

CASE NO. 70083

**IN THE
SUPREME COURT OF NEVADA**

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**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**

**APPELLANT UNIVERSAL HEALTH SERVICES, INC.'S PETITION
FOR REHEARING**

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IN THE SUPREME COURT OF THE STATE 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.

Supreme Court No. 70083

District Court No. A595780

APPELLANTS' 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.

Appellant Valley Health System, LLC d/b/a Centennial Hills Hospital
Medical Center ("Centennial Hills") is a Delaware Limited Liability Company.
It is wholly owned and operated by UHS of Delaware, Inc., a Delaware

1 Corporation, and the management company for Appellant Universal Health
2 Services, Inc. (“UHS”), also a Delaware Corporation. UHS is a holding
3 company that is a wholly owned subsidiary of Universal Health Services, a
4 publicly held company that owns 10% or more of Appellants’ stock.

5 DATED this 15th day of October, 2018.

6 BAILEY ♦ KENNEDY

7
8 By: /s/ Dennis L. Kennedy

DENNIS L. KENNEDY

9 JOSEPH A. LIEBMAN

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I. INTRODUCTION

In its Opening Brief, UHS explicitly argued that the District Court abused its discretion by treating Centennial Hills and UHS as one and the same in its November 4, 2015 Sanction Order (the “Sanction Order”). (App. Op. Brief, 38:11-39:8). UHS is a holding company and there is no evidence in the record that UHS—as opposed to Centennial Hills—had any involvement or relationship with any of the nurses or employees at issue in the Sanction Order. (*Id.*) This Court’s September 27, 2018 opinion overlooked these material issues of law and fact. In fact, the opinion does not mention this issue at all. Accordingly, UHS respectfully petitions this Court for rehearing pursuant to Nevada Rule of Appellate Procedure 40.

II. STATEMENT OF FACTS RELEVANT TO THE PETITION FOR REHEARING

This Court is already familiar with the underlying facts relevant to this dispute. However, there are several salient facts relevant to the Petition for Rehearing (the “Petition”) that UHS will reiterate here.

First, the District Court’s Sanction Order never attempted to distinguish between Centennial Hill and UHS. Instead, in the very first paragraph of the

1 Sanction Order, the District Court conflated these two separate entities and
2 collectively designated them both with the term “Centennial.” (Appellants’
3 Appendix (“AA”), Vol. VII, Tab 23, at 1309.) Yet there is no evidence in the
4 record that could support the premise that these two separate entities could or
5 should be treated interchangeably.

6 Second, the District Court’s merger of Centennial Hills and UHS led to
7 an automatic imputation to UHS of all of the factual findings against
8 Centennial Hills. For example, the District Court found that Mr. Farmer (the
9 individual who committed the assault) worked “at Centennial through its
10 agreement with ANS.” (AA, at 1315.) Yet there is no evidence in the record
11 that Mr. Farmer worked for UHS as well as for Centennial Hills. Likewise,
12 the District Court found that “Centennial began an ‘internal investigation’
13 handled by the ‘risk and quality management’ department.” (AA, at 1317).
14 Yet there is no evidence in the record that UHS had any involvement with this
15 “internal investigation.” Further, the District Court found that “it is
16 undisputed that Centennial’s management knew about the existence of the
17 Wolfe Police Statement and the Murray Police Statement by August 2008.”
18 (AA, at 1325, 1327.) Again, there is no evidence in the record that would

1 make it appropriate to impute this finding to UHS.

2 Third, the District Court’s Sanction Order, as well as this Court’s
3 opinion, heavily relied on a finding that “Centennial” verified two sets of
4 supposedly false interrogatory responses. *See, e.g., Valley Health Syst., LLC*
5 *v. Estate of Jane Doe*, 134 Nev. Adv. Op. 76, at 13 (Sep. 27, 2018) (“Finally,
6 the district court pointed out that Centennial provided verifications for all of
7 the false discovery disclosures.”). Specifically, the Sanction Order stated the
8 following:

9 83. Plaintiff asked Defendant Centennial by
10 Interrogatory no. 18 to disclose “when you received
11 LVMPD Statement of Margaret Wolfe.” On June 12,
12 2015, Defendant Centennial objected and further
13 stated: “Without waiving said Objection, this
14 Answering Defendant has only learned of the LVMPD
15 Statement of Margaret Wolfe through counsel.”
16 Centennial’s Risk Analyst, Amanda Bell, signed a
17 Verification swearing upon oath to the accuracy of this
18 response. However, Ms. Bell verified a false statement.
As indicated above, Centennial knew “of” the Wolfe
Police Statement by August, 2009.

84. Plaintiff then asked Defendant Centennial by
Interrogatory no. 19 to disclose “when you first became
aware that Margaret Wolfe had spoken with LVMPD
regarding Steven Farmer.” Ms. Bell repeated the same
response under oath. Again, Ms. Bell verified a false
statement.

85. Plaintiff also asked, by Interrogatory no. 17, for Defendant Centennial to disclose all “persons present at the meeting between Renato Sumera and Centennial Hills Hospital after Farmer was arrested.” Defendant Centennial, through the sworn response of Ms. Bell, responded: “Object. This Interrogatory is irrelevant. Counsel of record met with Mr. Sumera following Mr. Farmer’s arrest. Former Centennial Hills Hospital Risk Manager, Janet Callihan, and her staff provided introduction and left the meeting prior to any substantive discussion.” Plaintiff was entitled to the requested information because the memories of Sumera and the others had faded regarding persons involved in the internal investigation. Centennial had an opportunity to help alleviate some of the prejudice they had inflicted upon Plaintiff, but choose not to do so.

(AA, at 1328.) The imputation of these factual findings to UHS is erroneous.

It is undisputed that UHS did not respond to or verify any of these interrogatory responses. (AA, Vol. XV, Tabs 75 and 76, at 2985-2993.) Only Centennial Hills did. (*Id.*)

Finally, the District Court’s Sanction Order, as well as this Court’s opinion, relied on a finding that “Centennial knew that nurses Murray, Wolfe, and Sumera were critical witnesses in this case, and yet allowed their attorneys to submit no less than Eight (8) NRCP 16.1 disclosures that omitted any reference to these witnesses.” (AA, Vol. VII, Tab 23, at 1344.) Again, there is no

evidence in the record that UHS—as opposed to Centennial Hills—knew about these witnesses. There is no evidence in the record that any of these nurses were employed by UHS or had any connection to UHS aside from being employed by one of its subsidiary companies. Further, although the first two NRCP 16.1 disclosures were jointly made by Centennial Hills and UHS, all of the remaining NRCP 16.1 disclosures were solely made by Centennial Hills. (AA, Vol. XI-XII, Tabs 37-52, at 2250-2399.)

III. ARGUMENT

A. **Material Issues of Law and Fact Were Overlooked When the Court Did Not Address UHS’ Argument that it Was an Abuse of Discretion to Treat Centennial Hills and UHS as One and the Same.**

The Court may consider a Petition for Rehearing “when the court has overlooked or misapprehended a material fact in the record or a material question of law in the case.” NRAP 40(c)(2)(A); *see also Calloway v. City of Reno*, 114 Nev. 1157, 1158, 991 P.2d 1250, 1250 (1998) (“As it appears that this court has overlooked material matters and that rehearing will promote substantial justice, we conclude that rehearing is warranted.”). This Court has also determined that rehearing is appropriate if its “[o]pinion neglected to decide an issue presented in the briefs.” *Am. Cas. Co. of Reading v. Hotel and*

1 *Rest. Employees and Bartenders Int’l Union Welfare Fund*, 113 Nev. 764, 766,
2 942 P.2d 172, 174 (1997).

3 In its Opening Brief, UHS cited *Grider v. Keystone Health Plan Central*,
4 *Inc.* for the following premise: “There is ‘no authority for the proposition that
5 a parent corporation, simply by virtue of ownership, may be held responsible
6 for its subsidiary’s alleged discovery violations.’” (App. Op. Brief, 38:13-16
7 (citing *Grider v. Keystone Health Plan Central, Inc.*, 580 F.3d 119, 141 n. 24
8 (3d Cir. 2009).) Based on that legal authority, UHS argued that it was an abuse
9 of discretion for the District Court to treat Centennial Hills and UHS as one
10 and the same. (*Id.*, 39:1-8.)

11 Respectfully, just like in *American Casualty Company of Reading*, this
12 Court’s opinion did not address or rule on that particular issue. In fact, this
13 Court cited and relied on *Grider* for its holding that the appeal was not moot,
14 yet ignored the same legal authority with respect to the District Court’s
15 unsupported merger of Centennial Hills and UHS. *Valley Health Syst., LLC*,
16 134 Nev. Adv. Op. 76, at 8 n. 1. In other words, this Court overlooked
17 material issues of law and fact in its opinion.

18 ///

1 As shown above, there is no evidence in the record supporting any
2 finding that UHS—as opposed to Centennial Hills—committed any type of
3 discovery violations. UHS is a holding company, plain and simple. There is
4 no evidence in the record to support a finding that UHS had knowledge of
5 these various witnesses or the police reports. There is no evidence in the
6 record that UHS had any involvement with Centennial Hills’ internal
7 investigation. Finally, the interrogatory responses focused upon by the District
8 Court and this Court were not verified by UHS—they were only verified by
9 Centennial Hills.

10 There was no factual or legal basis to issue any discovery sanctions
11 against UHS. Furthermore, the District Court’s unsubstantiated confluence of
12 these two separate entities is contrary to Nevada law. *See Viega GMBH v.*
13 *Dist. Ct.*, 130 Nev. 368, 378, 328 P.3d 1152, 1158 (2014) (recognizing, for the
14 purposes of personal jurisdiction, that “[c]orporate entities are presumed
15 separate,” including a parent company and its subsidiary). Rehearing is
16 appropriate under NRAP 40(c)(2)(A) and the Sanction Order against UHS
17 should be vacated.¹

18 ¹ This Petition does not address the propriety of the Sanction Order against Centennial Hills.

NRAP 28.2 CERTIFICATE OF COMPLIANCE

1. I hereby certify that this brief complies with the formatting requirements of NRAP 32(a)(4), the typeface requirements of NRAP 32(a)(5), and the type-style requirements of NRAP 32(a)(6) because:

[x] This brief has been prepared in a proportionally spaced typeface using Microsoft Word in Times New Roman font 14.

2. I further certify that this brief complies with the page volume limitations of NRAP 40(b)(3) because, excluding the parts of the brief exempted by NRAP 32(a)(7)(C), it is:

[x] Proportionally spaced, has a typeface of 14 points or more, and does not exceed 10 pages.

3. Finally, I hereby certify that I have read this brief, and to the best of my knowledge, information, and belief, it is not frivolous or interposed for any improper purpose. I further certify that this brief complies with all applicable Nevada Rules of Appellate Procedure, in particular NRAP 28(e)(1), which requires every assertion in the brief regarding matters in the record to be supported by a reference to the page and volume number, if any, of the

1 transcript or appendix where the matter relied on is to be found.

2 I understand that I may be subject to sanctions in the event that the
3 accompanying brief is not in conformity with the requirements of the Nevada
4 Rules of Appellate Procedure.

5 DATED this 15th day of October, 2018.

6 BAILEY ♦ KENNEDY

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CERTIFICATE OF SERVICE

I certify that I am an employee of BAILEY ♦ KENNEDY and that on the 15th day of October, 2018, service of the foregoing **APPELLANT** **UNIVERSAL HEALTH SERVICES, INC.'S PETITION FOR REHEARING** was made by electronic service through Nevada Supreme Court's electronic filing system and/or by depositing a true and correct copy in the U.S. Mail, first class postage prepaid, and addressed to the following at their last known addresses:

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