing?

12 A The white hair, and he's wearing red, and white beard and he's wearing  
13 black glasses.

14 MR. MERBACK: Judge, can the record reflect the identification of the  
15 Defendant?

16 THE COURT: Yes, it will.

17 BY MR. MERBACK:

18 Q Now, Ms. [REDACTED], you indicated that the Defendant introduced himself  
19 as Steve; is that correct?

20 A Yes.

21 Q What, if anything else, did he say to you when he introduced himself to  
22 you?

23 A He said: Hi, I'm Steve and I've been assigned to you tonight. So, I'll be  
24 looking in on you.

25 Q Could you repeat that last phrase for me? I'm sorry.

1           A     He said: So, I'll be looking in on you. That was the first thing he said.  
2 He came back one other time, that my heart was in A-fib at that time and there were  
3 a lot of people in my room.

4           Q     Okay. Let's go back --

5           A     Okay.

6           Q     -- I'm just going to go back to that first time when he introduced himself.  
7 When he said that to you that he was going to check in on you, what was your  
8 condition at that point?

9           A     I'd had a seizure the night before so I couldn't talk to him or move or  
10 acknowledge him.

11          Q     So, you could not speak or move at that point?

12          A     No.

13          Q     Okay. But you were able to hear and understand what he was saying?

14          A     Yes.

15          Q     And you said you believed him to be a nurse; is that correct?

16          A     Yes.

17          Q     Now you indicated that you were, I think you used the word attacked, by  
18 the Defendant. Can you describe for the Court any of those instances -- actually let  
19 me ask you this. Was there just one instance or were there multiple instances?

20          A     Multiple.

21          Q     Okay. Can you --

22          MR. MANINGO: Excuse me. Judge, may we approach for a moment?

23                         [Bench conference -- not recorded]

24          THE COURT: Okay. The record will reflect that the exclusionary rule has  
25 been invoked and a witness is leaving the courtroom.



1 BY MR. MERBACK:

2 Q Ms. [REDACTED], you indicated that there were multiple instances. Can  
3 you describe one of those instances that you remember for the Court?

4 A One of -- I woke up and I was aware that my nipples were being  
5 pinched, and I looked straight into his face because he was that close to me, and he  
6 said: Oh, one the leads has come off on your heart monitor. But the thing about my  
7 heart or the telemetry buttons that they put on, it makes a noise if one becomes  
8 detached so that telemetry is advised as well. That was one instance.

9 Q Let me go back and ask you a few questions about that. You said the  
10 Defendant said your leads were off. Do you recall where your leads were located  
11 on your body at that point in time?

12 A Yes; they're not on my nipples.

13 Q Do you recall where they were?

14 A They have like one here and they have numerous ones underneath the  
15 abdomen.

16 MR. MERBACK: And, Judge, for the record, she's pointing to it looks like  
17 about the middle of her chest, kind of in the middle of her sternum, I would say.

18 THE COURT: Towards the right, yes, on her upper chest well above her  
19 breasts.

20 THE WITNESS: And then underneath.

21 MR. MERBACK: And then he also has indicated -- I think she showed both  
22 sides well beneath her breasts on kind of the side of her torso.

23 THE COURT: Correct; approximately at waist level.

24 BY MR. MERBACK:

25 Q Now could you feel or did you notice if any of the leads were actually off

1 of your body?

2 A No, I could not physically feel it and I couldn't move to, you know, to  
3 find out but, again I didn't hear the beeping sound that, you know, that the telemetry  
4 machine makes when a lead is off.

5 Q Okay. You've been in the hospital before; is that correct?

6 A Yes.

7 Q Have you had leads come off before and actually heard that sound?

8 A Yes.

9 Q And you didn't hear it this time?

10 A No.

11 Q You indicated that he was -- and I'll have you say it. What exactly was  
12 he doing to your nipples?

13 A He was pinching them, rubbing them.

14 Q Had you had people, nurses or doctors place leads on your body  
15 before?

16 A Yes.

17 Q Have you ever had anyone touch you in the same way that the  
18 Defendant did on this occasion?

19 A No, never, never.

20 Q And do you recall was he touching -- was he pinching both of your  
21 nipples or just one of them; do you recall?

22 A He pinched both.

23 Q When he was doing this, was it over your clothes or under your  
24 clothes?

25 A Under.

1 Q Do you recall what you were wearing at the time?

2 A Just a hospital nightgown.

3 Q And do you know how -- could you tell how it was that his hands had  
4 gotten underneath your nightgown?

5 A No.

6 Q Could you speak or move at this point in time?

7 A No, still not.

8 Q Do you recall whether the Defendant said anything to you besides that  
9 your leads had come off?

10 A Nothing.

11 Q Do you recall about how long that lasted that he was pinching your  
12 nipples?

13 A No.

14 Q And do you recall what if anything that caused him to stop doing it?

15 A I think me continually looking at him and me becoming awake.

16 Q And you continued to look at him, is that what you said?

17 A Yes, because like I said, I woke up and he was doing it.

18 Q Now was the only time, the only occasion on which he touched your  
19 nipples or your chest in that way or were there other occasions?

20 A I'm sorry?

21 Q You just talked about an incident where he was pinching your nipples?

22 A Yes.

23 Q Was that the only time that you recall that happened or do you recall  
24 whether there was other times that that occurred?

25 A That that specific pinching of my nipples occurred?

1 Q Or did he pinch your nipples on any other occasion?

2 A No, I believe that was -- I believe that was the one time.

3 Q Okay. Now were there any other instances that you can tell the Court  
4 about besides when he pinched your nipples?

5 A Yes. I woke up and he was walking around the left side of my bed and  
6 he pulled the sheets down off of me, and all I had on was my gown, and he lifted my  
7 gown up. You know how you go to billow something, you know, a sheet, but he kept  
8 it up high so that it was -- if I was laying down it was up high like that.

9 Q Now are you talking about the sheet or your gown?

10 A The sheet. He'd already pulled off of me my gown; he had lifted up  
11 high enough to see my entire body.

12 MR. MERBACK: And, Judge, for the record, she made a hand movement  
13 where she indicated with one hand her body would be laying flat and the other hand  
14 where the gown would maybe like -- I don't know -- a forty-five degree angle or  
15 based upon her hand movement.

16 THE COURT: Probably more like fifty-five degrees but, yes.

17 MR. MERBACK: That's why I'm lawyer because I don't do math; right?

18 THE WITNESS: You know, right like that. He brought it up like that.

19 MR. MERBACK. Thank you.

20 THE COURT: Okay.

21 BY MR. MERBACK:

22 Q Now when he lifted your gown like that, were you wearing anything  
23 underneath?

24 A No.

25 Q You didn't have a bra on?

1 A No.

2 Q you didn't have any underwear on?

3 A No. He did it more than once, lifting my nightgown up and down.

4 Q Did he tell you at that point why he was taking up the sheets or what he  
5 was doing? Did he say anything to you?

6 A No, not at that point. But he then walked around to my right, to the right  
7 side of my bed and he said: Oh, you have some feces, and he took my right leg and  
8 instead of rolling me to my side he took my right leg and brought it all the way up  
9 and -- he had nothing to clean me with. He had not gotten new pads to put under  
10 me or wipes or anything. And that's when I became aware of a very uncomfortable  
11 feeling and realization that he had his thumb in my anus.

12 MR. MERBACK: Okay. Your Honor, for the record, she made a motion with  
13 her finger showing the Defendant lifting her leg, about a 90 degree angle I would  
14 say.

15 THE COURT: That's correct.

16 BY MR. MERBACK:

17 Q Now you said that he had indicated to you that there was some feces  
18 on you?

19 A That's what he said.

20 Q But he had not done anything to change anything?

21 A Correct.

22 Q Is that correct? Was there a pad or anything of that nature that you had  
23 in case you had a bowel movement?

24 A Yeah, a pad underneath me 'cause I also had a catheter so -- in case,  
25 you know, there's a leak of any sort, I had a blue pad underneath me.

1 Q This blue pad, did he do anything to change that pad?

2 A No.

3 Q Were you wearing any underwear at the time?

4 A No.

5 Q Do he do anything to change your hospital gown?

6 A No.

7 Q Now you indicated that you felt his thumb go into your anus; is that  
8 correct?

9 A Yes.

10 Q Was it just his thumb or was there fingers as well; do you recall?

11 A How many I couldn't tell you but -- is that what you're asking me.

12 Q You indicated that his thumb went into your anus.

13 A Right.

14 Q I'm asking did any of his fingers also go into your anus or was it just his  
15 thumb?

16 A I couldn't -- I can't -- couldn't look down there but -- so I would have to  
17 say it was his thumb.

18 Q Okay. Could you tell how far into your anus his thumb went?

19 A Probably as far as his thumb is long.

20 Q Okay. And how did it feel when he did that? Did you have any pain or  
21 anything like that?

22 A Yes, it hurt and my -- him holding my leg as he was hurt and the next  
23 thing he said to me -- one thing during this because then I felt pressure on my  
24 vagina. And he said he was checking my catheter. But from knowledge, a catheter  
25 is not inside your vagina, it's above it. But the pressure I was feeling was inside my

1 vagina.

2 Q When you felt this pressure on your vagina, was your leg still up or  
3 brought your leg down?

4 A It was still up.

5 Q Did you feel whether or not -- do you know what was causing the  
6 pressure on your vagina?

7 A Yes, I knew it was his hands, his fingers.

8 Q Do you know whether or not his hands stayed on the outside of your  
9 vagina or did it ever go inside of your vagina?

10 A It was inside.

11 Q What part of his hands was inside your vagina?

12 A A finger.

13 Q His finger. Was there one finger, more than one finger; could you tell?

14 A No, I can't tell. I couldn't tell you that.

15 Q And could you tell how far his finger went inside your vagina?

16 A Maybe up to this knuckle.

17 MR. MERBACK: And, Judge, for the record, she's indicating it looks like the  
18 second knuckle on one of her fingers.

19 THE COURT: Correct.

20 BY MR. MERBACK:

21 Q And I know this is a difficult question, but I'm going to have to ask you  
22 again. What did you feel when that happened? Did it hurt? How did you feel?

23 A Yes, I felt pain. I felt a multitude of feeling, one feeling being that there  
24 was absolutely nothing I could do. I couldn't ring the bell, I couldn't scream, I  
25 couldn't move. I couldn't -- I just had to lay there. I was humiliated, I was

1 embarrassed. I was shocked that I'm in a hospital being taken care of and I'm  
2 having things like this done to me and at the point in time I can't tell anybody.

3 Q Did you actually have a catheter in at that point?

4 A Yes.

5 Q And you indicated previously that as you have had previously, the  
6 catheter was much higher on your body than where your vagina is located; is that  
7 correct?

8 A Well, yes, it's right above. You don't have anything to do with the  
9 vagina to put in a catheter.

10 Q When this whole incident occurred that you've talked about where he  
11 lifted your gown and penetrated your anus and then penetrated your vagina, was  
12 there anyone else in the room during that point in time?

13 A No.

14 Q Okay. And your condition, you indicated already, was the same that  
15 you could not speak and you could not move; is that correct?

16 A Yes.

17 Q Now you had previously been to the hospital on multiple occasions; is  
18 that correct?

19 A Yes.

20 Q Prior to this incident?

21 A You mean that year?

22 Q Yeah, in your life, you'd been to the hospital a number of times?

23 A Yes.

24 Q And you've been to the hospital a number of times since then?

25 A Yes.



1 Q Okay. Have you ever had anything like this occur to you on other  
2 occasions at the hospital?

3 A Never.

4 Q Have you ever had a nurse or a doctor or anyone else do the things  
5 you're talking about to you under these conditions in a hospital?

6 A No, never.

7 Q And this might be a difficult question to answer, but since that point in  
8 time since this incident in May of 2008, how many times do you think you've been to  
9 the hospital since then; can you guess?

10 A I was hospitalized every month May through December of '08 due to my  
11 seizures and sometimes I was there for three days, sometimes ten days. I was in  
12 the hospital just the night before last night for seizures. I was in the hospital  
13 probably -- now it's down to maybe once, twice a year because I just stay home for  
14 my seizures now.

15 Q You talk -- you just mentioned this, but just to talk about it briefly, so the  
16 last time you actually had a seizure was two nights ago; is that correct?

17 A Yes, Wednesday night, Wednesday night.

18 Q And between then and now you've spent the time recovering in  
19 preparation for testifying today; is that right?

20 A Yes.

21 Q Now let's go back to your stay in the hospital in May of 2008. Did there  
22 come a point in time during that stay when you gained back the ability to speak?

23 A Yes, later -- later that morning.

24 Q So, there was a morning that you gained the ability to speak?

25 A Yeah, I believe it was morning.

1 Q Once you had ability to speak, did you tell anyone about what had  
2 occurred?

3 A No, I didn't really have a chance 'cause my heart went into A-fib and  
4 immediately they had me rushed down to a different floor because my heart was in  
5 A-fib. While all that activity was going on though in my room, he stopped inside the  
6 door and said: I'm not assigned to you today but I just wanted to see how you were  
7 doing, and I thought was very bizarre.

8 Q That what you're talking about where he stopped and said that to you,  
9 that was after these incidents that you've talked about occurred; is that right?

10 A Yes.

11 Q Okay. But before you moved to the other room?

12 A Right.

13 Q Now when you were moved to this other room because of your heart,  
14 did you see the Defendant again at any point after that?

15 A No, I was on a different floor.

16 Q Did you eventually -- were you eventually able to tell anyone about the  
17 things that had happened?

18 A I had told my two sons as soon as I could talk, but it was probably  
19 another good 24 hours before my heart came out of A-fib. But as soon as it did, that  
20 was the very first thing I told them, that there was a nurse on the other floor, his  
21 name was Steve, he had white hair, and that he had put his thumb in my rectum and  
22 he had been pinching my nipples. I did not tell them the rest because they're my  
23 sons so --

24 Q Now your sons, what are their names?

25 A Marshall and Micah [phonetic] Petersen, both.

1 Q Did you tell anyone at the hospital about what had happened?

2 A No.

3 Q And why didn't you do that?

4 A Because it was kind of like not knowing who to trust or who to -- you go  
5 to a hospital because you need to and your one expectation is to be safe and to be  
6 treated humanly and decently and that had been taken away. And so I didn't trust  
7 this hospital anymore. I didn't trust --

8 Q Now I'm going to call your attention to about a month later to sometime  
9 in June of 2008. Actually strike that. Let me go back. You said you didn't tell  
10 anyone at the hospital. Did you at that point in May call the police?

11 A No, because at that point in time, the start of those -- of that -- the  
12 seizures in May, I seized, they told me, I think it was like nine times in the  
13 ambulance from the Smith's parking lot to the hospital, which is just through the  
14 parking lot, I seized nine times. And that started a series of seizures to where some  
15 months I was seizing like every two days.

16 Q Now you didn't call the police at that point, but did there come a point in  
17 time later on when the police were called?

18 A Yes.

19 Q Okay. Was that about a month later in June?

20 A Sounds right, yes.

21 Q So, if I said June 15<sup>th</sup> of 2008, would that sound about right to you?

22 A Yes, because my son had seen him on -- the Defendant, I guess, on TV  
23 and he came and told me about it and that there are multiple women and at that  
24 point in time, I said I have to do this no matter what my health is doing, I have to do  
25 this. Of course, I didn't foresee -- I didn't foresee how bad my health would actually

1 get but, yes.

2 Q Who called the police? Was it you or was it someone else?

3 A I did.

4 Q Now you talked about your son seeing something about the Defendant  
5 on the news. Did you also see something on the news or was it just your son told  
6 you about it?

7 A He told me about it.

8 Q So, you personally didn't see it? Is that a no?

9 A No -- yeah, no.

10 Q And then a few days later after you called the police, did a detective  
11 come out and interview you?

12 A Yes, somebody from the Sexual Crime Unit.

13 Q I'm going to go back just briefly. The incidents that you've talked about  
14 that the Defendant did to you at the hospital, did you want him to do any of those  
15 things to you?

16 A No.

17 Q Okay. Did you ever do anything to indicate to him that it was okay to do  
18 any of those things to you?

19 A There'd be no way for me to indicate that, no.

20 Q I'm going to ask you -- I'm going to give you some names and I want to  
21 know whether or not you know any of these people. Do you know an individual by  
22 the name of Ledahlia Spurlock?

23 A No.

24 Q Do you know a people named Heather Shank?

25 A No.

1 Q Do you know a person named Denise Hanna?  
2 A No.  
3 Q Do you know a person named Roxanne Cagnina?  
4 A No.  
5 Q Are you aware of whether or not any of these individuals were at the  
6 hospital around the same time you were?  
7 A No.  
8 Q Have you ever spoken with any of these people about the Defendant or  
9 the things he did to you?  
10 A No.  
11 MR. MERBACK: Court's indulgence. Your Honor, I have no further questions  
12 at this time.  
13 MR. MANINGO: Judge, would the Court or counsel have any objection if I  
14 were to remain seated during my examination.  
15 THE COURT: Well would you be able to see him if he's sitting?  
16 MR. MANINGO: I'll just slide over this way. I don't want to get in the way of  
17 any cameras or anything.  
18 THE COURT RECORDER: The camera's locked on the witness so we can't  
19 see anyone.  
20 THE COURT: No, I just want her to be able to see him.  
21 THE COURT RECORDER: Oh, okay. If he stands, if he stands up, he's  
22 going to be in the way and blocks her.  
23 THE COURT: I know --  
24 MR. MANINGO: Right. That's why it be best if I --  
25 THE COURT RECORDER: Phil, can you move those two things out of the

1 way and then she can see him.

2 **CROSS-EXAMINATION**

3 BY MR. MANINGO:

4 Q Hello, Ms. [REDACTED]. My name is Jeff Maningo and I'm just going to ask  
5 you some questions to follow-up on what Mr. Merback was talking about; okay?

6 A Okay.

7 Q During the time period of May of 2008, you were having a lot of seizure  
8 activity at that time; correct?

9 A It started May 12<sup>th</sup>.

10 Q Okay. During that time though you were having a lot of seizures;  
11 correct?

12 A During what time? I don't --

13 Q May of 2008.

14 THE COURT: Her answer was it started May 12<sup>th</sup>, counsel.

15 MR. MANINGO: All right.

16 THE WITNESS: I guess I don't understand the timeframe. They started May  
17 12<sup>th</sup>.

18 BY MR. MANINGO:

19 Q Now you were having seizures before May 12<sup>th</sup>, though; correct?

20 A No. I had seizures like five years ago. I hadn't had any seizures up  
21 until I hit my head.

22 Q And you hit your head in March; correct?

23 A And then I had no seizures until in May 12<sup>th</sup>.

24 Q Okay.

25 A And that's when they started and everything else came with it.

1 Q Okay. Once they did start, was it common to have several seizures in a  
2 single day?

3 A Explain what you mean.

4 Q Would you have more than one seizure in a day?

5 A Maybe I should explain my seizures again. Can I do that?

6 THE COURT: Yes.

7 THE WITNESS: Okay. I get an aura and a taste and then I know that a  
8 seizure's coming. I will seize up, my whole body seizes up. I stop breathing while  
9 I'm having one. My legs curl up, my arms curl up, and then I'll relax and then I'll curl  
10 up again. But if what you're asking me is will I have this happen in the morning and  
11 then maybe happen in the afternoon and the evening, no. I may have a seizure, you  
12 know, in the morning and then I'm done for that entire day. I have to go to sleep and  
13 take medicine and sleep because I'm in pain.

14 BY MR. MANINGO:

15 Q Okay. When you would have one of these seizures it would be very  
16 traumatic for you; correct?

17 A Yes.

18 Q Okay. As you explained just a few minutes ago, you would seize up  
19 and then relax and then seize up again and that could happen, you said I think, up  
20 to 42 times?

21 A Yes.

22 Q Okay. And each time that you would seize up, you would be -- you  
23 would become unaware of what was happening; is that fair to say?

24 A No. From the very -- from when I -- when I get that aura, I have like five  
25 minutes and then as soon as the seizing starts, I'm not there.

1 Q Okay.

2 A So, even when I relax I will seize. I'm still not there until I come all the

3 way out of it and then I'll just start blinking and licking and -- my lips and looking

4 around and then I'm back.

5 Q Okay. But for the duration then while you're seizing, you're blacked

6 out?

7 A Right.

8 Q Okay. And then after the seizing stops and you start to come back from

9 that, it takes time to recover; correct?

10 A Yes.

11 Q And you have to rest?

12 A I normally have to go to sleep.

13 Q Okay. And you have to take medication, you said?

14 A Yes.

15 Q Okay. And when you first come out of it you said, you start blinking and

16 it takes a while to sort of realize where you're at; is that fair to say? Yes?

17 A Yes.

18 Q Okay. And so when you're first coming out of one of these episodes,

19 you're confused; correct?

20 A I can't say that.

21 Q Well you're certainly not thinking clearly right after you get done having

22 one of these seizure episodes; are you?

23 A Right, right.

24 Q Okay.

25 A For the first few seconds as they lay there and blink, I realize I've had a



1 seizure. And then as I look around, I know where I am. It's not like -- it doesn't take  
2 me three hours to remember or to know.

3 Q Okay.

4 A I mean --

5 Q Okay.

6 A Only a matter of minutes.

7 Q Okay. Thank you. During the episode, you lose time though; correct?

8 A Right.

9 Q Okay. And when you're recovering from one of the episodes, you'll be  
10 in and out of consciousness. You'll fall asleep and then wake up and fall asleep  
11 easily again; correct?

12 A Well, yes, yes.

13 Q You're in and out of it?

14 A Normally if I'm at home I just pretty much sleep straight 12 hours  
15 through.

16 Q Okay. Is it fair to say though that during recovery though you're in and  
17 out of consciousness?

18 A In and out of sleep, yes.

19 Q Okay. Do you remember speaking to a detective about this case?

20 A Back in '08?

21 Q Yes.

22 A Yes.

23 Q Okay. And the words you used were in and out of consciousness?

24 A Okay.

25 Q Okay. So, is that fair to use?

1           A     Yes.

2           Q     Okay. Now you said that part of the recovery after you have one of  
3 these seizures is that you have to take medication; correct?

4           A     Correct.

5           Q     And during the week of May 13<sup>th</sup> to May 20<sup>th</sup>, 2008 when you were in  
6 Centennial Hills Hospital, you were on a number of different medications; correct?

7           A     I believe so. I mean, my medications have changed since then so --

8           Q     Would you be surprised to learn that based on your own medical  
9 records, you are on Prozac, an anti-depressant; does that sound right?

10          A     Yes.

11          Q     Okay. You are also on Benzodiazapenes which is -- the most common  
12 source would be like Valium; does that sound correct?

13          A     I [Inaudible response].

14          Q     You are also on sedatives; does that sound correct?

15          A     Well to mean -- no.

16          Q     Okay. So, if that's on your medical report and on your charts that the  
17 doctors filled out. Do you think it's correct?

18          A     Well, yes, I would.

19          Q     Okay And you were also on an anti-seizure medication called Dilantin;  
20 correct?

21          A     Yes, they started me on that, yes.

22          Q     Okay. And you're aware that with the anti-depressants such as Prozac  
23 that it affects your brain chemistry; correct?

24          A     Uh-hm.

25          Q     Okay. And you also know that Dilantin will also affect your brain

1 chemistry?

2 A Dilantin is for epileptic seizures.

3 Q Yes.

4 A Yes, I didn't stay on Dilantin.

5 Q I'm asking about the time period though of May 13<sup>th</sup> to May 20<sup>th</sup> while  
6 you were at Centennial Hills Hospital. At that time you were on Dilantin.

7 A Okay.

8 Q Are you aware that one of the side affects of Dilantin is confusion?

9 A No.

10 Q Are you aware that one of the side affects of Dilantin is delirium?

11 A No.

12 Q Besides being on the drugs I've already listed, you were also being  
13 given doses of morphine; correct?

14 A It's the only pain medication I can take.

15 Q Okay. And you understand that morphine is a very strong narcotic?

16 A Yes.

17 Q Okay. And morphine can certainly cause a change in someone's  
18 awareness; would you agree?

19 A No.

20 Q No?

21 A No.

22 Q So, you think that it would be okay for someone to drive while on  
23 morphine?

24 A I take -- I can no longer drive because of the brain trauma.

25 Q That wasn't my question though. My question is: Do you think it's okay

1 for someone to drive then if they're taking seven doses of morphine in five days?

2 A It depends on the doses.

3 Q Okay. Do you think it makes any difference that the morphine is being  
4 mixed with Prozac, Valium and Xanax?

5 MR. MERBACK: Judge, at this point, I'm going to object. I think the  
6 questions are going beyond the scope of her knowledge. I mean, these are  
7 questions that are for a doctor or someone of that nature to answer.

8 MR. MANINGO: Well it's going towards the witness's ability to perceive.

9 THE COURT: Right. Well you're asking her now her opinion as to the affects  
10 of drugs, and she can't offer that kind of opinion testimony. She's not qualified as an  
11 expert witness. I'll sustain the objection. Move on.

12 BY MR. MANINGO:

13 Q During this time then, you do realize that a number of different drugs  
14 were being mixed together? You were taking more than one drug?

15 A When you say during this time, are you saying while I'm in the hospital?

16 Q Yes. Still talking about the hospital, May 13<sup>th</sup> to May 20<sup>th</sup>, 2008.

17 A Okay.

18 Q And do you remember that period of time that you were on more than  
19 just one medication?

20 A Yes. What all medications I was on, no I couldn't tell you.

21 Q Okay.

22 A And especially since then, it took quite a while for them to actually dial  
23 in the medications I actually needed.

24 Q Okay. Thank you. During this week long period at Centennial Hills in  
25 2008, you spent that entire week recovering from the seizures; correct?

1           A     And?

2           Q     Is that correct?

3           A     No. I spent most of the time -- I should say I spent more time

4 recovering from the A-fib.

5           Q     Okay. And that happened while you were in the hospital recovering

6 from the seizures?

7           A     Correct.

8           Q     Okay. And also during this week long period, you were on a number of

9 different medications?

10          A     Yes.

11          Q     Okay. And it's from this one week period where you were covering

12 from the seizures, your heart went into A-fib, and you were on a number of different

13 medications that these allegations against Mr. Farmer come from, that one week

14 period; correct?

15          A     Yes.

16          Q     Okay. You discussed on your direct examination an incident where Mr.

17 Farmer he lifted up your gown?

18          A     Yes.

19          Q     Was that the first time that you met Mr. Farmer?

20          A     Yes.

21          Q     Okay. And he introduced himself to you?

22          A     Yes.

23          Q     Okay. And he told you what his name was?

24          A     Yes.

25          Q     Okay. He -- as it turned out he gave you the correct name; right? He

1 didn't give you a fake name or anything like that?

2 A Okay; yes.

3 MR. MERBACK: Actually, Judge, I'm going to object to that question. It's  
4 beyond the scope of her knowledge. I mean, she doesn't know his name beyond  
5 what he told her so I think that that's -- that question to her is objectionable.

6 MR. MANINGO: I'll re-ask.

7 THE COURT: Your objection is assumes facts not in evidence?

8 MR. MERBACK: Correct.

9 THE COURT: All right. Sustained.

10 BY MR. MANINGO:

11 Q Did he tell you that his name was Steve?

12 A Yes.

13 Q Okay.

14 A I believe he said Steven.

15 Q Steven. Okay. Now at that point you said he lifted up your gown;  
16 correct? Is that correct?

17 A At some point, yes, he lifted up my gown.

18 Q Okay. And you had a catheter at that point; correct?

19 A Yes.

20 Q Okay. You also at this point in time you were unable to move?

21 A Yes.

22 Q Okay. Now you've -- I think you told Mr. Merback you've had quite a bit  
23 of experience spending time in hospitals?

24 A Unfortunately.

25 Q Okay. Have you ever heard the term intimate care?

1           A     No.

2           Q     Okay. You do understand that nurses are asked to take care of  
3 personal hygiene tasks at certain points?

4           A     Yes.

5           Q     Okay. You understand that nurses are asked to clean up any leaks or  
6 bowel movements, that's part of their job; you know that?

7           A     Yes.

8           Q     Okay. You know that nurses are asked to check on a patient's catheter  
9 if they have one?

10          A     Yes.

11          Q     Okay. During this incident where Mr. Farmer, you say, he lifted up your  
12 gown, at this point you're also on medications; correct?

13          A     Yes.

14          Q     Okay. And one of the medications that you're on at that point is  
15 Morphine?

16          A     Yes.

17          Q     You discussed another incident where you said Mr. Farmer had told  
18 you that you had feces on you?

19          A     Yes.

20          Q     And that he lifted your leg up?

21          A     Yes.

22          Q     And his hand moved from your leg to your rectum?

23          A     Yes.

24          Q     Okay. Mr. Farmer explained to you that he was cleaning you?

25          A     No.

1 Q No? Did he explain to you that he was checking your catheter?  
2 A At one point he said that.  
3 Q And you still had a catheter at that point --  
4 A Yes.  
5 Q -- during that incident?  
6 A Yes.  
7 Q Okay. You were still unable to move at that point?  
8 A Yes.  
9 Q You couldn't look down and see what was going on?  
10 A No.  
11 Q Okay. You couldn't look down to see if, you know, what Mr. Farmer  
12 was doing; correct?  
13 A Correct.  
14 Q Okay.  
15 A But I could feel that he was not wiping me. I could feel that nothing --  
16 Q That wasn't my question, Ms. [REDACTED]. We'll get to that. Thank you.  
17 Because of your inability to move you couldn't sit up and see anything either  
18 obviously; is that correct?  
19 A Correct, but I was not laying flat.  
20 Q Okay. So, you were at an angle?  
21 A Yes.  
22 Q Okay. Was -- at that point as he had your leg up, you had a gown on;  
23 correct?  
24 A Yes.  
25 Q And you couldn't see past the gown; correct?



1           A     See past –

2           Q     You have a gown on and he lifts your leg up?

3           A     Right.

4           Q     Okay. You're not able to see what was going on?

5           A     That's if you're assuming that he had the gown with my leg while it was  
6 up, which it was not. The gown was across my lap.

7           Q     Well actually I'm just assuming from you already testified to which is  
8 you weren't able to see what was going on. You've already said that.

9           THE COURT: Counsel, you testifying? I don't hear a question

10          MR. MANINGO: My question is: Would you like to now change your testify?

11          MR. MERBACK: Objection, Judge, it's argumentative.

12          THE COURT: All right. So, I'm sustaining her -- the objection because you're  
13 mischaracterizing her previous testimony. So, if you'd let her answer.

14          MR. MANINGO: Judge, her previous testimony is that she was not able to  
15 see what was going on. I asked that direct question and that was her answer. Now  
16 she's saying, well, the gown was down. So, I'm asking her again were you able to  
17 see what was going on.

18          THE COURT: Rephrase the question and don't give me a narrative response  
19 and argue with me about the testimony.

20          BY MR. MANINGO:

21          Q     Ms. [REDACTED], were you able to see what was going on when Mr.  
22 Farmer said he was checking your catheter?

23          A     No.

24          Q     Okay. Thank you. He had told you that you had a bowel movement or  
25 that there was fecal matter?

1 A Yes.

2 Q Okay. You didn't notice any wipes or pads?

3 A No.

4 Q Okay. You didn't feel any -- you didn't feel yourself go to the bathroom?

5 A Right; no, I did not.

6 Q Okay. But before Mr. Farmer had come in to check it, you were

7 sleeping; correct?

8 A Off and on, yes.

9 Q You woke up and Mr. Farmer was already there?

10 A Yes.

11 Q And you were still on your medications during this incident, correct, to

12 the best of your knowledge?

13 A I would assume so if, I mean, I had just taken some, no, I don't believe I

14 did.

15 Q Do you remember?

16 A I don't remember taking any during this time, no. But some medications

17 I had through the IV as well.

18 Q Okay. But you had just awaken as Mr. Farmer was already there?

19 A Yes.

20 Q Okay. Based on your experience that you've talked about from being a

21 patient in hospitals you know that they will check patients who cannot move

22 themselves for bed sores; right?

23 A Yes.

24 Q Okay. And you know that date they look at different factors with

25 patients to see if you're at risk for bed sores such as whether or not you can feel

1 pain or discomfort; are you aware of that?

2 A Not so much, no.

3 Q Okay. Are you aware of the fact that your doctor noted that you have a  
4 very limited ability to feel pain or discomfort during that time that you were there?

5 MR. MERBACK: Judge, I'll actually object to that question on a number of  
6 reasons. I think it calls for a hearsay response because it's the statement of -- it's  
7 an out of court statement of another witness and also it would be -- I guess that  
8 would be my main objection at this point.

9 THE COURT: Well it also lacks foundation and assumes facts not in  
10 evidence so I'll sustain it on those grounds.

11 BY MR. MANINGO:

12 Q Well let me ask you this, Ms. [REDACTED]. Did you feel like you had full  
13 feeling in your body that you could feel discomfort normally?

14 A Could I feel pain?

15 Q Well pain or discomfort.

16 A Yes.

17 Q Okay. I mean, on a normal level.

18 A I don't know how to answer that because -- I mean, on a normal level if  
19 you feel discomfort or pain -- you know, like if your shoulder is getting tight, well you  
20 move it; right? You move so you can get comfortable. I can't move, but I can feel  
21 the discomfort. I just can't do anything about. So, I don't know how to answer your  
22 question.

23 Q Now you mentioned one other incident, I believe. You said that there  
24 was -- Mr. Farmer had come in and pinched your nipples?

25 A Yes.

1 Q Okay. And did you testify that that happened, how many times, once?

2 Once or more than once?

3 A Explain.

4 Q How many times did that happen where Mr. Farmer came in and  
5 pinched your nipples or touched your nipples?

6 A I'm aware of him pinching my nipples a total of four times, two times  
7 each.

8 Q I'm sorry. I'm not sure I understand.

9 MR. MERBACK: Judge, I think the question's vague. I mean, is the issue  
10 that how many times he pinched her nipples on this one occasion or were there  
11 multiple occasions and I think that's where the confusion's coming from so my  
12 objection is vague.

13 MR. MANINGO: How many incidents.

14 THE COURT: Well I'll sustain that and let you rephrase.

15 BY MR. MANINGO:

16 Q How many incidents occurred where Mr. Farmer touched your breasts?

17 THE COURT: He's talking about separate incidents.

18 THE WITNESS: Like at the --

19 THE COURT: Not each touching at one time. He's asking you was there  
20 more than one occurrence.

21 THE WITNESS: Two.

22 BY MR. MANINGO:

23 Q Two? Okay. Each of those times he stated that he was adjusting the  
24 heart monitor leads?

25 A Yes.

1 Q Okay. Now you had approximately eight leads placed across your  
2 torso; correct?

3 A I don't know if that's correct.

4 Q Okay. Was it -- did you have only one lead?

5 A I had more than one, but I don't know that I had eight; I didn't count.

6 Q Did you have more than two; do you remember?

7 A Yes, I know I had more than two. I just can't see that -- yes, I had  
8 exactly eight.

9 Q Okay. And I just want to get an approximation. So, was it more than  
10 four?

11 A Yes, probably.

12 Q Okay. Could it be more than eight?

13 A That's what I'm saying. I can't -- you said you had eight leads; did you  
14 know that. Well, no, I don't know that. I don't know exactly how many I had.

15 Q Okay. I'm just asking you what you do remember. Do you remember if  
16 there were more than five?

17 A No, I'm sure there were.

18 Q Okay. I'm sorry, Ms. [REDACTED]. I'm just asking how many there were on  
19 your body. It's not -- I'm not trying to trick you.

20 A You're asking me though a question that -- when these are put on me,  
21 I'm in a seizure state. So, I can't -- I'm not around to count 'em. Does that make  
22 sense to you? It's like being in a seizure --

23 Q It does make sense to me. However, you did speak to a detective and  
24 told the detective quite easily without all this extra argument that it was seven to  
25 eight leads on your chest; do you remember saying that to the detective?

1 A No.

2 Q Okay. You said that you know he wasn't adjusting the leads on your  
3 chest because you didn't hear any beeping?

4 A Right.

5 Q Okay.

6 MR. MERBACK: Objection. That's misstates her testimony. She said she  
7 knew the leads didn't come off because she didn't hear the beeping.

8 MR. MANINGO: I'm sorry. What did I say?

9 MR. MERBACK: You said you knew he wasn't adjusting the leads which is  
10 different than what she testified to.

11 THE COURT: Well restate the question because she had answered so --

12 MR. MANINGO: I think --

13 THE COURT: Yeah.

14 MR. MANINGO: -- I think she understood.

15 BY MR. MANINGO:

16 Q Ms. [REDACTED], You believed that none of your leads had come loose  
17 from your body because you didn't hear any alarm go off; correct?

18 A Correct.

19 Q Okay. Are you aware of the fact that at Centennial Hills Hospital in the  
20 room that you were in the telemetry monitors are actually at the nursing station in  
21 the hall and that's where the alarms go off; did you know that?

22 A I --

23 Q Were you aware of that?

24 A No.

25 Q Okay. It was your understanding that the -- there would be a telemetry

1 monitor and an alarm in your room; correct?

2 A Yes, from my recollection there was.

3 Q Okay. And so if I told you that there are pictures taken and research  
4 done showing that the monitors aren't even the room, they're in the hallway so that  
5 the patient wouldn't hear the alarm go off; could that change any of your testimony?

6 A No.

7 Q Okay.

8 A Because when my heart went into A-fib there was a machine by my bed  
9 that did start going off and did when the all the nurses came running in, turned it  
10 off --

11 Q Okay.

12 A -- and this machine actually went up to the room I went to for my A-fib.

13 Q When you said that Mr. Farmer was adjusting the leads on your chest,  
14 before you noticed him doing that you had been asleep; correct?

15 A Yes.

16 Q And then you started to wake up?

17 A I woke up, yes.

18 Q Okay. And you were looking at him you said?

19 A Yes.

20 Q Okay. But before he had come in you were out if it, you were asleep?

21 A I was asleep.

22 Q Okay. So, you were not aware of him coming in in the first place?

23 A No.

24 Q Okay.

25 A You mean did I hear him walk in, you mean? No.

1 Q During the time of this incident you were still on your medications;  
2 correct?

3 A I don't know. I mean, was I still being given medications; is that what  
4 you mean?

5 Q Yes.

6 A Yes.

7 Q Okay. And you were still being given morphine?

8 A I think so. I mean, I honestly don't know what the medications all were  
9 at that time, but I live on morphine every day of my life.

10 Q Okay. Now I know this sounds very obvious, but why you were at  
11 Centennial Hills Hospital that week there were other people in the hospital around;  
12 correct? You weren't the only patient obviously?

13 A I don't think so.

14 Q Okay. And you saw other staff members besides Mr. Farmer?

15 A Yes.

16 Q And there were doctors, nurses coming in and out of the room?

17 A Yes.

18 Q Okay. And what you testified to is that all these incidents that took  
19 place with Mr. Farmer happened in a location where anyone would have walked into  
20 your room and caught Mr. Farmer doing what he was doing; that was possible?

21 A Possible.

22 Q Nobody did that as far as you know?

23 A As far as I know.

24 Q Okay. And all the incidents that you described took place in a location  
25 where someone else could have seen Mr. Farmer doing something inappropriate;



1 correct?

2 A I don't know if that's correct or not. I mean -- because what happened  
3 was I was rushed down to another room after my heart went in A-fib and I'd been in  
4 a seizure prior so, no, I don't know that -- I don't know the lay of the hospital floor no,  
5 I don't. I don't know where the room was located or anything.

6 Q To the best of your knowledge though no one else saw Mr. Farmer do  
7 anything inappropriate to you?

8 A I don't know if anybody saw or not.

9 Q No one's come to said: Ms. [REDACTED], I saw this happen?

10 A No, nobody's done that.

11 Q You did not come forward with any of these allegations until a month  
12 after being released from the hospital; correct?

13 A Correct.

14 Q After this happened to you, the very first incident, when this happened  
15 to you in the hospital, you didn't tell your doctors what had happened; did you?

16 A No.

17 Q Okay. And you didn't tell any of the other nurses what had happened?

18 A No.

19 Q Okay. You didn't ask to speak with the police or for the police to be  
20 called and come to your room?

21 A No. I didn't even -- I didn't -- didn't -- didn't -- didn't --didn't -didn't --

22 THE MARSHAL: Your Honor.

23 THE COURT: Do you need to take a short rest, a recess? Yes?

24 THE WITNESS: Yes, yes, yes, yes, yes.

25 THE COURT: Okay. Court will be in recess for five minutes.

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[Recess taken at 11:28 p.m.]

[Proceedings resumed at 12:03 p.m.]

THE COURT: All right. Are we ready to go back on the record? All right.  
We're back on the record. Go ahead with your cross.

MR. MANINGO: Thank you.

BY MR. MANINGO:

Q [REDACTED], let's get this finished up now.

A Okay.

Q Do you remember what we were just talking about a minute ago?

A A lot of things.

Q That's true. I had asked you about the fact that you did not come forward with any of these allegations until about a month after you were released from the hospital?

A Correct.

Q Okay. And while you were still in the hospital between the dates of May 13<sup>th</sup> and May 20<sup>th</sup> of 2008, you didn't speak to any doctors at the hospital about what happened with Mr. Farmer; correct?

A Correct.

Q Okay. And you did not speak with any of the other nurses about what had happened; correct?

A Correct.

Q Okay. And did you not ask for the police to come to your room and speak to them; correct?

A Correct.

Q Okay. Now earlier when you were speaking with Mr. Merback, you said

1 the reason you didn't talk to anybody from the hospital was because you didn't trust  
2 the hospital anymore; right?

3 A Correct.

4 Q And do you remember saying that earlier?

5 A Yes.

6 Q Okay. However, do you remember that you went back to that same  
7 hospital on June 19<sup>th</sup>, 2008 for an emergency room visit?

8 A Yes.

9 Q Do you remember that?

10 A Yes.

11 Q Okay. And then you also went back to that same hospital that you said  
12 you no longer trust on June 24<sup>th</sup> of 2008 and stayed for a couple of days; do you  
13 remember that?

14 A Yes, I was taken by ambulance both times and had no say in where  
15 they would take me.

16 Q Okay.

17 A I asked to be taken to UMC and they would not take me. My -- both my  
18 sons requested I be taken to UMC.

19 Q Okay.

20 A And the ambulance drivers did not do it.

21 Q Okay. Now do you remember speaking to the detective about this case  
22 back in '08; correct?

23 A Yes.

24 Q Okay. And the detective asked you why you didn't tell anyone at the  
25 hospital; do you remember that?

1           A     Not specifically. We talked about a lot of things.

2           Q     Okay. Do you remember telling the detective that the reason you didn't

3 tell anyone was because you couldn't speak?

4           A     Which is true. At the time it was happening I could not speak.

5           Q     Right. But during your visit you were able to speak?

6           A     Right, and I told my sons.

7           Q     Okay. After you told your sons, they did not report it to the hospital staff

8 as far as you know; correct?

9           A     Correct.

10          Q     And they did not call the police; correct?

11          A     As far as my knowledge, no.

12          Q     Okay. After you told your sons about what had happened, you still

13 remained in that hospital for the duration of your stay; correct?

14          A     Correct; I believe I did, yes.

15          Q     Okay. What I'm asking, I guess, Ms. [REDACTED], is your sons allowed

16 you to remain in Centennial Hills Hospital after you told them what happened with

17 Mr. Farmer; correct?

18          A     Correct.

19          Q     Okay. Now after May 20<sup>th</sup> you were released from Centennial Hills; is

20 that right?

21          A     I believe so, yes.

22          Q     Okay. And you went back home at that time?

23          A     Yes.

24          Q     Okay. Once you got home you still didn't contact the police, correct,

25 right away I should say? You didn't call the police right away when you got home?

1           A     Correct.

2           Q     All right. And you didn't call the hospital to inform them of what had  
3 happened; correct?

4           A     Correct. Part of the reason I didn't call the hospital is I had been in  
5 Centennial previously for the flu and had several items stolen and making phone  
6 calls to get resolution got me nowhere.

7           Q     Okay. And, Ms. [REDACTED], I'm sorry, I didn't mean to interrupt. You  
8 have to answer just from the questions I ask otherwise it gets confusing. And so  
9 you did answer me and I appreciate it. Now once you did get home after May 20<sup>th</sup>  
10 you were able to at least speak and communicate; correct?

11          A     Yes.

12          Q     And you were able to make phone calls if you needed to; correct?

13          A     Yes.

14          Q     Okay. But at that time you still chose not to contact anyone about what  
15 had happened?

16          A     At that time my body started experiencing -- when I hit my head and got  
17 the brain trauma, all the sudden I could do Suduko in like two minutes; finish a  
18 puzzle which was totally abnormal for me. And then when the seizure started in  
19 May it's like all the sudden I was down the chute of a rollercoaster. I started  
20 experiencing high blood pressure. All my --

21          Q     Ms. [REDACTED], I'm going to interrupt you just for a second. I'm sorry,  
22 Your Honor, but I think this is all non-responsive.

23          A     No, I'm answering why I didn't call right away because my health  
24 started deteriorating so fast that that was on the front burner at the time. I started  
25 having seizures like every other day. I started experiencing uncontrollable sensory

1 overload and I had things happening I've never experienced before and my body  
2 and health was just going down a sieve and that was my top priority at that point in  
3 time.

4 Q You weren't concerned that if Mr. Farmer had assaulted you that he  
5 may continue assaulting somebody else at the hospital?

6 MR. MERBACK: I object as to argumentative and not relevant.

7 THE COURT: Yeah, I think that's argumentative so I'll sustain that.

8 BY MR. MANINGO:

9 Q Well let me rephrase, Ms. [REDACTED]. Once you got home from the  
10 hospital, were you concerned that anyone else might get hurt at the hospital?

11 A Of course.

12 Q Yes?

13 A Yes, of course.

14 Q And yet you still didn't call and report anything about Mr. Farmer even  
15 though you were concerned about that?

16 A Right.

17 Q Okay.

18 A But --

19 Q You answered the question. Thank you.

20 THE COURT: Well I'm going to allow her to explain her answer.

21 MR. MANINGO: Judge, I --

22 THE COURT: Are you trying to finish your answer?

23 THE WITNESS: Yes.

24 MR. MANINGO: Judge, I'm going to object because she answered the  
25 question and now we're giving her free reign to make these narratives.

1 THE COURT: All right. The District Attorney can follow up if he wants to. Go  
2 ahead.

3 BY MR. MANINGO:

4 Q It was a month later after release from the hospital around June 15<sup>th</sup>,  
5 you were still concerned about your health at that point; correct?

6 A Yes.

7 Q It was still a priority for you; correct?

8 A Yes.

9 Q Okay. But at that time your son saw Mr. Farmer on the television;  
10 right?

11 A Yes.

12 Q And it was seeing Mr. Farmer on the television that prompted you to  
13 make the phone call to the police; correct?

14 A It was the story associated with him being on TV that prompted it; to  
15 find out that I was not the only one.

16 Q Knowing that that was your nurse, that he was your nurse at the  
17 hospital also?

18 A And the story went on to say that there were more victims than just one.

19 Q Uh-hm.

20 A So, at that point in time, yes, I called.

21 Q Okay. And you were -- you had the physical capacity to make the  
22 phone call to the police yourself; correct?

23 A Yes.

24 Q Okay. You didn't have to have somebody else call for you?

25 A No.

1 Q Okay. And you could have made that phone call weeks earlier if you  
2 wanted to? I mean, you were physically capable of making that phone call?

3 A I was capable --

4 Q Okay.

5 A -- physically.

6 Q Okay.

7 A But medically not so much.

8 Q Earlier you said that you -- that because of your medical condition you  
9 live with Morphine every day?

10 A Yes.

11 Q Okay. Are you on morphine today?

12 A Yes.

13 Q Okay. What kind of dosage did you take today?

14 A My normal dosage. I take 7.5 milligrams three times a day.

15 Q Three times a day?

16 A Yes.

17 Q Okay. And at this point, how many doses -- how many 7.5 milligram  
18 doses have you had?

19 A One.

20 Q One. And then you'll take one midday and then another one in the  
21 evening?

22 A Yes.

23 Q Okay. While you were in the hospital, do you remember how many  
24 times your doctor saw you?

25 A No.



1 Q Okay. Do you remember how many times the nurses came through to  
2 check on you?

3 A No.

4 Q The incidents that you described to Mr. Merback, the incident where  
5 you said Mr. Farmer had pinched your nipples, did that happen -- what time of the  
6 day did that happen; do you remember?

7 A I believe it was nighttime.

8 Q Okay. Are you sure about that or --

9 A No.

10 Q Okay.

11 A Because it was dark in my room whether it was because the lights were  
12 out or because it was nighttime. I do believe it was nighttime though because the  
13 next morning when the day shift nurses came on is when my heart, I believe, went  
14 into A-Fib.

15 Q Okay. Now do you remember how many days you were at the hospital  
16 before you told your sons about Mr. Farmer?

17 A Well like I said earlier, it happened and I believe what he did to me was  
18 at night. The next morning, my heart went into A-Fib. It took 24 hours for it to out of  
19 A-Fib and the very first thing I said when I came to or came out of the A-Fib that was  
20 the first thing I told my boys, the very first thing.

21 Q Okay. So, how many days was that -- how many days had you been in  
22 the hospital at that point when you came out of A-Fib; do you remember?

23 A I had seizures on the second -- I mean, the 12<sup>th</sup>; I got admitted the 13<sup>th</sup>  
24 and it's either the 14<sup>th</sup> or the 15<sup>th</sup>. I'm not quite certain.

25 Q Okay. [REDACTED], you currently have a pending lawsuit against

1 Centennial Hills Hospital regarding these allegations against Mr. Farmer; correct?

2 A Yes.

3 Q I'm sorry?

4 A Yes.

5 Q Okay. And that was filed in July of '09, July 23<sup>rd</sup> of 2009?

6 A Okay. Somewhere in there.

7 Q And in the lawsuit what you're seeking is money; correct?

8 MR. MERBACK: Your Honor, I would object to this point beyond -- I mean,  
9 it's one thing -- I think it's not relevant at this point. It's one thing to ask the question  
10 about the lawsuit, but questions beyond that aren't relevant.

11 THE COURT: Beyond the scope of direct.

12 MR. MANINGO: And, Judge, I think it goes directly towards motive and bias  
13 especially if a witness has a financial motive regarding her testimony. I think it's  
14 definitely -- and which my co-counsel is explaining -- is covered under *Chavez*  
15 *versus* -- *v. State* -- that it does not need to be within the scope of the direct when  
16 you're talking about the motive and bias of a witness.

17 THE COURT: Okay. So, the objection's overruled. Proceed.

18 BY MR. MANINGO:

19 Q Ms. [REDACTED] the question was are you aware that -- excuse me let me  
20 rephrase that -- by filing a lawsuit what you're looking to accomplish is to receive  
21 money damages form the hospital; correct?

22 A From --

23 Q From Centennial Hills Hospital?

24 A From this lawsuit here?

25 Q Because of what happened with Mr. Farmer you're suing the hospital?

1 A Right.

2 Q Okay. And you're suing the hospital for money; right?

3 A Right.

4 Q Okay.

5 A My attorney is.

6 Q And you're aware that a conviction in this criminal case will help the  
7 lawsuit?

8 MR. MERBACK: Objection, Judge. That's clearly beyond her -- lack of  
9 foundation. It's beyond her scope of knowledge and it's not relevant.

10 THE COURT: Lacks foundation and assumes facts not in evidence. It's  
11 sustained.

12 MR. MANINGO: Court's indulgence.

13 BY MR. MANINGO:

14 Q Ms. [REDACTED] we're just about finished. You had started to mention a  
15 situation where Centennial Hills Hospital, you had property stolen from you while  
16 you were there?

17 A Yeah.

18 Q And did you ever file any kind of a complaint or anything with the  
19 hospital?

20 A Yes.

21 Q Okay. And you did not receive any satisfaction from them regarding  
22 that?

23 A No.

24 Q And did you pursue it by calling the police or just by contacting the  
25 hospital?

1           A     The hospital and their security department. I believe I did paperwork  
2 with them.

3           Q     Okay. And nothing ever came of it. You never found out anything or  
4 received your property?

5           A     No.

6           Q     And that happened -- that all happened before any incidents with Mr.  
7 Farmer?

8           A     Yes.

9           MR. MANINGO: Okay. Thank you, Ms. [REDACTED]. Pass the witness.

10          THE COURT: Redirect.

11          MR. MERBACK: No questions, Judge.

12          THE COURT: All right. May the witness then be excused?

13          MR. MERBACK: Yes, Your Honor.

14          THE COURT: Thank you. You're excused.

15          MR. MERBACK: Your Honor, can I slip out and get her son; is that okay?

16          THE COURT: Yes.

17          THE WITNESS: Do I have a chance to say anything or no?

18          THE COURT: No, you have to just answer questions of counsel so --

19          THE WITNESS: Okay.

20          THE COURT: -- you can speak to the District Attorney or anybody that you  
21 wish to about this, but you don't have to speak to anybody that you do not wish to.

22          MR. MANINGO: Judge, actually -- are we on the record still?

23          THE COURT: Yes.

24          MR. MANINGO: Okay. Thanks. We're asking the Court to advise the  
25 witness that this is actually trial testimony at this point and that the witness is not

1 allowed to discuss her testimony with anybody else or what went on here because  
2 there are other potential witnesses, in particular her family members and her sons.  
3 So --

4 THE COURT: Let me admonish her. All right.

5 MR. MANINGO: Yes, please.

6 THE COURT: All right. So, Ms. [REDACTED], because what we did today is in  
7 order to preserve your testimony for trial and later your testimony will be played for  
8 the jury. The reason your son was asked to step out into the hall and wait there was  
9 because he will be a witness in the trial and so don't discuss your testimony here  
10 today with your son. It's important that we maintain that exclusion of the witness  
11 and so don't discuss your testimony with your son or other members of your family  
12 who might be trial witnesses in this matter. All right.

13 THE WITNESS: Okay.

14 THE COURT: Thank you.

15 Anything further?

16 MR. MANINGO: Oh, no, Judge. Thank you.

17 THE COURT: Thank you. Court is adjourned.

18 MR. MERBACK: Thank you, Your Honor.

19

20 [Proceedings concluded at 12:24 p.m.]

21

22 ATTEST: I do hereby certify that I have truly and correctly transcribed the  
23 audio/video proceedings in the above-entitled case to the best of my ability.

24

25

26

Patricia Slattery

# EXHIBIT 2

  
CLERK OF THE COURT

JOCP

DISTRICT COURT

CLARK COUNTY, NEVADA

THE STATE OF NEVADA,

Plaintiff,

-vs-

STEVEN DALE FARMER

#2679879

Defendant.

CASE NO.  
C245739 / C249693

DEPT. NO. V

JUDGMENT OF CONVICTION

(JURY TRIAL)

The Defendant previously entered a plea of not guilty to the crimes of COUNTS 1, 2, 4, 8, 9, 11, 13 & 14 – OPEN OR GROSS LEWDNESS (Gross Misdemeanor) in violation of NRS 201.210; COUNTS 3 & 15 – INDECENT EXPOSURE (Gross Misdemeanor) in violation of NRS 201.220, and COUNTS 5, 6, 7, 10 & 12 – SEXUAL ASSAULT (Category A Felony) in violation of NRS 200.364, 200.366 ; and the matter having been tried before a jury and the Defendant having been found guilty of all counts OTHER THAN COUNTS - 3 & 7 whereas Defendant was found NOT GUILTY; thereafter, on the 28<sup>TH</sup> day of May, 2014, the Defendant was present in court for sentencing with his counsels JEFFREY MANINGO and RYAN BASHOR, Deputy Public Defenders, and good cause appearing,

1 THE DEFENDANT IS HEREBY ADJUDGED guilty of said offenses and, in  
2 addition to the \$25.00 Administrative Assessment Fee and \$150.00 DNA Analysis Fee  
3 including testing to determine genetic markers, the Defendant is sentenced as follows:  
4 As to COUNTS 1, 2, 4, 8, 9, 11, 13, 14 & 15 - TWELVE (12) MONTHS in the Clark  
5 County Detention Center (CCDC) as to each count with each count running  
6 CONCURRENT with each other; as to COUNT 5 - LIFE with a MINIMUM parole  
7 eligibility of TEN (10) YEARS in the Nevada Department of Corrections (NDC), Count  
8 5 to run CONCURRENT with Counts 1, 2 and 4; as to COUNT 6 - LIFE with a  
9 MINIMUM parole eligibility of TEN (10) YEARS in the Nevada Department of  
10 Corrections (NDC), Count 6 to run CONSECUTIVE to Count 5; as to COUNT 10 -  
11 LIFE with a MINIMUM parole eligibility of TEN (10) YEARS in the Nevada Department  
12 of Corrections (NDC), Count 10 to run CONSECUTIVE to Count 6; and as to COUNT  
13 12 - LIFE with a MINIMUM parole eligibility of TEN (10) YEARS in the Nevada  
14 Department of Corrections (NDC), Count 12 to run CONCURRENT with Counts 1, 2,  
15 4, 6, 8, 10 & 11; with TWO THOUSAND TWO HUNDRED FOUR (2,204) days Credit  
16 for Time Served.

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21 FURTHER ORDERED, a SPECIAL SENTENCE of LIFETIME SUPERVISION  
22 is imposed to commence upon release from any term of imprisonment, probation or  
23 parole. In addition, before the Defendant is eligible for parole, a panel consisting of  
24 the Administrator of the Mental Health and Development Services of the Department  
25 of Human Resources or his designee; the Director of the Department of Corrections or  
26 his designee; and a psychologist licensed to practice in this state; or a psychiatrist  
27  
28

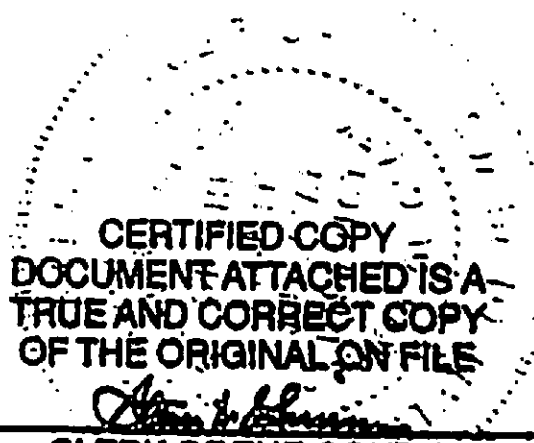


1 licensed to practice medicine in Nevada must certify that the Defendant does not  
2 represent a high risk to re-offend based on current accepted standards of assessment.

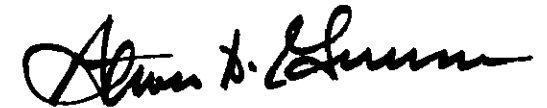
3  
4 ADDITIONALLY, the Defendant is ORDERED to REGISTER as a sex offender  
5 in accordance with NRS 179D.460 within FORTY-EIGHT (48) HOURS after any  
6 release from custody.

7  
8 DATED this 30th day of May, 2014.

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12 CAROLYN ELLSWORTH  
13 DISTRICT JUDGE  
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CERTIFIED COPY  
DOCUMENT ATTACHED IS A  
TRUE AND CORRECT COPY  
OF THE ORIGINAL ON FILE  
CLERK OF THE COURT  
JUN 05 2014

**TAB 5**



CLERK OF THE COURT

1 **OPPM**  
2 ROBERT C. McBRIDE, ESQ.  
3 Nevada Bar No.: 007082  
4 HEATHER S. HALL, ESQ.  
5 Nevada Bar No.: 010608  
6 CARROLL, KELLY, TROTTER,  
7 FRANZEN, McKENNA & PEABODY  
8 701 N. Green Valley Pkwy, Suite 200  
9 Henderson, NV 89074  
10 Telephone: (702) 792-5855  
11 Facsimile: (702) 796-5855  
12 Attorneys for Defendant STEVEN DALE FARMER

8 **DISTRICT COURT**  
9 **CLARK COUNTY, NEVADA**

10 \* \* \* \*

11 ESTATE OF JANE DOE, by and through its  
12 Special Administrator MISTY PETERSEN,

13 Plaintiff,

14 vs.

15 VALLEY HEALTH SYSTEM LLC, a Nevada  
16 limited liability company, dba CENTENNIAL  
17 HILLS HOSPITAL MEDICAL CENTER;  
18 UNIVERSAL HEALTH SERVICES, INC., a  
19 Delaware corporation; AMERICAN NURSING  
20 SERVICES, INC., a Louisiana corporation;  
21 STEVEN DALE FARMER, an individual;  
22 DOES I through X, inclusive; and ROE  
23 CORPORATIONS I through X, inclusive,

24 Defendants.

CASE NO.: A595780  
DEPT. NO.: II

DATE OF HEARING: 11/3/14

TIME OF HEARING: 9:00 a.m.

21 **DEFENDANT STEVEN DALE FARMER'S LIMITED OPPOSITION TO PLAINTIFF'S**  
22 **MOTION FOR SUMMARY JUDGMENT RE: LIABILITY**

23 COMES NOW Defendant STEVEN DALE FARMER, by and through his counsel of record  
24 Robert C. McBride, Esq. and Heather S. Hall, Esq., of the law firm of Carroll, Kelly, Trotter, Franzen,  
25 McKenna & Peabody, and hereby submits his Limited Opposition to Plaintiff's Motion for Summary  
26 Judgment Re: Liability.

27 This Limited Opposition is made and based upon the papers and pleadings on file herein, the  
28 Memorandum of Points and Authorities attached hereto, such other documentary evidence as may be

1 presented and any oral arguments at the time of the hearing of these matters.

2 DATED this 12 of October, 2014.

3 CARROLL, KELLY, TROTTER, FRANZEN,  
4 McKENNA & DEABODY

5 By: 

ROBERT C. McBRIDE, ESQ.

Nevada Bar No.: 007082

HEATHER S. HALL, ESQ.

Nevada Bar No.: 010608

701 N. Green Valley Pkwy, Suite 200

Henderson, NV 89074

Attorneys for Defendant,

Steven Dale Farmer

1 **MEMORANDUM OF POINTS AND AUTHORITIES**

2 **I.**

3 **STATEMENT OF PERTINENT FACTS**

4 This case involves allegations by Plaintiff Jane Doe that she was sexually assaulted by Defendant  
5 Steven Dale Farmer, who was an employee of Defendant American Nursing Services, Inc., while she was  
6 a patient at Defendant Centennial Hills Hospital Medical Center in or around May of 2008. Plaintiff filed  
7 her Complaint on July 24, 2009 and followed with an Amended Complaint filed on August 24, 2009.  
8 The Amended Complaint alleges the following causes of action: (1) Negligence/Corporate Negligence;  
9 (2) Punitive Damages; and (3) Attorney's fees. The allegations in the Amended Complaint refer to an  
10 alleged incident in May of 2008, at Centennial Hills Hospital where Plaintiff was recovering from  
11 seizures. Plaintiff's Statement of Uncontested Facts asserts that she could not "scream out" during the  
12 sexual assault because of the damage resulting from her seizures.

13 Mr. Farmer's criminal trial was continued several times over the last five years, but his criminal  
14 trial finally went forward on February 3, 2014 concluding on February 28, 2014. Despite the  
15 overwhelming lack of physical evidence, Steven Farmer's criminal trial resulted in a conviction of many  
16 of the charges against him. On May 28, 2014, he was sentenced to 30 years to life. Mr. Farmer was  
17 represented by a public defender. Clark County's Office of Public Defenders has an excellent appellate  
18 team who devotes 100% of its resources to pursuing appeals for convicted clients. Mr. Farmer's  
19 appellate attorney has already started working with him on the appeals process.

20 **II.**

21 **LEGAL ARGUMENT**

22 **A. THE JURY MUST BE PERMITTED TO CONSIDER COMPARATIVE**  
23 **NEGLIGENCE AND DAMAGES.**

24 A claim for civil battery requires a plaintiff to establish that the "defendant made an intentional,  
25 unlawful, and harmful contact with the plaintiff." Ashcraft v. King, 278 Cal Rptr. 900, 228 Cal App.3d  
26 604 (1991); *see also*, Romero, *supra*. Pursuant to Nevada law, battery is, "any willful and unlawful use  
27 of force or violence upon the person of another." NRS § 200.400(1)(a) and NRS § 200.481(1)(a); *see*  
28 *also* Wright v. Starr, *supra*, (defining battery as "any unlawful beating, or other wrongful physical

1 violence or constraint, inflicted on a human being without his consent"); Zaic v. Las Vegas Metro. Police  
2 Dep't, 2011 U.S. Dist. Lexis 21608; 2011 WL 810324 (D. Nev.); Conboy v. Wynn Las Vegas, LLC, 2012  
3 U.S. Dist. Lexis 163450; 2012 WL 5511616 (D. Nev.) The essence of a battery is a harmful contact,  
4 intentionally done. Ashcraft v. King, *supra*.

5 Although NRS 41.133 does establish a conclusive presumption of liability when an offender has  
6 been convicted of the crime that resulted in the injury to the victim, the statute does not abrogate the law  
7 regarding comparative negligence or damages. See Cromer v. Wilson, 225 P.3d 788 (Nev. 2010). As set  
8 forth in the Cromer decision, while NRS 41.133 establishes a conclusive presumption of liability, a  
9 defendant may argue comparative negligence pursuant to NRS 41.141 to reduce an award of damages  
10 at a trial as to damages only. Id. Here, all Defendants must be permitted to argue comparative negligence  
11 and lack of damages at the time of trial, regardless of a conclusive presumption of negligence.

12 **III.**

13 **CONCLUSION**

14 Based upon the foregoing, Defendant Steven Farmer respectfully requests that if this Court grants  
15 Plaintiff's Motion for Summary Judgment, its ruling clearly state that Defendants are permitted to argue  
16 comparative negligence and damages.

17 DATED this 13 day of October, 2014.

18 CARROLL, KELLY, TROTTER, FRANZEN,  
19 McKENNA & PEABODY

20 By: 

ROBERT C. McBRIDE, ESQ.

Nevada Bar No.: 007082

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Attorneys for Defendant

*Steven Dale Farmer*

**CERTIFICATE OF SERVICE**

I hereby certify that on this 13<sup>th</sup> day of October, 2014, service of a true and correct copy of the foregoing **DEFENDANT STEVEN DALE FARMER'S LIMITED OPPOSITION TO PLAINTIFF'S MOTION FOR SUMMARY JUDGMENT RE: LIABILITY** was made as indicated below:

— By first class mail, postage prepaid from Las Vegas, Nevada pursuant to N.R.C.P. 5(b) addressed as follows below:

— By facsimile, pursuant to EDCR 7.26 (as amended):


— By both US Mail and facsimile as indicated below:

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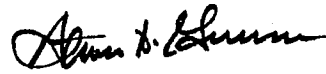
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*American Nursing Services, Inc.*

  
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*Carroll Kelly, Trotter, Franzen, McKenna & Peabody*

**TAB 6**





CLERK OF THE COURT

1 **OPP**

2 MICHAEL E. PRANGLE, ESQ.

3 Nevada Bar No. 8619

4 JOHN F. BEMIS, ESQ.

5 Nevada Bar No. 9509

6 HALL PRANGLE & SCHOONVELD, LLC

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12 *Attorneys for Defendants*

13 *Centennial Hills Hospital and*

14 *Universal Health Services, Inc.*

**DISTRICT COURT**

**CLARK COUNTY, NEVADA**

15 MISTY PETERSON, AS SPECIAL  
16 ADMINISTRATOR OF THE ESTATE OF  
17 JANE DOE,

18 Plaintiff,

19 vs.

20 VALLEY HEALTH SYSTEM LLC, a Nevada  
21 limited liability company, d/b/a CENTENNIAL  
22 HILLS HOSPITAL MEDICAL CENTER;  
23 UNIVERSAL HEALTH SERVICES, INC., a  
24 Delaware corporation; AMERICAN NURSING  
25 SERVICES, INC., a Louisiana corporation;  
26 STEVEN DALE FARMER, an individual; DOES I  
27 through X, inclusive; and ROE CORPORATIONS I  
28 through X, inclusive,

Defendants.

CASE NO. A595780  
DEPT NO. II

**DEFENDANTS CENTENNIAL HILLS HOSPITAL AND UNIVERSAL HEALTH SERVICES, INC.'S OPPOSITION TO PLAINTIFF'S MOTION FOR SUMMARY JUDGMENT RE: LIABILITY AND JOINDER TO DEFENDANT STEVEN DALE FARMER'S LIMITED OPPOSITION**

COMES NOW, Defendants, CENTENNIAL HILLS HOSPITAL and UNIVERSAL HEALTH SERVICES, INC., by and through their attorneys of record, the law firm of HALL,



HALL PRANGLE & SCHOONVELD, LLC  
1160 NORTH TOWN CENTER DRIVE  
SUITE 200  
LAS VEGAS, NEVADA 89144  
TELEPHONE: 702-889-6400 FACSIMILE: 702-384-6025


1 PRANGLE & SCHOONVELD LLC, and provides their Opposition to Plaintiff's Motion for  
2 Summary Judgment Re: Liability and Joinder to Defendant Steven Dale Farmer's Limited  
3 Opposition.

4 This Opposition/Joinder is made and based upon the pleadings on file, the Memorandum  
5 of Points and Authorities that follow, and any oral argument of counsel that may be heard at the  
6 time of hearing of this motion.  
7

8 DATED this 14<sup>th</sup> day of October, 2014.

9 HALL PRANGLE & SCHOONVELD, LLC

10  
11 By:

  
MICHAEL E. PRANGLE, ESQ.

Nevada Bar No. 8619

JOHN F. BEMIS, ESQ.

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*Attorneys for Defendants*

*Centennial Hills Hospital and*

*Universal Health Services, Inc.*

18 A.

19 **FACTUAL STATEMENT/INTRODUCTION**

20 **1. The Parties.**

21 Jane Doe is a single woman with adult children. She was hospitalized at Centennial Hills  
22 Hospital from May 14, 2008 until May 19, 2008. Approximately one month prior to her  
23 hospitalization, she suffered a brain injury that caused her to experience seizures. She was  
24 brought to CHH after experiencing a seizure on or about May 14, 2008. Plaintiff committed  
25 suicide on July 10, 2013.  
26  
27  
28

1 American Nursing Services, Inc., was a supplemental staffing agency that provided the  
2 alleged perpetrator of the assault, Steven Farmer, to Centennial Hills Hospital. Since the time of  
3 the incident, ANS has declared bankruptcy.

4 Broadlane Inc., is a non-party "middleman" who connected Centennial Hills Hospital  
5 with American Nursing Services, Inc., to supply supplemental staffing. There is no direct  
6 contract between American Nursing Services, Inc and Centennial Hills Hospital. Instead, there  
7 is a contract between American Nursing Services, Inc and Broadlane and Broadlane and  
8 Centennial Hills Hospital. Broadlane is not a party to the instant litigation.

9  
10 Steven Farmer is the alleged assailant and a former employee of American Nursing  
11 Services, Inc. On June 2, 2014, a Judgment of Conviction was filed in the criminal case against  
12 Mr. Farmer. See Plaintiff's MSJ, Exhibit 2.

13  
14 Centennial Hills Hospital is the facility where the alleged assault occurred.

15 **2. The Incident.**

16 Plaintiff was brought to Centennial Hills Hospital on or about May 14, 2008. Plaintiff  
17 was brought to the hospital due to having a seizure at the grocery store. Plaintiff alleges that  
18 while she was a patient, a nurse named Steven came in and improperly touched her on several  
19 occasions. Plaintiff did not come forward with her story until about 1 - 1 ½ months after her  
20 discharge. Mr. Farmer was convicted of sexual assault on Plaintiff.

21  
22 **3. Joinder to Defendant Steven Dale Farmer's Limited Opposition.**

23 That Defendants CENTENNIAL HILLS HOSPITAL and UNIVERSAL HEALTH  
24 SERVICES, INC. adopt, and incorporate as if fully set forth herein, the points and authorities,  
25 and arguments contained in Defendant Steven Dale Farmer's Limited Opposition to Plaintiff's  
26 Motion for Summary Judgment Re: Liability.  
27  
28

WHEREFORE, Defendants CENTENNIAL HILLS HOSPITAL and UNIVERSAL HEALTH SERVICES, INC., pray that Plaintiff's Motion for Summary Judgment Re: Liability in the above-entitled action be DENIED.

**B.**

**ARGUMENT**

Plaintiff seeks summary adjudication against Steven Farmer, American Nursing Services and Centennial Hills Hospital. In Nevada, conviction of a crime may be introduced as conclusive proof of all facts necessary to sustain a conviction. See NRS 41.133. In this case, Mr. Farmer was convicted of, amongst other crimes, sexual assault of Plaintiff. Through her Motion, Plaintiff seeks to apply strict liability to Centennial Hills Hospital. The conviction can be introduced against all Defendants. This Opposition does not seek to address whether the assault occurred. Rather this Opposition shows that there is no authority for Plaintiff's request for strict liability against Centennial Hills. As completely shown below, there is no authority to support finding Centennial Hills strictly liable for the acts of Mr. Farmer.

As this Court is aware, NRS 41.745 provides:

Liability of employer for intentional conduct of employee; limitations.

1. An employer is not liable for harm or injury caused by the intentional conduct of an employee if the conduct of the employee:

- (a) Was a truly independent venture of the employee;
- (b) Was not committed in the course of the very task assigned to the employee;

and

(c) Was not reasonably foreseeable under the facts and circumstances of the case considering the nature and scope of his or her employment.

-For the purposes of this subsection, conduct of an employee is reasonably foreseeable if a person of ordinary intelligence and prudence could have reasonably anticipated the conduct and the probability of injury.

2. Nothing in this section imposes strict liability on an employer for any unforeseeable intentional act of an employee. (emphasis added)

1 Thus, in order to establish liability for the conduct of an employee, Plaintiff must  
2 establish that the act was not a truly independent venture, the act was committed in the course of  
3 the task assigned to the patient, and that the act was reasonably foreseeable. Plaintiff's Motion  
4 wholly neglects the topic of whether the instant act was reasonably foreseeable.

5 As further discussed below, Defendant, Centennial Hills cannot be held liable for Steven  
6 Farmer's intentional conduct as his conduct was a truly independent venture. Additionally, Mr.  
7 Farmer's actions weren't reasonably foreseeable under the facts and circumstances of the case.  
8 Moreover, the finding of liability pursuant to NRS 41.745 is a question of fact for the jury. As  
9 such, Plaintiff's Motion should be denied as to Centennial Hills.  
10

11 **1. The Alleged Assault is a Truly Independent Venture.**

12 Initially, the alleged assault was a truly independent venture of Mr. Farmer. Both before  
13 and after the passage of N.R.S. 41.745, the Nevada Supreme Court has spoken numerous times  
14 as to how to determine whether acts fall within the course and scope of one's employment. For  
15 example, to determine course and scope, the Nevada Supreme Court looks to:  
16

17 a. whether the employee was "acting on behalf of" or "out of any sense of  
18 duty owed to" the employer, or "furthering the business interests", *Wood v.*  
19 *Safeway, Inc.*, 121 Nev. 724, 37-738, 121 P.3d 1026, 1035, *Burnett v.*  
20 *C.B.A. Sec. Service, Inc.*, 107 Nev. 787, 789, 820 .2d 750, 751-752  
21 (1991); and  
22

23 b. whether the employer "exercise[d] control over," or "received a  
24 benefit," from the employee's conduct, *Kornton v. Conrad, Inc.*, 119 Nev.  
25 123, 123, 67 P.3d 316, 317 (2003).  
26  
27  
28

In the instant matter, it is patently clear that sexual assaults are outside the course and scope of certified nurse assistant's job. This much is admitted in Plaintiff's Motion. The Nevada State Board of Nursing provides a CNA Skills Guidelines which itemizes a list of specific skills for CNA scope of practice. See Nevada State Board of Nursing CNA Skills Guidelines attached hereto as Exhibit A. In reviewing said exhibit, there is no reference to molestation, digital insertion of fingers into a patient's vagina, rectum or groping of breasts, and legs. See Exhibit A. In fact, there are no skills listed on the CNA Skills Guidelines that could be considered sexual in nature. *Id.*

Additionally, taking a look at the Centennial Hills Job Description/Performance Review for CNA's, there is no reference to molestation, digital insertion of fingers into a patient's vagina, rectum or groping of breasts, and legs. See Centennial Hills Job Description attached hereto as Exhibit B. Specifically, the Description/Purpose of Position states:

Responsible for assisting the planning, organizing, implementing and evaluating the activities occurring in the nursing unit by performing clerical and receptionist duties, and performing patient care/service activities/procedures as outlined by the state board of nursing and within the Nevada Nurse Practice Act. Performs assigned duties under the supervision of licensed nursing staff. *Id.*

Again, nothing in this description could possibly be interpreted to advocate or endorse the sexual assault of patients. In fact, this premise has been clearly admitted by Plaintiff. See Motion for Summary Judgment at 10:15-16.

Moreover, in *Wood v. Safeway*, the Nevada Supreme Court held that the repeated sexual assaults of a mentally retarded employee by a janitor hired to clean the store was clearly outside the course and scope of employment of the janitor and liability could not be extended to the employer. 121 Nev. at 739. In *Wood*, Safeway Stores, Inc. hired a mentally retarded individual, Doe, to work as a part-time courtesy clerk. Doe was hired through the store's special hiring

1 program, where job coaches were provided by Doe's high school. Doe also received assistance  
2 from a job coach at Easter Seals and the state provided a vocational rehabilitation counselor.  
3 Prior to beginning employment, Doe attended a daylong orientation session for new employees  
4 where she received specific training for her job duties. The orientation also covered Safeway's  
5 employment policies, including its policies on sexual harassment in the workplace. Doe was  
6 accompanied to the orientation by one of her job coaches, to ensure she understood all the  
7 materials and information.  
8

9 During her employment, Doe met Ronquillo-Nino, who was employed by Action  
10 Cleaning, and was contracted to work as a nighttime janitor at the Safeway store. On three  
11 separate occasions Ronquillo-Nino sexually assaulted Doe while she was at work. The assaults  
12 occurred in a cleaning supply room, and also outside behind a trash dumpster while Doe was  
13 collecting shopping carts from the parking lot. As a result of the assaults, Doe became pregnant  
14 and gave birth to a healthy child. Doe filed a Complaint against both Safeway and Action  
15 Cleaning based upon the multiple sexual assaults. Safeway brought a Motion for Summary  
16 Judgment based upon the Nevada Industrial Insurance Act providing the sole and exclusive  
17 remedy for injuries arising out of the course and scope of employment. Action Cleaning brought  
18 a Motion for Summary Judgment based upon NRS 41.745, claiming that it cannot be held liable  
19 for the intentional torts of its employee. The district court granted both motions, and denied  
20 Doe's Motion for Reconsideration. Thereafter, the Nevada Supreme Court upheld the summary  
21 adjudication.  
22  
23  
24

25 The Nevada Supreme Court held that because Ronquillo-Nino was not acting out of any  
26 sense of duty owed to Action Cleaning, the multiple sexual assaults against Doe were an  
27 independent venture and outside the course and scope of his employment. *See Wood*, 121 Nev.  
28

1 at 739. Based upon the assaults being an independent venture by Ronquillo-Nino, the Nevada  
2 Supreme Court held that Doe's argument must fail. *Id.*

3 Likewise, in the instant matter, there is absolutely no possible scenario that alleged sexual  
4 assault can be considered within the course and scope of Mr. Farmer's employment. As such,  
5 the alleged sexual assault must be considered a truly independent venture of Mr. Farmer. Based  
6 upon Mr. Farmer's alleged sexual assault being a truly independent venture, Centennial Hills  
7 cannot be held liable for the intentional tort allegations.  
8

9 **2. There is Absolutely No Clear Notice of a Propensity for the Type of Action**  
10 **that is Alleged to Have Occurred.**

11 Most importantly, the alleged sexual assault committed by Mr. Farmer was completely  
12 unforeseeable under the facts and circumstances of the case considering the nature and scope of  
13 his employment. In order to hold an employer liable for the intentional torts of an employee,  
14 NRS 41.745 requires that the action of the employee was reasonably foreseeable under the facts  
15 and circumstances of the case considering the nature and scope of his employment. Moreover,  
16 NRS 41.745 states "for the purposes of this subsection, conduct of an employee is reasonably  
17 foreseeable if a person of ordinary intelligence and prudence could have reasonably anticipated  
18 the conduct and the probability of injury." The Nevada Supreme Court has held that if an action  
19 is not reasonably foreseeable, the court does not need to look at the other two elements of NRS  
20 41.745(1). *Vaughan v. Harrah's Las Vegas Inc.*, 2008 WL 6124455, 2, attached hereto as  
21 Exhibit C.  
22

23  
24 The Nevada Supreme Court determined that whether an intentional act is reasonably  
25 foreseeable depends on whether one has reasonable cause to anticipate such act and the  
26 probability of injury resulting therefrom. *See Rockwell v. Sun Harbor Budget Suites*, 112 Nev.  
27 1217, 925 P.2d 1175 (1996) (citing *Thomas v. Bokelman*, 86 Nev. 10, 462 P.2d 1020 (1970)).  
28



1 The Nevada Supreme Court has quoted, with approval, the California Court of Appeal in  
2 explaining foreseeability in the context of respondeat superior as follows:

3 Foreseeability, as a test for respondeat superior merely means that in the context of  
4 the particular enterprise an employee's conduct is not so unusual or startling that it  
5 would seem unfair to include the loss resulting from it among other costs of the  
6 employer's business. In other words, where the question is one of vicarious liability,  
7 the inquiry should be whether the risk was one 'that may fairly be regarded as typical  
8 of or broadly incidental' to the enterprise undertaken by the employer.

9 Under the modern rationale for respondeat superior, the test for determining whether  
10 an employer is vicariously liable for the tortious conduct of his employee is closely  
11 related to the test applied in workers' compensation cases for determining whether an  
12 injury arose out of or in the course of employment. See *Wood*, 121 Nev. at 740  
13 (citing *Rodgers v. Kemper Construction Co.*, 50 Cal.App.3d 608, 124 Cal.Rptr. 143,  
14 148-49 (1975)).

15 In *Wood*, the Nevada Supreme Court concluded that the because the assailant had no prior  
16 criminal record in the United States or Mexico, and because there was no prior complaints  
17 against the assailant for sexual harassment, that it was not reasonably foreseeable that the  
18 assailant would sexually assault a Safeway employee. 121 Nev. at 740. In *Vaughan*, the Nevada  
19 Supreme Court held that based on a lack of a criminal record and no worker complaints of  
20 violent assault, Harrah's could not be held liable for its employee assaulting a patron in the  
21 bathroom. *Exhibit C*, 2008 WL 6124455, 2.

22 In the instant situation, there were absolutely no known prior acts by Mr. Farmer that  
23 could potentially put Centennial Hills on notice that Mr. Farmer would assault a patient. Prior  
24 to the alleged incident, Steven Farmer was a certified nurses' assistant in California and Nevada.  
25 Mr. Farmer went through a background check to receive his certification in both states.  
26 Centennial Hills was provided with a criminal background check, proof of negative drug test and  
27 employment background information prior to booking shifts with Mr. Farmer. Thereafter,  
28 Centennial Hills performed a primary source verification with the Nevada State Board of  
Nursing prior to hiring Mr. Farmer. Further, in reviewing Mr. Farmer's employment file at

1 Centennial Hills Hospital, there are absolutely no reports of ill character. *See* Centennial Hills  
2 Employee File of Steven Farmer attached hereto as Exhibit D.

3 Plaintiff will allege that Centennial Hills was on notice of Mr. Farmer's nefarious  
4 background based upon an allegation of "patient abuse" that occurred at Rawson Neal Hospital.  
5 Mr. Farmer was placed on "Do Not Return" status at the facility, but was cleared of any  
6 wrongdoing. There was no report to the Nevada Board of Nursing. Rather, Rawson Neal and  
7 American Nursing Services conducted separate investigations into the matter. Both  
8 investigations cleared Mr. Farmer of wrongdoing. American Nursing Services did not provide  
9 any information regarding the Rawson Neal Hospital accusations to Centennial Hills. As such,  
10 there is no way that Centennial Hills had prior knowledge of any prior improper conduct of Mr.  
11 Farmer.  
12

13  
14 The former clinical director of American Nursing Services' Las Vegas branch, Michelle  
15 Simmons, was deposed on November 15, 2012. Ms. Simmons is a former employee due to  
16 American Nursing Services declaring bankruptcy and closing business. Ms. Simmons testified  
17 that before sending an employee for an assignment, ANS would ensure that the individual was  
18 proper for whatever job they were booked. *See* Deposition of Michelle Simmons attached hereto  
19 as Exhibit E, 26:2-5. This included verifying credentialing, references, background check. *Id.* at  
20 26:6-21. Additionally, Ms. Simmons would follow up with the facilities on how the patients  
21 were doing when on assignment. *Id.* at 27:1-28:3  
22

23  
24 Ms. Simmons did recall incident related to Mr. Farmer at Rawson Neal Hospital. *Id.* At  
25 59:2-60:1. Mr. Farmer was placed on "Do Not Return" status at Rawson Neal pending the  
26 outcome of an internal investigation. On, or about, January 25, 2008, Rawson Neal Hospital  
27 informed American Nursing Services that Mr. Farmer was "Do Not Return" status. *Id.* At 74:5-  
28

10. Despite being on "Do Not Return" status at Rawson Neal, Mr. Farmer was booked at other facilities. *Id.* 115:5-11. Ms. Simmons testified that she did not inform Centennial Hills of the "Do Not Return" status or ongoing investigation at Rawson Neal. *Id.* CITE. American Nursing Services did not inform Centennial Hills of the investigation into the alleged patient abuse at Rawson Neal. *Id.* At 140:1-25. Ms. Simmons stated that American Nursing Services prevented her from informing Centennial Hills of the investigation. *Id.*

Clearly, there is no evidence that Centennial Hills Hospital had reasonable cause to anticipate the alleged conduct and the probability of injury resulting therefrom. Accordingly, pursuant to the *Wood* and *Vaughan* cases, this Honorable Court must deny Plaintiff's Motion.

**3. Whether NRS 41.745 Liability Exists, Is a Question of Fact for the Jury.**

Establishing liability for intentional conduct of an employee or agent is similar, but more onerous than establishing ostensible agency. With regard to ostensible agency, the Supreme Court of Nevada first addressed the issue of agency in a medical setting in *Oehler v. Humana*, 105 Nev. 348, 775 P.2d 1271 (1989). Plaintiff Beverly Oehler filed a Complaint against Humana Hospital Sunrise and numerous physicians alleging that Humana Hospital Sunrise and numerous physicians were liable under a negligent supervision theory (respondeat superior) and a vicarious liability (agency) theory. Discovery was conducted and Humana Hospital Sunrise filed a Motion for Summary Judgment which was granted and Plaintiff appealed.

The *Oehler* Court found that there was not a genuine issue of material fact regarding the vicarious liability (agency) theory. The Court found that agency did not exist as a matter of law, stating that "[a] hospital is not vicariously liable for acts of physicians who are neither employees nor agents of the hospital." *Id.* at 351, citing *Gasbarra v. St. James Hospital*, 406 N.E.2d 544 (Ill. App. 1980); *Cooper v. Curry*, 589 P.2d 201 (N.M. 1978).

The most recent Nevada case to address the agency theory is *Schlotfeldt*, where the Court looked to other jurisdictions as a guide for establishing the presence of agency between a doctor and hospital and evoking vicarious liability. *Schlotfeldt v. Charter Hospital of Las Vegas*, 112 Nev. 42, 48 (1996). Looking to *Hill v. St. Clare's Hospital*, 67 N.Y.2d 72; 490 N.E.2d 823, 827 (1986), the Court found that "absent an employment relationship, a doctor's mere affiliation with a hospital is not sufficient to hold a hospital vicariously liable for the doctor's negligent conduct." See also, *Ruane v. Niagara Falls Memorial Medical Center*, 60 N.Y.2d 908, 458 N.E.2d 1253 (1983). A physician or surgeon who is on a hospital's staff is not necessarily liable for his tortuous acts. *Evans v. Bernhard*, 533 P.2d 721, 725, 23 Ariz. App. 413 (1975). A hospital does not generally expose itself to vicarious liability for a doctor's actions by merely extending staff privileges to that doctor. *Moon v. Mercy Hospital*, 373 P.2d 944, 946; 150 Colo. 430 (1962); *Hundt v. Proctor Community Hospital*, 284 N.E.2d 676, 678; 5 Ill. App. 3d 987.

In Footnote 3 of *Schlotfeldt*, the Court pointedly stated that their holding did not disturb *Oehler* and the cases were distinguishable because:

Determining the existence of agency is quite different than determining the absence of agency. First, concluding agency exists requires an affirmative finding on all the elements of agency. Concluding agency does not exist requires only the negation of one element of the agency relationship. Second, the legal consequences of concluding that agency exists are much different from concluding the opposite. One defendant's liability can become inextricably linked to the tortuous acts of another defendant through the conclusion of agency. On the other hand, refusing to find agency merely requires a plaintiff to prove a case against each defendant individually.

Analyzing *Oehler* and *Schlotfeldt* together, a judge may determine that agency does not exist as a matter of law; as concluding that agency does not exist requires only the negation of one element of the agency relationship. In contrast, concluding agency does exist requires an affirmative finding on all the elements of agency and is a question of fact for the jury to decide.

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1 Likewise, this Court can conclude that NRS 41.745 liability does not exist as a matter of law.  
2 Such a conclusion only requires the negation of one of the three elements. However, this Court  
3 cannot conclude that NRS 41.745 liability is established, as that requires an affirmative finding  
4 of all three elements. Such a finding is a question of fact for a jury. Accordingly, Plaintiff's  
5 Motion as to Centennial Hills must be denied.  
6

7 C.

8 **CONCLUSION**

9 Based on the foregoing, Defendant respectfully requests that Plaintiff's Motion for  
10 Summary Judgment Re: Liability be DENIED.

11 DATED this 14<sup>th</sup> day of October, 2014.

12 HALL PRANGLE & SCHOONVELD, LLC

13  
14 By: 

15 MICHAEL E. PRANGLE, ESQ.

16 Nevada Bar No. 8619

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**CERTIFICATE OF SERVICE**

I HEREBY CERTIFY that I am an employee of HALL PRANGLE & SCHOONVELD, LLC; that on the 14<sup>th</sup> day of October, 2014, I served a true and correct copy of the foregoing **DEFENDANTS CENTENNIAL HILLS HOSPITAL AND UNIVERSAL HEALTH SERVICES, INC.'S OPPOSITION TO PLAINTIFF'S MOTION FOR SUMMARY JUDGMENT RE: LIABILITY AND JOINDER TO DEFENDANT STEVEN DALE FARMER'S LIMITED OPPOSITION** via E-Service on Wiznet pursuant to mandatory NEFCR 4(b) to the following parties:

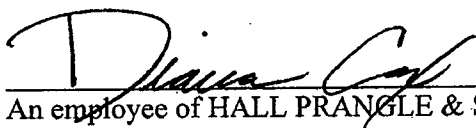
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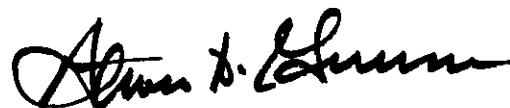
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An employee of HALL PRANGLE & SCHOONVELD, LLC

4822-6833-8463, v. 1

**TAB 7**



CLERK OF THE COURT

ERR

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*Centennial Hills Hospital and*  
*Universal Health Services, Inc.*

**DISTRICT COURT**

**CLARK COUNTY, NEVADA**

MISTY PETERSON, AS SPECIAL  
ADMINISTRATOR OF THE ESTATE OF  
JANE DOE,

Plaintiff,

vs.

VALLEY HEALTH SYSTEM LLC, a Nevada  
limited liability company, d/b/a CENTENNIAL  
HILLS HOSPITAL MEDICAL CENTER;  
UNIVERSAL HEALTH SERVICES, INC., a  
Delaware corporation; AMERICAN NURSING  
SERVICES, INC., a Louisiana corporation;  
STEVEN DALE FARMER, an individual; DOES I  
through X, inclusive; and ROE CORPORATIONS I  
through X, inclusive,

Defendants.

CASE NO. A595780  
DEPT NO. II

**DEFENDANTS CENTENNIAL HILLS HOSPITAL AND UNIVERSAL HEALTH  
SERVICES, INC.'S ERRATA TO THEIR OPPOSITION TO PLAINTIFF'S MOTION  
FOR SUMMARY JUDGMENT RE: LIABILITY AND JOINDER TO DEFENDANT  
STEVEN DALE FARMER'S LIMITED OPPOSITION**

COMES NOW, Defendants, CENTENNIAL HILLS HOSPITAL and UNIVERSAL  
HEALTH SERVICES, INC., by and through their attorneys of record, the law firm of HALL,

**HALL PRANGLE & SCHOONVELD, LLC**  
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1 PRANGLE & SCHOONVELD LLC, and provides their Errata to their Opposition to Plaintiff's  
2 Motion for Summary Judgment Re: Liability and Joinder to Defendant Steven Dale Farmer's  
3 Limited Opposition.

4 This Errata is made and based upon the pleadings on file, the Memorandum of Points and  
5 Authorities that follow, and any oral argument of counsel that may be heard at the time of  
6 hearing of this motion.  
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8 DATED this 16<sup>th</sup> day of October, 2014.

9 HALL PRANGLE & SCHOONVELD, LLC

10  
11 By:

  
MICHAEL E. PRANGLE, ESQ.

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*Attorneys for Defendants*

*Centennial Hills Hospital and*

*Universal Health Services, Inc.*

18 I.

19  
20 **ERRATA**

21 Defendants cited to the case *Vaughan v. Harrah's Las Vegas Inc.*, 2008 WL 6124455,  
22 three times in their Opposition to Plaintiff's Motion for Summary Judgment<sup>1</sup>. Defendants  
23 included a copy of the unpublished opinion as an exhibit to its Opposition. *See* Opposition,  
24 Exhibit C. Defendants failed to identify the case as an unpublished decision. To avoid any  
25 misrepresentation to the Court, Defendants seek to identify *Vaughan v. Harrah's Las Vegas Inc.*,  
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27  
28 <sup>1</sup> See Opposition 8:20, 9:14-19, and 11:10-11.

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1 2008 WL 6124455 as an unpublished opinion. The citation is not meant to be binding precedent.  
2 Rather, the citation is pursuant to SCR 123, as the case is relevant and instructional as to the  
3 construction of NRS 41.745.

4 DATED this 16<sup>th</sup> day of October, 2014.

5 HALL PRANGLE & SCHOONVELD, LLC

6  
7 By:

8   
MICHAEL E. PRANGLE, ESQ.

9 Nevada Bar No. 8619

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**CERTIFICATE OF SERVICE**

I HEREBY CERTIFY that I am an employee of HALL PRANGLE & SCHOONVELD, LLC; that on the 16<sup>th</sup> day of October, 2014, I served a true and correct copy of the foregoing **DEFENDANTS CENTENNIAL HILLS HOSPITAL AND UNIVERSAL HEALTH SERVICES, INC.'S ERRATA TO THEIR OPPOSITION TO PLAINTIFF'S MOTION FOR SUMMARY JUDGMENT RE: LIABILITY AND JOINDER TO DEFENDANT STEVEN DALE FARMER'S LIMITED OPPOSITION** via E-Service on Wiznet pursuant to mandatory NEFCR 4(b) to the following parties:

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An employee of HALL PRANGLE & SCHOONVELD, LLC

4841-0623-6191, v. 1