

IN THE SUPREME COURT OF THE STATE OF NEVADA

CHRISTINA KUSHNIR, MD, and
WOMEN'S CARE CENTER OF NEVADA

Petitioners,

vs.

THE EIGHTH JUDICIAL DISTRICT
COURT OF THE STATE OF NEVADA, IN
AND FOR THE COUNTY OF CLARK, AND
THE HONORABLE TIERRA JONES,
DISTRICT JUDGE,

Respondents,

and

THE ESTATE OF CAROL A. GAETANO,
DECEASED, VINCENT GARBITELLI,
ADMINISTRATOR

Real Parties in Interest.

Supreme Court Electronically Filed
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Case No. 17-76411-C

PETITIONERS' APPENDIX – Volume I

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	ALPHABETICAL APPENDIX	Bates No.
1	Defendants' Motion for Summary Judgment.....	PET APPX0001 – PET APPX0146
2	Plaintiffs' Opposition to Motion for Summary Judgment.	PET APPX0147 – PET APPX0176
3	Defendants' Reply to Motion for Summary Judgment.....	PET APPX0177 – PET APPX0191
4	Transcript of April 28, 2020 Hearing.....	PET APPX0192 – PET APPX0200
5	Notice of Entry of Order Denying Motion for Summary Judgment.....	PET APPX0201 – PET APPX0206

VOLUME APPENDIX	Bates No.
<u>Volume I</u>	
Defendants' Motion for Summary Judgment.....	PET APPX0001 – PET APPX0146

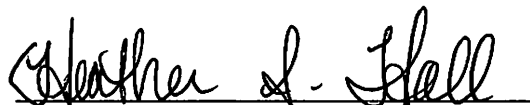
<u>Volume II</u>	Bates No.
Plaintiffs' Opposition to Motion for Summary Judgment....	PET APPX0147 – PET APPX0176
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Notice of Entry of Order Denying Motion for Summary Judgment.....	PET APPX0201 – PET APPX0206

CERTIFICATE OF COMPLIANCE

I hereby certify that on this appendix consists of true and correct copies of papers in the Clark County District Court file as required by NRAP 30(g).

Dated this 11th of September, 2020

McBRIDE HALL

A handwritten signature in black ink, appearing to read "Robert C. McBride", written over a horizontal line.

ROBERT C. McBRIDE, ESQ.

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CERTIFICATE OF SERVICE


I hereby certify that on this 11th day of September, 2020, I served the foregoing **PETITIONERS' APPENDIX – Volume I** upon the following parties by:

 X VIA ELECTRONIC SERVICE: by mandatory electronic service (e-service), proof of e-service attached to any copy filed with the Court; or

 X VIA U.S. MAIL: By placing a true copy thereof enclosed in a sealed envelope with postage thereon fully prepaid, addressed as indicated on the service list below in the United States mail at Las Vegas, Nevada

Aaron Ford, Esq. Attorney General Office of the Attorney General 555 E. Washington Ave., Ste. 3900 Las Vegas, Nevada 89101 <i>Counsel for Respondent</i> <i>The Honorable Tierra Jones</i>	Aaron Heaton, Esq. Jared F. Herling, Esq. HEATON & ASSOCIATES, PLLC 5785 Centennial Center Blvd., Ste. 240 Las Vegas, Nevada 89149 Attorneys for Real Parties in Interest
Honorable Tierra Jones Eighth Judicial District Court Department X Regional Justice Center 200 Lewis Avenue Las Vegas, Nevada 89101 <i>Respondent</i>	


An employee of McBRIDE HALL



1 **MSJD**

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15 *Christina Kushnir, M.D. & Women's*

16 *Care Center of Nevada*

17 **DISTRICT COURT**

18 **CLARK COUNTY, NEVADA**

19 THE ESTATE OF CAROL A. GAETANO,
20 DECEASED, VINCENT GARBITELLI,
21 ADMINISTRATOR,

22 Plaintiffs,

23 vs.

24 CHRISTINA KUSHNIR, M.D., AND
25 WOMEN'S CARE CENTER OF NEVADA,
26 INC., DOES I through X, inclusive and ROE
27 CORPORATIONS XI through XX, inclusive,

28 Defendants.

CASE NO.: A-17-764111-C

DEPT: X

**DEFENDANTS CHRISTINA KUSHNIR,
M.D. AND WOMEN'S CARE CENTER
OF NEVADA, INC.'S MOTION FOR
SUMMARY JUDGMENT**

HEARING REQUESTED

22 COME NOW, Defendants, CHRISTINA KUSHNIR, M.D. and WOMEN'S CARE
23 CENTER OF NEVADA, by and through their counsel of record, ROBERT C. McBRIDE, ESQ.
24 and HEATHER S. HALL, ESQ. of the law firm of CARROLL, KELLY, TROTTER,
25 FRANZEN & McBRIDE, and hereby file this Motion for Summary Judgment.

26 The instant Motion is made and based upon the papers and pleadings on file herein, the
27 Memorandum of Points and Authorities attached hereto, any other evidence that the Court deems

28 ///

1 just and proper and any argument of counsel which may be heard at the time of the hearing of the
2 Motion, if any.

3
4 DATED this 20th day of March, 2020.

5 CARROLL, KELLY, TROTTER,
6 FRANZEN & McBRIDE

7
8 /s/ Heather S. Hall

9 ROBERT C. McBRIDE, ESQ.
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16 *Christina Kushnir, M.D. & Women's*
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1 MEMORANDUM OF POINTS AND AUTHORITIES

2 I.

3 INTRODUCTION & STATEMENT OF FACTS

4 A. UNDERLYING MEDICAL CARE

5 Carol Gaetano was diagnosed with peritoneal or stomach cancer after a November 11,
6 2015 CT scan showed “diffuse metastatic peritoneal disease” consistent with cancer. *See Exhibit*
7 *“L”*, Dr. Kushnir’s pertinent records, KUSHNIR 19. On December 9, 2015, Dr. Kushnir
8 performed a diagnostic laparoscopy and abdominal biopsies for decedent as an outpatient. *See*
9 *Exhibit “M”*, Operative Report. The following day, decedent presented to the Valley Hospital
10 emergency department with complaints of abdominal pain and vomiting and was admitted.
11 Decedent remained hospitalized at Valley Hospital Medical Center from December 10, 2015
12 until her death on January 17, 2016.

13 B. PROCEDURAL HISTORY

14 This is a professional negligence action based upon care and treatment provided to
15 decedent Carol Gaetano by Defendants. Plaintiffs are the Estate of Carol Gaetano and Vincent
16 Garbitelli, as the Administrator of the Estate of Carol Gaetano. *See Exhibit “A”*, *Plfs’ Comp.*
17 Plaintiffs’ Complaint was filed on November 3, 2017. *Id.* Vincent Garbitelli, M.D. is the cousin
18 of decedent Carol Gaetano. At the time of Ms. Gaetano’s death on January 17, 2016, he had not
19 seen Ms. Gaetano face-to-face in more than 20 years. *See Exhibit “E”*, 68:12 – 15. In addition
20 to this matter, Dr. Garbitelli filed two other lawsuits which were ultimately dismissed. *See*
21 *Exhibit “E”*, 34 – 37.

22 In the current case, Plaintiffs allege that on December 9, 2015, Defendant Dr. Kushnir
23 performed a diagnostic laparoscopy that resulted in a perforated colon and acute peritonitis,
24 requiring hospitalization. *Id.* at page 2. As alleged in the Complaint, decedent died on January
25 17, 2016 at Valley Hospital Medical Center. *Id.* at page 1. The Complaint was filed on
26 November 3, 2017 by Vincent Garbitelli, who is a physician and the administrator of the Estate
27 of Gaetano. *Id.* Simultaneously, Dr. Garbitelli filed an Affidavit in support of the Complaint. *See*
28 *Exhibit “B”*.

1 On December 25, 2017, Defendants filed a Motion to Dismiss Plaintiff's Complaint on
2 the grounds that it was untimely. In opposing the Motion, Dr. Garbitelli alleged that he spoke
3 with Dr. Kushnir on January 2, 2016 and Dr. Kushnir "deliberately concealed" the true nature of
4 Carol Gaetano's perforated colon. *See* Plfs' Opposition to Motion to Dismiss, page 3. This Court
5 denied the Motion, concluding that discovery needed to be conducted into the alleged
6 concealment of Dr. Kushnir. The Order denying the Motion to Dismiss was entered on March 5,
7 2018.

8 Defendants subsequently filed a Petition for Writ of Mandamus and the Court of Appeals
9 of Nevada indicated "we are not persuaded that this court's intervention by way of extraordinary
10 relief is warranted" and denied the petition. The Court of Appeals did not address the merits of
11 Defendants' statute of limitations defense.

12 Once the case proceeded in the District Court, Plaintiff was represented by counsel and
13 the attorneys began conducting discovery. On January 17, 2020, the defense took the deposition
14 of Dr. Garbitelli. Dr. Garbitelli acknowledged in his deposition that Dr. Kushnir did not
15 misrepresent any information to him during that January 2, 2016 call. *See Exhibit "E"*, 80:11 –
16 14. Discovery has shown that Dr. Kushnir did not conceal any information from Dr. Garbitelli
17 during the January 2, 2016 phone call and that summary judgment in favor of Defendants is
18 appropriate.

19 C. SUMMARY OF ARGUMENT

20 Plaintiffs' one-year statute of limitations for *inquiry notice* expired before the instant
21 Complaint was filed on November 3, 2017. Dr. Garbitelli was frequently in communication with
22 his cousin's physicians during her Valley Hospital hospitalization. He learned of his cousin's
23 death the date it occurred – January 17, 2016. Dr. Garbitelli then requested an autopsy be
24 performed so he could determine the cause of death. *Five days* after Ms. Gaetano's death, the
25 coroner authored an autopsy report concluding that he could not determine the cause of
26 decedent's colon perforations, i.e., whether they were from the underlying disease or Dr.
27 Kushnir's surgery.

28 A little over a month after Ms. Gaetano's death, Dr. Garbitelli had consulted an attorney

1 regarding filing suit for Ms. Gaetano's medical care. By March 1, 2016, Dr. Garbitelli had taken
2 active steps to become the co-administrator of his cousin's Estate for the purpose of pursuing a
3 medical malpractice claim. By July 15, 2016, Dr. Garbitelli was the co-administrator of Carol
4 Gaetano's Estate and actively requesting her medical records. In August of 2016, he received
5 Dr. Kushnir's office chart, which included the December 9, 2015 Operative Report. On August
6 9, 2016, Valley Hospital Medical Center had transmitted the medical records to Dr. Garbitelli.

7 In Nevada, the injury in a wrongful death claim is the death. The appropriate inquiry for
8 determining when a statute of limitations begins to run is when Plaintiff was put on inquiry
9 notice. Here, the undisputed evidence demonstrates that the co-administrator of Ms. Gaetano's
10 Estate and the individual spear-heading this litigation, Dr. Garbitelli, was advised of her death on
11 January 17, 2016. *See Exhibit "F"*, Response No. 2. Dr. Garbitelli was not only on inquiry
12 notice as of the date of Carol Gaetano's death, but was actually inquiring into the cause of Carol
13 Gaetano's death and potential malpractice claims when he immediately requested an autopsy
14 from the Clark County Coroner's Office.

15 The date of death triggered inquiry notice and Dr. Garbitelli only had until January 17,
16 2017 to bring claims against these Defendants for care that was rendered on December 9, 2015,
17 allegedly resulting in decedent's death. Dr. Garbitelli waited until November 3, 2017, nearly 11
18 months beyond the time period allowed by NRS 41A.097. Plaintiffs' claims are time-barred and
19 these Defendants are entitled to summary judgment.

20 **D. STATEMENT OF UNDISPUTED FACTS**

- 21 1. Plaintiffs' Complaint was filed on November 3, 2017. *See Exhibit "A", Plfs' Comp.*
- 22 2. Plaintiff is the Estate of Carol Gaetano through the co-administrator of the Estate,
23 Vincent Garbitelli. *See Exhibit "C"*, para. 2.
- 24 3. Defendant Dr. Kushnir is a physician who provided care and treatment to decedent
25 Carol Gaetano in November and December 2015. *Id.* at para. 12 – 17.
- 26 4. Plaintiffs assert a claim for medical malpractice/wrongful death. *See Exhibit "C"*.
- 27 5. Specifically, Plaintiff alleges that Dr. Kushnir did an unnecessary and contraindicated
28 diagnostic laparoscopy on December 9, 2015, allegedly resulting in a perforated

1 colon and acute peritonitis. *Id.* at para. 17.

2 6. Dr. Garbitelli is the cousin of decedent and was deposed on January 17, 2020. *See*
3 **Exhibit “E”**.

4 7. During his deposition, Dr. Garbitelli testified that he, as the cousin of decedent,
5 requested an autopsy from the coroner’s office. *See Exhibit “E”*, 63:9 – 17.

6 8. Dr. Garbitelli further testified that the purpose of requesting an autopsy was to see if
7 the coroner could shed some light on decedent’s cause of death. *Id.* at 66:6 – 10.

8 9. Dr. Garbitelli instructed the coroner to focus on decedent’s abdomen and shared with
9 the coroner that Dr. Kushnir (the surgeon who operated on decedent) had said that
10 decedent’s cancer spontaneously perforated and caused her to have peritonitis and Dr.
11 Garbitelli asked the coroner whether he could shed any light on that. *Id.* at 66:11 –
12 68:1.

13 10. The autopsy report is dated January 22, 2016 and the coroner concluded that Ms.
14 Gaetano died as a result of multi-organ failure due to septic shock due to her
15 carcinoma. *See Exhibit “K”*, Autopsy Report.

16 11. In written discovery, Plaintiff was asked the date which he first contacted an attorney
17 “regarding filing a claim related to Carol A. Gaetano’s medical care and/or death and
18 the name of the attorney” first contacted. He responded that it was Bryan Lowe, Esq.
19 *See Exhibit “D”*, Answer to Interrogatory No. 12.

20 12. Dr. Garbitelli consulted attorney Bryan Lowe prior to February 26, 2016 about filing
21 a claim related to Carol Gaetano’s medical care and/or death. *See Exhibit “D”*,
22 Response to Interrogatory No. 12; *See also Exhibit “E”*, 26:10 – 27:6.

23 13. On March 1, 2016, Bryan Lowe, Esq. filed the Petition for Issuance of Letters of Co-
24 Administration and this document was signed by Dr. Garbitelli on February 26, 2016.
25 *See Exhibit “G”*

26 14. Dominick Di Gaetano, decedent’s brother-in-law, and Cheri Dahl, a friend of
27 decedent’s, were named as co-executors in decedent’s will but declined to act as
28 executors. *See Exhibit “H”*, Petition to Convert – exhibit A of that document.

- 1 15. Ms. Dahl signed the Declination to Serve as Executor on May 20, 2016. *See Exhibit*
2 **“H”**, Petition to Convert – exhibit C of that document.
- 3 16. Mr. Di Gaetano signed the Declination to Serve as Executor on May 17, 2016. *See*
4 **Exhibit “H”**, Petition to Convert – exhibit B of that document.
- 5 17. Dr. Garbitelli spoke with both Ms. Dahl and Mr. Di Gaetano before they signed these
6 documents. *See Exhibit “E”*, 60:3 – 62:6. Both declined because they did not want
7 to follow through with Dr. Garbitelli’s recommendation to do due diligence and
8 obtain medical records. *Id.* at 60:24 – 61:11.
- 9 18. On May 25, 2016, Dr. Garbitelli, through his attorney Bryan Lowe, Esq., filed a
10 Petition to Convert Letters of Special Administration to Letters of Co-Administration
11 with Will Annexed. *See Exhibit “H”*.
- 12 19. Dr. Garbitelli understood that in order to pursue a medical malpractice case, he would
13 need to become administrator of Carol Gaetano’s Estate. *See Exhibit “E”*, 26:15 –
14 18.
- 15 20. On July 1, 2016, Dr. Garbitelli was appointed co-administrator of Carol Gaetano’s
16 Estate. *See Exhibit “I”*.
- 17 21. On July 15, 2016, Dr. Garbitelli began gathering decedent’s medical records. On that
18 date, he submitted paperwork requesting decedent’s Valley Hospital Medical Center
19 chart for the stated purpose of “Administrator of Estate – Records Review”. *See*
20 **Exhibit “J”**.
- 21 22. That same day – July 15, 2016 – Dr. Garbitelli emailed with the records department
22 of Valley Hospital, requesting the records be mailed to him and providing his address.
23 *Id.*
- 24 23. On August 9, 2016, Dr. Garbitelli authorized a credit card charge of \$937.92 and
25 decedent’s Valley Hospital records were mailed to him that same day. *Id.*
- 26 24. In this litigation, Plaintiffs produced 7,892 pages of Valley Hospital records. All of
27 the pages produced indicate they were printed on July 21, 2016. *See Exhibit “M”*.
- 28 25. Dr. Garbitelli received the medical records from Dr. Kushnir’s office in August of

2016. *See Exhibit “E”*, 33:17 – 34:7.

26. Dr. Garbitelli received the Southwest Medical Associates in September 2016. *See Exhibit “E”*, 21:18 – 24:10.

27. On December 16, 2016, in a Status Report to the probate court, Dr. Garbitelli confirmed what was clear from his actions since learning of Carol Gaetano’s death on January 17, 2016 – he was “pursuing a medical malpractice lawsuit on behalf of the Estate of Carol Gaetano.” *See Exhibit “N”*, para. 9.

28. In addition to serving as co-administrator of Carol Gaetano’s Estate, Dr. Garbitelli is also serving as the expert affiant for this action. *See* Dr. Garbitelli’s October 20, 2017 affidavit, *Exhibit “B”*.

II.

LEGAL ARGUMENT

A. STANDARD FOR SUMMARY JUDGMENT.

NRCP 56 allows for summary judgment when there is no genuine issue of material fact and the moving party is entitled to a judgment as a matter of law. *Busch v. Flangas*, 108 Nev. 821, 837 P.2d 438 (1992). It is well-settled that a party seeking summary judgment bears the initial burden of demonstrating the absence of a genuine issue of material fact. *Celotex Corporation v. Catrett*, 477 U.S. 317, 323, 106 S.Ct. 2548, 2553. However, the moving party is not required to negate all the elements of the non-moving party’s case. *Lujan v. National Wildlife Federation*, 110 S.Ct. 3177, 3187 (1990). To the contrary, “the motion may, and should, be granted so long as whatever is before the District Court demonstrates that the standard for the entry of summary judgment, as set forth in rule 56(c), is satisfied.” *Lujan*, 110 S.Ct. at 3187 (citing *Celotex*, 477 U.S. at 323, 106 S.Ct. at 2558).

A Defendant may move for summary judgment at any time. *Cummings v. Las Vegas Mun. Corp.*, 88 Nev. 479, 481, 499 P.2d 650, 651 (1972) (citing NRCP 56(b)). Even though the pleadings and proof must be construed in the light most favorable to the non-moving party, **the non-moving party must set forth specific facts demonstrating the existence of a genuine issue for trial** or have summary judgment entered against the non-moving party. *Collins v.*

1 *Union Fed. Sav. & Loan Ass'n*, 99 Nev. 284, 294, 662 P.2d 610, 618-619 (1983).

2 A party opposing summary judgment may not rely on the allegations of their pleadings to
3 raise a material issue of fact where the moving party supports its motion with competent
4 evidence. *Barmettler v. Reno Air, Inc.*, 956 P.2d 1382 (Nev. 1998). Instead, the nonmoving
5 party bears the burden of showing there is more than “some metaphysical doubt” as to the
6 operative facts in order to avoid summary judgment being entered in the moving party’s favor,
7 with more than “gossamer threads of whimsy” needed. *Wood v. Safeway*, 121 Nev. 724, 730-31,
8 121 P.3d 1026 (2005)[Internal citations omitted]. Such evidence must be concrete and cannot
9 rely on “mere speculation, conjecture, or fantasy.” *O.S.C. Corp. v. Apple Computer, Inc.*, 792
10 F.2d 1464, 1467 (9th Cir. 1986).

11 **B. THE STATUTE OF LIMITATIONS LAW IN NEVADA.**

12 NRS 41A.097 sets the standard for medical malpractice actions accruing after October 1,
13 2002. The statute provides that, “An action for injury or death may not be commenced more
14 than three years after the date of injury or **one year after the plaintiff discovers or through the**
15 **use of reasonable diligence should have discovered the injury, whichever occurs first.**”
16 NRS 41A.097(2) [Emphasis added].

17 As a general rule, a cause of action begins to accrue when the wrong occurs and a party
18 sustains injury for which relief can be sought. *Peterson v. Bruen*, 106 Nev. 271, 274, 792 P.2d
19 18, 20 (1990) (citing *Nelson v. A.H. Robbins, Co.*, 515 F. Supp. 623, 625 (N.D. Cal. 1981)).
20 The current medical malpractice statute of limitations begins to run for purposes of the one year
21 period once the plaintiff discovers the legal injury. *Massey v. Litton*, 99 Nev. 723, 669 P.2d 248
22 (1983); *Pope v. Gray*, 104 Nev. 358, 760 P.2d 763 (1988); NRS 41A.097. In a wrongful death
23 case, the injury is the death. *Pope*, 104 Nev. at 362-63.

24 The determination of when the statute begins to run can be made as a matter of law in
25 some instances. *Siragusa v. Brown*, 114 Nev. 1384, 1400 – 1401, 971 P.2d 801, 812 (1998)
26 (citing *Nevada Power Co. v. Monsanto Co.*, 955 F.2d 1304, 1307 (9th Cir. 1992)) (stating that,
27 where there is uncontroverted that proves that the plaintiff discovered or should have discovered
28 the facts giving rise to a claim under the discovery rule, such a determine can be made as a

1 matter of law. This case presents an instance wherein *Siragusa* allows for a determination as a
2 matter of law.

3 Although “the [medical malpractice] statute **may have harsh results in some cases**, it
4 cuts with sharp but clean edge.” *Washoe Med. Ctr. v. Second Jud. Dist. Ct.*, 122 Nev. 1298, 148
5 P.3d 790 (2006) [Internal citations omitted]. In this instance, there is no doubt that the statute
6 began to run as of the date of injury, Carol Gaetano’s death on January 17, 2016.

7 **C. PLAINTIFFS’ DUTY TO INQUIRE AROSE MORE THAN ONE YEAR BEFORE**
8 **THIS COMPLAINT WAS FILED AND THE STATUTE WAS NOT TOLLED**
9 **FOR ANY PERIOD.**

10 The Nevada Supreme Court has determined that the tolling provision of NRS 41A.097(3)
11 only applies when there has been an intentional act that objectively hindered a reasonably
12 diligent plaintiff from timely filing suit. *Libby v. Eighth Judicial Dist. Court*, 325 P.3d 1276
13 (Nev. 2014), (quoting *Winn v. Sunrise Hospital and Medical Center*, 277 P.3d 458, 464 (Nev.
14 2012)). The purpose of this Court denying Defendants’ initial Motion to Dismiss on statute of
15 limitations was to allow the parties to conduct discovery to determine whether the statute of
16 limitations was tolled because of any alleged misrepresentations. With that discovery, it is clear
17 that the statute of limitations was not tolled for any period.

18 The deposition of Plaintiff Dr. Garbitelli was taken on January 17, 2020. During his
19 deposition, Dr. Garbitelli was asked about the January 2, 2016 call with Dr. Kushnir. *See Exhibit*
20 *“E”*, pages 77 – 80. He testified at length about his recollection of the call and the medical
21 information relayed to him concerning his cousin Carol Gaetano. *Id.* Dr. Garbitelli was
22 specifically asked:

23 Q. The call that you had on the second, was there anything that Dr.
24 Kushnir told you that you believe was untruthful or misrepresented?

25 A. Nothing.

26 *Id.* at 80:11 – 14.

27 The allegation raised in Opposition to the Motion to Dismiss that Dr. Kushnir misled Dr.
28 Garbitelli during the January 2, 2016 phone call is directly refuted by Dr. Garbitelli’s sworn
deposition testimony. Dr. Garbitelli no longer claims that Dr. Kushnir undertook any intentional

1 act that hindered his ability to file suit. Plaintiff merely claims that he was unable to read the
2 hospital records until November 18, 2016. Importantly, Plaintiff has never alleged that Dr.
3 Kushnir engaged in any *concealment of the records*, nor would such an allegation be supported
4 by any evidence. Valley Hospital has exclusive control of the hospital medical records.
5 Furthermore, Plaintiff has never claimed Valley Hospital concealed the hospital medical records,
6 only that Plaintiff was initially unable to read the Valley Hospital records he timely received.
7 Additionally, the December 9, 2015 Operative Report from Valley Hospital was included in Dr.
8 Kushnir's office chart which Dr. Garbitelli acknowledges having in August 2016. *See Exhibit*
9 *"E"*, 33:17 – 34:7; *See also, Exhibit "L"*, KUSHNIR 46 – 47.

10 Dr. Garbitelli was actively inquiring long before beginning to request medical records in
11 July of 2016. The statute of limitations is not tolled until a plaintiff decides to request medical
12 records. Nothing in NRS 41A.097 allows a plaintiff to delay requesting medical records in an
13 effort to extend the statute of limitations. Were that the case, the statute of limitations would be
14 rendered moot.

15 It is of no consequence that an average layperson may not have a specific medical or
16 legal theory as a basis for a malpractice claim. It is enough if the reasonable person has notice
17 sufficient to inquire about a potential claim. "The focus is on the patient's knowledge or access
18 to facts rather than on her discovery of legal theories." *Massey v. Litton*, 99 Nev. 723, 727-28,
19 669 P.2d 248 (Nev. 1983) (*citing Graham v. Hansen*, 180 Cal. Rptr. 604, 128 Cal. App. 3d. 965
20 (1982)). Nevada law is well-settled that the focus is on the discovery of facts and "these facts
21 need not pertain to precise legal theories the plaintiff may ultimately pursue, but merely to the
22 plaintiff's general belief that someone's negligence may have caused his or her injury." *Massey*,
23 99 Nev. at 728, 669 P.2d at 252; *See also Jolly v. Eli Lilly & Co., supra*. ("it is the discovery of
24 facts, not their legal significance, that starts the statute").

25 Here, Dr. Garbitelli is in the unique position of being a qualified medical expert. He is
26 not the average layperson. However, even the ordinarily prudent person would have been on
27 inquiry notice as of the date of death. *See Winn v. Sunrise Hospital and Medical Center*, 277
28 P.3d 458, 462 (Nev. 2012). In this case, the facts known or available to "the ordinarily prudent

1 person,” on January 17, 2016 were enough to charge that person with “inquiry notice.” The bell
2 commencing the investigation period rang no later than the date Dr. Garbitelli was advised of
3 Carol Gaetano’s death – January 17, 2016. Upon learning of her death, Dr. Garbitelli actively
4 began inquiring. To avoid the limitations bar, suit against these Defendants, Plaintiffs were
5 required to file suit no later than January 17, 2017. Because Plaintiffs waited until November 3,
6 2017 to file their Complaint, they are now beyond the one year statute of limitations.

7 **III.**

8 **CONCLUSION**

9 Based on all of the foregoing, Plaintiffs knew or should have known, through the use of
10 reasonable diligence, of their claims against these Defendants more than one year before filing
11 the November 3, 2017 Complaint. The statute of limitations has clearly run pursuant to NRS
12 41A.097 and Defendants are entitled to judgment as a matter of law.

13
14 DATED this _20th_ day of March, 2020.

15 CARROLL, KELLY, TROTTER,
16 FRANZEN & McBRIDE

17
18 /s/ Heather S. Hall

19 ROBERT C. McBRIDE, ESQ.
20 Nevada Bar No.: 7082
21 HEATHER S. HALL, ESQ.
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25 Attorneys For Defendants,
26 *Christina Kushnir, M.D. & Women’s*
27 *Care Center of Nevada*
28

1 **CERTIFICATE OF SERVICE**

2 I HEREBY CERTIFY that on the 20th day of March 2020, I served a true and correct
3 copy of the foregoing **DEFENDANTS CHRISTINA KUSHNIR, M.D. AND WOMEN'S**
4 **CANCER CENTER OF NEVADA, INC.'S MOTION FOR SUMMARY JUDGMENT**
5 addressed to the following counsel of record at the following address(es):

- 6 ☐ **VIA ELECTRONIC SERVICE:** By mandatory electronic service (e-service), proof of
7 e-service attached to any copy filed with the Court; or
- 8 ☐ **VIA U.S. MAIL:** By placing a true copy thereof enclosed in a sealed envelope with
9 postage thereon fully prepaid, addressed as indicated on the service list below in the
United States mail at Las Vegas, Nevada
- 10 ☐ **VIA FACSIMILE:** By causing a true copy thereof to be telecopied to the number
11 indicated on the service list below.

12 Aaron Heaton, Esq.
13 Jared F. Herling, Esq.
14 HEATON & ASSOCIATES, PLLC
15 5785 Centennial Center Blvd., Ste. 240
Las Vegas, Nevada 89149
Attorneys for Plaintiffs

16
17
18
19
20
21 /s/ Candace Cullina

22
23

An Employee of *CARROLL, KELLY, TROTTER,*
24 *FRANZEN & McBRIDE*

INDEX OF EXHIBITS

EXHIBIT	DESCRIPTION OF DOCUMENT
A	Plaintiff's Complaint
B	Plaintiff's Affidavit in Support of Complaint
C	Plaintiff's First Amended Complaint
D	Vincent Garbitelli, as Admin. of the Estate of Carol Gaetano, Deceased's 1 st Supp Answers to WCC's 1 st Set of Interrogatories
E	Deposition of Dr. Vincent Garbitelli
F	Vincent Garbitelli, as Admin. of the Estate of Carol Gaetano, Deceased's 1 st Supp Answers to WCC's 1 st Set of Request for Admissions
G	Petition for Issuance of Letters of Co-Administration
H	Petition to Convert
I	Order Granting Petition to Convert
J	Dr. Garbitelli's Request for Medical Records
K	Autopsy Report
L	Dr. Kushnir's Pertinent Records
M	Operative Report
N	Report of Status of Administration

EXHIBIT “A”

EXHIBIT “A”

CLERK OF THE COURT
Alvin B. Harmon

ADMINISTRATOR, ESTATE OF
CAROLA GAETANO, DECEASED
PO Box 267
Williston Park, NY 11596
(516) 294-3332
drgarbittelli@gmail.com

CLARK COUNTY, NEVADA

Department 24

CASE NO.
DEPT. NO

COMPLAINT

PET APPX0016

CAUSE of ACTION:

Carol Gaetano was referred to a gynecologist, Defendant physician Christina Kushnir of Women's Cancer Center of Nevada and saw that physician in her office on November 24th, 2015.

Dr. Kushnir without any input from Carol's Internist elected to schedule the patient for a **diagnostic** laparoscopy and "abdominal" biopsies. The procedure was scheduled for December 9th, 2015. The patient did not give consent for "tumor debulking" and Dr. Kushnir noted on her patient record that she "will obtain a diagnosis and go from there."

On December 9th, 2015, Dr. Kushnir performed an unnecessary and contraindicated diagnostic laparoscopy that resulted in a perforated colon and acute peritonitis requiring hospitalization.

Defendant physician held herself out as a gynecologist and gynecological cancer specialist. Dr. Kushnir acknowledged that Carol did not desire "tumor debulking" at the time of the November 24th office visit. There was no diagnosis verified at that time.

On November 25th, 2015, Carol had a Positron Emission Tomography with CT scan. The scan revealed multiple areas of abnormal uptake of radio-active glucose in the abdominal peritoneal region consistent with cancer lesions. On the report it was written the following: "upper GI endoscopy and colonoscopy are recommended for further evaluation."

Dr. Kushnir ignored that recommendation from the radiologist and did not consult with Carol's Internist for a gastroenterologist referral to perform the recommended procedures. Instead, Dr. Kushnir performed a **diagnostic** exploratory laparoscopy on December 9th, 2015.

The laparoscopy performed by Dr. Kushnir caused multiple perforations of Carol Gaetano's bowel and caused acute peritonitis with sepsis and respiratory failure.

The gross malpractice of Dr. Kushnir was the proximate cause of Carol Gaetano suffering acute peritonitis, sepsis, respiratory failure, and severe conscious pain and suffering.

AFFIRMED on this day, under penalty of perjury

October 20, 2017

By:

Vincent Garbitelli, Administrator of the Estate of Carol A. Gaetano
Pro Se

A handwritten signature in cursive script, appearing to read "Vincent Garbitelli", is written over a horizontal line.

EXHIBIT “B”

EXHIBIT “B”

CLERK OF THE COURT
Alvin B. Hanson

FROM THE

CLARK COUNTY, NEVADA

Department 24

CASE NO.
DEPT. NO.

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AFFIDAVIT

I am a physician licensed to practice medicine in the State of New York since 1978. I am a 1977 graduate of Loyola Stritch School of Medicine of Chicago, Illinois. I completed a three year Internal Medicine Residency program at Winthrop University Hospital in Mineola, New York in 1980. I became certified in the specialty of Internal Medicine by the American Board of Internal Medicine in 1980. I have been continuously licensed and Board Certified in Internal Medicine, in private practice, without interruption. I have published several articles and letters, which have appeared in The Archives of Internal Medicine and the Journal of the American Medical Association. I am a Fellow of the American College of Physicians.

In addition, I have been recognized as a Medical Expert in a wide variety of malpractice cases, having testified as said expert in all five counties of New York City and Nassau and Suffolk Counties on Long Island.

All of my expert medical opinions are made within a reasonable degree of medical certainty and are based upon my education, training, 40 years of medical practice, and review of the medical records and facts on this case and the diagnosis and care of thousands of patients over the last 43 years.

The specialty of Internal Medicine involves the **diagnosis and treatment of diseases and conditions of men and women from teenage years to the very elderly**. A diagnosis must first be made after a careful history and physical exam along with the ordering of the appropriate laboratory studies and diagnostic procedures as necessary to make a diagnosis without placing the patient under undue risk.

An Internist is firstly a **Diagnostician** and it is considered the standard of care to make judgments about what is or is not appropriate to make a diagnosis of cancer or other disease process. Although the Internist may not perform the procedure to effect a diagnosis of cancer in a given patient, the Internist is fully qualified to determine what procedure may or may not be necessary and/or appropriate for any given patient based upon the particular history and physical examination of any given patient.

Regardless of the specialty of the physician performing any given diagnostic procedure, because it is a **diagnostic** procedure, it is well within the broad standard of Internal Medicine to make a medical judgment about the appropriateness of a given procedure that a surgeon, gynecologist, or other specialist may want to perform to **make a diagnosis**.

CAUSE of ACTION:

Carol Gaetano was referred to a gynecologist, Defendant physician Christina Kushnir of Women's Cancer Center of Nevada and saw that physician in her office on November 24th, 2015.

Dr. Kushnir without any input from Carol's Internist elected to schedule the patient for a **diagnostic** laparoscopy and "abdominal" biopsies. The procedure was scheduled for December 9th, 2015. The patient did not give consent for "tumor debulking" and Dr. Kushnir noted on her patient record that she "will obtain a **diagnosis** and go from there."

On December 9th, 2015, Dr. Kushnir performed an unnecessary and contraindicated diagnostic laparoscopy that resulted in a perforated colon and acute peritonitis requiring hospitalization.

FACTS of the CASE:

Defendant physician held herself out as a gynecologist and gynecological cancer specialist. Dr. Kushnir acknowledged that Carol did not desire "tumor debulking" at the time of the November 24th office visit. There was no diagnosis verified at that time.

On November 25th, 2015, Carol had a Positron Emission Tomography with Non-Diagnostic CT scan. The scan revealed multiple areas of abnormal uptake of radioactive glucose in the abdominal peritoneal region consistent with cancer lesions. On the report it was written that "upper GI endoscopy and colonoscopy are recommended for further evaluation."

Dr. Kushnir ignored that recommendation from the radiologist and did not consult with Carol's Internist for a gastroenterologist referral to perform the recommended procedures. Instead, Dr. Kushnir performed a **diagnostic** exploratory laparoscopy on December

9th, 2015.

At the start of the laparoscopy, the intra-abdominal pressure was very high at 16. Despite that persistent high pressure and knowing the history of the patient with previous surgeries of an appendectomy, a gallbladder resection, a complete abdominal hysterectomy, and salpingo-oophorectomy; Dr. Kushnir proceeded with the diagnostic laparoscopy.

She took "multiple biopsies" according to her operative report despite the fact that there was "diffuse disease throughout the entire peritoneum (and the) liver was not visible."

After the laparoscopy was completed, Carol complained of significant abdominal pain and was given pain medication without relieving the pain. She also complained of nausea and had bloating and lack of appetite. She was sent home without relief of her symptoms.

Her symptoms of nausea, vomiting, and generalized abdominal pain continued throughout the night of December 9th and the morning of December 10th, 2015.

Although she made a telephone call to Dr. Kushnir's office in the morning of December 10th, she was not advised to go to the emergency room until the afternoon.

She was admitted to Valley Hospital Medical Center on the afternoon of December 10th and it was discovered on abdominal CT scan and X rays that perforated bowel was present.

The laparoscopy performed by Dr. Kushnir had resulted in multiple perforations of Carol Gaetano's bowel and acute peritonitis with sepsis and respiratory failure.

EXPERT OPINION

It is my opinion, within a reasonable degree of medical certainty that Dr. Kushnir and Women's Cancer Center of Nevada departed from good and accepted practice of medicine by performing a **contraindicated, unnecessary, and negligently performed diagnostic laparoscopy** which resulted in multiple bowel perforations and peritonitis.

Dr. Kushnir was fully aware of Carol Gactano's history during the November 24th 2015 office visit and should have been aware of the high risk of complications associated with the presumptive diagnosis of peritoneal cancer in a patient with multiple abdominal surgeries and her plan of doing a diagnostic laparoscopy to get a tissue biopsy.

It is 100% certain that there would be adhesions and significant scar tissue in the abdomen of the patient because of her extensive surgical history.

That history made it contraindicated to attempt a laparoscopy because of the difficulty in visualizing the peritoneal lesions and safely taking biopsies.

The laparoscopy was also unnecessary in making a diagnosis of cancer. It was already known on the day after the November 24th 2015 office visit that cancer was highly likely because of the positive PET/CT scan revealing multiple lesions in the abdomen.

Dr. Kushnir also departed from the good and accepted practice of medicine by ignoring the recommendation of the radiologist who interpreted the PET/CT scan, to get an upper endoscopy and colonoscopy "for further evaluation."

Dr. Kushnir departed from the good and accepted practice of medicine by failing to refer to a radiologist for a "skinny" needle CT guided biopsy of any one of the lesions seen on the PET/CT scan. That was a much less riskier course of diagnostic action than her plan of a contraindicated diagnostic laparoscopy.

Because Dr. Kusnir had already "made up her mind" to proceed with the laparoscopy on the November 24th office visit by stating in her record "will schedule for a **diagnostic**

laparoscopy... risks and benefits were discussed..." she never offered Carol Gaetano alternative diagnostic and investigative measures in making the diagnosis of cancer.

By ignoring the recommendations of the radiologist and not opting for less invasive diagnostic procedures, Dr. Kushnir embarked on a plan that created a substantial and unnecessary risk of life threatening complications.

Dr. Kushnir had the chance to abort the laparoscopy on December 9th when she encountered the very high intra-abdominal pressures and lack of visualization of the organs within the abdomen but she failed to meet the standard of every physician--- to do no harm.

With her laparoscope and biopsy "graspers" she perforated the patient's bowels multiple times in multiple attempts to get tissue for diagnosis when far less dangerous means were available to her.

In addition, Dr. Kushnir departed from good and accepted practice of medicine when she discharged Carol after the laparoscopy even though the patient felt very sick with nausea and abdominal pain. It is my opinion with a reasonable degree of medical certainty that Carol Gaetano was suffering from multiple perforations of her colon secondary to the negligence of Dr. Kushnir's surgery and biopsies.

Dr. Kushnir departed from the good and accepted practice of medicine in failing to diagnose the patient's perforated colon, sending her home with those perforations and developing acute peritonitis and sepsis.

Dr. Kushnir did not properly monitor the patient and did not send her to the hospital until the afternoon of December 10th, 2015.

In conclusion, Dr. Kushnir utilized dangerous and unnecessary means to make a diagnosis of cancer of the peritoneum when there were clearly much safer, medically indicated

cancer of the peritoneum when there were clearly much safer, medically indicated procedures to confirm the diagnosis and her gross negligence violated the cardinal rule in Medicine to "first, do no harm."

The gross malpractice of Dr. Kushnir was the proximate cause of Carol Gaetano suffering acute peritonitis, sepsis, respiratory failure, and severe conscious pain and suffering.

SWORN on this day

OCT Month 2 Day 2017

By:

Vincent Garbitelli, MD.

Vincent Garbitelli MD

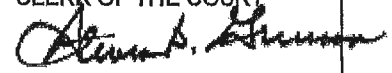
State of Vermont
Orange County

At Randolph, this 20th day of OCTOBER A.D. 2017
personally appeared VINCENT GARBITELLI
and acknowledged this instrument by HIS sealed and
subscribed, to be HIS free act and deed. Before
me, E. Dan O'Brien Notary Public
My Commission Expires: 08-10-2019



EXHIBIT “C”

EXHIBIT “C”



1 **FAC**
2 AARON HEATON, ESQ.
3 Nevada Bar No. 11595
4 JARED F. HERLING, ESQ.
5 Nevada Bar No. 13350
6 **HEATON & ASSOCIATES, PLLC**
7 5785 Centennial Center Blvd., Ste. 240
8 Las Vegas, Nevada 89149
9 Telephone (702) 850-5000
10 Facsimile (702) 664-2100
11 Aaron@HeatonLegal.com
12 Jared@HeatonLegal.com
13 *Attorney for Plaintiffs*

14
15 **DISTRICT COURT**
16 **CLARK COUNTY, NEVADA**

17 THE ESTATE OF CAROL A. GAETANO,
18 DECEASED, VINCENT GARBITELLI,
19 ADMINISTRATOR,

20 Plaintiffs,

21 vs.

22 CHRISTINA KUSHNIR, MD, and WOMEN'S
23 CANCER CENTER OF NEVADA,

24 Defendants.

CASE No.: A-17-764111-C
DEPT. No.: X

PLAINTIFF'S FIRST AMENDED
COMPLAINT (Arbitration Exempt:
Medical Malpractice)

25 **PLAINTIFF'S COMPLAINT**

26 Plaintiff, by and through its undersigned counsel, **HEATON & ASSOCIATES, PLLC**, and
27 for its causes of action against Defendants, complain and allege as follows:

28 **ALLEGATIONS COMMON TO ALL COUNTS**

1. At all relevant times asserted herein, Carol A. Gaetano, deceased, was a resident of the State of Nevada.
2. Vincent Garbitelli is presently serving as the co-administrator of the Estate of Carol A. Gaetano.

1 3. At all times material to this Complaint, the acts and omissions giving rise to this
2 action occurred in Clark County, Nevada.

3 4. Venue and jurisdiction are also proper because all Defendants conduct business in
4 Clark County, Nevada and have agents that reside and do business in Clark County, Nevada, and the
5 events giving rise to this action occurred herein.

6 5. All defendants identified as corporations or other such entities were at all times
7 mentioned herein acting by and through officers, employees, agents, and contractors, who were
8 acting within the course and scope of their employment and authority, such that these corporations
9 or other such entities are bound by, and vicariously liable for, the conduct of their officers, agents,
10 employees, and contractors. Such corporations or other such entities also are directly liable for their
11 own conduct, negligence, recklessness, and other tortious conduct in the hiring and supervision of
12 the officers, employees, agents, and contractors whose conduct gives rise to this action.

13 6. At all times mentioned herein, Defendant CHRISTINA KUSHNIR, M.D. was a
14 physician licensed to practice medicine in the State of Nevada and engaged in the practice of her
15 profession in the State of Nevada.

16 7. At all times mentioned herein, Defendant WOMEN'S CANCER CENTER OF
17 NEVADA, INC., was a Nevada domestic corporation doing business in the State of Nevada.

18 8. Upon information and belief, Defendant WOMEN'S CANCER CENTER OF
19 NEVADA, INC. was the employer and/or principal of all those employed and/or working at
20 WOMEN'S CANCER CENTER OF NEVADA, INC., including Defendant CHRISTINA
21 KUSHNIR, M.D., all of whom were acting in the course and scope of their employment, such that
22 Defendant WOMEN'S CANCER CENTER OF NEVADA, INC. is vicariously liable for the
23 negligent acts and omissions described below.

24 9. All of the acts complained of herein by Plaintiffs against said Defendants were done
25 and performed by said Defendants by and through their duly authorized agents, servants and
26
27
28

1 employees, each of whom and all of who were at all times mentioned herein acting within the
2 course, purpose, and scope of their said agency, service and employment, and whose conduct was
3 ratified by all Defendants, and each of them. Further, each Defendant ratified and affirmed the
4 conduct of each other Defendant.

5
6 10. At all times set forth herein, each of the Defendants were acting as the agents,
7 servants, and employees of all the other Defendants.

8 11. Attached to this Complaint is the expert declaration of Vincent Garbitelli, M.D.,
9 supporting the allegations contained in this Complaint. The same is incorporated by reference as if
10 set forth fully herein.

11 12. Beginning on or about November of 2015, Carol Gaetano employed Defendants, and
12 each of them, to diagnose and treat her medical condition, and to do all things necessary for her care
13 and treatment.

14 13. Carol Gaetano was referred to a gynecologist, Defendant physician Christina Kushnir
15 of Women's Cancer Center of Nevada and saw that physician in her office on November 24th,
16 2015.

17 14. Dr. Kushnir without any input from Carol's Internist elected to schedule the patient
18 for a diagnostic laparoscopy and "abdominal" biopsies.

19 15. The procedure was scheduled for December 9th, 2015.

20 21 26. The patient did not give consent for "tumor debulking" and Dr. Kushnir noted on her
22 patient record that she "will obtain a diagnosis and go from there."

23 24 17. On December 9th, 2015, Dr. Kushnir performed an unnecessary and contraindicated
25 diagnostic laparoscopy that resulted in a perforated colon and acute peritonitis requiring
26 hospitalization.

27 28 18. Defendant physician held herself out as a gynecologist and gynecological cancer
specialist.

1 19. Dr. Kushnir acknowledged that Carol did not desire "tumor debulking" at the time of
2 the November 24th office visit.

3 20. There was no diagnosis verified at that time.

4 21. On November 25th, 2015, Carol had a Positron Emission Tomography with CT
5 scan.

6 22. The scan revealed multiple areas of abnormal uptake of radio-active glucose in the
7 abdominal peritoneal region consistent with cancer lesions.

8 23. On the report it was written the following: "upper GI endoscopy and colonoscopy are
9 recommended for further evaluation."
10

11 24. Dr. Kushnir ignored that recommendation from the radiologist and did not consult
12 with Carol's Internist for a gastroenterologist referral to perform the recommended procedures.

13 25. Instead, Dr. Kushnir performed a diagnostic exploratory laparoscopy on December
14 9th, 2015.

15 26. The laparoscopy performed by Dr. Kushnir caused multiple perforations of Carol
16 Gaetano's bowel and caused acute peritonitis with sepsis and respiratory failure.

17 27. The gross malpractice of Dr. Kushnir was the proximate cause of Carol Gaetano
18 suffering acute peritonitis, sepsis, respiratory failure, and severe conscious pain and suffering.
19

20 28. Dr. Kushnir further concealed her acts, errors, and/or omissions upon which this
21 action is based which were known or through the use of reasonable diligence should have been
22 known to her.
23

24 **FIRST CLAIM FOR RELIEF**

25 **(Professional Negligence)**

26 29. All allegations set forth above are incorporated by reference as if fully set forth
27 herein.
28

1 30. At all times pertinent, all named Defendants who are "providers of health care" as
2 defined in Chapter 41A of the Nevada Revised Statutes owed a duty to exercise reasonable care,
3 skill, or knowledge in caring for Carol Gaetano, decedent, and providing for her health care needs.

4 31. By reason of the acts and omissions set forth above, all named Defendants breached
5 their duty to Plaintiff, which breaches resulted in her injury, pain and suffering.

6 32. The acts and omissions by all Defendants constitute negligence by reason of failure to
7 abide by and adhere to the standard of care governing health care providers in their respective fields.
8

9 33. As a proximate result of the acts and omissions by Defendants, Carol Gaetano was
10 injured in health, strength and activity, sustaining bodily injuries, all to Plaintiff's damage,
11 exceeding \$15,000.00.

12 34. As a further result of the negligence of the Defendants, and each of them, and the
13 resulting injuries to Carol Gaetano, decedent, Plaintiff was compelled to, and did, incur expenses for
14 medical care, incidentals, and consequential for said Plaintiff in an amount in excess of \$15,000.00.
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PRAYER FOR RELIEF

Wherefore, Plaintiffs pray for Judgment against Defendants, as follows:

1. General and special damages in excess of \$15,000.00, according to proof at trial;
2. Pre-judgment and post-judgment interest, as allowed by law;
3. Costs of suit and attorney fees; and,
4. For such other and further relief as the court may deem appropriate.

DATED this 13 day of January, 2020.

HEATON & ASSOCIATES

AARON HEATON, ESQ.

Nevada Bar No. 71595

JARED F. HERLING, ESQ.

Nevada Bar No. 13350

5785 Centennial Center Blvd., Ste. 240

Las Vegas, Nevada 89149

Telephone (702) 850-5000

Facsimile (702) 664-2100

Aaron@HeatonLegal.com

Jared@HeatonLegal.com

Attorney for Plaintiffs

SECRETARY OF THE BOARD
Alvin B. Harrison

FILED : **CLERK**

CLARK COUNTY, NEVADA

Department 24

CASE NO.
DEPT. NO

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AFFIDAVIT

As follows:

PET APPX0034

In addition, I have been recognized as a Medical Expert in a wide variety of malpractice cases, having testified as said expert in all five counties of New York City and Nassau and Suffolk Counties on Long Island.

All of my expert medical opinions are made within a reasonable degree of medical certainty and are based upon my education, training, 40 years of medical practice, and review of the medical records and facts on this case and the diagnosis and care of thousands of patients over the last 43 years.

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FACTS of the CASE:

Defendant physician held herself out as a gynecologist and gynecological cancer specialist. Dr. Kushnir acknowledged that Carol did not desire "tumor debulking" at the time of the November 24th office visit. There was no diagnosis verified at that time.

On November 25th, 2015, Carol had a Positron Emission Tomography with Non-Diagnostic CT scan. The scan revealed multiple areas of abnormal uptake of radioactive glucose in the abdominal peritoneal region consistent with cancer lesions. On the report it was written that "upper GI endoscopy and colonoscopy are recommended for further evaluation."

Dr. Kushnir ignored that recommendation from the radiologist and did not consult with Carol's Internist for a gastroenterologist referral to perform the recommended procedures. Instead, Dr. Kushnir performed a **diagnostic** exploratory laparoscopy on December

9th, 2015.

At the start of the laparoscopy, the intra-abdominal pressure was very high at 16. Despite that persistent high pressure and knowing the history of the patient with previous surgeries of an appendectomy, a gallbladder resection, a complete abdominal hysterectomy, and salpingo-oophorectomy; Dr. Kushnir proceeded with the diagnostic laparoscopy.

She took "multiple biopsies" according to her operative report despite the fact that there was "diffuse disease throughout the entire peritoneum (and the) liver was not visible."

After the laparoscopy was completed, Carol complained of significant abdominal pain and was given pain medication without relieving the pain. She also complained of nausea and had bloating and lack of appetite. She was sent home without relief of her symptoms.

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Although she made a telephone call to Dr. Kushnir's office in the morning of December 10th, she was not advised to go to the emergency room until the afternoon.

She was admitted to Valley Hospital Medical Center on the afternoon of December 10th and it was discovered on abdominal CT scan and X rays that perforated bowel was present.

The laparoscopy performed by Dr. Kushnir had resulted in multiple perforations of Carol Gaetano's bowel and acute peritonitis with sepsis and respiratory failure.

EXPERT OPINION

It is my opinion, within a reasonable degree of medical certainty that Dr. Kushnir and Women's Cancer Center of Nevada departed from good and accepted practice of medicine by performing a **contraindicated, unnecessary, and negligently performed diagnostic laparoscopy** which resulted in multiple bowel perforations and peritonitis.

Dr. Kushnir was fully aware of Carol Gaetano's history during the November 24th 2015 office visit and should have been aware of the high risk of complications associated with the presumptive diagnosis of peritoneal cancer in a patient with multiple abdominal surgeries and her plan of doing a diagnostic laparoscopy to get a tissue biopsy.

It is 100% certain that there would be adhesions and significant scar tissue in the abdomen of the patient because of her extensive surgical history.

That history made it contraindicated to attempt a laparoscopy because of the difficulty in visualizing the peritoneal lesions and safely taking biopsies.

The laparoscopy was also unnecessary in making a diagnosis of cancer. It was already known on the day after the November 24th 2015 office visit that cancer was highly likely because of the positive PET/CT scan revealing multiple lesions in the abdomen.

Dr. Kushnir also departed from the good and accepted practice of medicine by ignoring the recommendation of the radiologist who interpreted the PET/CT scan, to get an upper endoscopy and colonoscopy "for further evaluation."

Dr. Kushnir departed from the good and accepted practice of medicine by failing to refer to a radiologist for a "skinny" needle CT guided biopsy of any one of the lesions seen on the PET/CT scan. That was a much less riskier course of diagnostic action than her plan of a contraindicated diagnostic laparoscopy.

Because Dr. Kusnir had already "made up her mind" to proceed with the laparoscopy on the November 24th office visit by stating in her record "will schedule for a **diagnostic**

laparoscopy... risks and benefits were discussed..." she never offered Carol Gaetano alternative diagnostic and investigative measures in making the diagnosis of cancer.

By ignoring the recommendations of the radiologist and not opting for less invasive diagnostic procedures, Dr. Kushnir embarked on a plan that created a substantial and unnecessary risk of life threatening complications.

Dr. Kushnir had the chance to abort the laparoscopy on December 9th when she encountered the very high intra-abdominal pressures and lack of visualization of the organs within the abdomen but she failed to meet the standard of every physician--- to do no harm.

With her laparoscope and biopsy "graspers" she perforated the patient's bowels multiple times in multiple attempts to get tissue for diagnosis when far less dangerous means were available to her.

In addition, Dr. Kushnir departed from good and accepted practice of medicine when she discharged Carol after the laparoscopy even though the patient felt very sick with nausea and abdominal pain. It is my opinion with a reasonable degree of medical certainty that Carol Gaetano was suffering from multiple perforations of her colon secondary to the negligence of Dr. Kushnir's surgery and biopsies.

Dr. Kushnir departed from the good and accepted practice of medicine in failing to diagnose the patient's perforated colon, sending her home with those perforations and developing acute peritonitis and sepsis.

Dr. Kushnir did not properly monitor the patient and did not send her to the hospital until the afternoon of December 10th, 2015.

In conclusion, Dr. Kushnir utilized dangerous and unnecessary means to make a diagnosis of cancer of the peritoneum when there were clearly much safer, medically indicated

cancer of the peritoneum when there were clearly much safer, medically indicated procedures to confirm the diagnosis and her gross negligence violated the cardinal rule in Medicine to "first, do no harm."

The gross malpractice of Dr. Kushnir was the proximate cause of Carol Gaetano suffering acute peritonitis, sepsis, respiratory failure, and severe conscious pain and suffering.

SWORN on this day

OCT Month 2 Day 2017

By:

Vincent Garbitelli, MD.

Vincent Garbitelli MD

State of Vermont
Orange County
At Randolph, this 20th day of OCTOBER AD 2017
personally appeared VINCENT GARBITELLI
and acknowledged this instrument by HIS sealed and
subscribed, to be HIS free act and deed. Before
me, E. Dan O'Brien Notary Public
My Commission Expires: 02-10-2019



EXHIBIT “D”

EXHIBIT “D”

1 **RESP**

2 AARON HEATON, ESQ.

3 Nevada Bar No. 11595

4 JARED F. HERLING, ESQ.

5 Nevada Bar No. 13350

6 **HEATON & ASSOCIATES, PLLC**

7 5785 Centennial Center Blvd., Ste. 240

8 Las Vegas, Nevada 89149

9 Telephone (702) 850-5000

10 Facsimile (702) 664-2100

11 Info@HeatonLegal.com

12 *Attorneys for Plaintiff*

13 **DISTRICT COURT**

14 **CLARK COUNTY, NEVADA**

15 ESTATE OF CAROL A. GAETANO,
16 DECEASED, VINCENT GARBITELLI,
17 ADMINISTRATOR.

CASE NO.: A-17-764111-C

DEPT NO.: X

18 Plaintiff,

19 vs.

20 CHRISTINA KUSHNIR, M.D., AND
21 WOMEN'S CARE CENTER OF NEVADA,
22 INC., DOES I through X, inclusive and ROE
23 CORPORATIONS XI through XX, inclusive,

24 Defendants.

25 **VINCENT GARBITELLI, AS ADMINISTRATOR OF THE ESTATE**
26 **OF CAROL A. GAETANO, DECEASED'S FIRST SUPPLEMENTAL ANSWERS TO**
27 **DEFENDANT, WOMEN'S CARE CENTER OF NEVADA'S FIRST SET OF**
28 **INTERROGATORIES**

///

///

1 TO: WOMEN'S CARE CENTER OF NEVADA, Defendant, and

2 TO: ROBERT C. McBRIDE, ESQ. and HEATHER S. HALL, ESQ., their attorneys:

3 COMES NOW, VINCENT GARBITELLI, AS ADMINISTRATOR OF THE ESTATE OF
4 CAROL A. GAETANO, DECEASED, by and through his attorneys, JARED F. HERLING, ESQ.,
5 AND AARON HEATON, ESQ., hereby provides these supplemental responses to DEFENDANT'S
6 INTERROGATORIES as follows (**new information noted in bold**):
7

8 **INTERROGATORY NO. 1:**

9 Please state Carol A. Gaetano's full name and all names by which she has ever been known,
10 including nicknames, date and place of birth, and Social Security number.

11 **ANSWER TO INTERROGATORY NO. 1:**

12 Carol Ann Gaetano

13 Carol Arbitella

14 DOB: 10/14/43

15 SS No.: _____
16

17 **INTERROGATORY NO. 2:**

18 Please identify yourself fully, giving your full name, age, residential and business address,
19 occupation, the date of appointment as executor or administrator, the court of appointment, and your
20 relationship to the decedent at the time of her death.
21

22 **ANSWER TO INTERROGATORY NO. 2:**

23 Vincent Garbitelli

24 Solo Practice in General Internal Medicine

25 Appointed administrator in July 2016
26

27 ///

28 ///

1 **INTERROGATORY NO. 3:**

2 Has Carol A. Gaetano ever been arrested, charged, and/or convicted of a felony, and if so,
3 provide the date and county for each arrest, charge, and/or conviction.

4 **ANSWER TO INTERROGATORY NO. 3:**

5 Objection, irrelevant and overburdensome in terms of time frame. Without waiving said
6 objections: Unknown.

7 **INTERROGATORY NO. 4:**

8 If the Decedent has children, please state their name(s), age(s) and address(es).

9 **ANSWER TO INTERROGATORY NO. 4:**

10 No children.

11 **INTERROGATORY NO. 5:**

12 Other than a driver's license, identify all licenses and/or certifications that have been issued
13 to Carol A. Gaetano, the date that they were issued, and the name and address of the organization
14 that issued them.

15 **ANSWER TO INTERROGATORY NO. 5:**

16 Unknown.

17 **INTERROGATORY NO. 6**

18 Pursuant to NRS 42.021, please state whether any of the expenses the Estate of Carol A.
19 Gaetano is claiming as damages in this case were paid by any type of insurance, and if so, please
20 state the following:

- 21 a. The name and address of the insurer;
- 22 b. The policy number(s) under which payment was made;
- 23 c. The named insured on the policy or policies;
- 24 d. The amounts paid by each insurer;
- 25 e. Whether a right of subrogation exists;
- 26
- 27
- 28

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- 1 f. Whether a claim of subrogation has been asserted; and
- 2 g. Whether there are liens and if so the amount of each lien.

3 **ANSWER TO INTERROGATORY NO. 6:**

4 Unknown.

5 **INTERROGATORY NO. 7:**

6 If Carol A. Gaetano maintained any life insurance policies, or received any death benefits as
7 a result of the incident, please provide for each policy: (a) the policy number; (b) the amounts that
8 was to be paid; and (c) the name, address and telephone number of each beneficiary thereof.

9 **ANSWER TO INTERROGATORY NO. 7:**

10 Unknown.

11 **INTERROGATORY NO. 8:**

12 Provide the name and address of each of the Decedent's employers from five years before
13 the events alleged in the Complaint to the present with a description of the nature of the employment
14 and the rate of compensation for each employer.

15 **ANSWER TO INTERROGATORY NO. 8:**

16 Unknown.

17 **INTERROGATORY NO. 9:**

18 Describe the nature and extent of all of Carol A. Gaetano's formal education.

19 **ANSWER TO INTERROGATORY NO. 9:**

20 Unknown. Death certificate states she completed tenth grade.

21 **INTERROGATORY NO. 10:**

22 Please describe, in detail, each and every conversation you had with Defendant Christina
23 Kushnir, M.D., including:

- 24 a. The date, time and place of each conversation;
- 25 b. The nature and substance of each conversation;

- 1 c. Whether each conversation was telephonic or in-person;
- 2 d. The name of each person present and/or on the phone during the conversations; and
- 3 e. Who initiated each conversation.

4 **ANSWER TO INTERROGATORY NO. 10:**

- 5 a. January 2, 2016 through January 16, 2016

6 The rest of the information requires testimony – too extensive for interrogatory.

7 **FIRST SUPPLEMENTAL RESPONSE TO INTERROGATORY NO. 10:**

8 To the best of my present recollection: On or about January 2nd 2016 I had a
9 conversation on the telephone with Dr. Kushnir. There were no other persons on the telephone
10 other than Kushnir and myself. I initiated the conversation because I had left a couple of
11 messages for Kushnir over the New Year's Eve holiday to discuss the case of Carol Gaetano. I
12 do not remember who dialed first on that day. During that conversation Kushnir told me that
13 Carol ruptured her cancer tumors on her colon into the free peritoneum. Although Kushnir
14 knew I was a medical doctor with decades of experience, Kushnir never advised me that she
15 caused the perforations with her laparoscope or other instruments. Kushnir stated that Carol
16 had widespread metastatic cancer that was inoperable and that she removed Carol's right
17 colon. Kushnir stated that Carol's prognosis was grim and Carol was intubated and on a
18 ventilator and not able to be weaned off of it. When I asked what was the tissue diagnosis of
19 the cancer, Kushnir did not give me a clear answer. Kushnir was insistent that Carol had
20 essentially terminal cancer and the care was under the involvement of the Internists at Valley
21 Hospital Medical Center and that she was deferring the medical management to those doctors.
22 I had a second telephone conversation on or about January 14th with Kushnir and we briefly
23 discussed Carol's dismal prognosis and that a tracheostomy had never been performed
24 because the internists felt Carol was too sick to tolerate it.

25
26
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1 **INTERROGATORY NO. 11:**

2 Please identify each and every employee of Women's Cancer Center of Nevada who you
3 claim was involved in the Incident or who you believe has knowledge of relevant information
4 relating to the Incident, including their name, address, telephone number, and a complete summary
5 of each person's knowledge of relevant information.
6

7 **ANSWER TO INTERROGATORY NO. 11:**

8 Contained in first joint plan filed.

9 **INTERROGATORY NO. 12:**

10 State the date which you first contacted an attorney regarding filing a claim related to Carol
11 A. Gaetano's medical care and/or death and the name of the attorney you first contacted.
12

13 **ANSWER TO INTERROGATORY NO. 12:**

14 Objection, irrelevant. Without waiving said objection, Brian Lowe, Esq. in 2016, I do not
15 recall exact date.

16 **INTERROGATORY NO. 13:**

17
18 Identify each of Carol A. Gaetano's healthcare providers and/or facilities with whom she
19 received medical or mental health care and treatment for five (5) years prior to the subject incident.
20

21 **ANSWER TO INTERROGATORY NO. 13:**

22 Dr. Tolentino.

23 **INTERROGATORY NO. 14:**

24 Are you aware of any other persons who may have a legal right to bring a claim as a result of
25 the incident which forms the basis of your current Complaint, who are not already named as a
26 Plaintiff? If so, please provide the last known name, address and telephone number of any potential
27 claimants and identify each individual's relationship to decedent Carol A. Gaetano.
28

///

1 **ANSWER TO INTERROGATORY NO. 14:**

2 None known.

3 **INTERROGATORY NO. 15:**

4 In your own words, describe with specificity any and all money paid, or to be paid, to
5 decedent, or her estate, heirs and/or personal or special representative, because of, or arising out of,
6 the alleged conduct of Defendants in which decedent was involved, including payments from
7 insurance companies or pursuant to court issued judgments and/or orders.
8

9 **ANSWER TO INTERROGATORY NO. 15:**

10 None known.

11 **INTERROGATORY NO. 16:**

12 Please state whether Carol A. Gaetano was receiving any support from any family members
13 in order to meet living expenses during the five years prior to her death. If your answer is in the
14 affirmative, please state the amount of support she received, how long she received it, and from
15 whom.
16

17 **ANSWER TO INTERROGATORY NO. 16:**

18 None known.

19 **INTERROGATORY NO. 17:**

20 Did Carol A. Gaetano maintain any presence on any social networking websites such as
21 Facebook, MySpace, or Twitter? If so, please provide any screen names or handles used, and
22 describe any information posted therein relative to the facts and circumstances alleged in the
23 Complaint.
24

25 **ANSWER TO INTERROGATORY NO. 17:**

26 None known.

27
28 ///

INTERROGATORY NO. 18:

Please describe an average day in Carol A. Gaetano's life prior to her death, from the time she arose in the morning until she went to bed.

ANSWER TO INTERROGATORY NO. 18:

Unknown.

INTERROGATORY NO. 19:

Please identify each and every person with knowledge of relevant information related to this matter, including each person's name, present address, present telephone number, and a complete summary of each person's knowledge of relevant information.

ANSWER TO INTERROGATORY NO. 19:

Unknown.

INTERROGATORY NO. 20:

Please state the name of each medication that Carol A. Gaetano was taking during the five (5) years prior to her death, including the dosage of each medication, the period of time she was taking each medication, and the medical provider that prescribed the medication.

ANSWER TO INTERROGATORY NO. 20:

See Dr. Tolentino's records.

INTERROGATORY NO. 21:

Please state all mental health conditions, medical conditions, and/or health issues that Carol A. Gaetano had within the five (5) years prior to her death, when she was diagnosed as having each such condition and the medical provider that diagnosed her with each such condition.

ANSWER TO INTERROGATORY NO. 21:

In Dr. Tolentino's records which Defendant has.

///

1 **INTERROGATORY NO. 22:**

2 If you, on behalf of the Estate of Carol A. Gaetano, are claiming past loss of earnings, wages,
3 and/or income on behalf of Carol A. Gaetano as a result of the subject incident, describe the source
4 of such earnings/wages/income, the amount of time lost, and the amount of loss and how the same
5 was calculated.
6

7 **ANSWER TO INTERROGATORY NO. 22:**

8 N/A.

9 **INTERROGATORY NO. 23:**

10 In the two years preceding her passing how often did you visit decedent, or did decedent visit
11 you and what shared activities did you and decedent participate in during that time?
12

13 **ANSWER TO INTERROGATORY NO. 23:**

14 N/A.

15 **INTERROGATORY NO. 24:**

16 Please state how often you visited Carol A. Gaetano during her admission to Valley Hospital
17 from December 2015 to January 2016.

18 **ANSWER TO INTERROGATORY NO. 24:**

19 None, she was intubated through the entire hospital stay.

20 **INTERROGATORY NO. 25:**

21 Pursuant to NRCPP 16.1(a)(1)(c), please provide a computation of any category of damages
22 you are claiming on behalf of the ESTATE OF CAROL A. GAETANO and identify any supporting
23 documents bearing the nature and extent of your claimed injuries.
24

25 **ANSWER TO INTERROGATORY NO. 25:**

26 None claimed at this time other than general damages. Discovery is ongoing.
27
28

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1 **INTERROGATORY NO. 26:**

2 State each and every expense, debt or obligation the Estate has incurred, amount expended
3 and item of special damage the Estate will claim at trial as a result of the injuries or conditions listed
4 in your answer to these Interrogatories other than that itemized in your answer to the foregoing
5 Interrogatories. (This Interrogatory inquires as to, but is not limited to: funeral expense, medical
6 expenses, ambulance expenses, and transportation expenses).
7

8 **ANSWER TO INTERROGATORY NO. 26:**

9 To be supplemented when Medicare conditional payment amount is known. Discovery is
10 ongoing.

11 **INTERROGATORY NO. 27:**

12 Have you, or any of your representatives or agents executed a covenant not to sue any of
13 decedent's medical providers in exchange for his or her availability to testify of behalf of decedent?
14 If so, please identify each covenant executed, the name of the provider and the parties to each.
15

16 **ANSWER TO INTERROGATORY NO. 27:**

17 No.

18 **INTERROGATORY NO. 28:**

19 Was the Decedent or has she ever been, a recipient of Medicare benefits or made application
20 for such benefits? If so, please provide the following information:

- 21
- 22 a. The date on which the Decedent first became entitled to receive such benefits;
 - 23 b. The Decedent's Medicare Health Insurance Claim Number ("HCIN");
 - 24 c. The name or identity of the covered beneficiary;
 - 25 d. The effective dates of coverage (both beginning and ending, if applicable); and
 - 26 e. The reason the Decedent was entitled to or qualified for Medicare.

27 **ANSWER TO INTERROGATORY NO. 28:**

28 Yes, information unknown.

1 **INTERROGATORY NO. 29:**

2 Has Medicare been notified of this pending action? If so, please state when Medicare was
3 first notified and what information was provided to Medicare in the notification.

4 **ANSWER TO INTERROGATORY NO. 29:**

5 No.

6 **INTERROGATORY NO. 30:**

7 Have any of the expenses the Estate seeking to recover in this action been paid by Medicare?

8 If so, please provide the following information:

- 9
- 10 a. The total amount of medical expenses paid to date by Medicare;
- 11 b. An itemization of the medical expenses paid by Medicare and to whom such benefits
- 12 were paid; and
- 13 c. Whether any of the amounts identified have been reimbursed to Medicare and, if so, by
- 14 whom.
- 15

16 **ANSWER TO INTERROGATORY NO. 30:**

17 None known.

18 **INTERROGATORY NO. 31:**

19 Please state whether an autopsy was performed in connection with the death of Carol A.
20 Gaetano and if so, please provide the name, address, and telephone number of each person involved
21 in such autopsy, and the result of such autopsy.

22 **ANSWER TO INTERROGATORY NO. 31:**

23 Yes, in Clark County. Defendant has a copy of the autopsy report.

24 **INTERROGATORY NO. 32:**

25 Please state whether decedent lived alone, with a spouse, friend, family or significant other
26 and whether she relied upon others for assistance in completing her activities of daily living.

27
28 ///

1 **ANSWER TO INTERROGATORY NO. 32:**

2 Unknown.

3 **INTERROGATORY NO. 33:**

4 State the details of the conversation Vincent Garbitelli alleges occurred on January 2, 2016
5 regarding Carol Gaetano's death, including, but not limited to:

- 6
- 7 a. The names of all individuals present for that conversation, including the name of the
8 medical provider;
- 9 b. The location where this conversation took place;
- 10 c. All information you recall being discussed;
- 11 d. How long this conversation lasted; and
- 12 e. What information was relayed to during this conversation.

13 **ANSWER TO INTERROGATORY NO. 33:**

14 Requires deposition.

15 **FIRST SUPPLEMENTAL RESPONSE TO INTERROGATORY NO. 33:**

16 Please see the First Supplemental Response to Interrogatory No. 10, above.

17 **INTERROGATORY NO. 34:**

18 Identify the date on which you first requested Carol Gaetano's Valley Hospital medical
19 records.
20

21 **ANSWER TO INTERROGATORY NO. 34:**

22 Summer of 2016.

23 **INTERROGATORY NO. 35:**

24 If your response to any of Defendant Women's Care Center of Nevada's Request for
25 Admissions, served concurrently with these Interrogatories, was anything other than an unqualified
26 admission, for each response, provide the bases and reasons for the response.
27

28 ///

1 **ANSWER TO INTERROGATORY NO. 35:**

2 N/A.

3 **FIRST SUPPLEMENTAL RESPONSE TO INTERROGATORY NO. 35:**

4 Regarding Admission No. 4: It is denied because it is the allegation of the Plaintiff
5 action that the malpractice of Kushnir caused Carol Gaetano to be unable to receive her
6 pension and social security checks in subsequent years because Carol died approximately 5
7 weeks after the contraindicated diagnostic procedure negligently performed by Kushnir on
8 December 9th 2015.

9
10 Regarding Admission No. 10: It is denied because although the Third Party Medical
11 Records bureau sent an email with the hospital records of nearly 9000 pages supposedly
12 attached, I was unable to open the files on the computer. After several phone calls over the
13 next two months I finally received a disc(s) towards the end of October of 2016.

14 DATED this 17th day of December, 2019.

15
16 HEATON & ASSOCIATES

17
18 /s/ Jared F. Herling
19 AARON HEATON, ESQ.
20 Nevada Bar No. 11595
21 JARED F. HERLING, ESQ.
22 Nevada Bar No. 13350
23 **HEATON & ASSOCIATES, PLLC**
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CERTIFICATE OF SERVICE

Pursuant to EDCR 8.05(f), I certify that the following parties are to be served as follows:

Mail: None

Fax: None

Hand Delivery: None

Electronically:

Robert C. McBride, Esq.
**CARROL, KELLY, TROTTER, FRANZEN, McBRIDE &
PEABODY**
8329 W. Sunset Rd., #260
Las Vegas, Nevada 89113
Attorneys for Defendants

Dated this 17th day of December, 2019.

/s/ Clarice Felix
An employee of HEATON & ASSOCIATES

VERIFICATION

STATE OF Nevada)
) ss,
COUNTY OF Clark)

I, VINCENT GARBITELLI state as follows:

1. That I am the Co-Administrator of the Estate of Carol Gaetano, Plaintiff, in the above-captioned matter;
2. That I have read the foregoing First Supplemental Answers to Interrogatories and know the contents thereof.
3. That the same is true to my own knowledge, except for those matters therein stated upon information and belief, and as to those matters, I believe them to be true.
4. I declare under penalty of perjury under the law of the State of Nevada that the foregoing is true and correct.

DATED this 2 day of December, 2019

Vincent Garbitelli
VINCENT GARBITELLI

EXHIBIT “E”

EXHIBIT “E”

1 SUPERIOR COURT

2 DISTRICT COURT

3 CLARK COUNTY, NEVADA

4 ----- X

5 ESTATE OF CAROL A. GAETANO, DECEASED, VINCENT

6 GARBITELLI, ADMINISTRATOR,

7 Plaintiff,

8 Case No. A-17-764111-C

9 Dept. No. X

10 -versus-

11 CHRISTINA KUSHNIR, M.D., AND WOMEN'S CARE CENTER OF

12 NEVADA, INC., DOES 1 through X, inclusive and ROE

13 CORPORATIONS X1 through XX, inclusive,

14 Defendants.

15 ----- X

16 DEPOSITION of the SPECIAL ADMINISTRATOR,

17 DR. VINCENT GARBITELLI, taken by the Defendants held at

18 the offices of Lexitas/Deitz Court Reporting Service,

19 1 Penn Plaza, New York, New York, on January 17, 2020,

20 at 10:55 a.m., before a Notary Public of the State of

21 New York.

22 *****

23

24 Job Number.: 596882

25

1 represented by counsel in this case, copies of
2 Southwest Medical Associates records. And I just
3 wanted to show you.

4 Do you remember how you received the Southwest
5 medical records? Meaning, in paper, electronic? What
6 format did you receive those records in when you first
7 received them?

8 A I'm not exactly sure, but I think they were in
9 paper form somewhere along the way. Yes, I believe
10 they were paper but I'm not certain.

11 Q No problem. I have some papers that might
12 assist with refreshing your memory.

13 MS. HALL: Mr. Herling, for your sake,
14 it's not Bates stamped unfortunately, but it's
15 the authorizations from the Southwest medical
16 records that were produced by the Plaintiff.

17 MR. HERLING: Okay.

18 Q So, the first thing that I show you, Dr.
19 Garbitelli, is a Southwest Medical Associates
20 authorization to disclose medical records, and it looks
21 to be perhaps a fax from you.

22 So I'll give you a moment to look that over and
23 then I just have a couple of questions.

24 MR. HERLING: Is it the one dated
25 September 13?

1 MS. HALL: Yes.

2 MR. HERLING: Thank you.

3 MS. HALL: Yes, and there's a couple of
4 other pages that are related, same date.

5 A I see it. I remember that.

6 Q My question is: What date did you first request
7 the Southwest medical records?

8 A It looks like 9/9/16.

9 Q If I can have that.

10 I'll also show you two more pages from the
11 Southwest medical records and these look to be fee
12 approval requests that were -- excuse me -- let me back
13 up a moment before I move on.

14 The two documents that I just showed you, is
15 this document that I showed you dated August 29, 2016,
16 is that a document that you faxed to Southwest Medical
17 in Las Vegas?

18 A Probably.

19 Q Is this in your handwriting?

20 A Yes.

21 Q And the date of this is August 29, 2016?

22 A Yes.

23 Q And then I also showed you it looks to be like a
24 HIPAA release for the medical records?

25 A Yes.

1 Q And is that something that is in your
2 handwriting portion of it?

3 A Yes.

4 Q And you submitted that to Southwest Medical in
5 Las Vegas?

6 A Yes.

7 Q If I can clear up whether you got it in paper or
8 a CD. The next two pages that I'll show you, Doctor,
9 are Southwest Medical Associates fee approval request
10 and it looks like they're both dated 9/13/2016. So
11 I'll give you a moment to look that over.

12 A Okay.

13 Q The document that I just showed you, do you see
14 where it says "actual pages 808"?

15 A Yes.

16 Q And it says the estimated fee is \$420?

17 A Yes.

18 Q Do you know does that in any way refresh your
19 memory as to whether you actually got pages from
20 Southwest Medical?

21 A I'm not certain. I don't recall because I had
22 -- I don't recall ever printing out -- it's possible
23 but I don't remember that. I have no recollection of
24 any of that, of whether I got a CD and then converted
25 it. I don't remember. I don't recall.

1 Q Is that your signature where it says, "Person
2 authorizing payment"?

3 A Yes.

4 Q And the date of that is 9/15?

5 A Yes.

6 Q And that would have been in 2016?

7 A Yes.

8 Q Did you pay for the charges related to getting
9 the Southwest medical records for Ms. Gaetano?

10 A Yes.

11 Q And how did you pay for that? Credit card,
12 cash, check?

13 A I don't recall.

14 Q Did you ever have any discussion with anyone at
15 Southwest Medical about the 60 cents per page charge
16 for the medical records?

17 A I don't recall.

18 MR. HERLING: Can we say we're marking A
19 and B?

20 MS. HALL: Yes. So A is going to be the
21 first two pages that I showed him, and B is the
22 9/13 fee request from Southwest Medical.

23 MR. HERLING: Okay.

24 Q We marked as Exhibit A the first two pages I
25 showed you with the fax and the HIPAA release.

1 didn't see any urgency to be reviewing them immediately
2 upon receipt.

3 Q I did have a question regarding the estate of
4 your cousin.

5 You did know that to pursue a medical
6 malpractice case that you would need to set up an
7 estate in Nevada, correct?

8 A I don't understand the question.

9 MS. HALL: Sure. Let me rephrase it.

10 Q In 2016 you were appointed administrator of Ms.
11 Gaetano's estate; is that correct?

12 A Yes. Co-administrator.

13 Q Co-administrator with Mr. Lowe?

14 A Yes.

15 Q You did understand that in order to pursue a
16 medical malpractice case that you would need to become
17 administrator or co-administrator of her estate?

18 A Yes, I understood that.

19 Q And in terms of the attorney who assisted you
20 with the estate, was that Brian Lowe?

21 A Yes.

22 Q And when did you first consult Mr. Lowe?

23 A Somewhere in the beginning of 2016. I don't
24 recall exactly.

25 Q The paperwork from the Probate Court that

1 petitioned for issuance of letters of special
2 administration, that document was filed March 1st,
3 2016.

4 Is it fair to say that you had consulted Brian
5 Lowe before he filed that document?

6 A Yes.

7 Q As I was just explaining because the copier was
8 not functioning at the firm, I've got one copy but you
9 and I will get through this.

10 So I have just marked as Exhibit C some of the
11 documents from the Valley Hospital records.

12 So the first thing that I want to show you is
13 the page that is the authorization requesting medical
14 records.

15 So if you'd take a second and look at that I
16 have a couple of questions for you.

17 MR. HERLING: You said Exhibit C is the
18 Valley Hospital record?

19 MS. HALL: Yes. It's going to be four
20 pages. The first page is cc: payment receipt.
21 The second page say,s, "Medical Records
22 Transmittal." The third page is the HIPAA
23 authorization or the medical records request,
24 and then the fourth page is an email between Dr.
25 Garbitelli and someone at Valley Hospital.

1 Q And that's not at all my intention. Just so
2 you're clear, I do know from your answers that you were
3 not able to open the attachment to the first email you
4 received. And we'll talk about that in just a moment.

5 A Correct.

6 Q My questions are about whether this refreshes
7 your memory as to when you got that email which had an
8 attachment you could not open?

9 A I don't recall.

10 Q Why did you request the Valley Hospital medical
11 records in July of 2016?

12 A I felt it was part of my due diligence as an
13 administrator and as a relative next of kin of Carol.

14 Q Why did you request the Southwest medical
15 records?

16 A For the same reason.

17 Q Dr. Kushnir's office records, at some point did
18 you request those records?

19 A Yes.

20 Q When did you first request those records?

21 A I don't recall exactly, but it would have been
22 in the summer of 2016.

23 Q When did you receive those records from Dr.
24 Kushnir's office?

25 A My recollection is somewhere in the summer of

1 2016.

2 Q Do you know if you got those in paper or a disc?

3 A I believe they were paper.

4 Q Are you able to be any more specific than the
5 summer of 2016?

6 A August maybe but now I'm not sure. I would say
7 August of 2016.

8 Q The only reason I'm asking, Doctor, is I live in
9 Las Vegas so summer is never-ending.

10 A Good point.

11 Q With respect to Ms. Gaetano's medical care you
12 filed two lawsuits regarding her care; is that correct?

13 A No, I actually filed three.

14 Q That was going to be my question, I couldn't
15 really tell from the court docket.

16 One of the lawsuits that you filed was against
17 Southwest Medical Associates, Dr. Tolentino and Dr.
18 Ticman, correct?

19 A That's correct.

20 Q And that one was filed on November 3, 2017?

21 A Yes.

22 Q Other than that case and the case that we're
23 here today where you're giving a deposition, what is
24 the other case that you filed?

25 A Against Valley Hospital Medical Center and

1 several doctors that interacted or rendered care to
2 Carol.

3 Q The case against Southwest Medical, was that
4 case dismissed?

5 A Yes.

6 Q The case against Valley Hospital and the other
7 physicians, when was that case filed?

8 A The same time.

9 Q On November 3rd?

10 A Yes, or thereabouts. I can't be a hundred
11 percent certain.

12 Q What was the outcome of the case against Valley
13 and the many physicians?

14 A That was dismissed.

15 Q And all three of the cases were filed in Clark
16 County, Nevada?

17 A Yes.

18 Q At the time that those three matters were filed,
19 were you representing the estate in the legal action?

20 A I don't know what you mean by "representing."

21 Q Sure. Let me see if I can clarify.

22 Were there any attorneys who appeared as counsel
23 of record at the time the case was filed?

24 A No.

25 Q On any of those three cases?

1 A Correct.

2 Q And, now, I do understand that in the Southwest
3 Medical matter ultimately you retained Mr. Brenske; is
4 that correct?

5 A Yes.

6 Q And his partner Mr. Krametbauer?

7 A Yes.

8 Q Did you also remain Mr. Brenske and
9 Mr. Krametbauer in the case against Valley and the
10 other physicians?

11 A Yes, acting as the administrator of the estate I
12 retained them. I did not personally retain them.

13 Q But at the time of filing the three matters,
14 there was no legal counsel making an appearance?

15 A Correct.

16 Q Why did you choose to file three separate
17 actions instead of one action?

18 A Are you asking me as a medical expert or as the
19 administrator? I'm not quite sure how you're asking
20 that question.

21 Q Do you not understand the question?

22 A I don't understand it.

23 Q So at the time that these three cases were
24 filed, you made the decision to file them, correct?

25 A Yes.

1 Q Why did you make the decision to file them as
2 three separate actions?

3 A Because they were three separate internal
4 medicine departures from good and accepted practice.
5 They were three distinct medical care issues that were
6 specific to the entities that I filed against.

7 So that's why there were three separate, because
8 they were three separate allegations of medical
9 malpractice.

10 Q I want to talk just a moment about the
11 allegations or criticisms that you have of Dr.
12 Kushnir's care. The affidavit that you prepared
13 regarding Dr. Kushnir's care, one of the criticisms
14 that you mentioned is that she did not follow the
15 radiologist recommendation from that November 25, 2015
16 CT where the radiologist had recommended a GI endoscopy
17 and colonoscopy. Was that one of your criticisms of
18 Dr. Kushnir?

19 A I'm going to ask for clarification again. Are
20 you asking me as a witness or as a medical expert?

21 I'm not quite sure the context of what you're
22 asking before I can answer any kind of a question on
23 that matter.

24 Q At this stage I'm only asking you whether one of
25 the criticisms contained in your affidavit, which was

1 Q I have the will I think on my iPad, if you need
2 to see it.

3 I'll represent to you that the will lists
4 Dominick and Cheri Dahl as administrators. Does that
5 sound correct to you or do you remember?

6 A Yes.

7 Q In May of 2016 Dominick declined to serve as the
8 administrator.

9 Did you have any conversations with Dominick
10 about whether or not he would serve as the
11 administrator?

12 A Yes, I vaguely recall some conversation we had.

13 Q And what do you recall in that regard?

14 A That he did not want to be involved because he
15 was not a next of kin. And that we were the next of
16 kin, and it was more appropriate for us to be involved.

17 Q And who is "us"?

18 A "Us" meaning the cousins.

19 Q Did you and Dominick have any discussion about
20 why there needed to be an administrator of the estate?

21 A Well, to settle her affairs and the rest of it
22 would be speculative.

23 Q What do you mean?

24 A Just what I mean. It's all speculation. I
25 don't recall exactly other than the fact that he didn't

1 want to be the administrator, and he didn't want to get
2 involved with doing due diligence to get medical
3 records and things like that, which I had recommended
4 was advised, I said that we should get medical records,
5 and he didn't want to get involved with any of that.

6 Q That is not something that he wanted to
7 participate in?

8 A Absolutely not. Yes.

9 Q That conversation, did that occur before he
10 signed the paperwork declining?

11 A Yes.

12 Q What about Cheri Dahl, do you know Cheri Dahl?

13 A No.

14 Q Have you ever spoken to Cheri Dahl?

15 A I think I spoke to her on the phone with the
16 same issue. She was even stronger than Dominick where
17 she said, "You're the family. You get involved. I
18 don't want to get involved. I'm sorry my name is on
19 there. I'll be happy to sign declination."

20 So that was basically -- it was a brief
21 conversation.

22 Q Did you talk with Cheri about why there needed
23 to be an administrator?

24 A That I don't recall. It was focused on the fact
25 that she was just a friend and not a relative. And she

1 felt it should be the relatives involved.

2 Q That conversation, did that occur before Cheri
3 filed the paperwork declining or signed the paperwork?

4 A Yes.

5 Q It was before?

6 A Yes.

7 Q Have you spoken to Cheri since that
8 conversation?

9 A No.

10 Q Have you seen her ever in person?

11 A No.

12 Q Do you have a phone number for Cheri?

13 A No.

14 Q At the time you spoke with Cheri who initiated
15 that communication?

16 A I don't recall.

17 MS. HALL: I'm in need of a comfort
18 break. So we can either take fifteen minutes or
19 so that you wanted for lunch now, or we can take
20 a comfort break and come back.

21 THE WITNESS: Sure. what time is it?

22 MS. HALL: It's now 12:25.

23 THE WITNESS: Sure. I'll have a break
24 snack.

25 MS. HALL: How long would you like?

1 MR. HERLING: Five or ten minutes.

2 MS. HALL: Okay. With that then we'll
3 take a quick break.

4 (At this point in time, a brief recess
5 was taken.)

6 BY MS. HALL:

7 Q I think before we broke I was going to start
8 asking you about the autopsy that was performed.

9 Were you offered the option of having an autopsy
10 performed for Carol?

11 A No, I wasn't offered.

12 Q Do you know if anyone in the family decide to
13 have an autopsy?

14 A You mean other than myself? I don't understand
15 the question.

16 Q Did you request an autopsy?

17 A Yes.

18 Q Why did you make that request?

19 A I just thought it was the proper thing to do of
20 a woman who came in and became deathly ill. It just
21 seemed like pretty routine for me being a doctor for
22 nearly 40 years that you would do an autopsy in a
23 person who, you know, gets so sick so quickly and has
24 such a horrific diagnosis.

25 Q The coroner's office in Las Vegas, did you talk

1 to anyone in the coroner's office?

2 A Yes.

3 Q Who did you speak with and when was the first
4 time?

5 A I don't recall.

6 Q Did you ever speak with Timothy Dutra, the
7 physician at the coroner's office?

8 A Yes.

9 Q When is the first time you spoke with Dr. Dutra?

10 A I don't recall, it would sometime within a
11 couple of weeks of her death.

12 Q At some point did you receive a copy of the
13 autopsy report from the coroner's office?

14 A Yes.

15 Q When did you first receive that?

16 A I do not recall.

17 Q I'll represent to you that the report authored
18 by Dr. Dutra is from February of 2016.

19 Do you know if it was within a few weeks of the
20 report being ready or being authored?

21 A I would be guessing, but I would assume it was
22 somewhere around that time in the winter of 2016.

23 Q When you say "winter of 2016," I want to clarify
24 a few things.

25 The petition that was filed in probate court for

1 letters of special administration, that was filed, I
2 believe, March the 1st, 2016.

3 Did you have the autopsy report at the time of
4 the petition being filed?

5 A I don't recall.

6 Q The petition attaches the death certificate for
7 Carol.

8 Does that indicate to you that you had
9 possession of the death certificate at the time of the
10 March 1st filing?

11 A Again, I don't recall what's written on there.

12 Q Do you know how it is that you would have
13 received any documents from the coroner's office?
14 Would it have been by email? By U.S. mail?

15 A I believe I got a mailed report.

16 Q Did you save the envelope that it came in?

17 A No.

18 Q The records that you received from Southwest
19 Medical, were those sent to you in an envelope?

20 A I believe so.

21 Q Did you save that envelope?

22 A No.

23 Q The same questions for the Valley Hospital and
24 the records from Dr. Kushnir's office?

25 A No, I don't recall saving any envelopes.

1 Q Do you remember anything that you may have
2 discussed with Dr. Dutra?

3 A Some of it. It's four years ago almost.

4 Q Tell me what you do remember discussing with Dr.
5 Dutra.

6 A I just basically felt that 72-year-old woman,
7 coming into the hospital, dying five weeks later, I
8 wanted to have a complete autopsy to find out if he
9 could give some -- shed some light on her condition,
10 cause of death.

11 Q Anything else that you remember?

12 A I wanted him to specifically give me an opinion
13 about this Stage IV cancer that I was told she had.
14 And to focus on the abdomen in particular because of
15 the diagnosis that they told me.

16 Q Did you have any discussion with Dr. Dutra about
17 Carol's perforations?

18 A Yes. I told him that the surgeon who operated
19 on her, Dr. Kushnir, had told me that her cancer
20 spontaneously perforated and caused her to have
21 peritonitis at the beginning of December, on or about
22 December 9th, 10th, and I asked him to see if he could
23 shed any light on that.

24 Q Anything else you remember speaking to Dr. Dutra
25 about before getting the autopsy report?

1 A I would say that was the main points that I can
2 recall.

3 Q Once you did receive the autopsy report, did you
4 have any discussion with Dr. Dutra about his findings?

5 A I have to think about that one. I do not recall
6 if we did have a conversation. I do not recall.

7 Q At some point did you personally review the
8 autopsy report?

9 A Yes.

10 Q From your review of the autopsy report, was Dr.
11 Dutra able to conclude the cause of the perforations
12 Carol had?

13 A No.

14 Q Do you remember what he said regarding that?

15 A Yeah, the key was that the manner of death was
16 undeterminate. And that he saw cancer and I remember
17 him writing in there somewhere in the report about
18 making no determination about what happened to the
19 colon.

20 Q Do you remember reading in the autopsy report
21 that Dr. Dutra's conclusion was that the perforation
22 could have been caused by the cancer or the surgery and
23 he could not reach a final conclusion?

24 A I think it was something like that. I don't
25 recall exact wording, but I think that's a fair enough

1 characterization, that he couldn't determine.

2 Q Before I switch gears, have you told me
3 everything that you do remember discussing with Dr.
4 Dutra?

5 A As best as I can recall.

6 Q As we go on today, if you remember anything
7 else, just let me know but I'd like to switch gears, if
8 I can.

9 A Okay.

10 Q I want to talk to you a little bit your cousin,
11 Carol.

12 Before her death in January of 2016, when is the
13 last time that you saw Carol face-to-face? Can you
14 estimate for me when that was?

15 A More than twenty years ago.

16 Q Where did you see her?

17 A In New York somewhere at a family gathering. I
18 don't recall.

19 Q Was Carol born in New York?

20 A Yes.

21 Q When did she move to Las Vegas?

22 A Many years ago.

23 Q Are you able to estimate when Carol moved to Las
24 Vegas?

25 A No.

1 why I put the date as January 2nd because it was after
2 the New Year had started.

3 So, I don't recall who initiated the
4 conversation. I don't recall that but I know we had a
5 conversation at that time.

6 Q Do you know what number you were on, what phone
7 you were on?

8 A I don't believe it would be on my cellphone. I
9 don't recall.

10 Q We talked earlier that you have an office line.
11 Do you have a home line that you use?

12 A No, I don't have a home line.

13 Q Did you in January of 2016?

14 A No, I don't have one.

15 Q So tell me what you remember discussing with Dr.
16 Kushnir on January 2nd.

17 A I remember that Dr. Kushnir told me that she was
18 seriously ill with Stage IV cancer, it was very
19 extensive, she opened her up and it was, you know, the
20 day after she did the laparoscopy and she was in bad
21 shape. She said that the cancer -- one of the things I
22 remember pretty well -- she said the cancers
23 spontaneously perforated sometime after the 9th of
24 December. I said, "What cancer?" And she said she
25 wasn't sure what the diagnosis was but it was

1 widespread metastatic cancer, and she was in bad shape
2 and she went into respiratory failure and sepsis and
3 she was just, you know, terminal and seriously ill.

4 I asked her a couple of times in different ways,
5 so what was the diagnosis and she kept saying
6 widespread metastatic cancer and that she spontaneously
7 perforated in several places. And it sounded pretty
8 grim to me. And I said, "What are they doing for her?"
9 And she said, well, she is not taken care of right now,
10 she is under the hands of the internist and
11 pulmonologist and that she's on a respirator and they
12 can't get her off the respirator.

13 I remember asking her if she had a tracheostomy
14 and she said, no, that she didn't have a tracheostomy.
15 So I wondered why and she said it wasn't her decision
16 to make. But she painted a very grim picture of her
17 condition. And that she was, you know, terminal.

18 **Q Anything else that you remember discussing**
19 **during that call?**

20 **A** Oh, she did tell me that because she
21 spontaneously perforated her cancer that she had to
22 remove her colon, right colon had to be removed. And
23 that because she had peritonitis she had to leave her
24 belly open. Her entire abdomen was open. So she did
25 not sew her up because she had peritonitis.

1 Q And she told you that during that call?

2 A Yes.

3 Q Anything else that you can remember about that
4 call?

5 A That is about the gist of it as I can recall.
6 Was those points, spontaneous perforation of the colon;
7 widespread cancer; peritonitis; respiratory failure.
8 It just sounded abysmally dismal to me.

9 Oh, I think we did discuss the fact that Carol
10 had wanted everything done. That I remember because I
11 asked her and she said, no, based upon what you did the
12 other day, she's still a full code, but she expressed
13 that, you know, it was pretty grim.

14 Q During that call, did Dr. Kushnir try and
15 persuade you to change Carol's status from full code?

16 A I don't recall.

17 Q As you sit here, do you have any recollection of
18 her commenting one way or another on her status as full
19 code?

20 A Well, she did comment because I mentioned to her
21 that Suba-Cohen had called me on consecutive days
22 wanting me to pull the plug on her. So, I was
23 impressed with that, it was touched upon it. But I
24 don't recall her saying, yes, you should pull the plug
25 on her. But I did tell her Dr. Cohen from the

1 internal -- you know -- from the medical staff -- she
2 was internal, Dr. Suba-Cohen, and that the medical
3 staff was involved and that she was pretty hopeless.
4 But, no, I don't recall her saying I should pull the
5 plug or make her a DNR, you know, do not resuscitate.
6 But I know we had discussed that Suba-Cohen had called
7 me on consecutive days trying to get me to consent to
8 pulling the plug.

9 Q Anything else you remember about the call?

10 A That's all I can recall.

11 Q The call that you had on the second, was there
12 anything that Dr. Kushnir told you that you believe was
13 untruthful or misrepresented?

14 A Nothing.

15 Q After the December 2015 call with Dr.
16 Suba-Cohen, did you ever speak with Dr. Suba-Cohen
17 again on the phone?

18 A Yes. Probably sometime in January we had a
19 couple of calls.

20 Q What was discussed during those calls?

21 A The same thing, that she is in horrible
22 condition. Now it was getting to the point where I was
23 being told by both the doctors and the nursing staff
24 and Dr. Suba-Cohen and the other residents, that I was
25 very unrealistic and I was interfering in her care and

EXHIBIT “F”

EXHIBIT “F”

1 **RSPN**
2 ZOE TERRY, ESQ.
3 Nevada Bar No. 010900
4 Terry Law Group, PC
5 1980 Festival Plaza Drive, Suite 300
6 Las Vegas, Nevada, 89135
7 (702) 726-6797
8 Attorneys for Plaintiff

9 **DISTRICT COURT**

10 **CLARK COUNTY, NEVADA**

11 THE ESTATE OF CAROL A. GAETANO,)
12 DECEASED, VINCENT GARBITELLI,)
13 ADMINISTRATOR,)

14 Plaintiffs,)

15 vs.)

16 CHRISTINA KUSHNIR, MD, and)
17 WOMEN'S CARE CENTER OF)
18 NEVADA,)

19 Defendants.)

CASE NO.: A-17-764111-C
DEPT. NO.: X

20 **VINCENT GARBITELLI, AS ADMINISTRATOR OF THE ESTATE**
21 **OF CAROL A. GAETANO, DECEASED'S RESPONSES TO DEFENDANT,**
22 **WOMEN'S CARE CENTER OF NEVADA'S FIRST SET OF REQUEST FOR ADMISSIONS**

23 TO: WOMEN'S CARE CENTER OF NEVADA, Defendant, and

24 TO: ROBERT C. McBRIDE, ESQ. and HEATHER S. HALL, ESQ., their attorneys:

25 COMES NOW, VINCENT GARBITELLI, AS ADMINISTRATOR OF THE ESTATE OF
26 CAROL A. GAETANO, DECEASED, by and through his attorney, ZOE TERRY, ESQ, hereby
27 responds to DEFENDANT'S REQUEST FOR ADMISSIONS as follows:

28 **REQUEST NO. 1:**

Admit that Carol Gaetano died on January 17, 2016.

RESPONSE NO. 1:

Admit.

1 **REQUEST NO. 2:**

2 Admit that Vincent Garbitelli was advised of Carol Gaetano's death on January 17, 2016.

3 **RESPONSE NO. 2:**

4 Admit.

5 **REQUEST NO. 3:**

6 Admit that the Estate of Carol Gaetano is not making a claim for lost wages.

7 **RESPONSE NO. 3:**

8 Admit.

9 **REQUEST NO. 4:**

10 Admit that the Estate of Carol Gaetano did not suffer any loss of income as a result of the
11 subject incident.

12 **RESPONSE NO. 4:**

13 Deny.

14 **REQUEST NO. 5:**

15 Admit that an autopsy was not requested for Carol Gaetano.

16 **RESPONSE NO. 5:**

17 Deny.

18 **REQUEST NO. 6**

19 Admit that Vincent Garbitelli made a request for Carol Gaetano's Valley Hospital medical
20 records in on or before July 15, 2016.

21 **RESPONSE NO. 6:**

22 Admit.

23 **REQUEST NO. 7:**

24 Admit that Exhibit "A" is an email between Vincent Garbitelli and an individual at Valley
25 Hospital Medical Center regarding medical records for Carol Gaetano.

1 **RESPONSE NO. 7:**

2 Admit.

3 **REQUEST NO. 8:**

4 Admit that Vincent Garbitelli is a physician licensed in the state of New York.

5 **RESPONSE NO. 8:**

6 Admit.

7 **REQUEST NO. 9:**

8 Admit that Vincent Garbitelli authored the statement in support of the Complaint in this action.

9 **RESPONSE NO. 9:**

10 Admit.

11 **REQUEST NO. 10:**


12 Admit that Vincent Garbitelli received the medical records from Valley Hospital for Carol
13 Gaetano on or around August 9, 2016, as indicated in Exhibit "B".

14 **RESPONSE NO. 10:**

15 Deny.

16 DATED this 29th day of July, 2019.

17 TERRY LAW GROUP, PC

18 
19 ZOE TERRY, ESQ.
20 Nevada Bar No. 10900
21 1980 Festival Plaza Drive, Suite 300
22 Las Vegas, NV 89135
23 Attorney for Plaintiff
24 zoe@terrylawgroup.com

1
2 **CERTIFICATE OF SERVICE**

3 I hereby certify that on the 29th day of July, 2019 I served a true and correct copy of the
4 foregoing **VINCENT GARBITELLI, AS ADMINISTRATOR OF THE ESTATE OF CAROL A.**
5 **GAETANO, DECEASED'S RESPONSES TO DEFENDANT, WOMEN'S CARE CENTER OF**
6 **NEVADA'S FIRST SET OF REQUEST FOR ADMISSIONS**, addressed to the following counsel
7 of record at the following address(es), as follows:

8 **VIA U.S. MAIL:** by placing a true copy thereof enclosed in a sealed envelope with
9 postage thereon fully prepaid, addressed as indicated on service list below in the
10 United States mail at Las Vegas, Nevada.

11 **VIA FACSIMILE:** by causing a true copy thereof to be telecopied to the number
12 indicated on the service list below.

13 **VIA PERSONAL DELIVERY:** by causing a true copy thereof to be hand delivered
14 on this date to the addressee(s) at the address(es) set forth on the service list below.

15 **VIA E-SERVICE:** an electronic copy of the preceding document was concurrently served
16 upon opposing counsel via the Court's electronic service system.

17 Robert C. McBride, Esq.
18 Heather S. Hall, Esq.
19 CARROLL, KELLY, TROTTER, FRANZEN,
20 McBRIDE & PEABODY
21 8329 W. Sunset Road, Suite 260
22 Las Vegas, NV 89113
23 rcmcbride@cktfmlaw.com
24 hshall@cktfmlaw.com
25 Attorneys for Defendants

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An employee of TERRY LAW GROUP, PC

EXHIBIT “G”

EXHIBIT “G”

**EIGHTH JUDICIAL DISTRICT COURT
CLARK COUNTY, NEVADA
FAMILY COURT COVER SHEET**

P-16-087691-E

CASE NO. _____ (To be assigned by the Clerk's Office)

Do you or any other party in this case (including any minor child) have any other current case(s) or past case(s) in the Family Court or Juvenile Court in Clark County?

☐ YES ☒ NO

If yes, complete the other side of this form

PARTY INFORMATION (Please Print)

Plaintiff/Petitioner		Defendant/Respondent/Co-Petitioner/Ward/Decedent	
Last Name: <u>Lowe</u>		Last Name: <u>Garcia</u>	
First Name: <u>Aaron</u>	Middle Name: <u>Turley</u>	First Name: <u>Carol</u>	Middle Name: <u>A.</u>
Home Address: <u>4011 Meadows Ln #102</u>		Home Address: _____	
City, State, Zip: <u>Las Vegas, NV 89107</u>		City, State, Zip: _____	
Mailing Address: _____		Mailing Address: _____	
City, State, Zip: _____		City, State, Zip: _____	
Phone #: _____	Date of Birth: _____	Phone #: _____	Date of Birth: _____
Attorney Information		Attorney Information	
Name: <u>Bryan A Lowe</u>	Bar No: <u>1322</u>	Name: _____	Bar No: _____
Address: <u>4011 Meadows Ln #102</u>		Address: _____	
City, State, Zip: <u>Las Vegas, NV 89107</u>		City, State, Zip: _____	
Phone #: <u>702-259-0002</u>		Phone #: _____	

(Check one box only for the type of case being filed with this cover sheet)

DOMESTIC	MISC. DOMESTIC RELATIONS	GUARDIANSHIP	PROBATE
Marriage Dissolution <input type="checkbox"/> Annulment <input type="checkbox"/> Divorce - No minor child(ren) <input type="checkbox"/> Divorce - With minor child(ren) <input type="checkbox"/> Foreign Decree <input type="checkbox"/> Joint Petition - No minor child(ren) <input type="checkbox"/> Joint Petition - With minor child(ren) <input type="checkbox"/> Separate Maintenance	<input type="checkbox"/> Adoption - Minor <input type="checkbox"/> Adoption - Adult <input type="checkbox"/> Mental Health <input type="checkbox"/> Name Change <input type="checkbox"/> Paternity <input type="checkbox"/> Permission to Marry <input type="checkbox"/> Temporary Protective Order (TPO) <input type="checkbox"/> Termination of Parental Rights <input type="checkbox"/> Child Support/Custody <input type="checkbox"/> Other (Identify) _____	Guardianship of an Adult <input type="checkbox"/> Person <input type="checkbox"/> Estate <input type="checkbox"/> Person and Estate Guardianship of a Minor <input type="checkbox"/> Person <input type="checkbox"/> Estate <input type="checkbox"/> Person and Estate <input type="checkbox"/> Guardianship Trust	<input type="checkbox"/> Summary Administration <input checked="" type="checkbox"/> General Administration <input type="checkbox"/> Special Administration <input type="checkbox"/> Set Aside Estates <input type="checkbox"/> Trust/Conservatorships <input type="checkbox"/> Individual Trustee <input type="checkbox"/> Corporate Trustee <input type="checkbox"/> Other Probate
MISC. JUVENILE RELATIONS <input type="checkbox"/> Emancipation	DA - CHILD SUPPORT/MAINTENANCE <input type="checkbox"/> DA - UIFSA <input type="checkbox"/> DA - Child Support In State		

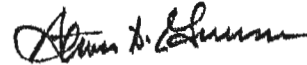
List children involved in this case (If more than 3 children, please enter the information on the reverse side)

1.	2.	3.	4.	5.
First Name	Last Name	Middle Name	Date of Birth	Relationship

Bryan A Lowe
Printed Name of Preparer

Bryan Lowe
Signature of Preparer

3-1-16
Date



CLERK OF THE COURT

PETJ
Bryan A. Lowe, Esq.
Nevada Bar No. 1322
BRYAN A. LOWE & ASSOCIATES
PROFESSIONAL LAW CORPORATION
4011 Meadows Lane #102
Las Vegas, NV 89107
(702) 259-0002
Fax: (702) 259-7774
office@bryanalow.com
Attorney for Petitioners

DISTRICT COURT

CLARK COUNTY, NEVADA

In the Matter of the Estate of:

CAROL A. GAETANO,

Deceased.

Case No.: P-16-087691-E

Dept. No.: 26

Date of Hearing:

Time of Hearing: 9:30 a.m.

PETITION FOR ISSUANCE OF LETTERS OF CO-ADMINISTRATION

Petitioners, VINCENT GARBITELLI and AARON TURLEY LOWE, by and through their attorney, Bryan A. Lowe, Esq. of the law firm Bryan A. Lowe & Associates Professional Law Corporation, respectfully represents to the Court as follows:

1. Carol A. Gaetano, (the "Decedent") died on or about January 17, 2016, in Las Vegas, Clark County, Nevada, and, at the time of her death, was a resident of same. A certified copy of the Decedent's Death Certificate is attached hereto and made a part hereof, as Exhibit "A".

2. At the date of her death, Decedent owned property located in Las Vegas, County of Clark, State of Nevada.

3. Petitioners believe the Decedent died intestate.

4. Vincent Garbitelli is the cousin of the Decedent, a resident of the State of New York and is competent and capable and consents to act as Co-Administrator of the Estate. Petitioner's address is P.O. Box 267, Williston Park, NY 11596. Petitioner has never been convicted of a felony.

1 5. Aaron Turley Lowe, is a resident of the State of Nevada and is competent and
2 capable and consents to act as Co-Administrator of the Estate. Petitioner's address is 4011
3 Meadows Lane, Suite 102, Las Vegas, NV 89107. Petitioner has never been convicted of a
4 felony.

5 6. The heirs, next of kin, legatees and devisees of the Decedent, have each signed a
6 Nomination and Consent. Said Nominations and Consents nominated Vincent Garbitelli and
7 Aaron Turley Lowe as Co-Administrators of Decedent's estate. Said Nominations and Consents
8 will be filed on or before the hearing date for said Petition for Issuance of Letters of Co-
9 Administration.

10 7. The names, addresses and residences of the heirs, next of kin, legatees and
11 devisees of the Decedent, so far as are known to the Petitioner, are as follows:

<u>Name and Address</u>	<u>Relationship</u>	<u>Age</u>
Vincent Garbitelli P.O. Box 267 Williston Park, NY 11596	Cousin	Adult
John Garbitelli c/o Vincent Garbitelli P.O. Box 267 Williston Park, NY 11596	Cousin	Adult
Anne Repecki c/o Vincent Garbitelli P.O. Box 267 Williston Park, NY 11596	Cousin	Adult
William Morea c/o Vincent Garbitelli P.O. Box 267 Williston Park, NY 11596	Cousin	Adult
John Granelli c/o Vincent Garbitelli P.O. Box 267 Williston Park, NY 11596	Cousin	Adult
Louise Perillo c/o Vincent Garbitelli P.O. Box 267 Williston Park, NY 11596	Cousin	Adult

Annette Valenzano
c/o Vincent Garbitelli
P.O. Box 267
Williston Park, NY 11596

Cousin

Adult

No spouse, children, parents, siblings, grandparents, aunts or uncles

8. The character and value of the property of the estate is unknown at this time.

9. The names of the Co-Administrators for whom Letters of Administration are prayed are the Petitioners, Vincent Garbitelli and Aaron Turley Lowe.

WHEREFORE, your Petitioners pray:

A. That a time be appointed for hearing and that all interested persons be duly notified to appear at the time appointed;

B. That Letters of Co-Administration may be issued to your Petitioners as Co-Administrators of the Estate, without bond, and with all funds received regarding the Estate are to be deposited into the Bryan A Lowe & Associates Client Trust Account. Further any Estate costs incurred by Bryan A Lowe & Associates shall be reimbursed from said funds upon Courts approval;

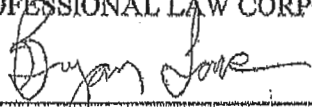
C. And for such other and further relief as to the Court may seem just and proper in the premises.

DATED this 26th day of February, 2016.


VINCENT GARBITELLI


AARON TURLEY LOWE

BRYAN A LOWE & ASSOCIATES
PROFESSIONAL LAW CORPORATION


Bryan A Lowe, Esq.
Nevada Bar No. 1322
4011 Meadows Lane, Suite 102
Las Vegas, Nevada 89107
Attorney for Petitioners

State of Vermont
Orange County
At Randolph, this 26th day of FEBRUARY A.D. 2016,
personally appeared VINCENT B. GARBITELLI
and acknowledged this instrument by HIS sealed and
subscribed, to be HIS free act and deed. Before
me, E. Anna Oakes Notary Public
My Commission Expires: 02-10-2019

1 VERIFICATION

2 STATE OF VT }
3 COUNTY OF Orange } ss

4
5 VINCENT GARBITELLI, being first duly sworn, under penalty of perjury, deposes and
6 says:

7 I am the Petitioner in the above-entitled action; I have read the foregoing PETITION
8 FOR ISSUANCE OF LETTERS OF CO-ADMINISTRATION; and I know the contents thereof;
9 the same is true of my own knowledge, except for those matters therein contained stated upon
10 information and belief, and as to those matters I believe them to be true.

11 Vincent Garbitelli
12 VINCENT GARBITELLI

13 SUBSCRIBED and SWORN to before me

14 this 26th day of February, 2016.

15 E. Ann LaFollette
16 NOTARY PUBLIC in and for said
17 County and State EXPIRE: 02-10-2019

18 STATE OF VERMONT
19 COUNTY OF ORANGE
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VERIFICATION


STATE OF NEVADA }
COUNTY OF CLARK } ss

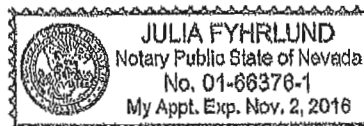
AARON TURLEY LOWE, being first duly sworn, under penalty of perjury, deposes and says:

I am the Petitioner in the above-entitled action; I have read the foregoing PETITION FOR ISSUANCE OF LETTERS OF CO-ADMINISTRATION; and I know the contents thereof; the same is true of my own knowledge, except for those matters therein contained stated upon information and belief, and as to those matters I believe them to be true.


AARON TURLEY LOWE

SUBSCRIBED and SWORN to before me
this 1st day of MARCH, 2016.


NOTARY PUBLIC in and for said
County and State



EXHIBIT

EXHIBIT "A"

STATE OF NEVADA

CERTIFICATION OF VITAL RECORD

DEPARTMENT OF HEALTH AND HUMAN SERVICES DIVISION OF PUBLIC AND BEHAVIORAL HEALTH VITAL STATISTICS

CASE FILE NO. 3873913

CERTIFICATE OF DEATH

2016002358

STATE FILE NUMBER

TYPE OR
PRINT IN
PERMANENT
BLACK INK

DECEDENT

IF DEATH
OCCURRED IN
INSTITUTION SEE
HANDBOOK
REGARDING
COMPLETION OF
RESIDENCE
ITEMS

PARENTS

DISPOSITION

TRADE CALL

CERTIFIER

REGISTRAR

CAUSE OF
DEATH

CONDITIONS IF
ANY WHICH
GAVE RISE TO
IMMEDIATE
CAUSE
BY STATING THE
UNDERLYING
CAUSE LAST

1a. DECEASED-NAME (FIRST,MIDDLE,LAST,SUFFIX) Carol A GAETANO				2. DATE OF DEATH (Mo/Day/Year) January 17, 2016		3a. COUNTY OF DEATH Clark	
3b. CITY, TOWN, OR LOCATION OF DEATH Las Vegas		3c. HOSPITAL OR OTHER INSTITUTION-Name (If not other, give street and No.) Valley Hospital Medical Center		3d. If Hosp. or Inst. Indicate D.O.A./OP/Emer. Rm. Inpatient (Specify) Inpatient		4. SEX Female	
5. RACE White (Specify)		6. Hispanic Origin? Specify No/Non-Hispanic		7a. AGE Last birthday (Years) 72		7b. UNDER 1 YEAR MO'S DAYS HOURS MINS	
8. DATE OF BIRTH (Mo/Day/Yr) October 14, 1943		9a. STATE OF BIRTH (If not US/CA, name country) New York		9b. CITIZEN OF WHAT COUNTRY United States		10. EDUCATION 10	
11. MARITAL STATUS (Specify) Widowed		12. SURVIVING SPOUSE'S NAME (Last name prior to first marriage)		13. SOCIAL SECURITY NUMBER		14a. USUAL OCCUPATION (Give Kind of Work Done During Most of)	
14b. KIND OF BUSINESS OR INDUSTRY Casino		15. Ever in US Armed Forces? No		15a. RESIDENCE - STATE Nevada		15b. COUNTY Clark	
15c. CITY, TOWN OR LOCATION Las Vegas		15d. STREET AND NUMBER 4814 Monterey Ave		15e. INSIDE-CITY Limits (Specify Yes or No) No		16. FATHER/PARENT - NAME (First Middle Last Suffix) Giacomo ARBITELLA	
17. MOTHER/PARENT - NAME (First Middle Last Suffix) Mary KOPENITS		18a. INFORMANT-NAME (Type or Print) Vincent GARBITELLI		18b. MAILING ADDRESS (Street or R.F.D. No, City or Town, State, Zip) P O Box 267 Williston Park, New York 11596			
19a. BURIAL, CREMATION, REMOVAL, OTHER (Specify) Cremation		19b. CEMETERY OR CREMATORY - NAME Hiles Crematory		19c. LOCATION City or Town State Henderson Nevada 89011			
20a. FUNERAL DIRECTOR - SIGNATURE (Of Person Acting as Such) HEATHER SPARKS		20b. FUNERAL DIRECTOR LICENSE NUMBER 778		20c. NAME AND ADDRESS OF FACILITY Davis Funeral Home and Memorial Park 6200 S Eastern Las Vegas NV 89119			
TRADE CALL - NAME AND ADDRESS							
21a. To the best of my knowledge, death occurred at the time, date and place and due to the cause(s) stated. (Signature & Title) TIMOTHY DUTRA M.D. SIGNATURE AUTHENTICATED							
21b. DATE SIGNED (Mo/Day/Yr) February 12, 2016		21c. HOUR OF DEATH 15:44		22a. DATE SIGNED (Mo/Day/Yr) January 17, 2016		22b. HOUR OF DEATH 15:44	
21d. NAME OF ATTENDING PHYSICIAN IF OTHER THAN CERTIFIER (Type or Print)		23a. NAME AND ADDRESS OF CERTIFIER (PHYSICIAN, ATTENDING PHYSICIAN, MEDICAL EXAMINER, OR CORONER) (Type or Print) Timothy Dutra M.D. 1704 Pinto Lane Las Vegas, NV 89106					
23b. LICENSE NUMBER RI13502		24a. REGISTRAR (Signature) NANCY BARRY SIGNATURE AUTHENTICATED		24b. DATE RECEIVED BY REGISTRAR (Mo/Day/Yr) February 15, 2016		24c. DEATH DUE TO COMMUNICABLE DISEASE YES <input type="checkbox"/> NO <input checked="" type="checkbox"/>	
25. IMMEDIATE CAUSE (ENTER ONLY ONE CAUSE PER LINE FOR (a), (b), AND (c).) Multi-organ Failure Due To Septic Shock							
25a. DUE TO, OR AS A CONSEQUENCE OF: Peritoneal Carcinomatosis, Status Post Laparoscopy And Subsequent Ileocectomy							
25b. DUE TO, OR AS A CONSEQUENCE OF: Low-grade Papillary Serous Carcinoma With Psammomatous Calcifications							
25c. DUE TO, OR AS A CONSEQUENCE OF:							
PART II OTHER SIGNIFICANT CONDITIONS-Conditions contributing to death but not resulting in the underlying cause given in Part I.							
26a. AUTOPSY (Specify Yes or No) Yes		26b. WAS CASE REFERRED TO CORONER (Specify Yes or No) Yes		27. INJURY AT WORK (Specify Yes or No)			
28a. ADD. SUICIDE; HOM. UNDET. OR PENDING INVEST. (Specify) UNDET.		28b. DATE OF INJURY (Mo/Day/Yr)		28c. HOUR OF INJURY		28d. DESCRIBE HOW INJURY OCCURRED	
28e. INJURY AT WORK (Specify Yes or No)		28f. PLACE OF INJURY-At home, farm, street, factory, office building, etc. (Specify)		28g. LOCATION STREET OR R.F.D. No.		28h. CITY OR TOWN STATE	

LOCAL REGISTRAR

"CERTIFIED TO BE A TRUE AND CORRECT COPY OF THE DOCUMENT ON FILE WITH THE REGISTRAR OF VITAL STATISTICS, STATE OF NEVADA." This copy was issued by the Southern Nevada Health District from State certified documents authorized by state Board of Health pursuant to NRS 440.175.

VRS-Rvr20120523a



228452

DATE ISSUED:

FEB 18 2016

Registrar of Vital Statistics

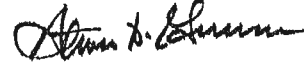
By *Mary Wiber*

This copy not valid unless prepared on watermarked security paper displaying date, seal and signature of Registrar.
SOUTHERN NEVADA HEALTH DISTRICT • P.O. Box 3902 • Las Vegas, NV 89127 • 702-759-1010 • Tax ID # 88-0151573



EXHIBIT “H”

EXHIBIT “H”



CLERK OF THE COURT

PET
Bryan A Lowe, Esq.
Nevada Bar No. 1322
BRYAN A. LOWE & ASSOCIATES
PROFESSIONAL LAW CORPORATION
4011 Meadows Lane #102
Las Vegas, NV 89107
(702) 259-0002
Fax: (702) 259-7774
office@bryanalow.com
Attorney for Petitioners

DISTRICT COURT

CLARK COUNTY, NEVADA

In the Matter of the Estate of:

CAROL A. GAETANO,

Deceased.

Case No.: P-16-087691-E

Dept. No.: 26

Date of Hearing:

Time of Hearing: 9:30 a.m.

**PETITION TO CONVERT LETTERS OF SPECIAL ADMINISTRATION TO LETTERS OF
CO-ADMINISTRATION WITH WILL ANNEXED; AND
PETITION FOR PROBATE OF WILL, AND ISSUANCE OF LETTERS OF
CO-ADMINISTRATION WITH WILL ANNEXED**

COME NOW, VINCENT GARBITELLI and AARON TURLEY LOWE ("Petitioners") by and through their attorney, Bryan A Lowe, Esq. of the law firm Bryan A Lowe & Associates Professional Law Corporation, and petition this Court to admit the Last Will and Testament of CAROL GAETANO ("Decedent") to probate and further to convert the Letters of Special Administration issued in this matter to Letters Co-Administration with Will Annexed under General Administration, and in support hereof, represent to this Court as follows:

1. The Decedent died on January 17, 2016, in Clark County, Nevada. A certified copy of the Decedent's Death Certificate is on file herein.

2. The Decedent was, at the time of her death, a resident of County of Clark, State of Nevada, and her estate consists of certain real and personal property.

3. The Decedent died testate; the original Will, dated November 9, 2009, has been lodged with the Court Clerk and a copy is attached hereto and made a part hereof, as Exhibit "A".

...

1 4. Dominick Di Gaetano, the Decedent's brother-in-law, is named as the Executor in the
2 Will, however, Dominick Di Gaetano has declined to act as said Executor. A copy of Mr. Gaetano's
3 Declination to Serve as Executor is attached hereto and made a part hereof, as Exhibit "B".

4 5. Cheri Dahl, the Decedent's friend, is named as the alternate Executor in the Will,
5 however, Cheri Dahl has declined to act as said Executor. A copy of Ms. Dahl's Declination to Serve as
6 Executor is attached hereto and made a part hereof, as Exhibit "C".

7 6. Vincent Garbitelli is the cousin of the Decedent, a resident of the State of New York and
8 is competent and capable and consents to act as Co-Administrator With Will Annexed of the Estate.
9 Petitioner's address is P.O. Box 267, Williston Park, NY 11596. Petitioner has never been convicted of a
10 felony.

11 7. Aaron Turley Lowe, is a resident of the State of Nevada and is competent and capable
12 and consents to act as Co-Administrator With Will Annexed of the Estate. Petitioner's address is 4011
13 Meadows Lane, Suite 102, Las Vegas, NV 89107. Petitioner has never been convicted of a felony.

14 8. Dominick Di Gaetano and Cheri Dahl, have each signed a Nomination and Consent. Said
15 Nominations and Consents nominated Vincent Garbitelli and Aaron Turley Lowe as Co-Administrators
16 With Will Annexed of Decedent's estate. Said Nominations and Consents are attached hereto and made a
17 part hereof, as Exhibit "D" and Exhibit "E".

18 9. The names, addresses and residences of the heirs, next of kin, legatees and devisees of the
19 Decedent, so far as are known to the Petitioner, are as follows:

<u>Name and Address</u>	<u>Relationship</u>	<u>Age</u>
Peter Kopenitz 5028 Las Palomas Place Elkton, FL 32033	Uncle	Adult
Steve Kopenitz 282 Rose Branch Street Johnstown, PA 15909	Uncle	Adult
Vincent Garbitelli P.O. Box 267 Williston Park, NY 11596	Cousin	Adult

1	John Garbitelli	Cousin	Adult
2	c/o Vincent Garbitelli		
	P.O. Box 267		
3	Williston Park, NY 11596		
4	Anne Repecki	Cousin	Adult
5	c/o Vincent Garbitelli		
	P.O. Box 267		
6	Williston Park, NY 11596		
7	William Morea	Cousin	Adult
8	c/o Vincent Garbitelli		
9	P.O. Box 267		
10	Williston Park, NY 11596		
11	John Granelli	Cousin	Adult
12	c/o Vincent Garbitelli		
13	P.O. Box 267		
14	Williston Park, NY 11596		
15	Louise Perillo	Cousin	Adult
16	c/o Vincent Garbitelli		
17	P.O. Box 267		
18	Williston Park, NY 11596		
19	Annette Valenzano	Cousin	Adult
20	c/o Vincent Garbitelli		
21	P.O. Box 267		
22	Williston Park, NY 11596		
23	Dominick Di Gaetano	Brother-in-law	Adult
24	c/o Donna McClean		
25	28708 Fox Tail Way		
26	Highland, CA 92346		
27	Cheri Dahl	Friend	Adult
28	P.O. Box 438		
	Logandale, NY 89021		
	Evie Harris	Friend	Adult
	Address Unknown		
	Margie Ligett	Friend	Adult
	Address Unknown		
	No spouse, children, parents, siblings, or grandparents		
	10. The character and value of the property of the estate is unknown at this time.		
	11. On or about May 6, 2016, this Court entered an order appointing Tamara Newsom as		
	Special Administrator of the Decedent's estate.		

1 WHEREFORE, your Petitioners pray:

2 A. That a time be appointed for hearing and that all interested persons be duly notified to
3 appear at the time appointed;

4 B. That the Letters of Special Administration issued to Tamara Newsom be revoked;

5 C. That said Will may be admitted to probate, and that Letters of Co-Administration With
6 Will Annexed may be issued to your Petitioners as Co-Administrators With Will Annexed of the Estate,
7 without bond, and with all funds received regarding the Estate are to be deposited into the Bryan A Lowe
8 & Associates Client Trust Account. Further any Estate costs incurred by Bryan A Lowe & Associates
9 shall be reimbursed from said funds upon Courts approval;

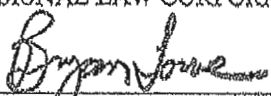
10 D. And for such other and further relief as to the Court may seem just and proper in the
11 premises.

12 DATED this 24th day of May, 2016.

13
14 
15 VINCENT GARBITELLI

16
17 
18 AARON TURLEY LOWE

19 BRYAN A LOWE & ASSOCIATES
20 PROFESSIONAL LAW CORPORATION

21 
22 Bryan A. Lowe, Esq.
23 Nevada Bar No. 1322
24 4011 Meadows Lane, Suite 102
25 Las Vegas, Nevada 89107
26 Attorney for Petitioners
27
28

VERIFICATION

STATE OF NY }
COUNTY OF NASSAU } ss

VINCENT GARBITELLI, being first duly sworn, under penalty of perjury, deposes and says:

I am the Petitioner in the above-entitled action; I have read the foregoing PETITION TO CONVERT LETTERS OF SPECIAL ADMINISTRATION TO LETTERS OF CO-ADMINISTRATION WITH WILL ANNEXED AND PETITION FOR PROBATE OF WILL, AND ISSUANCE OF LETTERS OF CO-ADMINISTRATION WITH WILL ANNEXED; and I know the contents thereof; the same is true of my own knowledge, except for those matters therein contained stated upon information and belief, and as to those matters I believe them to be true.


VINCENT GARBITELLI

SUBSCRIBED and SWORN to before me

this 24 day of May, 2016.


NOTARY PUBLIC in and for said
County and State


RODNEY JEAN-BAPTISTE
Notary Public, State of New York
Qualified In Nassau County
Reg. #01JE6261009
My Commission Expires 05-07-2020

VERIFICATION

STATE OF NEVADA }
COUNTY OF CLARK } ss

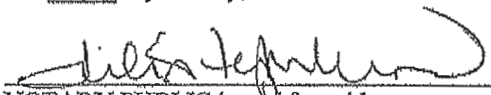
AARON TURLEY LOWE, being first duly sworn, under penalty of perjury, deposes and says:

I am the Petitioner in the above-entitled action; I have read the foregoing PETITION TO CONVERT LETTERS OF SPECIAL ADMINISTRATION TO LETTERS OF CO-ADMINISTRATION WITH WILL ANNEXED AND PETITION FOR PROBATE OF WILL, AND ISSUANCE OF LETTERS OF CO-ADMINISTRATION WITH WILL ANNEXED; and I know the contents thereof; the same is true of my own knowledge, except for those matters therein contained stated upon information and belief, and as to those matters I believe them to be true.


AARON TURLEY LOWE

SUBSCRIBED and SWORN to before me

this 25th day of May, 2016.


NOTARY PUBLIC in and for said
County and State

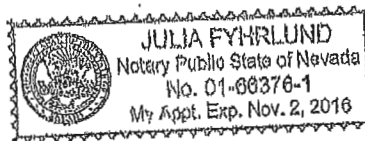


EXHIBIT "A"

Last Will and Testament

I, Carol Haetan of the City of Las Vegas
County of Clark, State of Nevada

being of sound mind, and not acting under duress, menace, fraud, or undue influence of any person do hereby make, publish and declare this instrument my last Will and Testament and do hereby revoke any and all other Wills and Codicils heretofore made by me.

FIRST: I order and direct that my just debts and funeral expenses, expenses for administration of my estate and any inheritance, State or Federal taxes upon said estate, except those, if any, which are secured by mortgage or deed of trust, shall be paid as soon after my death as may be practical.

SECOND: I am a unmarried person. My spouse is N/a and
N/a are all my children, either natural or adopted.

THIRD: I nominate my spouse as Guardian of my minor children. In the event that my spouse shall predecease me or fails to serve as such Guardian, then I nominate and appoint

N/a Guardian of the person and property of my minor children. I further direct that no bond shall be required.

FOURTH: I hereby make the following specific bequests:

1. I leave Dominick Di Haetan's car I presently own
2. I leave Eric Harris & Cheri Dahl to divide between them all items inside & outside of home on Monterey Ave
3. My dog Heidi to Eric Harris or Margie Higgett

FIFTH: I hereby give, devise and bequeath all of the rest and residue of my estate, all property

over which I have power to dispose to Dominick Di Haetan.

SIXTH: I nominate and appoint Dominick Di Haetan as Executor of this will. In the event that the Executor named above shall predecease me or fails to serve as such Executor of this will, I nominate and appoint

Cheri Dahl as Executor. I further direct that no appointee hereunder shall be required to give any bond for the faithful performance of their duties.

SEVENTH: I hereby authorize my Executor to exercise all power, rights, discretion and duties deemed necessary for the proper administration and disposition of my estate.

I subscribe my name to this Will this 9th Day of Nov., 2009 at
Las Vegas, Nevada
City State

Carol Gaetano
Signature

On the day written below, Carol Gaetano
declared to us, the undersigned that this instrument, consisting of 2 pages, was
the Will of 11-9-2009

and requested us to act as witnesses to it. thereupon signed this Will in our presence, all of us being present at the same time. We now in presence and in the presence of each other subscribe our names as witnesses.

It is our belief that Carol Gaetano is of sound mind and under no constraint or undue influence whatsoever.

We declare under penalty of perjury that the foregoing is true and correct and that this

declaration was executed on NOV 9, 2009
at Citibank
2625 E Desert Inn Rd. LV, NV 89121

Alvin Loosen
Witness

2625 E Desert Inn Rd LV NV 89121
Address

David M. Johns
Witness

Citibank 2625 E Desert Inn
Las Vegas NV 89121
Address

Araceli Cleto
Witness

Citibank 2625 E Desert Inn
Las Vegas NV 89121
Address

EXHIBIT "B"

1 DOC
2 Bryan A Lowe, Esq.
3 Nevada Bar No. 1322
4 BRYAN A LOWE & ASSOCIATES
5 PROFESSIONAL LAW CORPORATION
6 4011 Meadows Lane #102
7 Las Vegas, NV 89107
8 (702) 259-0002
9 Fax: (702) 259-7774
10 office@bryanalow.com
11 Attorney for Petitioners

12 DISTRICT COURT
13 CLARK COUNTY, NEVADA

14 In the Matter of the Estate of

15 CAROL A. GAETANO,

16 Deceased.

17 } CASE NO. P-16-087691-E
18 } DEPT. NO. 26

19 DECLINATION TO SERVE AS EXECUTOR

20 1. On November 9, 2009, CAROL GAETANO executed a Last Will and Testament
21 (hereinafter "Will").

22 2. Pursuant to said Will, SIXTH, I nominate and appoint DOMINICK DI
23 GAETANO as Executor of this will. In the event that the Executor named above shall
24 predecease me or fails to serve as such Executor of this will, I nominate and appoint CHERI
25 DAHL as Executor. I further direct that no appointee hereunder shall be required to give any
26 bond for the faithful performance of their duties.

27 3. DOMINICK DI GAETANO declines his nomination and appointment as
28 Executor of the Will of CAROL GAETANO.

1 IN WITNESS WHEREOF DOMINICK DI GAETANO, hereby executes this Declaration
2 to Serve as Executor.

3
4 
5 DOMINICK DI GAETANO

6
7
8 A notary public or other officer completing this certificate verifies only the identity of the individual
9 who signed the document to which this certificate is attached, and not the truthfulness, accuracy, or
validity of that document.

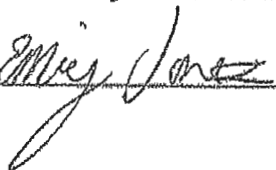
10 ACKNOWLEDGMENT

11 STATE OF CALIFORNIA)
12 COUNTY OF San Bernardino ss.

13 On the 17 day of May, 2016, before me,
14 Emily Jones, Notary Public, personally appeared DOMINICK DI
15 GAETANO, who proved to me on the basis of satisfactory evidence to be the person whose name is
16 subscribed to the within instrument, and acknowledged to me that he executed the same in his/authorized
capacity, and that by his/signature on the instrument, the person(s) or entity(ies) upon behalf of which the
person acted, executed the instrument.

17 I certify under PENALTY OF PERJURY under the laws of the State of California that the
18 foregoing paragraph is true and correct.

19 WITNESS my hand and official seal.

20 Signature 

(SEAL)



EXHIBIT "C"

1 DOC
2 Bryan A Lowe, Esq.
3 Nevada Bar No. 1322
4 BRYAN A LOWE & ASSOCIATES
5 PROFESSIONAL LAW CORPORATION
6 4011 Meadows Lane #102
7 Las Vegas, NV 89107
8 (702) 259-0002
9 Fax: (702) 259-7774
10 office@bryanalow.com
11 Attorney for Petitioners

12 DISTRICT COURT
13 CLARK COUNTY, NEVADA

14 In the Matter of the Estate of

15 CAROL A. GAETANO,

16 Deceased.

17 } CASE NO. P-16-087691-E
18 } DEPT. NO. 26

19 DECLINATION TO SERVE AS EXECUTOR

20 1. On November 9, 2009, CAROL GAETANO executed a Last Will and Testament
21 (hereinafter "Will").

22 2. Pursuant to said Will, SIXTH, I nominate and appoint DOMINICK DI
23 GAETANO as Executor of this will. In the event that the Executor named above shall
24 predecease me or fails to serve as such Executor of this will, I nominate and appoint CHERI
25 DAHL as Executor. I further direct that no appointee hereunder shall be required to give any
26 bond for the faithful performance of their duties.

27 3. CHERI DAHL declines her nomination and appointment as the alternate Executor
28 of the Will of CAROL GAETANO.

1 IN WITNESS WHEREOF CHERI DAHL, hereby executes this Declination to Serve as
2 Executor.

3
4 
5 CHERI DAHL

6
7 STATE OF NEVADA)
8 COUNTY OF CLARK) ss.

9 On this 20th day of May, 2016, before me, the undersigned, a Notary Public in and for
10 said County and State, personally appeared CHERI DAHL, who duly acknowledged to me that
11 she is authorized to sign the foregoing Declination to Serve as Executor, known to me to be the
12 person described herein and who executed the foregoing Declination to Serve as Executor freely
and voluntarily for the uses and purposes therein mentioned.

13 WITNESS my hand and official seal.

14
15 
16 NOTARY PUBLIC

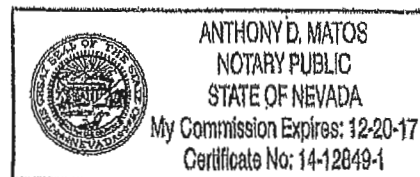


EXHIBIT "D"

1 NOM
2 Bryan A. Lowe, Esq.
3 Nevada Bar No. 1322
4 BRYAN A. LOWE & ASSOCIATES
5 PROFESSIONAL LAW CORPORATION
6 4011 Meadows Lane #102
7 Las Vegas, NV 89107
8 (702) 259-0002
9 Fax: (702) 259-7774
10 office@bryanalow.com
11 Attorney for Petitioners

12 DISTRICT COURT

13 CLARK COUNTY, NEVADA

14 In the Matter of the Estate of:

Case No.: P-16-087691-E
Dept. No.: 26

15 CAROL A. GAETANO,

16 Deceased.

17 NOMINATION AND CONSENT

18 STATE OF California)
19) ss.
20 COUNTY OF San Bernardino

21 I, DOMINICK DI GAETANO, having been first duly sworn upon my oath, according to
22 law, do swear and affirm:

23 1. I am the brother-in-law and a beneficiary of the Estate of Carol A. Gaetano (the
24 "Decedent").

25 2. The Decedent died on January 17, 2016, in Las Vegas, Nevada.

26 3. I do hereby nominate AARON TURLEY LOWE, who is a resident of Las Vegas,
27 County of Clark, Nevada, to act as Co-Administrator with Will Annexed of the Estate of Carol
28 A. Gaetano.

4. I do hereby nominate VINCENT GARBITELLI, who is a resident of New York,
to act as Co-Administrator with Will Annexed of the Estate of Carol A. Gaetano.

1 5. I do freely consent to their appointment as such Co-Administrators with Will
2 Annexed, and hereby request that AARON TURLEY LOWE and VINCENT GARBITELLI, be
3 appointed as such Co-Administrators with Will Annexed by the above-entitled Court.
4

5 DATED this 17 day of May, 2016.

6
7 By Dominick Di Gaetano
8 Dominick Di Gaetano
9

10 A notary public or other officer completing this certificate verifies only the identity of the individual who signed
11 the document to which this certificate is attached, and not the truthfulness, accuracy, or validity of that
12 document.

13 STATE OF CALIFORNIA)
14) ss.
15 COUNTY OF San Bernardino)

16 Subscribed and sworn to (or affirmed) before me on this 17 day of May, 2016,
17 DOMINICK DI GABTANO proved to me on the basis of satisfactory evidence to be the person(s) who appeared
18 before me.

19 WITNESS my hand and Official Seal.

20
21 Emily Jones
22 NOTARY PUBLIC
23
24
25
26
27
28



EXHIBIT "E"

1 NOM
2 Bryan A Lowe, Esq.
3 Nevada Bar No. 1322
4 BRYAN A LOWE & ASSOCIATES
5 PROFESSIONAL LAW CORPORATION
6 4011 Meadows Lane #102
7 Las Vegas, NV 89107
8 (702) 259-0002
9 Fax: (702) 259-7774
10 office@bryanalow.com
11 Attorney for Petitioners

7 DISTRICT COURT

8 CLARK COUNTY, NEVADA

10 In the Matter of the Estate of:

Case No.: P-16-087691-E

Dept. No.: 26

11 CAROL A. GAETANO,

12 Deceased.

13 NOMINATION AND CONSENT

14 STATE OF NEVADA)

15) ss.

16 COUNTY OF CLARK)

17 I, CHERI DAHL, having been first duly sworn upon my oath, according to law, do swear
18 and affirm:

19 1. I am a beneficiary of the Estate of Carol A. Gaetano (the "Decedent").
20 2. The Decedent died on January 17, 2016, in Las Vegas, Nevada.
21 3. I do hereby nominate AARON TURLEY LOWE, who is a resident of Las Vegas,
22 County of Clark, Nevada, to act as Co-Administrator with Will Annexed of the Estate of Carol
23 A. Gaetano.

24 4. I do hereby nominate VINCENT GARBITELLI, who is a resident of New York,
25 to act as Co-Administrator with Will Annexed of the Estate of Carol A. Gaetano.
26
27
28

1 5. I do freely consent to their appointment as such Co-Administrators with Will
2 Annexed, and hereby request that AARON TURLEY LOWE and VINCENT GARBITELLI, be
3 appointed as such Co-Administrators with Will Annexed by the above-entitled Court.

4 DATED this 20th day of May, 2016.

6
7 By: Cheri Dahl

8 Cheri Dahl

9 SUBSCRIBED and SWORN to before me
10 this 20th day of May, 2016.

11 Anthony D. Matos
12 NOTARY PUBLIC in and for said
13 County and State

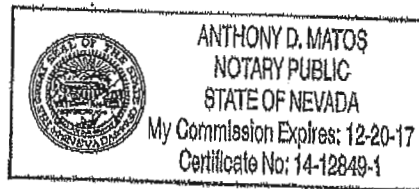
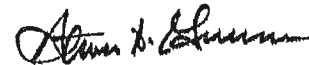


EXHIBIT “I”

EXHIBIT “I”



CLERK OF THE COURT

1 ORDER
2 Bryan A Lowe, Esq.
3 Nevada Bar No. 1322
4 BRYAN A LOWE & ASSOCIATES
5 PROFESSIONAL LAW CORPORATION
6 4011 Meadows Lane #102
7 Las Vegas, NV 89107
8 (702) 259-0002
9 Fax: (702) 259-7774
10 office@bryanalow.com
11 Attorney for Petitioners

7 DISTRICT COURT

8 CLARK COUNTY, NEVADA

9 In the Matter of the Estate of:

10 CAROL A. GAETANO,

11 Deceased.

Case No.: P-16-087691-E

Dept. No.: 26

Date of Hearing: July 1, 2016

Time of Hearing: 9:30 a.m.

12
13 **ORDER GRANTING PETITION TO CONVERT LETTERS OF SPECIAL**
14 **ADMINISTRATION TO LETTERS OF CO-ADMINISTRATION WITH WILL**
15 **ANNEXED; AND ORDER ADMITTING WILL TO PROBATE AND ISSUANCE OF**
16 **LETTER OF CO-ADMINISTRATION WITH WILL ANNEXED**

17 The Petition To Convert Letters Of Special Administration To Letters Of Co-
18 Administration With Will Annexed; And Petition For Probate Of Will, And Issuance Of Letters
19 Of Co-Administration With Will Annexed filed in this matter by Vincent Garbitelli and Aaron
20 Turley Lowe in the matter of the Estate of Carol A. Gaetano, deceased, having come on regularly
to be heard by the Court on the March 25, 2016, the Court finds:

- 21 1. Due and proper notice of the hearing has been given as required by law.
- 22 2. The above-named Decedent died on January 17, 2016, was a resident of the
23 County of Clark, State of Nevada, at the time of her death, and left an estate in Clark County,
24 Nevada that is subject to the jurisdiction of this Court.
- 25 3. The Decedent died testate leaving a Last Will and Testament dated November 9,
26 2009, that was duly executed and witnessed according to law and having been duly proven to the
27 satisfaction of the Court.
- 28

1 IT IS THEREFORE ORDERED, ADJUDGED AND DECREED:

2 A. That Decedent's Last Will and Testament dated November 9, 2009, is admitted to
3 probate.

4 B. That Letters of Special Administration issued in this matter to Tamara Newsom
5 are revoked.

6 C. That Vincent Garbitelli and Aaron Turley Lowe are appointed as Co-
7 Administrators With Will Annexed of the Estate of Carol A. Gaetano.

8 D. That Letters of Co-Administration With Will Annexed be issued to Petitioners
9 upon taking an oath of office as required by law, without bond, and with all funds received
10 regarding the Estate are to be deposited into the Bryan A Lowe & Associates Client Trust
11 Account. Further any Estate costs incurred by Bryan A Lowe & Associates shall be reimbursed
12 from said funds upon Court approval.

13 DATED this 15th day of July, 2016.

14
15 
16 DISTRICT JUDGE 

17 Submitted by:

18 BRYAN A LOWE & ASSOCIATES
19 PROFESSIONAL LAW CORPORATION

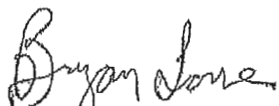
20 
21 Bryan A. Lowe, Esq.
22 Nevada Bar No. 1322
23 4011 Meadows Lane, Suite 102
24 Las Vegas, Nevada 89107
25 (702) 259-0002
26 Attorney for Petitioners
27
28

EXHIBIT “J”

EXHIBIT “J”

MRO
1000 Madison Avenue
Suite 100
Norristown, PA 19403
Ph: 888-252-4146
Fx: (610) 962-8421

Medical Records Transmittal

Date: 8/9/2016
Request Number: 13704287
Page Count: 7891

Your requested medical records are attached.

Patient Name: CAROL GAETANO
Medical Facility: Valley Hospital

Requester: Vincent Garbitelli, M.D.
Organization: Personal

Your reference number:

Thank you,
MRO
MROcorp.com

AUTHORIZATION TO USE AND DISCLOSE PROTECTED HEALTH INFORMATION

Initial here if requesting information from Valley Hospital Medical Center.
 Note: There will be a charge of \$.14 per page if source document is electronic or a charge of \$.16 per page if source document is paper for releases of PHI for all reasons other than continued patient care.

Initial here if requesting access to review original medical records.

☒ Initial here if requesting patient record to be provided in electronic format (CD) or secure e-mail.

☒ Patients are entitled to one (1) free Compact Disc (CD) containing radiology images/films/recordings. Any requests for additional copies will be subject to a \$10 fee per CD.

CAROL A. GAETANO 10/14/1992
 Patient Name at Time of Treatment Date of Birth

4814 MONTERREY AVE.
 Street Address

LAS VEGAS NV 89121
 City State Zip Code

argarbitelli@gmail.com
 Email

 Social Security Number

 Home Phone Number

 Work Phone Number

This document authorizes Valley Hospital Medical Center to use and disclose Protected Health Information (PHI) as described below. Uses and disclosures of PHI will be consistent with Nevada and Federal law concerning the privacy of PHI. Failure to provide all information requested will delay action on this Authorization.

- Person(s)/Organization(s) authorized to receive the PHI: ☐ Valley Hospital Medical Center ☐ Self
☒ Other: ADMINISTRATOR OF ESTATE - COURT ORDER
- Purpose of Requested Use or Disclosure: ☐ Cont. Care ☐ Insurance ☐ Attorney ☐ Personal
☒ Other: ADMINISTRATOR OF ESTATE - REWARDS BENEFIT
- Description of the information included in Use or Disclosure: Treatment date(s): DEC 2015 to JAN 2016
☐ Billing Record ☐ History and Physical ☐ Emergency Department
☒ All PHI in Medical Record (Complete Chart Copy) ☐ Operative Report ☐ Other (please specify):
☐ Radiology Images CD ☐ Radiology Report
☐ Discharge Summary ☐ Lab Reports/Pathology Reports
- By signing my initials next to the specific category of highly confidential information, I am authorizing Valley Hospital Medical Center to release the indicated type of information next to my initials pursuant to this Authorization from the treatment date(s) listed above.
VA HIV/AIDS VA Drug and Alcohol Information VA Genetic Information
VA Mental Health Information VA Sexually Transmitted Disease Information VA Tuberculosis Information
- This authorization will expire 1 year from the date of request unless otherwise specified here: _____ (date of expiration)

NOTICE OF RIGHTS AND OTHER INFORMATION:

- I understand that I have the right to revoke this authorization at any time. Such requests must be submitted in writing to the attention of Valley Hospital Medical Center, Health Information Management Department at 820 Shadow Lane, Las Vegas, Nevada, 89109. Phone: (702) 388-4591 Fax: (702) 388-4752. Cancellation of my authorization will be effective when Valley Hospital Medical Center receives my signed request, but it will not apply to the information that was used or disclosed prior to that date.
- I understand that refusal to sign this authorization will have no effect on my enrollment, eligibility for benefits, or the amount a third party payor pays for the health services I receive.
- I understand that the person or entity that receives this information may not be covered by the federal privacy regulations, in which case the information above may be redisclosed and no longer protected by these regulations. I also understand that the person I am authorizing to use and/or disclose the information may receive compensation for the use and/or disclosure.
- I have a right to receive a copy of this authorization. I may inspect or obtain a copy of the protected health information that I am being asked to use or disclose.

Signature of Patient Vincent Garbitelli, MD 7/15/16 ADMINISTRATOR
 Signature of Legal Representative Catherine Garbitelli 7/15/16 Relationship To Patient
 Witness DECEASED / JAN 17, 2016
 Reason Patient Unable to Sign

☐ I Will Pick Up PHI
☒ Mail PHI
☐ Please Fax PHI To Physician Indicated

☐ Patient received copy of authorization Staff Initials: _____



BAR CODE

RI1001

Valley
 Hospital Medical Center
 AUTHORIZATION TO USE AND DISCLOSE
 PROTECTED HEALTH INFORMATION

PATIENT IDENTIFICATION

MRO
 JUL 15 2016
 Initials: gar

Ramirez, Gabriela

From: Doctor Garbitelli <drgarbitelli@gmail.com>
Sent: Friday, July 15, 2016 1:42 PM
To: Ramirez, Gabriela
Subject: [External]Re: Valley Hospital Medical Records

This message was received from outside of UHS's network. Please proceed with caution when clicking any links, opening attachments or responding with sensitive information. If you have any questions please contact ReportSpam@uhsinc.com ASAP.

Dear Gaby,

Thank you very much for your help! The records for Carol Gaetano can be sent to:

Vincent Garbitelli, MD,
1506 West Street
Brookfield, Vermont 05036

Mail to:

I very much appreciate your promptness and courtesy.

Regards,
Dr. Garbitelli

On Fri, Jul 15, 2016 at 3:47 PM, Ramirez, Gabriela <Gabriela.Ramirez@uhsinc.com> wrote:

Gaby Ramirez

ROI Specialist/MRO

Health Information Management

Valley Hospital Medical Center

☎ Phone: [702-388-4542](tel:702-388-4542)

☎ Fax: [702-853-8389](tel:702-853-8389)

✉ Email: gabriela.ramirez@uhsinc.com

UHS of Delaware, Inc. Confidentiality Notice: This e-mail message, including any attachments, is for the sole use of the intended recipient(s) and may contain confidential and privileged information. Any unauthorized

CC Payment Receipt

Transaction Status:	Approved
Transaction Date and Time:	8/9/2016 5:02:57 PM
Transaction Reference No.:	720669
Approval Code:	0000698290
Order Number:	13704287
Charge Amount:	\$937.92
Credit Card Number:	XXXXXXXXXXXX4630
Credit Card Holder:	Vincent Garbitelli

EXHIBIT “K”

EXHIBIT “K”

Clark County Coroner
1704 Pinto Lane
Las Vegas, NV 89106
(702) 455-3210



AUTOPSY REPORT

Case Number: 16-00628

January 22, 2016

AUTOPSY REPORT

PATHOLOGIC EXAMINATION ON THE BODY OF

CAROL GAETANO

SIGNIFICANT ANATOMIC FINDINGS

- I. Peritoneal cavity.
 - A. Acute peritonitis, status post recent abdominal laparoscopy, followed by abdominal laparotomy with segmental resection of small bowel and placement of ileocolostomy (recent), pending reveal of medical records.
- II. Respiratory system.
 - A. Bilateral pulmonary congestion and edema.
 - B. Bilateral pulmonary parenchymal consolidation, consistent with acute respiratory distress syndrome due to systemic sepsis.
 - 1. Bilateral pleural effusions.
 - C. Early bronchopneumonia.
- III. Cardiovascular system.
 - A. Cardiac enlargement with four chamber dilatation.
 - B. Minimal coronary artery atherosclerosis.
 - C. Mild to moderate aortic atherosclerosis.
 - D. Anti-embolism filter in abdominal inferior vena cava.
- IV. Hepatobiliary system.
 - A. Status post cholecystectomy (remote).
- V. Female genital system.
 - A. Status post abdominal hysterectomy and bilateral salpingo-oophorectomy (remote).

*Dissemination is restricted.
Secondary dissemination of this document is prohibited.*

P - AR 000001

PET APPX0128

Clark County Coroner
1704 Pinto Lane
Las Vegas, NV 89106
(702) 455-3210



AUTOPSY REPORT

Case Number: 16-00628

OPINION

It is my opinion that this 72-year-old woman, Carol Gaetano, died as a result of multi-organ failure due to septic shock due to peritoneal carcinomatosis, status post laparoscopy and subsequent ileocelectomy due to low-grade papillary serous carcinoma with psammomatous calcifications. The decedent presented to a local emergency room complaining of abdominal pain, nausea, vomiting and diarrhea of three days' duration. The decedent was admitted to the hospital, and underwent a diagnostic laparoscopy, with the finding of diffuse carcinoma of the peritoneum. The decedent was discharged home, but returned to the emergency room that evening, complaining of worsening nausea, vomiting and abdominal pain. A CT scan of the abdomen showed intraperitoneal free air, and the decedent was admitted and taken to the operating room on the following day, undergoing an ileocolonic resection with end-ileostomy and G-tube placement, and wound vac closure. The surgical pathology diagnosis was low-grade serous carcinoma with abundant psammomatous calcifications, with tumor diffusely involving the serosa. The decedent had a history of total abdominal hysterectomy with bilateral oophorectomy for unknown indication approximately 20 years previously. Post-operatively the decedent remained ventilator-dependent, she became septic, including candidemia. She required vasopressor support. She developed multi-organ failure, with acute respiratory distress syndrome and acute tubular necrosis. Her condition continued to deteriorate, and death occurred approximately 5 weeks following admission to the hospital. Toxicological examination of postmortem heart blood showed fentanyl 59 ng/mL, norfentanyl 3.0 ng/mL, and midazolam 440 ng/mL. The blood levels of these medications are consistent with a critically ill patient on mechanical ventilation in an ICU setting. The manner of death in this case is determined to be undetermined, because review of the medical records and autopsy findings cannot determine whether the peritonitis was secondary to the peritoneal serosal carcinomatosis, or iatrogenic, incurred during the diagnostic laparoscopic examination.

*Dissemination is restricted.
Secondary dissemination of this document is prohibited.*

P - AR 000002

PET APPX0129

Clark County Coroner
1704 Pinto Lane
Las Vegas, NV 89106
(702) 455-3210




AUTOPSY REPORT

Case Number: 16-00628

CAUSE OF DEATH: It is my opinion that this 72-year-old woman, Carol Gaetano, died as a result of multi-organ failure due to septic shock due to peritoneal carcinomatosis, status post laparoscopy and subsequent ileocelectomy due to low-grade papillary serous carcinoma with psammomatous calcifications.

MANNER OF DEATH: UNDETERMINED.

 **DATE:** 2/12/16
Timothy F. Dutra, MD, PhD
Medical Examiner
Clark County, Nevada

TFD/kra/ay/amu

*Dissemination is restricted.
Secondary dissemination of this document is prohibited.*

P - AR 000003

PET APPX0130

EXHIBIT “L”

EXHIBIT “L”

Attached Result:

Referral: Patient: GAETANO, CAROL A
5266631

Annotation

System - 11/11/2015 11:18 AM
Unspecified abdominal pain

Name	Result	Ref. Range	Abnormal Flag
CT ABD/PELVIS W/ CONTRAST			N_A
Result Text			
ACCESSION #: 6777196 - CT OF THE ABDOMEN AND PELVIS WITH CONTRAST			

CLINICAL HISTORY: Abdominal pain.

TECHNIQUE: CT scan of the abdomen and pelvis with IV contrast.
Patient declined oral contrast.

COMPARISON: CT studies of the abdomen from March 2012 and July 2006.

FINDINGS: Lung bases are unremarkable. Mild diffuse diminished density of the liver, consistent with fatty infiltration. Moderate amount of hypodense peritoneal disease in the upper and midabdomen. This measures up to 3.4 cm in short axis in the left upper abdomen and up to 2.2 cm in short axis along the right aspect of liver. Multiple small peritoneal calcifications are also present in the abdomen and pelvis. A 2.2 cm anterior pelvic soft tissue calcification actually appears a little smaller than on previous study in 2012. No pathologic intestinal dilation. No acute kidney abnormality. There is a small simple cyst in the anterior-superior left kidney. The abdominal aorta is normal in caliber. The IVC appears normal. There are multiple diverticula in the sigmoid colon. The bladder is not distended. The uterus is not identified. The ovaries are not identified. There are mild degenerative changes in the spine.

IMPRESSION:

1. Interval development of multiple peritoneal hypodense lesions and peritoneal calcifications, consistent with diffuse metastatic peritoneal disease. This may represent ovarian carcinoma or perhaps other adenocarcinoma.
2. Mild fatty infiltration of liver.
3. Cholecystectomy.
4. Simple left renal cyst.
5. Small fat-containing intrapelvic ventral hernia (not mentioned above).

NOTE: PROVIDER NOTIFICATION SYSTEM IMPLEMENTED.

Page 2 of 4

12/08/2017 7:01PM (GMT-05:00)
KUSHNIR 000019

Transcribed: 11/11/2015 by rar
RESPROVADD Interface, Powerscribe 11/11/2015 7:30:21 PM
CONPROVADD Interface, Powerscribe 11/11/2015 7:30:21 PM
TRANSCRIBE Interface, Powerscribe 11/11/2015 7:30:22 PM
Interpreted By POLINER, ROBERT 11/12/2015 2:09:26 PM
FINALIZED POLINER, ROBERT 11/12/2015 2:09:26 PM

Progress Note

Patient: Gaetano, Carol A
Account Number: 42683
DOB: 10/14/1943 **Age:** 72 Y **Sex:** Female
Phone: 702-434-1590
Address: 4814 MONTERREY AVE, LAS VEGAS, NV-89121-6807

Provider: Christina L. Kushnir, MD**Date:** 11/24/2015**Subjective:****Chief Complaints:**

1. Peritoneal cancer. 2. referred by Carolyn Bushman.

HPI:genetic hpi:

72 Go F referred by Carolyn Bushman for peritoneal nodules. Pt states she has been having abdominal pain, +night sweats, +nausea +vomiting +abdominal discomfort over the past 12 months. denies SOB/cp/vaginal bleeding/change in bowel and bladder habits.

ct a/p: lung bases unremarkable

moderat amount of hypodense peritoneal lesions consistent with meastatic disease. LUQ 3.4cm mass 2.2cm right aspect of liver.

ROS:DERMATOLOGY:

no rash. no moles. no lumps. no dry or sensitive skin. no hives. no alopecia.

ENDOCRINOLOGY:

no fatigue. no excessive thirst. no excessive urination. no weight loss. no insomnia. no cold intolerance. no heat intolerance.

NEUROLOGY:

no headache. no neuropathy. no seizures. no insomnia. no memory loss. no dizziness. no gait abnormality.

OPHTHALMOLOGY:

no diminished vision. no eye irritation. no drainage from eyes. no blurring of vision. no seasonal eye sx. no dander related eye sx. no loss of vision.

RESPIRATORY:

no shortness of breath. no chest pain. no wheezing. no hoarseness.

ALLERGY:

no runny nose. no itchy eyes. no ear fullness. no sinus congestion. no nose bleed.

HEMATOLOGY/LYMPH:

no fatigue. no loss of appetite. no varicose veins. no easy bruising. no edema.

UROLOGY:

no difficulty urinating. no blood in urine. no frequent urination. no urinary incontinence. no nocturia. no Dysuria. no urinary tract obstruction.

LABORATORY:

no low ANC. no low platelets. no low hemoglobin. no low WBC. no elevated ALT. no elevated AST. no elevated alkaline phosphatase. no elevated creatinine. no proteinuria. no hypomagnesemia.

CONSTITUTIONAL:

no weight gain. no loss of appetite. no fever. no weakness. no breast feeding. no formula feeding. no weight loss. no night sweats.

ENT:

no cold. no cough. no hearing loss. no ringing in ears. no mucositis.

CARDIOLOGY:

no chest pain. no palpitations. no leg swelling. no dizziness. no shortness of breath. no varicose veins.

GASTROENTEROLOGY:

no nausea. no heartburn. no taste changes. no vomiting. no difficulty swallowing. no abdominal pain. no diarrhea. no constipation. no blood in stool.

MUSCULOSKELETAL:

no joint swelling. no joint pain. no leg cramps. no joint stiffness. no muscle pain.

PSYCHOLOGY:

no high stress level. no depression. no eating disorder. no mental or physical abuse. no anxiety.
FEMALE REPRODUCTIVE:
no heavy periods. no dyspareunia. no sexually active, monogamous. no infertility. no frequent yeast infections. no pelvic pain. no contraception. no vaginal bleeding. no post-menopausal bleeding. no prolapse. no itching. no abnormal vaginal discharge. no hot flashes.

Medical History: Htn, Depression, Hypercholesterol.

OB History: Gravida: 0. Para: 0.

Surgical History: tah, bso, cholecystectomy.

Family History:
none.

Social History: no Smoking Are you a: nonsmoker. no Recreational drug use. Alcohol: no,, none.

Medications: None

Allergies: N.K.D.A.

Objective:

Vitals: Temp 97.5, HR 79, BP 166/86, Ht 67, Wt 213.0, BMI 33.36.

Examination:

General Examination:

General appearance: NAD, obese, pleasant. Neck, thyroid: no supraclav. Heart: NSR, normal S1S2. Lungs: clear to auscultation, no wheezes or crackles. Abdomen soft, NT/ND, BS present, no guarding or rigidity. nodule palpated on rlq. non-tender. Extremities: normal ROM, no clubbing, no edema. Pelvic absent cervix.
ned..

Assessment:

Assessment:

1. Disorder of peritoneum, unspecified - K66.9
2. Essential (primary) hypertension - I10
3. Other obesity due to excess calories - E66.09

Plan:

1. Others

- Notes: 1. will schedule for a diagnostic laparoscopy, abdominal biopsies. risks and benefits were discussed including death.
2. pt does not know if she wants to go through a tumor debulking. therefore, will obtain a diagnosis and go from there.

Provider: Christina L Kushnir, MD

Patient: Gaetano, Carol A **DOB:** 10/14/1943 **Date:** 11/24/2015

VHM- Valley Hospital Medical Center
820 Shadow Lane
Las Vegas, NV 89108-4184

Patient: GAETANO, CAROLA
MRN: 1
FIN:
DOB/Sex: 10/14/1943 / Female
Patient Room: VHM ABC

Admit: 12/9/2015
Disch: 12/9/2015 Disch Time: 10:47 PST
Attending: Kushnir MD, Christina
Copy To: n/a

Operative Record

DOCUMENT NAME:
SERVICE DATE/TIME:
RESULT STATUS:
PERFORM INFORMATION:
SIGN INFORMATION:

Operative Reports
12/8/2015 08:38 PST
Auth (Verified)
Kushnir MD, Christina (12/9/2015 08:42 PST)
Kushnir MD, Christina (12/9/2015 08:42 PST)

Indication for Surgery

1. suspect primary peritoneal carcinoma
2. ct scan shows diffuse peritoneal carcinomatosis
3. weightloss

Preoperative Diagnosis

1. suspect primary peritoneal carcinoma
2. ct scan shows diffuse peritoneal carcinomatosis
3. weightloss

Postoperative Diagnosis

same; carcinoma

Operation

1. diagnostic laparoscopy
2. abdominal biopsy

Surgeon(s)

Kushnir MD, Christina (Surgeon)

Assistant

Gordon, LEE
Shao, Joo (resident)

Anesthesia Type and Anesthesiologist

General
Arts, Adam A MD (Attending Anesthesiologist)

Estimated Blood Loss

10.0 mL

Urine Output

see anesthesia note

Findings

1. diffuse carcinoma on the peritoneum
2. mesentery involvement
3. diffuse carcinomatosis on the small bowel

Specimen(s)

1. right colic gutter
2. left pelvic sidewall
3. right pelvic sidewall
4. anterior abdominal wall

Transcription

Print Date/Time 12/9/2015 22:43 PST

Report Request ID: 123937102

Page 1 of 2

12/08/2017 7:01PM (GMT-05:00)
KUSHNIR 000046

PET APPX0136

VHM- Valley Hospital Medical Center

Patient: GAETANO, CAROLA

MRN: 12792015

FIN:

Admit: 12/9/2015

Disch: 12/9/2015

Attending: Kushnir MD, Christina

Operative Record

Comorbidities

none apparent

Technique

Patient was taken to the operating room where general anesthesia was found to be adequate she was prepped and draped in normal sterile fashion in dorsal lithotomy position with legs in yellow stirrups after time out was done and incision was made below the left costal margin with an 11 blade Versaco needle was inserted and intra-abdominal pressure was 18 despite repositioning the Versaco needle of the pressures were still very elevated at this time we decided to move forward with a Hassan technique since incision was made above the umbilicus with an 11 blade Army-Navy's were used to dissect through subcutaneous tissue and to the level of the fascia was reached Coker's are placed on the fascia and Army-Navy's were then placed in the fascia and the peritoneum was identified and grasped to tonally incised with Metzenbaum scissors at this time a 12 trocar was inserted and high flow gas was initiated patient was placed in chest 30 10 scope was inserted and upper abdomen is inspected there is diffuse disease throughout the entire peritoneum liver was not visible as it was obscured with peritoneal disease the small bowel was diffusely involved with disease mesentery was also involved return towards the pelvis and patient was placed in Trendelenburg pelvis was obliterated by loops of small bowel that were diffusely involved with tumor left and right pelvic sidewalls were diffusely involved with tumor as well and the anterior abdominal wall had small nodules as well as large nodules and incision was made in the left lower quadrant and a 5 bladed trocars placed under direct visualization a grasper was used to take multiple biopsies of the right colic gutter the left pelvic sidewall the right pelvic sidewall and the anterior abdominal wall the right colic gutter biopsy was sent to pathology and the pathologist called back stating that it was collected with some nodules with cells that were suspicious for malignancy at this time lights were turned on and skin was closed with 4-0 Monocryl and glue and local anesthesia was used to obtain excellent pain control. Patient tolerated the procedure well sponge tap and needle counts correct x3 per nurse report patient was taken to the recovery room in stable condition

Electronically Signed By: Kushnir, Christina MD

On: 12-09-2015 08:42 PST

EXHIBIT “M”

EXHIBIT “M”

VHM- Valley Hospital Medical Center

Patient: GAETANO, CAROL A
 MRN: [REDACTED]
 DOB/Sex: 10/14/1943 / Female
 Attending: Kushnir MD,Christina

Admit: 12/9/2015
 Disch: 12/9/2015

FIN:

Operative Record

electrical injury
 0.290 The patient
 is at or returning
 to normothermia at
 the conclusion of
 the immediate
 postoperative period

Yes

injury
 0.120 The patient
 is free from signs
 and symptoms of
 injury related to
 transfer/transport

Yes

VHM Departures From OR

Present on Depart
 Post-op Destination
 Report Given By
 Report Date/Time
 Adelma

Entry 1
 Oxygen
 PACU
 Arita, Adam A MD
 12/09/15 08:41:00

Via
 Skin Condition
 Report Given To
 Transported By

Stretcher
 Clear
 Walker RN, Julie A
 Monasterio RN,

C, Arita, Adam A MD

Case Comments

<None>

Finalized By: Nowland, Tammy M

Document Signatures

Signed By:
 Monasterio RN, Adelma C 12/09/15 08:48
 Nowland, Tammy M 12/09/15 17:06

Unfinalized History

Date/Time	Username	Reason for Unfinalizing	Freestext Reason for Unfinalizing
12/09/15 17:06	VHSENOWLAT	Incomplete Documentation	

DOCUMENT NAME:	Operative Reports
SERVICE DATE/TIME:03/20/2013	12/9/2015 08:36 PST
RESULT STATUS:	Auth (Verified)
PERFORM INFORMATION:	Kushnir MD,Christina (12/9/2015 08:42 PST)
SIGN INFORMATION:	Kushnir MD,Christina (12/9/2015 08:42 PST)

Indication for Surgery

1. suspect primary peritoneal carcinoma
2. ct scan shows diffused peritoneal carcinomatosis
3. weightloss

Preoperative Diagnosis

1. suspect primary peritoneal carcinoma
2. ct scan shows diffused peritoneal carcinomatosis
3. weightloss

Postoperative Diagnosis

same; carcinoma

Operation

1. diagnostic laparoscopy

Print Date/Time 7/21/2016 16:42 PDT

Medical Record

Page 53 of 208

Patient: GAETANO, CAROL A
MRN: [REDACTED]
DOB/Sex: 10/14/1943 / Female
Attending: Kushnir MD, Christina

Admit: 12/9/2015
Disch: 12/9/2015

FIN:

Operative Record

2. abdominal biopsies

Surgeon(s)

Kushnir MD, Christina (Surgeon)

Assistant

Gordon, LEE

Shea, Joe (resident)

Anesthesia Type and Anesthesiologist

General

Arita, Adam A MD (Attending Anesthesiologist)

Estimated Blood Loss

10.0 mL

Urine Output

see anesthesia note

Findings

1. diffuse carcinoma on the peritoneum
2. mesentery involvement
3. diffuse carcinomatosis on the small bowel

Specimen(s)

1. right colic gutter
2. left pelvic sidewall
3. right pelvic sidewall
4. anterior abdominal wall

Complications

none apparent

Technique

Patient was taken the operating room where general anesthesia was found to be adequate she was prepped and draped in normal sterile fashion in dorsal lithotomy position with legs in yellowfin stirrups after timeout was done and incision was made below the left costal margin with an 11 blade Veress needle was inserted and intra-abdominal pressure was 16 despite repositioning the Veress needle of the pressures were still very elevated at this time we decided to move forward with a Hassan technique stone incision was made above the umbilicus with an 11 blade Army-Navy's were used to dissect through subcutaneous tissue and to the level of the fascia was reached Coker's are placed on the fascia arm Army-Navy's were then placed in the fascia and the peritoneum was identified and grasped to tonsils incised with Metzenbaum scissors at this time a 12 trocar was inserted and high flow gas was initiated patient was placed in chart 00 10 scope was inserted and upper abdomen is inspected there is diffuse disease throughout the entire peritoneum liver was not visible as it was obscured with peritoneal disease the small bowel was diffusely involved with with disease mesentery was also involved return towards the pelvis and patient was placed in Trendelenburg pelvis was obliterated by loops of small bowel that were diffusely involved with tumor left and right pelvic sidewalls were diffusely involved with tumor as well and the anterior abdominal wall had small nodules as well as large nodules and incision was made in the left lower quadrant and a 5 bladed trochars placed under direct visualization a grasper was used to take multiple biopsies of the right colic gutter the left pelvic sidewall the right pelvic sidewall and the anterior abdominal wall the right colic gutter biopsy was sent to pathology and the pathologist called back stating that it was calcified with some modalities with cells that were suspicious for malignancy at this time lights were turned on and skin was closed with 4-0 Monocryl and glue and local anesthesia was used to obtain excellent pain control. Patient tolerated the procedure well sponge lap and needle counts correct x3 per nurse report patient was taken to the recovery room in stable condition

*Electronically Signed By: Kushnir, Christina MD**On: 12.09.2015 08:42 PST*

EXHIBIT “N”

EXHIBIT “N”



CLERK OF THE COURT

PET
BRYAN A LOWE, ESQ.
Nevada Bar No. 1322
BRYAN A LOWE & ASSOCIATES
PROFESSIONAL LAW CORPORATION
4011 Meadows Lane, Suite 102
Las Vegas, Nevada 89107
(702) 259-0002
Fax: (702) 259-7774
office@bryanalow.com
Attorney for Co-Administrators with Will Annexed

DISTRICT COURT

CLARK COUNTY, NEVADA

In the Matter of the Estate of:)	Case No.: P-16-087691-E
CAROL A. GAETANO,)	Dept. No.: PCI
Deceased.)	Date of Hearing: January 13, 2017
)	Time of Hearing: 9:30 a.m.

REPORT OF STATUS OF ADMINISTRATION

Petitioners, Vincent Garbitelli and Aaron Turley Lowe, Co-Administrators with Will Annexed of the Estate of Carol A. Gaetano, deceased, render to the Court a report of the status of administration, as follows:

1. That the above-named Decedent died on January 17, 2016, in the County of Clark, State of Nevada, and was a resident of the County of Clark, State of Nevada, at the time of her death.
2. That the Decedent died testate leaving a Last Will and Testament dated November 9, 2009, which has been duly proven to the satisfaction of the Court.
3. That Vincent Garbitelli and Aaron Turley Lowe were duly appointed Co-Administrators with Will Annexed of the above-captioned Estate on July 1, 2016, and are still acting in that capacity.
4. Immediately after Letters of Administration with Will Annexed were issued to Petitioners in this estate matter, Petitioners caused to be duly published a Notice to Creditors as required by NRS 147.010 as evidenced by an affidavit of publication filed herein. That the time for presentation of claims against the decedent's estate has expired and four (4) creditors' claims have been timely filed against Decedent's estate.

1 5. Petitioners have filed herein an Inventory and Appraisement setting forth the total date of
2 death value of this estate at a negative sum of Sixty-Three Thousand Three Hundred Fifty-Two Dollars
3 and Thirteen Cents (-\$63,352.13).

4 6. Prior to Petitioners' appointment, Decedent's 2011 Smart Car VIN
5 WMEEJ3BABBK423010 was repossessed by Mercedes-Benz Financial Services and sold on or April 13,
6 2016, by Mercedes-Benz Financial Services.

7 7. That Decedent's real property located at 4814 Monterrey Avenue, Las Vegas, NV 89121
8 was appraised on March 1, 2016, for value of One Hundred Forty-Five Thousand Dollars (\$145,000.00)
9 with a reverse mortgage with Financial Freedom in the sum of approximately Two Hundred Eight
10 Thousand Four Hundred Eighty-Nine Dollars (\$208,489.00).

11 8. That Petitioners have been working with Financial Freedom to execute a Deed In Lieu Of
12 Foreclosure, and Petitioners were notified on December 19, 2016, that Financial Freedom has approved
13 said Deed In Lieu of Foreclosure.

14 9. Petitioners are pursuing a medical malpractice lawsuit on behalf of the Estate of Carol A.
15 Gaetano.

16 10. Due to the event set forth in paragraph 9 above, this estate is not in a condition to be
17 closed as of this date.

18 11. That Petitioners believe it would be in the best interest of the estate and those persons
19 who have interests therein, that the continuation and administration of this estate be the duration of the
20 litigation.

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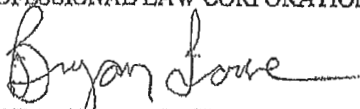
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1 WHEREFORE, Petitioners pray that this matter be set for hearing; that notice be given as
2 required by law; that the Court order that the administration of this estate may continue for the duration of
3 the litigation, and for such other further relief as the Court deems proper.
4

5
6 
7 Vincent Garbitelli, Co-Administrator With Will Annexed

8
9 
10 Aaron Turley Lowe, Co-Administrator With Will Annexed

11 BRYAN A LOWE & ASSOCIATES
12 PROFESSIONAL LAW CORPORATION

13 
14 BRYAN A. LOWE, ESQ.
15 Nevada Bar No. 1322
16 4011 Meadows Lane #102
Las Vegas, Nevada 89107
Attorney for Co-Administrators With Will Annexed

11111111

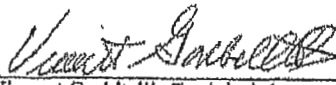
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VERIFICATION

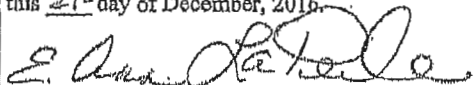
STATE OF VERMONT }
COUNTY OF ORANGE } ss:

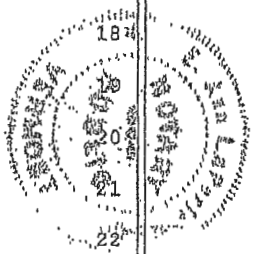
Vincent Garbitelli, being first duly sworn, under penalty of perjury, deposes and says:

He is the Petitioner in the above-entitled action; he has read the foregoing Report of Status of Administration and knows the contents thereof; the same is true of his own knowledge, except for those matters therein contained stated upon information and belief, and as to those matters he believes them to be true.


Vincent Garbitelli, Co-Administrator With Will Annexed

SUBSCRIBED and SWORN to before me
this 21st day of December, 2016.


NOTARY PUBLIC in and for said
County and State EXPIRE: 02-10-2019




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He is the Petitioner in the above-entitled action; he has read the foregoing Report of Status of Administration and knows the contents thereof; the same is true of his own knowledge, except for those matters therein contained stated upon information and belief, and as to those matters he believes them to be true.



SUBSCRIBED and SWORN to before me
this 25 day of December, 2016.

 **JULIA FYHRLUND**
Notary Public State of Nevada
No. 01-66376-1
My Appt. Exp. Nov. 2, 2020