

IN THE SUPREME COURT OF THE STATE OF NEVADA

VALLEY HEALTH SYSTEM, LLC
(DOING BUSINESS AS "CENTENNIAL
HILLS HOSPITAL MEDICAL
CENTER"), A FOREIGN LIMITED
LIABILITY COMPANY,
PETITIONER,

v.

THE EIGHTH JUDICIAL DISTRICT
COURT OF THE STATE OF NEVADA
EX REL. THE COUNTY OF CLARK,
AND THE HONORABLE JUDGE
JERRY A. WIESE II,

RESPONDENT,

and

ESTATE OF REBECCA POWELL,
THROUGH BRIAN POWELL, AS
SPECIAL ADMINISTRATOR; DARCI
CREECY, INDIVIDUALLY AND AS
HEIR; TARYN CREECY,
INDIVIDUALLY AND AS AN HEIR;
ISAIAH KHOSROF, INDIVIDUALLY
AND AS AN HEIR; LLOYD CREECY,
INDIVIDUALLY,

Real Parties In Interest,

and

DR. DIONICE S. JULIANO, M.D., AN
INDIVIDUAL; DR. CONRADO C.D.
CONCIO, M.D., AN INDIVIDUAL; DR.
VISHAL S. SHAH, M.D., AN
INDIVIDUAL,

Additional Parties In Interest.

Supreme Court No.:

District Court No. **Electronically Filed**
Dec 22 2020 04:25 p.m.
Elizabeth A. Brown
Clerk of Supreme Court

**PETITIONER'S APPENDIX TO PETITION FOR WRIT OF MANDAMUS
VOLUME I**

S. BRENT VOGEL
Nevada Bar No. 006858
ADAM GARTH
Nevada Bar No. 015045
Lewis Brisbois Bisgaard & Smith LLP
6385 South Rainbow Boulevard, Suite 600
Las Vegas, Nevada 89118
Telephone: 702-893-3383
Facsimile: 702-893-3789
Attorneys for Petitioners

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CERTIFICATE OF MAILING

I hereby certify that on this 22nd day of December, 2020, I served the foregoing **APPENDIX TO PETITION – VOLUME I** upon the following parties by placing a true and correct copy thereof in the United States Mail in Las Vegas, Nevada with first class postage fully prepaid:

The Honorable Jerry A. Wiese II
The Eighth Judicial District Court
Regional Justice Center
200 Lewis Avenue
Las Vegas, Nevada 89101
Respondent

Aaron Ford
Attorney General
Nevada Department of Justice
100 North Carson Street
Carson City, Nevada 89701
Counsel for Respondent

Paul S. Padda, Esq.
PAUL PADDA LAW, PLLC
4560 S. Decatur Blvd., Suite 300
Las Vegas, NV 89103
Tel: 702.366.1888
Fax: 702.366.1940
psp@paulpaddalaw.com
*Attorneys for Plaintiffs/Real Parties
in Interest*

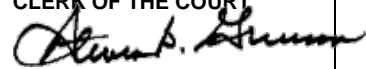
John H. Cotton, Esq.
Brad Shipley, Esq.
JOHN. H. COTTON & ASSOCIATES
7900 W. Sahara Ave., Suite 200
Las Vegas, NV 89117
Tel: 702.832.5909
Fax: 702.832.5910
jhcotton@jhcottonlaw.com
bshipleyr@jhcottonlaw.com
Attorneys for Additional Parties in Interest
*Dionice S. Juliano, M.D., Conrado
Concio, M.D And Vishal S. Shah, M.D.*

/s/ Roya Rokni

An employee of LEWIS BRISBOIS BISGAARD
& SMITH, LLP

DOCUMENT 1

DOCUMENT 1



1 **MSJ**
2 S. BRENT VOGEL
3 Nevada Bar No. 6858
4 Brent.Vogel@lewisbrisbois.com
5 ADAM GARTH
6 Nevada Bar No. 15045
7 Adam.Garth@lewisbrisbois.com
8 LEWIS BRISBOIS BISGAARD & SMITH LLP
9 6385 S. Rainbow Boulevard, Suite 600
10 Las Vegas, Nevada 89118
11 Telephone: 702.893.3383
12 Facsimile: 702.893.3789
13 *Attorneys for Defendant Valley Health System,*
14 *LLC dba Centennial Hills Hospital Medical*
15 *Center*

10 DISTRICT COURT
11 CLARK COUNTY, NEVADA
12

13 ESTATE OF REBECCA POWELL, through
14 BRIAN POWELL, as Special Administrator;
15 DARCI CREECY, individually and as Heir;
16 TARYN CREECY, individually and as an
17 Heir; ISIAH KHOSROF, individually and as
18 an Heir; LLOYD CREECY, individually;;

19 Plaintiffs,

20 vs.

21 VALLEY HEALTH SYSTEM, LLC (doing
22 business as "Centennial Hills Hospital Medical
23 Center"), a foreign limited liability company;
24 UNIVERSAL HEALTH SERVICES, INC., a
25 foreign corporation; DR. DIONICE S.
26 JULIANO, M.D., an individual; DR.
27 CONRADO C.D. CONCIO, M.D., an
28 individual; DR. VISHAL S. SHAH, M.D., an
individual; DOES 1-10; and ROES A-Z;

Defendants.

Case No. A-19-788787-C

Dept. No.: 30

**VALLEY HEALTH SYSTEM, LLC AND
UNIVERSAL HEALTH SERVICES,
INC.'S MOTION FOR SUMMARY
JUDGMENT BASED UPON THE
EXPIRATION OF THE STATUTE OF
LIMITATIONS**

HEARING REQUESTED

26 COMES NOW, Defendants VALLEY HEALTH SYSTEM, LLC (doing business as
27 "Centennial Hills Hospital Medical Center"), a foreign limited liability company; UNIVERSAL
28 HEALTH SERVICES, INC., a foreign corporation (collectively "CHH") by and through their

1 counsel of record S. Brent Vogel, Esq., and Adam Garth, Esq., of the Law Firm LEWIS
2 BRISBOIS BISGAARD & SMITH, LLP, and hereby move the court for an order granting
3 summary judgment due to the expiration of the statute of limitations as contained in NRS
4 41A.097, necessitating dismissal of the instant case.

5 CHH makes and bases this motion upon the papers and pleadings on file in this case, the
6 Memorandum of Points and Authorities submitted herewith, and any arguments adducted at the
7 hearing of this Motion.

8 DATED this 2nd day of September, 2020

9
10 LEWIS BRISBOIS BISGAARD & SMITH LLP

11
12 By /s/ Adam Garth
13 S. BRENT VOGEL
14 Nevada Bar No. 6858
15 ADAM GARTH
16 Nevada Bar No. 15045
17 6385 S. Rainbow Boulevard, Suite 600
18 Las Vegas, Nevada 89118
19 Tel. 702.893.3383
20 *Attorneys for Attorneys for Defendant Valley*
21 *Health System, LLC dba Centennial Hills Hospital*
22 *Medical Center*
23
24
25
26
27
28

1 **MEMORANDUM OF POINTS AND AUTHORITIES**

2 **I. INTRODUCTION**

3 On February 4, 2019, the Estate of Rebecca Powell and individual heirs (collectively
4 “Plaintiffs”) filed an untimely Complaint against CHH as well as other co-defendants (collectively
5 “Defendants”), for alleged professional negligence/wrongful death arising out of the care and
6 treatment Ms. Powell received at CHH.¹ Plaintiffs contend that Defendants breached standard of
7 care by purportedly failing to recognize and consider drug-induced respiratory distress, allowing the
8 administration of Ativan, and failing to otherwise treat or monitor Ms. Powell.² Plaintiffs allege that
9 these deviations caused her death on May 11, 2017 and that they personally observed the alleged
10 negligence.³ Plaintiffs do not allege any negligent care, treatment, actions or inactions by
11 Defendants after Ms. Powell’s death on May 11, 2017. Consequently, under the facts pled, the
12 statute of limitations began to run on May 11, 2017. Although the statute of limitations began to run
13 on May 11, 2017 and expired on May 11, 2018, Plaintiffs failed to file their Complaint until February
14 4, 2019, more than one year and eight months after the statute of limitations expired. Since Plaintiffs
15 failed to file their Complaint within NRS 41A.097(2)’s one-year statute of limitations, CHH’s
16 motion for summary judgment should be granted in its entirety and the Complaint dismissed.

17 **II. STATEMENT OF UNDISPUTED FACTS**

18 **A. Procedural History**

- 19 1. Plaintiffs commenced this action on February 4, 2019 by the filing of the Complaint.⁴
20 2. Co-defendants filed a Motion to Dismiss Plaintiffs’ Complaint on June 12, 2019,
21 seeking dismissal on multiple grounds including the untimely filing of the Complaint and expiration
22

23 _____
24 ¹ See Complaint annexed hereto as Exhibit “A”

25 ² Exhibit “A”, ¶ 28

26 ³ Exhibit “A” ¶ 29; Exhibit “A”, ¶¶ 41-56 (asserting shock as a result of the observance or
27 contemporaneous witnessing of the alleged negligence)

28 ⁴ Exhibit “A”

(footnote continued)

1 of the statute of limitations.⁵

2 3. Defendant Shah, MD joined Defendants' Concio's and Juliano MDs' Motion to
3 Dismiss on June 13, 2019.⁶

4 4. In lieu of an answer, CHH filed a motion to dismiss the Complaint on June 19, 2019,
5 alleging that the statute of limitations elapsed long before Plaintiffs' Complaint was filed.⁷

6 5. CHH joined Defendants Concio and Juliano's Motion to Dismiss on June 26, 2019.⁸

7 6. Plaintiffs' opposed Concio and Juliano's Motion to Dismiss on August 13, 2019.⁹

8 7. Defendants filed their respective replies to Plaintiffs' opposition to the motion to
9 dismiss.¹⁰

10 8. Defendant Universal Health Services Inc. filed its own motion to dismiss on
11 September 23, 2019.¹¹

12 9. On September 25, 2019, this Court denied Defendants' respective motions to
13 dismiss,¹² but Universal Health Systems, Inc.'s motion was rendered moot by stipulation of the
14 parties to dismiss the action as against that defendant only without prejudice.¹³

15
16 _____
17 ⁵ See Defendants Concio's and Juliano, MD's Motion to Dismiss Plaintiffs' Complaint annexed
hereto as Exhibit "B"

18 ⁶ See, Defendant Shah MD's Joinder annexed hereto as Exhibit "C"

19 ⁷ See Defendant Centennial Hills Hospital's Motion to Dismiss Plaintiffs' Complaint annexed
20 hereto as Exhibit "D"

21 ⁸ See CHH's Joinder to Concio's and Juliano's Motion to Dismiss annexed hereto as Exhibit "E"

22 ⁹ See Plaintiffs' Opposition to Concio and Juliano's Motion to Dismiss annexed hereto as Exhibit
23 "F"

24 ¹⁰ See Concio and Juliano's Reply annexed hereto as Exhibit "G" and CHH's Reply annexed
hereto as Exhibit "H"

25 ¹¹ See Universal Health Services, Inc.'s Motion to Dismiss annexed hereto as Exhibit "I"

26 ¹² See Minute Order dated September 25, 2019 annexed hereto as Exhibit "J"

27 ¹³ See Stipulation of Dismissal Without Prejudice annexed hereto as Exhibit "K"

28 (footnote continued)

1 10. On April 15, 2020, CHH filed its Answer to Plaintiffs’ Complaint.¹⁴

2 **B. Undisputed Facts Demonstrating Untimely Filing**

3 11. Based upon the Complaint and the accompanying affidavit, Rebecca Powell

4 overdosed on Benadryl, Cymbalta, and Ambien on May 3, 2017.¹⁵

5 12. Plaintiffs’ further allege that EMS was called and came to Ms. Powell’s aid,

6 discovering her with labored breathing and vomit on her face.¹⁶ Plaintiffs further allege that Ms.

7 Powell was transported to CHH where she was admitted.¹⁷

8 13. Plaintiffs claim that one week into her admission, on May 10, 2017, Ms. Powell

9 complained of shortness of breath, weakness, and a drowning feeling, and Defendant Vishal Shah,

10 MD, ordered Ativan to be administered via IV push.¹⁸

11 14. Plaintiffs assert that on May 11, 2017, Defendant Conrado Concio, MD, ordered two

12 doses of Ativan via IV push.¹⁹

13 15. To assess her complaints, Plaintiffs alleged that a chest CT was ordered, but the

14 providers were unable to obtain the chest CT due to Ms. Powell’s anxiety, and she was returned to

15 her room.²⁰

16 16. Plaintiffs further alleged that Ms. Powell was placed in a room with a camera

17 monitor.²¹

18

19 ¹⁴ See CHH’s Answer annexed hereto as Exhibit “L”

20 ¹⁵ Exhibit “A”, ¶ 18

21 ¹⁶ Exhibit “A”, ¶ 18

22 ¹⁷ Exhibit “A”, ¶ 18

23 ¹⁸ Exhibit “A”, ¶ 21

24 ¹⁹ Exhibit “A”, ¶ 22

25 ²⁰ Exhibit “A”, ¶ 22; see also Exhibit A (Affidavit of Dr. Sami Hashim, M.D.) to the Complaint

26 (Exhibit “A” hereto) at p. 3

27 ²¹ Exhibit “A”, ¶ 22

28 (footnote continued)

1 17. Plaintiffs' expert stated in his affidavit used to support the Complaint that pursuant
2 to the doctor's orders, a dose of Ativan was administered at 03:27.²²

3 18. Thereafter, Ms. Powell allegedly suffered acute respiratory failure, which resulted in
4 her death on May 11, 2017, according to Plaintiffs.²³

5 19. Plaintiffs alleged that they personally observed the alleged negligence, Ms. Powell's
6 rapid deterioration, and the results of the alleged negligence.²⁴

7 20. On May 25, 2017, MRO, a medical records retrieval service responsible for
8 supplying medical records to those requesting same on behalf of CHH, received a request for
9 medical records from Taryn Creecy, one of the plaintiffs in this matter, along with a copy of a court
10 order requiring that Centennial Hills Hospital provide a complete copy of Rebecca Powell's medical
11 chart.²⁵ Exhibit "A" to Ms. Arroyo's declaration shows this request and court order.

12 21. On June 2, 2017, the request for the medical records for Mrs. Powell was processed
13 by MRO personnel.²⁶

14 22. On June 5, 2017, MRO determined that the records for Mrs. Powell were requested
15 by Taryn Creecy, her daughter, that the records were requested to be sent to a post office box, and
16 verified the court order for same.²⁷

17 23. On June 7, 2017, MRO invoiced Ms. Creecy which included all fees associated with
18 the provision of 1165 pages of Mrs. Powell's medical records from CHH. The 1165 pages invoiced
19
20

21 ²² Exhibit A (Affidavit of Dr. Sami Hashim, M.D.) to the Complaint (Exhibit "A" hereto) at p. 3

22 ²³ Exhibit "A", ¶ 22

23 ²⁴ Exhibit "A", ¶¶ 44-45, 52-53

24 ²⁵ See Declaration of Gina Arroyo and associated exhibits annexed thereto which are collectively
25 annexed hereto as Exhibit "M", specifically ¶ 6

26 ²⁶ Exhibit "M", ¶ 7

27 ²⁷ Exhibit "M", ¶ 8 as well as Exhibit "A" thereto

28 (footnote continued)

1 represented the entirety of medical records for Mrs. Powell with no exclusions.^{28 29}

2 24. On June 12, 2017, MRO received payment for the 1165 pages of records and the next
3 day, June 13, 2017, MRO sent out the complete 1165 pages to Ms. Creecy to the address provided
4 on the request.³⁰

5 25. MRO received the package back from the United States Postal Service due to
6 undeliverability to the addressee on June 23, 2017.³¹

7 26. MRO contacted Ms. Creecy on June 28, 2017 regarding the returned records, and
8 she advised MRO that the post office box to which she requested the records be sent was in the
9 name of her father, Brian Powell, and that the Post Office likely returned them since she was an
10 unknown recipient at the post office box. She thereafter requested that MRO resend the records to
11 him at that post office box address.³²

12 27. On June 29, 2017, MRO re-sent the records addressed to Mr. Powell at the post office
13 box previously provided, and MRO never received the records back thereafter.³³

14 28. MRO provided copies of all medical records for Mrs. Powell as part of this medical
15 records request, and no records for this patient were excluded from that packet.^{34 35}

16 29. CHH's custodian of records stated that she compared the 1165 pages of records
17 supplied in June, 2017 to Ms. Creecy to CHH's electronic medical records system and she verified
18

19 ²⁸ Exhibit "M", ¶ 9 as well as Exhibit "B" thereto

20 ²⁹ Declaration of Melanie Thompson, CHH's custodian of records, annexed hereto as Exhibit "N",
21 ¶ 4

22 ³⁰ Exhibit "M", ¶ 10 as well as Exhibit "C" thereto

23 ³¹ Exhibit "M", ¶ 11 as well as Exhibit "D" thereto

24 ³² Exhibit "M", ¶ 12

25 ³³ Exhibit "M", ¶ 13

26 ³⁴ Exhibit "M", ¶ 14

27 ³⁵ Declaration of Melanie Thompson, CHH's custodian of records, annexed hereto as Exhibit "N",
28 ¶ 4

(footnote continued)

1 that the totality of the medical records for Ms. Powell was provided to Ms. Creecy without excluding
2 any records.³⁶

3 30. On February 4, 2019, which was one year, eight months, and twenty-four days after
4 Ms. Powell's death, Plaintiffs filed the subject Complaint seeking relief under the following causes
5 of action: 1) negligence/medical malpractice; 2) wrongful death pursuant to NRS 41.085; 3)
6 negligent infliction of emotional distress on behalf of Darci, Taryn, and Isaiah; and 4) negligent
7 infliction of emotional distress on behalf of Lloyd Creecy.³⁷ Plaintiffs included the Affidavit of Sami
8 Hashim, MD, which sets forth alleged breaches of the standard of care.³⁸

9 31. NRS 41A.097 (2)(a) and (c) requires that an action based upon professional
10 negligence of a provider of health be commenced the earlier of one year from discovery of the
11 alleged negligence, but no more than three years after alleged negligence.

12 32. An action which is dismissed and not refiled within the time required by NRS
13 41A.097 (2)(a) and (c) is time barred as a matter of law.

14 33. Plaintiffs' claims sound in professional negligence, which subjects the claims to NRS
15 41A.097(2)'s one-year statute of limitations requirement.

16 34. Since Plaintiffs failed to file their Complaint within one-year after they discovered
17 or through the use of reasonable diligence should have discovered the injury, Plaintiffs failed to
18 timely file their Complaint, which necessitated the instant motion. See NRS 41A.097(2).

19 35. Moreover, Plaintiffs neither pled nor provided any explanation, valid or otherwise,
20 to justify the late filing of their Complaint.

21 **III. LEGAL ARGUMENT**

22 **A. Summary Judgment Standard**

23 Summary judgment is appropriate "if the pleadings, depositions, answers to interrogatories,
24

25 ³⁶ Declaration of Melanie Thompson, CHH's custodian of records, annexed hereto as Exhibit "N",
26 ¶ 4

27 ³⁷ Exhibit "A"

28 ³⁸ Exhibit A to the Complaint (Exhibit "A" hereto)

1 and admissions on file, together with the affidavits, if any, show that there is no genuine issue as to
2 any disputed material fact and that the moving party is entitled to a judgment as a matter of law.”
3 N.R.C.P. 56(c). In other words, a motion for summary judgment shall be denied only when the
4 evidence, taken together, shows a genuine issue as to any material fact. In the milestone case *Wood*
5 *v. Safeway, Inc.*, 121 Nev. 724, 731 (2005), the Supreme Court of Nevada held that “[t]he
6 substantive law controls which factual disputes are material” to preclude summary judgment, and
7 that “[a] factual dispute is genuine when the evidence is such that a rational trier of fact could return
8 a verdict for the nonmoving party.” *Id.* Summary judgment is proper “where the record before the
9 Court on the motion reveals the absence of any material facts and [where] the moving party is
10 entitled to prevail as a matter of law.” *Zoslaw v. MCA Distribution Corp.*, 693 F.2d 870, 883 (9th
11 Cir. 1982), *cert. denied*, 460 U.S. 1085 (1983); Fed. R. Civ. Proc. 56. “A material issue of fact is
12 one that affects the outcome of the litigation and requires a trial to resolve the parties differing
13 versions of the truth.” *Sec. and Exch. Comm. v. Seaboard Corp.*, 677 F.2d 1289, 1293 (9th Cir.
14 1982).

15 When applying the above standard, the pleadings and other proof must be construed in a
16 light most favorable to the nonmoving party. *Wood, supra* 121 Nev. at 732. However, the
17 nonmoving parties in this case, Plaintiffs, “may not rest upon general allegations and conclusions,”
18 but shall “by affidavit or otherwise, set forth specific facts demonstrating the existence of a genuine
19 issue for trial.” *Id.* at 731-32. The nonmoving party “bears the burden to ‘do more than simply show
20 that there is some metaphysical doubt’ as to the operative facts in order to avoid summary judgment
21 being entered in the moving party’s favor.” *Id.* at 732. “The nonmoving party ‘is not entitled to
22 build a case on the gossamer threads of whimsy, speculation and conjecture.’” *Id.* But, “the
23 nonmoving party is entitled to have the evidence and all reasonable inferences accepted as true.”
24 *Lease Partners Corp. v. Robert L. Brooks Trust Dated Nov. 12, 1975*, 113 Nev. 747, 752 (1997).

25 The moving party has the burden of showing the absence of a genuine issue of material fact,
26 and a court must view all facts and inferences in the light most favorable to the responding party.
27 *See Adickes v. S.H. Dress & Co.*, 398 U.S. 144, 157 (1970). *See also Zoslaw*, 693 F.2d at 883;
28 *Warren v. City of Carlsbad*, 58 F.3d 439 (9th Cir. 1995). Once this burden has been met, “[t]he

opposing party must then present specific facts demonstrating that there is a factual dispute about a material issue.” *Zoslaw*, 693 F.2d at 883. The moving party is entitled to summary judgment if the non-moving party, who bears the burden of persuasion, fails to designate “specific facts showing that there is a genuine issue for trial.” *Celotex Corp. v. Catrett*, 477 U.S. 317, 324, 106 S.Ct. 2548, 91 L. Ed. 2d 265 (1986) (internal quotation omitted).

As to when a court should grant summary judgment, the High Court has stated:

[T]he 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. One of the principal purposes of the summary judgment rule is to isolate and dispose of factually unsupported claims or defenses, and we think it should be interpreted in a way that allows it to accomplish this purpose.

Celotex, 477 U.S. at 323-324. “A [s]ummary judgment procedure is properly regarded not as a disfavored procedural shortcut, but rather as an integral part of the Federal Rules as a whole, which are designed ‘to secure the just, speedy and inexpensive determination of every action.’” *Id.* at 327.

B. Plaintiffs’ Causes of Action Are Subject to NRS 41A’s Requirements

NRS 41A.097 states in pertinent part:

2. Except as otherwise provided in subsection 3, an action for injury or death against a provider of health care may not be commenced more than 3 years after the date of injury or 1 year after the plaintiff discovers or through the use of reasonable diligence should have discovered the injury, whichever occurs first, for:

(a) Injury to or the wrongful death of a person occurring on or after October 1, 2002, based upon alleged professional negligence of the provider of health care;

* * *

(c) Injury to or the wrongful death of a person occurring on or after October 1, 2002, from error or omission in practice by the provider of health care.

NRS 41A.017 defines a “‘Provider of health care’” . . . [as] **a physician licensed pursuant to chapter 630 or 633 of NRS, physician assistant, dentist, licensed nurse, dispensing optician, optometrist, registered physical therapist, podiatric physician, licensed psychologist, chiropractor, doctor of Oriental medicine, medical laboratory director or technician, licensed dietitian or a licensed hospital, clinic, surgery center, physicians’ professional corporation or group practice**

1 **that employs any such person and its employees.”** (Emphasis supplied). CHH, as a licensed
2 hospital, its nurses, and the physicians Plaintiffs allege were the ostensible agents of CHH, CHH
3 falls within the protections of NRS Chapter 41A, with the one year discovery rule applicable thereto.

4 To determine whether a plaintiff’s claim sounds in “professional negligence,” the Court
5 should look to the gravamen of the claim to determine the character of the action, not the form of
6 the pleadings. *See Szymborski v. Spring Mountain Treatment Ctr.*, 403 P.3d 1280, 1285 (Nev. 2017)
7 (“Therefore, we must look to the gravamen or ‘substantial point or essence’ of each claim rather
8 than its form to see whether each individual claim is for medical malpractice or ordinary
9 negligence.”) (quoting *Estate of French*, 333 S.W.3d at 557 (citing Black’s Law Dictionary 770
10 (9th ed. 2009))); *see also Lewis v. Renown*, 432 P.3d 201 (Nev. 2018) (recognizing that the Court
11 had to look to the gravamen of each claim rather than its form to determine whether the claim
12 sounded in professional negligence); *Andrew v. Coster*, 408 P.3d 559 (Nev. 2017), cert. denied,
13 138 S. Ct. 2634, 201 L. Ed. 2d 1037 (2018); *see generally Egan v. Chambers*, 299 P.3d 364, 366
14 n. 2 (Nev.2013) (citing *State Farm Mut. Auto. Ins. Co. v. Wharton*, 88 Nev. 183, 495 P.2d 359, 361
15 (1972)); *see also Brown v. Mt. Grant Gen. Hosp.*, No. 3:12-CV-00461-LRH, 2013 WL 4523488,
16 at *8 (D. Nev. Aug. 26, 2013).

17 A claim sounds in “professional negligence” if the claim arises out of “the failure of a
18 provider of health care, in rendering services, to use the reasonable care, skill or knowledge
19 ordinarily used under similar circumstances by similarly trained and experienced providers of
20 health care.” NRS 41A.015. A “provider of health care” includes, in pertinent part, a physician, a
21 nurse, and a licensed hospital. *See* NRS 41A.017. Consequently, if a plaintiff’s claim arises out of
22 the alleged failure of a physician, nurse, and/or hospital to use reasonable care, skill, or knowledge,
23 used by other similarly trained and experienced providers, in rendering services to the patient, the
24 plaintiff’s claim sounds in professional negligence.

25 Generally, “[a]llegations of breach of duty involving medical judgment, diagnosis, or
26 treatment indicate that a claim is for medical malpractice.” *Szymborski.*, 403 P.3d at 1284 (citing
27 *Papa v. Brunswick Gen. Hosp.*, 132 A.D.2d 601, 517 N.Y.S.2d 762, 763 (1987) (“When the duty
28 owing to the plaintiff by the defendant arises from the physician-patient relationship or is

1 substantially related to medical treatment, the breach thereof gives rise to an action sounding in
2 medical malpractice as opposed to simple negligence.”); *Estate of French v. Stratford House*, 333
3 S.W.3d 546, 555 (Tenn. 2011) (“If the alleged breach of duty of care set forth in the complaint is one
4 that was based upon medical art or science, training, or expertise, then it is a claim for medical
5 malpractice.”); see also *Lewis v. Renown Reg'l Med. Ctr.*, 432 P.3d 201 (Nev. 2018) (holding that
6 Plaintiffs’ elder abuse claim under NRS 41.1495 sounded in professional negligence where it
7 involved alleged failures to check on the patient while under monitoring). For example, in *Lewis v.*
8 *Renown*, the Nevada Supreme Court recognized that a claim for elder abuse arising out of alleged
9 failure to properly check or monitor a patient or otherwise provide adequate care sounded in
10 professional negligence. See generally *Lewis v. Renown* , 432 P.3d 201 (Nev. 2018). Since the
11 gravamen of Plaintiff’s claim was professional negligence, the Court affirmed the District Court’s
12 dismissal of the elder abuse claim on statute of limitations grounds. *Id.* In reaching this holding, the
13 Court reasoned as follows:

14 In *Szymborski* we considered the distinction between claims for
15 medical negligence and claims for ordinary negligence against a
16 healthcare provider in the context of the discharge and delivery by
17 taxi of a disturbed patient to his estranged father’s house, without
18 notice or warning. *Id.* at 1283-1284. In contrast to allegations of a
19 healthcare provider’s negligent performance of nonmedical services,
20 “[a]llegations of [a] breach of duty involving medical judgment,
21 diagnosis, or treatment indicate that a claim is for [professional
22 negligence].” *Id.* at 1284. The gravamen of Lewis’ claim for abuse
23 and neglect is that Renown failed to adequately care for Sheila by
24 failing to monitor her. Put differently, Renown breached its duty to
25 provide care to Sheila by failing to check on her every hour per the
26 monitoring order in place. We are not convinced by Lewis’
arguments that a healthcare provider’s failure to provide care to a
patient presents a claim distinct from a healthcare provider’s
administration of substandard care; both claims amount to a claim
for professional negligence where it involves a “breach of duty
involving medical judgment, diagnosis, or treatment.” *Id.* Lewis’
allegations that Renown failed to check on Sheila while she was
under a monitoring order necessarily involve a claim for a breach of
duty in the administration of medical treatment or judgment. Thus,
we affirm the district court’s dismissal of Lewis’ claims against
Renown because his claim for abuse and neglect sounds in
professional negligence and is time barred pursuant to NRS
41A.097(2).

27 *Id.* (emphasis added).

28 Similarly, in this case, Plaintiffs’ claims for negligence/medical malpractice pursuant to

1 NRS 41A, wrongful death pursuant to NRS 41.05, and negligent infliction of emotional distress, all
2 sound in professional negligence. Plaintiffs' first cause of action for negligence/medical malpractice
3 is explicitly one for professional negligence subject to NRS 41A's requirements and is based upon
4 the report from Sami Hashim, MD.³⁹ Plaintiffs' second cause of action is based upon the same
5 alleged failures to provide medical services below the applicable standard of care and the same
6 affidavit from Dr. Hashim.⁴⁰ Plaintiffs' third and fourth causes of action for negligent infliction
7 of emotional distress are also based upon the same alleged deviations in the standard of care and
8 the same affidavit as the professional negligence claim.⁴¹ As a result, it is clear Plaintiffs' claims
9 sound in professional negligence or that the gravamen of their claims is professional negligence.
10 Consequently, Plaintiffs' claims are necessarily subject to NRS 41A.097(2)'s statute of
11 limitations.

12 **C. CHH's Motion for Summary Judgment Should Be Granted Since Plaintiffs'**
13 **Complaint Was Filed After the One-Year Statute of Limitations Expired**

14 As expressed in *Massey v. Litton*, 99 Nev. 723, 669 P.2d 248 (1983), the one year discovery
15 period within which a plaintiff has to commence an action commences when the plaintiff "... knows
16 or, through the use of reasonable diligence, should have known of facts that would put a reasonable
17 person on inquiry notice of his cause of action." *Id.* at 728, 669 P.2d at 252; *See, also Eamon v.*
18 *Martin*, 2016 Nev. App. Unpub. LEXIS 137 at 3-4 (Nev. App. Mar. 4, 2016).

19 "This does not mean that the accrual period begins when the plaintiff discovers the precise
20 facts pertaining to his legal theory, but only to the general belief that someone's negligence may
21 have caused the injury." (citing *Massey*, 99 Nev. at 728, 669 P.2d at 252). Thus, the plaintiff
22 "discovers" the injury when "he had facts before him that would have led an ordinarily prudent
23 person to investigate further into whether [the] injury may have been caused by someone's
24 negligence.'" *Eamon* at 4 (quoting *Winn v. Sunrise Hosp. & Med. Ctr.*, 128 Nev 246, 252, 277 P.3d

25 _____
26 ³⁹ Exhibit "A" hereto, ¶¶ 26-33 and Dr. Hashim's Aff. annexed thereto as Exhibit A

27 ⁴⁰ Exhibit "A" hereto, ¶¶ 34-40

28 ⁴¹ Exhibit "A", ¶¶ 41-48; 49-56

1 458, 462). “The plaintiff need not be aware of the precise causes of action he or she may ultimately
2 pursue. *Winn*, 128 Nev. at 252-53, 277 P.3d at 462. Rather, the statute begins to run once the plaintiff
3 knows or should have known facts giving rise to a ‘general belief that someone’s negligence may
4 have caused his or her injury.’ *Id.*” *Golden v. Forage*, 2017 Nev. App. Unpub. LEXIS 745 at 3 (Nev.
5 App. October 13, 2017).

6 The date on which the one-year statute of limitation begins to run may be decided as a matter
7 of law where uncontroverted facts establish the accrual date. *See Golden, supra.* at *2 (Nev. App.
8 Oct. 13, 2017) (“The date on which the one-year statute of limitation began to run is ordinarily a
9 question of fact for the jury, and may be decided as a matter of law only where the uncontroverted
10 facts establish the accrual date.”) (citing *Winn v. Sunrise Hosp. & Med. Ctr.*, 128 Nev. 246, 251,
11 277 P.3d 458, 462 (2012) (recognizing that the district court may determine the accrual date as a
12 matter of law where the accrual date is properly demonstrated)); *see also Dignity Health v. Eighth*
13 *Judicial Dist. Court of State, ex rel. Cty. of Clark, No. 66084*, 2014 WL 4804275, at *2 (Nev. Sept.
14 24, 2014).

15 If the Court finds that the plaintiff failed to commence an action against a provider of health
16 care before the expiration of the statute of limitations under NRS 41A.097, the Court may properly
17 dismiss the Complaint pursuant to NRCP 12(b)(5). *See, e.g., Egan v. Adashek*, 2015 Nev. App.
18 Unpub. LEXIS 634, at *2 (Nev. App. Dec. 16, 2015) (affirming district court’s dismissal of action
19 under NRCP 12(b)(5) where the plaintiff failed to file within the statute of limitations set forth in
20 NRS 41A.087); *Rodrigues v. Washinsky*, 127 Nev. 1171, 373 P.3d 956 (2011) (affirming district
21 court’s decision granting motion to dismiss the plaintiffs’ claims for failure to comply with NRS
22 41A.097); *Domnitz v. Reese*, 126 Nev. 706, 367 P.3d 764 (2010) (affirming district court’s decision
23 dismissing plaintiff’s claim after finding that plaintiff had been placed on inquiry notice prior to one
24 year before his complaint was filed and that the statute of limitations had expired pursuant to NRS
25 41A.97(2)).

26 While this is a motion for summary judgment (unlike a motion to dismiss when the
27 averments in the Complaint need to be taken as true), the standard is more favorable to the moving
28 party since once a prima facie case that no genuine issue of material fact exist, the non-moving party

1 is obligated to come forth with sufficient and admissible evidence demonstrating the presence of a
2 material issue of fact. CHH has more than presented their prima facie case, and Plaintiffs will find
3 it impossible to demonstrate with any credibility or admissible evidence sufficient to overcome the
4 burden now shifted to them for their failure to timely file their Complaint.

5 In this case, NRS 41A.097(2)'s one-year statute of limitations began to run on the date of
6 Ms. Powell's death (May 11, 2017). Per the Complaint, the individually named Plaintiffs, including
7 Darci Creecy, Taryn Creecy, Isaiah Creecy, and Lloyd Creecy, contemporaneously observed the
8 alleged negligence and Ms. Powell's rapid deterioration leading up to her death on May 11, 2017.⁴²

9 In fact, such contemporary observance of the alleged negligence is an element of Plaintiffs'
10 claims for negligent infliction of emotional distress.⁴³ In order to establish negligent infliction of
11 emotional distress under Nevada law, a plaintiff must generally show that he or she was a bystander,
12 who is closely related to the victim of an accident, be located near the scene of such accident and
13 suffer "shock" that caused emotional distress resulting from the "observance or contemporaneous
14 sensory of the accident." *State v. Eaton*, 101 Nev. 705, 714, 710 P.2d 1370, 1376 (1985) (allowing
15 recovery for negligent infliction of emotional distress to witness of car accident in which the
16 plaintiff's baby daughter was killed); *see also Grotts v. Zahner*, 989 P.2d 912, 920 (Nev. 1999).
17 "[R]ecover may not be had under this cause of action, for the 'grief that may follow from the
18 [injury] of the related accident victim.'" *Eaton*, at 714, 710 P.2d at 1376. In fact, in cases where
19 emotional distress damages are not secondary to physical injuries, "proof of 'serious emotional
20 distress' causing physical injury or illness must be presented." *Olivero v. Lowe*, 116 Nev. 395, 399-
21 405 (Nev. 2000).

22 Since Plaintiffs allege that they contemporaneously observed the alleged negligence and
23 deterioration of Ms. Powell leading up to her death, the Plaintiffs knew, or should have known, of
24

25 ⁴² See Exhibit "A" hereto at ¶ 20 (died on May 11, 2017); *see also* Exhibit "A" hereto at ¶¶ 45-46
26 and 52-53 (allegedly contemporaneously observing Ms. Powell rapidly deteriorate and die).

27 ⁴³ An earlier filed Motion for Summary Judgment on the issue of negligent infliction of emotional
28 distress has not yet decided as of the filing of this Motion.

(footnote continued)

1 facts that would put a reasonably person on inquiry notice by May 11, 2017. Plaintiffs were aware
2 of facts that would lead an ordinarily prudent person to investigate the matter further at that time.
3 In fact, the evidence submitted herewith demonstrates that Taryn Creecy, one of the plaintiffs herein,
4 specifically requested copies of Ms. Powell's complete medical records from CHH on May 25,
5 2017, a mere two weeks after Ms. Powell's death.⁴⁴ Ms. Creecy even went to the trouble of going
6 to Probate Court to obtain a court order directing the production of Ms. Powell's records from CHH,
7 and actually obtained that very order.⁴⁵ It is abundantly clear that Plaintiffs sought and obtained all
8 of Ms. Powell's medical records as late as June, 2017. The declarations of both Gina Arroyo and
9 Melanie Thompson⁴⁶ conclusively establish that Plaintiffs received a complete copy of Ms. Powell's
10 medical records from CHH in June, 2017 and Plaintiffs sought them in May, 2017.

11 Under Nevada law, Plaintiffs did not have to know precise facts or legal theories for their
12 claims; rather, they only needed to be placed on inquiry notice. Here, under the facts alleged in the
13 Complaint and based upon the conclusive and incontrovertible evidence annexed hereto, Plaintiffs
14 were placed on inquiry notice because they were aware of facts that would lead an ordinarily prudent
15 person to investigate the matter further. Not only were they placed on inquiry notice, but they
16 actually pursued the medical records upon which the Complaint is based. They sought and obtained
17 all they needed to investigate the claims immediately after Ms. Powell's death, but they failed to
18 timely file their lawsuit.

19 Furthermore, Dr. Hashim, Plaintiffs' expert, was able to provide a medical affidavit to
20 support Plaintiffs' Complaint in January, 2019, based upon the complete medical record they
21 requested a mere two weeks after Ms. Powell's death, and which they obtained from CHH in June,
22 2017. There is nothing more than the CHH medical records which were necessary either to frame
23 a complaint, or to have had Plaintiffs be placed upon inquiry notice of alleged professional
24

25 ⁴⁴ See Declaration of Gina Arroyo and associated exhibits annexed thereto which are collectively
26 annexed hereto as Exhibit "M"

27 ⁴⁵ Exhibit A to Exhibit "M" hereto.

28 ⁴⁶ Exhibits "M" and "N" respectively hereto

negligence (which itself is completely denied by CHH). The fault lies not with anyone other than either Plaintiffs or their counsel for their failure to file their Complaint by May 11, 2018.

Given this, the one-year statute of limitations under NRS 41A.097(2) began to run on May 11, 2017. Thus, Plaintiffs were required to file their Complaint by May 11, 2018. Plaintiffs obtained their expert affidavit on January 23, 2019, and failed to file their Complaint until February 4, 2019. Since Plaintiffs failed to file their Complaint within the one-year statute of limitations provided by NRS 41A.097(2), Plaintiffs' Complaint was untimely. Therefore, the CHH's instant motion should be granted as there are no genuine issues of fact as to (1) the lateness of the filing, (2) no evidence (nor can there be) to excuse such a late filing, and (3) nothing in Plaintiffs' Complaint affirmatively pleading and justification for the late filing.

IV. CONCLUSION

CHH introduced incontrovertible evidence that Plaintiffs' Complaint was untimely filed. The fact that the action itself accrued more than one year after Plaintiffs' discovery of the injury which placed them on reasonable notice of their causes of action, Plaintiffs are time barred and CHH's motion for summary judgment should be granted in its entirety and the complaint against CHH be dismissed with prejudice.

DATED this 2nd day of September, 2020

LEWIS BRISBOIS BISGAARD & SMITH LLP

By /s/ Adam Garth
S. BRENT VOGEL
Nevada Bar No. 6858
ADAM GARTH
Nevada Bar No. 15045
6385 S. Rainbow Boulevard, Suite 600
Las Vegas, Nevada 89118
Tel. 702.893.3383
*Attorneys for Attorneys for Defendant Valley
Health System, LLC dba Centennial Hills Hospital
Medical Center*

///

CERTIFICATE OF SERVICE

I hereby certify that on this 2nd day of September, 2020, a true and correct copy of **VALLEY HEALTH SYSTEM, LLC AND UNIVERSAL HEALTH SERVICES, INC.'S MOTION FOR SUMMARY JUDGMENT BASED UPON THE EXPIRATION OF THE STATUTE OF LIMITATIONS** was served by electronically filing with the Clerk of the Court using the Odyssey E-File & Serve system and serving all parties with an email-address on record, who have agreed to receive electronic service in this action.

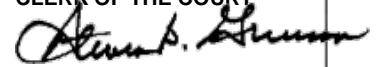
Paul S. Padda, Esq.
PAUL PADDA LAW, PLLC
4560 S. Decatur Blvd., Suite 300
Las Vegas, NV 89103
Tel: 702.366.1888
Fax: 702.366.1940
psp@paulpaddalaw.com
Attorneys for Plaintiffs

John H. Cotton, Esq.
Brad Shipley, Esq.
JOHN. H. COTTON & ASSOCIATES
7900 W. Sahara Ave., Suite 200
Las Vegas, NV 89117
Tel: 702.832.5909
Fax: 702.832.5910
jhcotton@jhcottonlaw.com
bshipleyr@jhcottonlaw.com
*Attorneys for Defendants Dionice S. Juliano,
M.D., Conrado Concio, M.D And Vishal S.
Shah, M.D.*

By /s/ Roya Rokni
An Employee of
LEWIS BRISBOIS BISGAARD & SMITH LLP

PAUL PADDA LAW, PLLC
4560 South Decatur Blvd., Suite 300
Las Vegas, Nevada 89103
Tele: (702) 366-1888 • Fax (702) 366-1940

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Steven D. Grierson
CLERK OF THE COURT



COMP

PAUL S. PADDA, ESQ. (NV Bar #10417)

Email: psp@paulpaddalaw.com

JOSHUA Y. ANG, ESQ. (NV Bar #14026)

Email: ja@paulpaddalaw.com

PAUL PADDA LAW, PLLC

4560 South Decatur Blvd., Suite 300

Las Vegas, Nevada 89103

Tele: (702) 366-1888

Fax: (702) 366-1940

Attorneys for Plaintiffs

CLARK COUNTY DISTRICT COURT

CLARK COUNTY, NEVADA

ESTATE OF REBECCA POWELL,
through **BRIAN POWELL**, as Special
Administrator; **DARCI CREECY**,
individually and as an Heir; **TARYN**
CREECY, individually and as an Heir;
ISAIAH KHOSROF, individually and as an
Heir; **LLOYD CREECY**, individually;

Plaintiffs,

vs.

VALLEY HEALTH SYSTEM, LLC (doing
business as "Centennial Hills Hospital Medical
Center"), a foreign limited liability company;
UNIVERSAL HEALTH SERVICES, INC.,
a foreign corporation; **DR. DIONICE S.**
JULIANO, M.D., an individual; **DR.**
CONRADO C.D. CONCIO, M.D., an
individual; **DR. VISHAL S. SHAH, M.D.**, an
individual; **DOES 1-10**; and **ROES A-Z**;

Defendants.

A-19-788787-C

Case No. _____

Department 14

Dept No. _____

COMPLAINT

JURY TRIAL DEMANDED

***SUBJECT TO AUTOMATIC
ARBITRATION EXEMPTION –***

1. ***Pursuant To N.A.R. 3(A)-
Medical Malpractice***
2. ***Amount In Controversy Exceeds
\$50,000.00***

1 This is a civil action seeking monetary damages for the death of Rebecca Powell. In
2 support of this Complaint, Plaintiffs rely upon the Affidavit of Dr. Sami Hashim, M.D.
3 (incorporated by reference herein and attached to this Complaint as **Exhibit A**) and allege as
4 follows:

5
6 **I.**

7 **ARBITRATION EXEMPTION**

8 1. Nevada Revised Statute (“N.R.S.”) 38.250 requires that “[a]ll civil actions filed in
9 district court for damages, if the cause of action arises in the State of Nevada and the amount in
10 issue does not exceed \$50,000 per plaintiff, exclusive of attorney’s fees, interest and court costs,
11 must be submitted to nonbinding arbitration . . .”

12
13 2. This case is automatically exempt from the arbitration program because “the
14 amount in issue” (i.e. damages) for Plaintiffs significantly exceeds \$50,000.00, and because it is
15 a medical malpractice matter.

16
17 **II.**

18 **JURISDICTION, VENUE AND LEGAL BASIS FOR THIS ACTION**

19 3. This civil action is brought by Plaintiffs pursuant to the statutory and common law
20 of the State of Nevada. Venue is appropriate in this Court because all events giving rise to the
21 present cause of action occurred in Clark County, Nevada. The amount in controversy in this
22 case is well in excess of the statutorily required amount of \$15,000.00.

23
24 ...

25 ...

III.

THE PARTIES

4. Plaintiff, "Estate of Rebecca Powell" administers the affairs of Rebecca Powell ("Rebecca") who died in Clark County, Nevada on May 11, 2017. At the time of her death, Rebecca, an adult female, was approximately 42-years old. Rebecca was born on May 30, 1975.

5. Plaintiff Brian Powell ("Brian") is an adult male and the ex-husband of Rebecca as well as the Special Administrator of Rebecca's Estate. At all time periods relevant to this lawsuit, Brian was a resident of Clark County, Nevada.

6. Plaintiff Darci Creecy ("Darci") is an adult female and the daughter of Rebecca. At all time periods relevant to this lawsuit, Darci was a resident of Ohio.

7. Plaintiff Taryn Creecy ("Taryn") is an adult female and the daughter of Rebecca. At all time periods relevant to this lawsuit, Taryn was a resident of Ohio.

8. Plaintiff Isaiah Khosrof ("Khosrof") is an adult male and the son of Rebecca. At all time periods relevant to this lawsuit, Khosrof was a resident of Massachusetts.

9. Plaintiff Lloyd Creecy ("Lloyd") is an adult male and the father of Rebecca. At all time periods relevant to this lawsuit, Lloyd was a resident of Ohio.

10. Defendant Valley Health System, LLC (doing business as "Centennial Hills Hospital Medical Center") ("VHS") is a for-profit healthcare company, upon information and belief, headquartered in Nevada, that operates approximately 6 hospitals in Nevada. Upon information and belief, VHS owns and operates "Centennial Hills Hospital Medical Center"

1 located in Las Vegas, Nevada. VHS is a Delaware limited liability company registered to transact
2 business in Nevada.

3 11. Defendant Universal Health Services, Inc. (“UHS”) is, upon information and
4 belief, a for-profit healthcare company headquartered in King of Prussia, Pennsylvania. Upon
5 further information and belief, UHS, through subsidiarie(s)/intermediarie(s) owns and operates
6 “Centennial Hills Hospital Medical Center” located in Las Vegas, Nevada, through
7 ownership/control of Valley Health System, LLC. UHS is a foreign corporation registered in
8 Delaware.
9

10 12. Defendant Dr. Dionice S. Juliano, M.D. (“Dr. Juliano”) is an adult male individual
11 that, upon information and belief, was a resident of Clark County, Nevada for all time periods
12 relevant to this lawsuit. Dr. Juliano is licensed to practice medicine in the State of Nevada.
13

14 13. Defendant Dr. Conrado C.D. Concio, M.D. (“Dr. Concio”) is an adult male
15 individual that, upon information and belief, was a resident of Clark County, Nevada for all time
16 periods relevant to this lawsuit. Dr. Concio is licensed to practice medicine in the State of Nevada.
17

18 14. Defendant Dr. Vishal S. Shah, M.D. (“Dr. Shah”) is an adult male individual that,
19 upon information and belief, was a resident of Clark County, Nevada for all time periods relevant
20 to this lawsuit. Dr. Shah is licensed to practice medicine in the State of Nevada.

21 15. Plaintiffs are informed and believe, and thereupon allege, that each of the
22 Defendants designated as Does 1 through 10, inclusive, are responsible in some manner for the
23 events and happenings herein referred to and negligently and/or intentionally caused injuries and
24 damages to Plaintiffs. Plaintiffs further allege that they cannot currently ascertain the identity of
25

1 each of the Doe Defendants and Plaintiffs will therefore seek leave of Court to amend this
2 Complaint to insert the true names and capacities of Doe Defendants when they have been
3 ascertained, together with appropriate charging allegations and to join such Defendants in this
4 action.

5 16. Plaintiffs are informed and believe, and thereupon allege, that each of the
6 Defendants designated as Roes A through Z, inclusive, is responsible in some manner for the
7 events and happenings herein referred to and negligently and/or intentionally caused injuries and
8 damages to Plaintiffs. Plaintiffs are further informed and believe that each of the Roes is either a
9 corporation, related subsidiary, parent entity, group, partnership, holding company, owner,
10 predecessor entity, successor entity, joint venture, related association, insurer or business entity,
11 the true names of which are currently unknown to Plaintiffs at this time. Additionally, Plaintiffs
12 allege that they cannot currently ascertain the identity of each of the Roe Defendants and Plaintiffs
13 will therefore seek leave of Court to amend this Complaint to insert the true names and capacities
14 of Roe Defendants when they have been ascertained, together with appropriate charging
15 allegations and to join such Defendants in this action.

16
17
18
19 IV.

20 **FACTUAL BACKGROUND**

21 17. Centennial Hills Hospital Medical Center ("CHHMC") (operated by VHS and
22 UHS) advertises itself on its website as a hospital that offers various healthcare services, including
23 emergency care, heart care, stroke services, imaging services, gastroenterology and oncology,
24 among other things. UHS, the parent corporation of VHS, and through VHS, the owner and
25

operator of CHHMC, in or around April 2018, was reported to have set aside approximately \$35 million for the potential settlement of alleged False Claims Act violations.

18. On May 3, 2017, Rebecca was found by emergency medical services (“EMS”) at home, unconscious with labored breathing, and with vomitus on her face. It was believed she had ingested an over-amount of Benadryl, Cymbalta and Ambien. *See Exhibit A*, (Affidavit of Dr. Sami Hashim, M.D. ¶ 6A). EMS intubated Rebecca and transported her to the Emergency Department (“ED”) of CHHMC. *Id.* At the ED, Rebecca was evaluated and diagnosed with: (a) Respiratory Failure and low blood pressure; (b) “Overdose on unknown amount of Benadryl, Cymbalta and ethyl alcohol”; (c) Sinus Tachycardia – no ectopy; and (d) Acidosis, among other things. *Id.*

19. Notwithstanding the Death Certificate stating that the only cause of death was “Complications of Cymbalta Intoxication,” Rebecca did not, and with high probability could not have died from this. *See Exhibit A*, (Affidavit of Dr. Sami Hashim, M.D. ¶ 6B). Instead, Rebecca died as a direct consequence of respiratory failure directly due to below standard of care violations as indicated by her medical records and reinforced by the Department of Health and Human Services—Division of Health Quality and Compliance’s (“DHHS”) Investigative Report. *Id.* After being admitted to Centennial Hills Hospital on March 3, 2017, Rebecca’s health status steadily improved over the course of almost a week to a point where a pulmonologist consultation stated that Rebecca felt well and wanted to go home, while making no note to delay discharge. *Id.* Plaintiffs were also told by healthcare providers that Rebecca was doing much better and “would be discharged soon.” *Id.* Metabolically, Cymbalta has a half-shelf life of approximately

1 12-24 hours and up to 48 hours if an excessive amount is ingested. Rebecca's health status did
2 not deteriorate, and was in fact improving, until 150 hours plus had transpired. *Id.* Therefore, the
3 possibility that Rebecca died of Cymbalta intoxication or of complications arising therefrom, is
4 not realistic. *Id.* A bronchoscopy and bronchoalveolar lavage on May 4, 2017 excluded any
5 aspiration of vomitus, and toxicology reports did not find evidence of the ingestion of Ambien,
6 Benadryl or ethyl alcohol. *Id.*

8 20. By May 9, 2017, it was noted that Rebecca "had significantly improved and was
9 expected to be discharged." *Id.* However, Rebecca's health status began to deteriorate the next
10 day, on May 11, 2017. *See Exhibit A*, (Affidavit of Dr. Sami Hashim, M.D. ¶ 6C). The initial
11 changes were not critical, nor overly concerning. *Id.* However, Defendants' conduct in providing
12 healthcare services to Rebecca fell below the appropriate standard of care; this included
13 inadequate and absent monitoring, a lack of diagnostic testing and improper treatment, all of
14 which were directly related to Rebecca's acutely failing health status and ultimately her death
15 early in the morning of May 11, 2017. *Id.*

18 21. The day before, on May 10, 2017 in the wee hours of the morning, Rebecca started
19 coughing and complained of shortness of breath, weakness and a "drowning" feeling. *Id.* Pursuant
20 to this, the drug Ativan was ordered to be administered to Rebecca by Dr. Shah via IV push. *Id.*
21 Various tests including x-rays were administered, which showed possible infiltrates or edema. *Id.*

22 22. On May 11, 2017, Dr. Concio ordered two consecutive doses of the drug Ativan
23 to be administered to Rebecca via IV push. *See Exhibit A*, (Affidavit of Dr. Sami Hashim, M.D.
24 ¶ 6D). A CT Scan of Rebecca's chest was also ordered, but said scan was aborted due to
25

1 Rebecca's shortness of breath and "anxiety." *Id.* At the very least, a portable x-ray should have
2 been ordered when the patient was returned to her room, but it was not. *Id.* Later, an RT-Tech
3 noted that Rebecca needed to be monitored by a "sitter" due to her attempting to remove her
4 oxygen mask. *Id.* However, no sitter was assigned, nor was Rebecca moved to another room with
5 adequate monitoring capabilities. *Id.* Indeed, the camera monitor of the room Rebecca was in
6 noted that the resolution of the camera/monitor did not allow him to see the patient enough to
7 discern when she attempted to remove the mask. *Id.* Rebecca was mis-diagnosed with 'anxiety
8 disorder' by an unqualified healthcare provider and there was no differential diagnosis presented
9 by any physician at any time on May 11, 2017 when the patient was suffering from respiratory
10 insufficiency. *Id.* Given that Rebecca had been receiving daily doses of Midazolam,
11 Acetylcysteine and at least four other drugs known to cause adverse respiratory side effects, and
12 that Rebecca went into Code Blue status within 90 minutes after Ativan dosing, it is highly
13 probable that the administration of back-to-back doses of Ativan via IV Push to her (while she
14 was already in respiratory distress), alongside the inadequate and absent monitoring, and other
15 act or omissions falling below standard of care, as notes by the DHHS Investigative Report, all
16 directly led to Rebecca's acute respiratory failure resulting in the final cardiorespiratory event
17 and her death. *Id.*

21 23. Dr. Juliano, Dr. Concio and Dr. Shah all breached their duty as professionals
22 providing medical services to Rebecca. *See Exhibit A*, (Affidavit of Dr. Sami Hashim, M.D. ¶
23 7). All three of them were aware of the patient's acutely declining health status and were
24 responsible (and should have) ordered alternative diagnostic imaging such as a portable x-ray to
25

1 detect any significant pulmonary changes when an attempt to conduct a CT scan failed due to
2 “anxiety.” See **Exhibit A**, (Affidavit of Dr. Sami Hashim, M.D. ¶ 7A). In addition, based on
3 Rebecca’s stable condition until late May 10, 2017 and her acute decline in health status on May
4 11, 2017, these three physicians should have made a differential diagnosis that included the
5 possibility of side effect(s) and adverse reaction(s) from the numerous medications being
6 administered to Rebecca known to have side effects directly related to her symptoms manifesting
7 during the deterioration of her health status on May 10 and 11, 2017. *Id.* The nature of the sudden
8 onset of Rebecca’s symptoms should have triggered the three doctors to review drug side effects
9 and interactions as a likely cause of her symptoms and declining health status, but this possibility
10 was ignored by them. *Id.* All three physicians were aware of the decision to administer more
11 Ativan via IV-Push to Rebecca multiple times in rapid succession to treat the her symptom of
12 anxiety, and allowed this administration in dereliction of their responsibility to have been aware
13 that administering Ativan to a respiratory-compromised patient poses significant risks related to
14 serious pulmonary/respiratory function. *Id.* Indeed, the FDA provides warnings of such risks. *Id.*

15
16
17
18 24. Had the three physicians reviewed Rebecca’s drug regimen, they would have
19 realized a large number of these drugs caused shortness of breath, associated anxiety, cough,
20 labored breathing, weakness and other related symptoms exhibited by Rebecca. *Id.* They would
21 have further recognized that Ativan is known to potentially cause and/or increase respiratory
22 depression and would not have administered it, especially not by IV-Push, which is fast-acting.

23 *Id.*

24 ...

25. In concert with, and in addition to the above-articulated failures, a DHHS report dated February 5, 2018 (received by Special Administrator Brian Powell on February 9, 2018) found a plethora of violations falling below the standard of care. *See Exhibit A*, (Affidavit of Dr. Sami Hashim, M.D. ¶ 8). Among other things, the report criticized the fact that no specific differential diagnosis was shown in the records related to Rebecca’s complaints and abnormal findings between May 10 and 11, 2017. *Id.* It also notes that the records state numerous times that physician notification, elevation to a higher level of care and/or closer monitoring was required but did not occur. *Id.* For example, at one point in time the respiratory therapist concluded the physician should have been notified, the Rapid Response Team (“RRT”) activated, and the level of care upgraded, but the physician was not notified, the RRT was not activated and the level of care was not elevated. *Id.* Further, Rebecca was never moved to a different room for closer monitoring as earlier advised. *Id.* Instead, for at least one hour while she was in severe respiratory distress, no RN or CNA checked on her, which was grossly inadequate. *Id.* Also falling far below the standard of care was the fact that Rebecca did not receive any cardiac monitoring until she entered Code Blue status. *Id.* Any patient in respiratory distress needing a re-breather mask and receiving the same medications as Rebecca, must be on telemetry to monitor cardiac status. *Id.* In Rebecca’s case, this was critically important given the fact she had been administered multiple IV Push doses of Ativan, a drug known to depress the respiratory system. *Id.*

...

...

...

V.

FIRST CAUSE OF ACTION

[On Behalf Of The Estate Of Rebecca Powell (Through Special Administrator Brian), Darci, Taryn and Isaiah Against All Defendants]
Negligence / Medical Malpractice

26. Plaintiffs The Estate Of Rebecca Powell (through Special Administrator Brian), Dacri, Taryn, and Isaiah reallege and incorporate by reference the allegations set forth in paragraphs 1 through 25 above.

27. Under Nevada law, specifically the provisions of Nevada Revised Statute (“NRS”) sections 41A, a plaintiff may recover for medical malpractice by showing the following: (i) defendant(s) (i.e. hospital, physician or employee of hospital) failed in rendering services to use reasonable care, skill or knowledge ordinarily used in similar circumstances; (ii) defendant’s conduct was the actual and proximate cause of plaintiff’s injuries; and (iii) plaintiff suffered damages. Under NRS 41A.071, a suit alleging medical malpractice requires an affidavit from a “medical expert.”

28. In this case, Defendants (physicians, medical personnel and medical services corporations in the business of operating/providing services at Centennial Hills Hospital Medical Center) owed Rebecca a duty of care to provide her with medical services in a reasonable and safe manner. Defendants breached their duty of care towards Rebecca by providing her with medical services that fell below the acceptable standards of practice and care. *See Exhibit A* (attached in compliance with NRS 41A.071 and fully incorporated by reference herein). Specifically, Defendants acted below the standard of care when, among other things detailed in **Exhibit A**, they failed to recognize and consider the differential diagnosis of drug-induced

1 respiratory distress, inappropriately administering and/or allowing the administration of
2 additional Ativan via IV Push which further depressed Rebecca's respiration, contributing to her
3 death. This was compounded by numerous instances of failure to notify a physician, failure to
4 elevate to a higher level of care, failure to conduct necessary tests and failure to conduct closer
5 monitoring, all falling below the standard of care. Defendants also failed to recognize the fact that
6 Cymbalta could not be the cause of Rebecca's acute health deterioration due to its short half-shelf
7 life. Any other failures by Defendants to adhere to the standard of care while treating Rebecca
8 not described herein are realleged and incorporated by reference herein, as set forth in **Exhibit A**
9 and paragraphs 1 to 27 above.

10
11 29. Based upon the foregoing, it was entirely foreseeable that administering several
12 doses of Ativan via IV Push in quick succession to Rebecca, who was already experiencing
13 respiratory distress, and who was already on a cocktail of other drugs also known to have negative
14 respiratory effects, in conjunction with the various failures of care describes above and in **Exhibit**
15 **A**, could have caused (and in all probability did cause) severe respiratory symptoms, ultimately
16 putting Rebecca into Code Blue status and killing her. **Exhibit A**, ¶ 7 and 8. Thus, Defendants'
17 breach of their duty was both the actual and proximate cause of Rebecca's death.
18

19
20 30. Plaintiffs Dacri, Taryn and Isaiah, the heirs of Rebecca, as well as her Estate, have
21 suffered damages, including but not limited to significant pain and suffering, as a result of
22 Defendants' negligence in excess of \$15,000.00.
23

24 ...

25 ...

31. As a result of Defendants' negligence, these Plaintiffs have been required to obtain the services of an attorney to prosecute this action. These Plaintiffs are entitled to an award of attorney's fees and costs of suit incurred herein.

32. That the conduct of Defendants rose to the level of oppression, fraud or malice, express or implied. That Defendants consciously disregarded the welfare and safety of Rebecca and these Plaintiffs in providing substandard care to Rebecca, leading to her death. Further, Defendants committed fraud where notes and records by RN(s) and/or CNAs were contradicted by a note indicating that Rebecca was not checked on for an hour on May 11, 2017 while she was in critical condition. See **Exhibit A**, (Affidavit of Dr. Sami Hashim, M.D. ¶ 8). These Plaintiffs further reallege and incorporate any further applicable acts or omissions of Defendants while treating Rebecca not described herein, as set forth in Exhibit A and paragraphs 1 to 31 above. That these Plaintiffs are entitled to punitive/exemplary damages due to said acts or omissions.

33. The Estate of Rebecca Powell is also entitled to, and does hereby maintain this action, pursuant to NRS 41.100 and seeks all damages permitted under that statute.

VI.

SECOND CAUSE OF ACTION

[On Behalf Of The Estate Of Rebecca Powell (Through Special Administrator Brian), Darci, Taryn and Isaiah Against All Defendants]
Wrongful Death Pursuant To NRS 41.085

34. These Plaintiffs reallege and incorporate by reference the allegations set forth in paragraphs 1 through 33 above.

...

...

1 35. Under NRS 41.085, the heirs and personal representative of a decedent's estate
2 may respectively maintain independent causes of action against another where that person/party
3 has caused the decedent's death by wrongful act or neglect.

4 36. In this case, Rebecca's Estate (through Brian its Special Administrator) and her
5 heirs (her children Dacri, Taryn, and Isaiah) may each seek appropriate damages permitted by
6 Nevada law (NRS 41.085) based upon the death of Rebecca. This includes, but is not limited to,
7 damages for grief, sorrow, loss of probable support, companionship, society, comfort and
8 consortium, medical/funeral expenses and damages for pain/suffering/emotional distress of
9 Rebecca. Additionally, these Plaintiffs may also seek any special damages permitted by law.

10 37. Defendants acted wrongfully and neglectfully when they breached their duty of
11 care towards Rebecca by providing her with medical service that fell below the acceptable
12 standards of practice and care. See **Exhibit A** (fully incorporated by reference herein).
13 Specifically, Defendants acted below the standard of care when, among other things detailed in
14 **Exhibit A**, they failed to recognize and consider the differential diagnosis of drug-induced
15 respiratory distress, inappropriately administering and/or allowing the administration of
16 additional Ativan via IV Push which further depressed Rebecca's respiration, contributing to her
17 death. This was compounded by numerous instances of failure to notify a physician, failure to
18 elevate to a higher level of care, failure to conduct necessary tests and failure to conduct closer
19 monitoring, all falling below the standard of care. Defendants also failed to recognize the fact that
20 Cymbalta could not be the cause of Rebecca's acute health deterioration due to its short half-shelf
21 life. Any other failures by Defendants to adhere to the standard of care while treating Rebecca
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1 not described herein are realleged and incorporated by reference herein, as set forth in **Exhibit A**
2 and paragraphs 1 to 36 above.

3 38. These Plaintiffs, the heirs of Rebecca, as well as her Estate, have suffered
4 respective damages as a result of Defendants' negligence in excess of \$15,000.00.

5 39. That the conduct of Defendants rose to the level of oppression, fraud or malice,
6 express or implied. That Defendants consciously disregarded the welfare and safety of Rebecca
7 and these Plaintiffs in providing substandard care to Rebecca, leading to her death. Further,
8 Defendants committed fraud where notes and records by RN(s) and/or CNAs were contradicted
9 by a note indicating that Rebecca was not checked on for an hour on May 11, 2017 while she was
10 in critical condition. *See Exhibit A*, (Affidavit of Dr. Sami Hashim, M.D. ¶ 8). These Plaintiffs
11 further reallege and incorporate any further applicable acts or omissions of Defendants while
12 treating Rebecca not described herein, as set forth in Exhibit A and paragraphs 1 to 38 above.
13 That these Plaintiffs are entitled to punitive/exemplary damages due to said acts or omissions.
14

15 40. As a result of Defendants' negligence, these Plaintiffs have been required to obtain
16 the services of an attorney to prosecute this action. These Plaintiffs are entitled to an award of
17 attorney's fees and costs of suit incurred herein.
18

19
20 **VII.**

21 **THIRD CAUSE OF ACTION**

22 ***[On Behalf Of Darci, Taryn and Isaiah Against All Defendants]***
23 **Negligent Infliction Of Emotional Distress**

24 41. These Plaintiffs reallege and incorporate by reference the allegations set forth in
25 paragraphs 1 through 40 above.

1 42. A plaintiff may recover for negligent infliction of emotional distress (bystander
2 theory) under Nevada law by showing the following: (i) defendant negligently committed an
3 injury upon another; (ii) plaintiff is closely related to the victim of the accident; (iii) plaintiff was
4 located near the scene of the accident; and (iv) plaintiff suffered a shock resulting from the sensory
5 and contemporaneous observance of the accident.
6

7 43. In this case, Defendants (physicians and medical services corporations operating
8 a for-profit hospital) owed Rebecca a duty of care to provide reasonable and safe services. They
9 breached this duty of care towards Rebecca by providing her with medical service that fell below
10 the acceptable standards of practice and care. See **Exhibit A** (fully incorporated by reference
11 herein). Specifically, Defendants acted below the standard of care when, among other things
12 detailed in **Exhibit A**, they failed to recognize and consider the differential diagnosis of drug-
13 induced respiratory distress, inappropriately administering and/or allowing the administration of
14 additional Ativan via IV Push which further depressed Rebecca's respiration, contributing to her
15 death. This was compounded by numerous instances of failure to notify a physician, failure to
16 elevate to a higher level of care, failure to conduct necessary tests and failure to conduct closer
17 monitoring, all falling below the standard of care. Defendants also failed to recognize the fact that
18 Cymbalta could not be the cause of Rebecca's acute health deterioration due to its short half-shelf
19 life. Any other failures by Defendants to adhere to the standard of care while treating Rebecca
20 not described herein are realleged and incorporated by reference herein, as set forth in **Exhibit A**
21 and paragraphs 1 to 42 above.
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1 44. As a direct and proximate result of the negligence of Defendants, these Plaintiffs
2 suffered shock and serious emotional distress when they observed the condition of their mother
3 Rebecca precipitously deteriorate (ultimately leading to her rapid death) at CHHMC on May 10
4 and 11 of 2017.

5 45. These Plaintiffs contemporaneously observed the direct and proximate results of
6 Defendants' negligence when their mother Rebecca, who previously appeared to be recovering,
7 rapidly deteriorated before their eyes and died. These Plaintiffs suffered a shock and serious
8 emotional distress from sensory, contemporaneous observance of this tragic and unfortunate
9 event, all directly and proximately caused by Defendants' negligence. That said, this severe
10 emotional distress had an adverse impact on their physical health and well-being.
11

12 46. These Plaintiffs, and each of them, have suffered damages as a result of
13 Defendants' actions in excess of \$15,000.00.
14

15 47. That the conduct of Defendants rose to the level of oppression, fraud or malice,
16 express or implied. That Defendants consciously disregarded the welfare and safety of Rebecca
17 and these Plaintiffs in providing substandard care to Rebecca, leading to her death. Further,
18 Defendants committed fraud where notes and records by RN(s) and/or CNAs were contradicted
19 by a note indicating that Rebecca was not checked on for an hour on May 11, 2017 while she was
20 in critical condition. *See Exhibit A*, (Affidavit of Dr. Sami Hashim, M.D. ¶ 8). These Plaintiffs
21 further reallege and incorporate any further applicable acts or omissions of Defendants while
22 treating Rebecca not described herein, as set forth in Exhibit A and paragraphs 1 to 46 above.
23 That these Plaintiffs are entitled to punitive/exemplary damages due to said acts or omissions.
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1 48. As a result of Defendants' actions, these Plaintiffs have been required to obtain
2 the services of an attorney to prosecute this action. These Plaintiff is entitled to an award of
3 attorney's fees and costs of suit incurred herein.

4 **VIII.**

5 **FOURTH CAUSE OF ACTION**
6 ***[On Behalf Of Lloyd Creecy Against All Defendants]***
7 **Negligent Infliction Of Emotional Distress**

8 49. This Plaintiff realleges and incorporates by reference the allegations set forth in
9 paragraphs 1 through 48 above.

10 50. A plaintiff may recover for negligent infliction of emotional distress (bystander
11 theory) under Nevada law by showing the following: (i) defendant negligently committed an
12 injury upon another; (ii) plaintiff is closely related to the victim of the accident; (iii) plaintiff was
13 located near the scene of the accident; and (iv) plaintiff suffered a shock resulting from the sensory
14 and contemporaneous observance of the accident.

15
16 51. In this case, Defendants (physicians and medical services corporations operating
17 a for-profit hospital) owed Rebecca a duty of care to provide reasonable and safe services. They
18 breached this duty of care towards Rebecca by providing her with medical service that fell below
19 the acceptable standards of practice and care. *See Exhibit A* (fully incorporated by reference
20 herein). Specifically, Defendants acted below the standard of care when, among other things
21 detailed in **Exhibit A**, they failed to recognize and consider the differential diagnosis of drug-
22 induced respiratory distress, inappropriately administering and/or allowing the administration of
23 additional Ativan via IV Push which further depressed Rebecca's respiration, contributing to her
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1 death. This was compounded by numerous instances of failure to notify a physician, failure to
2 elevate to a higher level of care, failure to conduct necessary tests and failure to conduct closer
3 monitoring, all falling below the standard of care. Defendants also failed to recognize the fact that
4 Cymbalta could not be the cause of Rebecca's acute health deterioration due to its short half-shelf
5 life. Any other failures by Defendants to adhere to the standard of care while treating Rebecca
6 not described herein are realleged and incorporated by reference herein, as set forth in **Exhibit A**
7 and paragraphs 1 to 50 above.

9 52. As a direct and proximate result of the negligence of Defendants, this Plaintiff
10 suffered shock and serious emotional distress when he observed the condition of his daughter
11 Rebecca precipitously deteriorate (ultimately leading to her rapid death) at CHHMC on May 10
12 and 11 of 2017.

14 53. This Plaintiff contemporaneously observed the direct and proximate results of
15 Defendants' negligence when his daughter Rebecca, who previously appeared to be recovering,
16 rapidly deteriorated before his eyes and died. This Plaintiff suffered a shock and serious
17 emotional distress from sensory, contemporaneous observance of this tragic and unfortunate
18 event, all directly and proximately caused by Defendants' negligence. That said, this severe
19 emotional distress had an adverse impact on his physical health and well-being.

21 54. This Plaintiff has suffered damages as a result of Defendants' actions in excess of
22 \$15,000.00.

24 55. That the conduct of Defendants rose to the level of oppression, fraud or malice,
25 express or implied. That Defendants consciously disregarded the welfare and safety of Rebecca

1 and these Plaintiffs in providing substandard care to Rebecca, leading to her death. Further,
2 Defendants committed fraud where notes and records by RN(s) and/or CNAs were contradicted
3 by a note indicating that Rebecca was not checked on for an hour on May 11, 2017 while she was
4 in critical condition. *See Exhibit A*, (Affidavit of Dr. Sami Hashim, M.D. ¶ 8). These Plaintiffs
5 further reallege and incorporate any further applicable acts or omissions of Defendants while
6 treating Rebecca not described herein, as set forth in Exhibit A and paragraphs 1 to 54 above.
7 That these Plaintiffs are entitled to punitive/exemplary damages due to said acts or omissions.
8

9 56. As a result of Defendants' actions, this Plaintiff has been required to obtain the
10 services of an attorney to prosecute this action. This Plaintiff is entitled to an award of attorney's
11 fees and costs of suit incurred herein.
12

13 **IX.**

14 **RELIEF REQUESTED**

15 57. Wherefore, in light of the foregoing, Plaintiffs request that the Court enter the
16 following relief in this matter:
17

- 18 a. Set this matter for trial by jury on a date certain;
- 19 b. Award Plaintiffs compensatory and special damages in amounts exceeding
20 \$15,000.00 for each cause of action set forth herein;
- 21 c. Award Plaintiffs interest (pre-judgment and post-judgment) on all sums
22 permitted by law;
- 23 d. Award Plaintiff reasonable attorney's fees and costs for having to
prosecute this matter;

24 ...

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- 1 e. Punitive/Exemplary Damages for each cause of action; and
2
3 f. Award all other just and proper relief.

4 DATED this 4th day of February 2019.

5 Respectfully submitted by:

6 PAUL PADDA LAW, PLLC

7
8 By: 

9 PAUL S. PADDA, ESQ.
10 JOSHUA Y. ANG, ESQ.
11 4560 South Decatur Blvd., Suite 300
12 Las Vegas, Nevada 89103

13 Attorneys for Plaintiffs
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EXHIBIT A

EXHIBIT A

AFFIDAVIT OF DR. SAMI HASHIM, M.D.

STATE OF NEW YORK

}

COUNTY OF WESTCHESTER

}

The undersigned affiant, Dr. Sami Hashim, M.D., being first duly sworn, hereby deposes and says:

1. I have reviewed the medical records pertaining to Rebecca Powell (Date of Birth: May 30, 1975 / Date of Death: May 11, 2017).
2. This affidavit is offered based upon my personal and professional knowledge. I am over the age of eighteen and competent to testify to the matters set forth herein if called upon to do so.
3. I am a medical doctor and senior attending physician in the Division of Endocrinology and Metabolism at St. Luke's Hospital/Medical Center at Mount Sinai in New York, New York. I have been a Professor of Endocrinology, Internal Medicine, Metabolism & Nutritional Medicine at Columbia University College of Physicians & Surgeons since the early 1970's and was Chief of Metabolic Research from 1971 to 1997. I have published over 200 papers in peer-reviewed journals and am a recognized expert in the fields of internal medicine (including general medicine, which includes cardiology, neurology, pulmonology and other specialties), endocrinology, metabolism and nutrition. I have served on research review committees of the National Institute of Health. I earned my MD degree from the State University of New York, with post graduate training at Harvard University.
4. I have worked as a senior attending physician and professor at St. Luke's Hospital and Medical Center, a Mount Sinai Medical Center affiliate hospital (previously affiliated with Columbia University) for over 20 years. As a professor, I teach medical students, interns, residents all aspects of internal and general medicine, in-patient and out-patient medical care. I complete medical rounds each day seeing patients with and without medical students, interns, residents and I train Fellows in many different specialties including Emergency Medicine, Cardiology, and Pulmonary Medicine. I also attend to private patients at St. Luke's.
5. As a senior attending physician and Professor with decades of teaching and training medical students, Interns, Residents and Fellows as well as attending to my own private patients, I can attest that following Standard of Care ("SOC") protocols is crucial and essential for proper diagnosis, treatment and care management. Obviously, there are numerous SOC protocols, which begin from the time the patient is first seen and examined at a hospital/medical center, post-admission, at time of discharge and following discharge. Many of the protocols are basic, yet of critical importance to the patient's overall health welfare and ultimate recovery during the recuperation period following discharge. That is why all hospitals/medical centers respect and adhere to strict guidelines and protocols described & defined by each healthcare facility and even by federal law(s). Certainly, real-time information stated

and revealed in a patient's medical records such as all chart notes, must be carefully evaluated and considered as primary SOC as part of patient care management. Disregard of even basic protocols can lead to catastrophic events and outcomes.

6. I have reviewed the available medical records, summary reports and the HHS-Investigative Report pertaining to Rebecca Powell. Evaluation of her medical records and reconstruction of an accurate timeline was available in part (all records were requested, not all records were provided by Centennial Hills Hospital & Medical Center). In my opinion, stated to a reasonable degree of medical probability, the conduct of *Centennial Hills Hospital & Medical Center* (including its hospitalists/nurses and other healthcare providers including *Dr. Juliano Dionice, M.D., Dr. C. Concio, M.D., Dr. Vishal Shah* - presumed employees)—fell below the appropriate standards of care that were owed to Rebecca Powell. The medical records and additional medical related information I have reviewed reveal the following:

- A. On May 3, 2017 at 3:27PDT, Rebecca Powell, a 41-year old adult female, was found by EMS at home, unconscious with labored breathing and vomitus on her face. It was believed she ingested an over-amount of Benadryl, Cymbalta and Ambien. EMS intubated Ms. Powell and transported her to Centennial Hills Hospital—Emergency Department (ED). At ED, patient was evaluated and diagnosed with:

- Respiratory Failure and low BP
- “Overdose on unknown amount of Benadryl, Cymbalta and ETOH”
- Review of Systems: “Within Normal Limits” (WNL)
- Sinus Tachycardia – no ectopy
- Lab results consistent with respiratory failure and over-dosage of suspected medications
- Acidosis

- B. Notwithstanding clear evidence of intentional over-dosing of the substances mentioned, the Death Certificate noted the *only* cause of death was due to: “Complications of Cymbalta Intoxication.” Based on medical records, the patient did not and with high probability could not have died from the cause of death stated in the Death Certificate. The patient died as a direct consequence of respiratory failure directly due to below standard of care violations as indicated by her medical records and reinforced by the Department of Health and Human Services—Division of Health Quality and Compliance Investigative Report. Furthermore:

- After being admitted to Centennial Hills Hospital on 05/03/17, the patient's health status steadily improved over the course of almost a week.
- Patient was extubated in the ICU and moved to a medical floor.
- Patient's lab results improved daily.
- Pulmonologist consultation stated that the patient felt well enough and wanted to go home. The specialist made no note to delay discharge.
- Healthcare providers told family members from out-of-town that the patient was doing much better and “would be discharged soon.” Family returned to their homes out-of-state based on the information they received.

- Metabolically, Cymbalta has a half-shelf life of approximately 12-24 hours, up to 48 hours if an over-amount is ingested. The patient didn't have a downward health status until 150 hours+ had transpired. *Therefore, the possibility that she died from Cymbalta intoxication or complication of, is not realistic.*
 - There was no medical evidence of the patient ingesting Ambien, Benadryl or ETOH, nor did toxicology reports reveal any of those substances.
 - On 05/04/17, the patient underwent a bronchoscopy and bronchoalveolar lavage. The report stated, *"There was no foreign material or deciduous matter evidenced."* Had the patient aspirated vomitus, there would have been some endotracheal or bronchial evidence of foreign or deciduous matter.
 - From 05/07/17 – 05/11/17 – Over a period of nearly five days, medical records state the patient steadily improved.
 - 05/07/17– PROGRESS NOTES state *"Patient alert and stable"* and *"Can upgrade diet to GI soft."*
 - 05/08/17 – *"Patient vitals remain stable"* and *"No significant event during shifts."*
 - 05/09/17 – PROGRESS NOTES (stating the patient had significantly improved and was expected to be discharged)
 - *"Patient eager to go home. Denies any shortness of breath. No cough, shortness of breath or sputum production."*
 - Review of Systems – Normal
 - Vitals – Normal
- C. Late on 05/10/17 and early hours of 05/11/17, the patient's health status changed. Initially, the changes were not even approaching critical by any stretch of consideration or concern. However, the *below standard of care related to inadequate and absent monitoring, lack of diagnostic testing and improper treatment were directly related to the patient's acutely failing health status and ultimately her pronounced death at 6:57 AM on 05/11/17.*
- On 05/10/17 at 2AM, patient started coughing and complained of SOB. Patient was receiving O2-2L/NC
 - At 10:51AM – Patient's SO2 dropped to 92%
 - At 3:11PM – *Patient complained of continued SOB and weakness*
 - At 4:11PM – Patient complaining of increased labor for breathing, states she feels like she's *"drowning"*
 - Order for breathing treatment and **Ativan IV Push** ordered by *Dr. Shah* & administered for anxiety with no improvement.
 - Dr. Shah contacted who ordered STAT ABG and 2 view x-ray – Results showed possible infiltrates or edema.
- D. On 05/11/17, the patient's health status markedly declined.
- At 2AM – A STAT CT scan of chest was ordered.
 - At 2:20AM – **Ativan IV Push** (.5mg) was ordered by *Dr. Concio* & administered.
 - At 2:40AM – *CT Lab called to state patient was being returned to her room (701) and CT could not be completed due to patient's complaint of SOB and anxiety.*
 - (Note: At the very least, a portable x-ray should have been ordered when the patient was returned to her room. **It wasn't.**)
 - At 3:27AM – **Ativan IV Push** was again ordered by *Dr. Concio* & administered.

- At 3:45AM – RT-Tech (Venessa) was called to assess the patient. Indicated that the patient was not cooperative and kept removing the O2 mask. Also stated the patient needed to be monitored with a “sitter.” Karen contacted House Supervisor David to explain that a sitter was needed. He suggested placing the patient in wrist restraints. When asked to closely monitor the patient, the camera monitor (John) noted that the resolution of the camera/monitor did not allow him to see the patient enough to discern when she attempted to remove the mask. He advised moving the patient to a room with better video capability. The patient did not receive a “sitter” nor was she moved to another room with adequate monitoring capability.
- The patient was mis-diagnosed with ‘anxiety disorder’ by an unqualified healthcare provider and there was no differential diagnosis presented by any physician at any time on 05/11/17 when the patient was suffering from respiratory insufficiency.
- Based on the administration of multiple doses of Ativan IV Push, the fact that the patient had been receiving daily doses of Midazolam (another Benzodiazepine causing respiratory depression), Acetylcysteine (can also cause respiratory symptoms), (at least four other drugs with side effects of SOB, labored breathing and cough) and the period of time from Ativan dosing to Code Blue was within less than 90 minutes. Given the medication regimen the patient was on, it’s highly probable that administering the back to back doses of Ativan IV Push to this patient (already in respiratory distress), the inadequate and absent monitoring of the patient and other below standards of care as verified in the Investigative Report, were all directly related to the patient’s acute respiratory failure leading to the final cardiorespiratory event and death.

7. Dr. Dionice, Dr. Concio and Dr. Shah, in my expert opinion, each one breached their duty.

- A. Based on radiological reports as late as 05/10/17, stating there were no significant changes from 05/08/17, noting “possible infiltrates or edema.” This is extremely relevant in diagnosing and treating the patient’s sudden respiratory change in health status late 05/10/17 and 05/11/17.
- Since the patient was unable to undergo a CT scan due to “anxiety”, at the very least a portable x-ray should have been ordered to determine if and what significant pulmonary changes were present based on the presence of acute signs & symptoms. Each of the three physicians aforementioned were aware of the patient’s acutely declining health status and were responsible for not only ordering an alternative diagnostic imaging such as a portable x-ray, but also obtaining & reporting the results to determine pulmonary involvement based on her symptoms. Medical records do not reveal a portable x-ray ordered when the CT scan was unable to be completed, nor any results of any x-ray ordered after the attempted CT scan when the patient was returned to her room.
 - Based on the patient’s stable condition until late 05/10/17 and her acute decline in health status on 05/11/17, an immediate differential diagnosis should have been made, which absolutely should have included the possibility of side effect(s) and adverse reaction(s) from medications being administered. Given the nature of the sudden onset of the patient’s symptoms, drug side effects and interactions should have been reviewed by each of the three physicians aforementioned. The patient had been receiving six drugs, including Ativan administered on 05/09/17 and 05/10/17, all having side effects directly

related to the symptoms and findings displayed by the patient at the time her health acutely worsened on 05/10/17 & 05/11/17.

- Without consideration of the probable drug side effects, adverse reactions and interactions, which were most probably directly related to the patient's acute symptoms, the three physicians aforementioned, ignored even the possibility that her medications might be the cause of her symptoms & declining health status. Consequently, not one of the three physicians aforementioned even placed drug(s) side effects/adverse reactions on any differential diagnosis.
- Instead of performing their professional duty related to prescribed and administered medications, all three of the physicians aforementioned were aware of the decision to administer even more Ativan IV-Push, multiple times in a short period of time to treat the patient's symptom of anxiety. It was the responsibility of each of the three physicians to have been aware and knowledgeable that administering Ativan to a respiratory compromised patient has significant risks related to serious pulmonary/respiratory function. The FDA provides warnings with the use of benzodiazepines of such risk. Interactions with other drugs (not only when used concomitantly with opiates) can compound the seriousness of the risk(s).
- *Had any of the three physicians aforementioned, reviewed the patient's drug regimen, they would have realized that several of the drugs caused, shortness of breath (SOB) and associated anxiety, cough, labored breathing, weakness and other related symptoms exhibited by the patient. Had any of the three aforementioned physicians, reviewed the side effects, Ativan (known to potentially cause and/or increase respiratory depression) would not have been administered, especially not by IV-Push (the effects are much faster and more dramatically pronounced).*

8. Department of Health and Human Services—NV Bureau of Health Quality and Compliance Investigative Report, not only reinforced my findings, but revealed many other below standard of care violations, all related directly to the wrongful death of the patient. The information below, provides examples of other below standard of care violations found in the medical records and as part of the HHS—NV Bureau's Investigation:

- There was no specific differential diagnosis shown in the records related to her complaints and abnormal findings between 05/10/17 to 05/11/17.
- The records stated numerous times that the patient needed to be elevated to a higher level of care and required *close* monitoring. ***Neither were provided.***
- **Respiratory Therapist** – (“...the RT concluded the physician should have been notified, the RRT activated and the level of care upgraded.”) ***The physician was not notified, the RRT was not activated and the level of care was not elevated.***
- **Registered Nurse** – (“...RN explained normal vital signs were: B/P: 100/60, HR: no more than 100 bpm, RR: 16-20 br/m and SPO2 no less than 92%. If a patient with a HR of 130 bpm and RR of 30 br/m, the physician **must** be notified immediately and the RRT activated.”) ***The patient had a HR of 130, SPO2 below 92% while receiving 3+ liters of oxygen and a respiratory rate of 30 bpm..***”) ***The physician was not notified.***
- **The Legal 2000 Patient Frequency Observation Record** – (“...they could not see the incident on monitor and again advised to change the patient to room 832 (with working camera). The record revealed at 6:10 AM, Code Blue was announced. The record indicated the patient “last appeared to be sitting in close to upright position with fingers

*possible in mouth for approximately one hour.”) **IMPORTANT NOTE – The patient was not changed to a different room as earlier advised. Hence, she was not being adequately monitored, which was of critical importance. The last sentence in this record reveals that for at least one hour the patient was in severe respiratory distress and during that hour, no RN or CNA checked on the patient. This contradicts other records and statements made by the RN and the CNA.***

- **Chief of Nursing Operations** – (“...the Chief of Nursing Operations (CNO) indicated that the patient should have been monitored closely based on the vital signs and condition. The CNO acknowledged the Rapid Response Team (RRT) should have been activated and the patient upgraded to a higher level of care.”) **The RRT was not activated nor was the patient elevated to a higher level of care.**
- **Process Improvement Manager** – (“...the facility Process Improvement Manager indicated the patient was not monitored by telemetry and the cardiac monitoring documentation available for 05/11/17 was the EKG performed during the Code Blue.”) **The patient was already known to be in respiratory distress before she coded. According to this record-note, the patient was not receiving any cardiac monitoring and was only monitored during the code. (This is a shameful and gross example of below standard of care. Any patient in respiratory distress needing a re-breather mask and receiving the same medications for the present acute health status, must be on telemetry to monitor cardiac status. In this patient’s case, it was critically important given the fact she had been administered multiple IV PUSH doses of ATIVAN, a drug known to depress the respiratory system.**
- **Respiratory Therapy Supervisor** – (“...RT Supervisor confirmed according to the vital signs documented in the record on 05/11/17 at 4:08 AM and 4:47 AM, the patient was in respiratory distress and required an upgrade of the level of care.”) **On more than one occasion during the same hour, the patient required being upgraded to a higher level of care, but wasn’t upgraded. This note also indicates that during that hour between 4:00 AM – 5 AM, no RN or CNA checked on the patient. This contradicts other records and statements made by the RN and the CNA.**

9. In my expert opinion, stated to a reasonable degree of medical probability, the failure to properly diagnose the patient before she became acutely critical on 05/11/17, the failure of the healthcare provider staff to adequately monitor the patient (also stated in the HHS-Investigative Report), the failure to properly diagnose the patient, the failure to provide proper treatment (***lacking review of the patient’s medications***) and administering the drug (Ativan) several times **IV-Push** in a respiratory compromised patient, inclusively & directly led to the patient’s wrongful death. Additionally, there were many other below Standard of Care violations as revealed and reported by the Department of Health and Human Services, Nevada—Bureau of Health Care Quality and Compliance – Investigation Report (Complaint Number - NV00049271) also related directly to Rebecca’s Powell’s wrongful death.

I declare, under penalty of perjury, that the foregoing is true and correct to the best of my knowledge and belief. I reserve the right to change my opinions pending production and review of additional medical records.

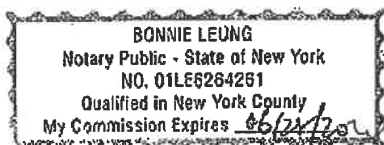
Sami Hashim
Dr. Sami Hashim, MD.

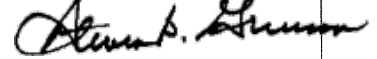
Dated: 1/23/2019

Sworn to me before this 23rd day

of January 2019.

Bonnie Leung
Notary Public





1 **MTD**
2 JOHN H. COTTON, ESQ.
3 Nevada Bar Number 5268
4 JHCotton@jhcottonlaw.com
5 BRAD SHIPLEY, ESQ.
6 Nevada Bar Number 12639
7 BShipleyr@jhcottonlaw.com
8 **JOHN H. COTTON & ASSOCIATES, LTD.**
9 7900 West Sahara Avenue, Suite 200
10 Las Vegas, Nevada 89117
11 Telephone: (702) 832-5909
12 Facsimile: (702) 832-5910
13 *Attorneys for Defendants Conrado Concio, M.D.,*
14 *and Dionice Juliano, M.D.*

9 **DISTRICT COURT**
10 * * *
11 **CLARK COUNTY, NEVADA**

11 ESTATE OF REBECCA POWELL, through
12 BRIAN POWELL, as Special Administrator;
13 DARCI CREECY, individually and as an Heir;
14 TARYN CREECY, individually and as an
15 Heir; ISAAH KHOSROF, individually and as
16 an Heir; LLOYD CREECY, individually,

17 Plaintiffs,

18 vs.

19 VALLEY HEALTH SYSTEM, LLC (doing
20 business as "Centennial Hills Hospital Medical
21 Center"), a foreign limited liability company;
22 UNIVERSAL HEALTH SERVICES, INC., a
23 foreign corporation; DR. DIONICE S.
24 JULIANO, M.D., an individual; Dr.
25 CONRADO C.D. CONCIO, M.D., an
26 individual; DR. VISHAL S. SHAH, M.D., an
27 individual; DOES 1-10; and ROES A-Z;

28 Defendants.

HEARING REQUESTED

CASE NO.: **A-19-788787-C**
DEPT. NO.: **XIV**

DEFENDANT CONRADO CONCIO,
MD, AND DIONICE JULIANO, MD'S
MOTION TO DISMISS

HEARING REQUESTED

23 Defendants Conrado Concio, MD, and Dionice Juliano, MD by and through their counsel
24 of record, John H. Cotton, Esq., and Brad J. Shipley, Esq., of the law firm of JOHN H. COTTON
25 & ASSOCIATES, LTD, pursuant to NRCP 12(b)(5), NRS 41A.097, and NRS 41A.071 hereby
26 move to dismiss Plaintiffs' Complaint with respect to Defendants Conrado Concio, MD, and
27 Dionice Juliano, MD, as the action is barred by the applicable statute of limitations, and no
28

John H. Cotton & Associates, Ltd.
7900 West Sahara, Suite 200
Las Vegas, Nevada 89117

1 allegations of negligence are made in the affidavit in support of the Complaint against Defendant
2 Dionice Juliano, MD.

3 *Memorandum of Points and Authorities*

4 **I. Introduction**

5 This matter concerns the death of Rebecca Powell on May 11, 2017. No party takes the
6 death of a 42-year old woman lightly. Plaintiffs, the estate and heirs of Ms. Powell, allege
7 negligent infliction of emotional distress in addition to professional negligence. While
8 Defendants contend that all of the care and treatment rendered was within the standard of care,
9 they need not argue the underlying merits of this case because Plaintiffs fail to overcome
10 important threshold procedural requirements that are necessary to protect Defendants'
11 fundamental rights to due process.

12 Specifically, with respect to both Defendants, the statute of limitations has clearly long
13 passed, and the pleadings, even taken as true, necessitate such a finding as a matter of law. With
14 respect to Defendant Juliano, Plaintiffs have also failed to give him adequate notice of the
15 allegations against him by failing to properly allege with any specificity in the required expert
16 affidavit what it actually is that he did that fell below the standard of care.

17 **II. Facts as Alleged in Plaintiff's Complaint**

18 1. On February 4, 2019, a Complaint was filed in the Eighth Judicial District Court, by the
19 Estate and heirs of Rebecca Powell, naming, *inter alia*, Defendants Conrado Concio, MD and
20 Dionice Juliano, MD. The Complaint alleges four causes of action: 1) Negligence/Medical
21 Malpractice, 2) Wrongful Death, 3) Negligent Infliction of Emotional Distress on behalf of
22 Rebecca Powell's three adult children, and 4) Negligent Infliction of Emotional Distress on
23 behalf of Rebecca Powell's surviving father. The action or actions alleged to form the basis of
24
25
26
27
28

///

1 the negligent infliction of emotional distress claims are the same as those giving rise to the
2 professional negligence claim.

3 2. The Complaint alleges that Rebecca Powell died on May 11, 2017. The Complaint is
4 silent as to the date that Plaintiffs obtained the decedent's medical records. There is no allegation
5 that either Defendant Concio or Defendant Juliano concealed or delayed the receipt of decedent's
6 medical records.
7

8 3. An affidavit in support of the Complaint was attached, and executed by Dr. Sami
9 Hashim, M.D. Dr. Hashim levels specific criticisms of the fact that the decedent received Ativan
10 on May 10 and 11, which he alleges contributed to her death. Dr. Hashim mentions specifically
11 that Dr. Shah and Dr. Concio administered Ativan to the decedent. Dr. Hashim states that "in my
12 opinion, stated to a reasonable degree of medical probability, the conduct of Centennial Hills
13 Hospital & Medical Center (including its hospitalists/nurses and other healthcare providers
14 including Dr. Juliano Dionice, (*sic*) M.D., Dr. C. Concio, MD, Dr. Vishal Shah – presumed
15 employees)—fell below the appropriate standards of care that were owed to Rebecca Powell."
16 Dr. Hasim further states that "Dr. Dionice, Dr. Concio and Dr. Shah, in my expert opinion, each
17 one breached their duty." While the affidavit does state, in conclusory fashion, that Defendant
18 Juliano breached his duty, it does not describe any specific acts that he did which support that
19 conclusion.
20

21 **III. Legal Argument**

22 NRCP 12(b)(5) provides for dismissal of actions for failure to state a claim upon which
23 relief can be granted. In ruling on a Motion to Dismiss pursuant to NRCP 12(b)(5), the Court
24 must regard all factual allegations in the complaint as true and must draw all inferences in favor
25 of the non-moving party. *See Schneider v. County of Elko*, 119 Nev. 381, 75 P.3d 368 (2003).
26 Dismissal for failure to state a claim is appropriate when it appears beyond a doubt that the
27
28

1 plaintiff could prove no set of facts which, if true, would entitle him to relief. *Buzz Stew, LLC v.*
2 *City of Las Vegas*, 124 Nev. Adv. Op. 21, 181 P. 3d 670, 672 (2008). To survive a motion to
3 dismiss for failure to state a claim, the complaint must set forth factual allegations sufficient to
4 establish each element necessary to recover under some actionable legal theory. *See* NRC
5 12(b); *See also Hampe v. Foote*, 118 Nev. 405, 408, 47 P. 3d 438, 439 (2002) (although factual
6 allegations in the complaint are regarded as true for the purposes of a motion to dismiss, a
7 [d]ismissal is proper where the allegations are insufficient to establish the elements of a claim for
8 relief).

9
10 Here, although Plaintiffs are entitled to have all allegations regarded as true for purposes
11 of this motion, each of Plaintiffs claims for relief as a matter of law, as will be explained in more
12 detail below.

13 **A. Pursuant to NRS 41A.071, any allegations of professional negligence against**
14 **Defendant Dionice Juliano fail as a matter of law.**

15
16 NRS 41A.071 imposes a threshold pleading requirement on Plaintiffs in actions for
17 professional negligence. The statute reads:

18 If an action for professional negligence is filed in the district court,
19 the district court shall dismiss the action, without prejudice, if the
20 action is filed without an affidavit that: 1. Supports the allegations
21 contained in the action; 2. Is submitted by a medical expert who
22 practices or has practiced in an area that is substantially similar to
23 the type of practice engaged in at the time of the alleged
24 professional negligence; 3. Identifies by name, or describes by
conduct, each provider of health care who is alleged to be
negligent; and 4. Sets forth factually a specific act or acts of
alleged negligence separately as to each defendant in simple,
concise and direct terms.

25 The Supreme Court of Nevada has discussed these four requirements, and specifically addressed
26 NRS 41A.071(3) and (4) in *Zohar v. Zbiegien*, 130 Nev. Adv. Op. 74 (2014), noting that “the
27 district court in each instance should evaluate the factual allegations contained in both the
28

1 affidavit and the medical malpractice complaint to determine whether the affidavit adequately
2 supports or corroborates the plaintiffs allegations.” While *Zohar*, and NRS 41A.071(3) allow a
3 Plaintiff to submit an affidavit that describes a defendant’s conduct without including his name,
4 NRS 41A.071(4) is explicit that merely naming an actor without describing his actions is
5 insufficient. A Plaintiff cannot meet this requirement merely by alleging in an affidavit in
6 conclusory fashion that a given Defendant breached the standard of care. The affidavit must
7 specify “a specific act or acts of alleged negligence.” NRS 41A.071(4).
8

9 Here, Plaintiff has failed to meet this burden with respect to Defendant Julianio. While it
10 is true that the affidavit does mention twice, in paragraphs 6 and 7, that Defendant Julianio
11 (erroneously referred to as Julianio Dionice and Dr. Dionice), fell below the appropriate standard
12 of care, there is absolutely no reference whatsoever to what acts Defendant Julianio actually
13 undertook that justify this conclusion. As explained above, the affidavit must, at minimum,
14 allege some “specific act,” and it simply does not, with respect to Defendant Julianio.
15

16 Accordingly, all allegations of professional negligence against Defendant Julianio must be
17 dismissed, as they are *void ab initio* for failure to meet the requirements of NRS 41A.071.
18

19 **B. Pursuant to NRS 41A.097, any allegations of professional negligence fail as a matter**
20 **of law.**

21 In addition to the affidavit requirement set forth in NRS 41A.071, NRS 41A.097 imposes
22 a strict statute of limitations on actions for professional negligence. After October 1, 2002, “an
23 action for injury or death against a provider of health care may not be commenced more than 3
24 years after the date of injury or 1 year after the plaintiff discovers or through the use of
25 reasonable diligence should have discovered the injury, whichever occurs first.” NRS
26 41A.097(2).
27

28 ///

1 The Supreme Court of Nevada has clarified the “discovery rule” and what constitutes
2 discovery of an injury in professional negligence cases. Notably, while the Supreme Court held
3 unambiguously in *Massey v. Litton*, 99 Nev. 723 (1983) that a Plaintiff does not discover the
4 injury merely by virtue of the injury having happened, the Court further held in *Pope v. Gray*,
5 104 Nev. 358 (1988) that in cases of wrongful death, a Plaintiff has, as a matter of law,
6 “discovered” the injury just over four months after the death when Plaintiff had retained an
7 attorney and received medical records and the death certificate. Thus the Court was clear that
8 while the death of a decedent alone does not automatically trigger the start of the discovery rule,
9 the unambiguous requirement that Plaintiff exercise reasonable diligence set forth in NRS
10 41A.097 cannot be rendered meaningless by a Plaintiff failure to seek or analyze relevant
11 records.

12
13 Here, the record is clear that Plaintiff cannot meet both burdens of exercising reasonable
14 diligence in discovering the existence of the claim, and filing the complaint within a year of that
15 discovery. Even taking all of the allegations set forth in the Complaint as true, one of those
16 requirements must be false. The decedent died on May 11, 2017. The Complaint was not filed
17 until February 4, 2019. Based on the date of the Complaint, in order for Plaintiffs’ claims to
18 survive the statute of limitations, Plaintiffs must not have discovered their claim until after
19 February 4, 2018. Based on the almost eight months between the death of the decedent and the
20 last possible date of date of discovery, it is impossible that Plaintiffs could have exercised
21 reasonable diligence and yet not have discovered the claim until almost eight months later.
22 Plaintiffs have not alleged that they exercised reasonable diligence in discovering the claim, and
23 they have clearly not done so because it is absolutely implausible for Plaintiffs to allege that they
24 have, given the amount of time that has passed.

25
26
27 ///

Furthermore, while Plaintiffs will no doubt argue in opposition that the nature of the decedent's death caused an exceptionally long delay in discovering the claim, Plaintiffs' own allegations undermine this argument. While Plaintiff is entitled to factual deference on a motion to dismiss, they also must be bound by the facts that they themselves alleged. The gravamen of the Complaint is that the decedent was slowly improving before she suddenly and unexpectedly turned for the worst and died. Accepting this allegation as true, Plaintiffs must be held to the strictest timeframes possible under the discovery rule. Plaintiffs cannot simultaneously argue that the negligence here was so egregious as to warrant punitive damages but at the same time claim that they had no indication whatsoever of the possible existence of a claim against any healthcare providers until eight months after the sudden death of the decedent.

Finally, to the extent that Plaintiff argues that the statute of limitations should somehow be tolled, Plaintiffs fail to allege any concealment on the part of these moving Defendants. The statute of limitations is therefore not subject to any tolling provision with respect to Defendant Juliano and Defendant Concio.

C. The Wrongful Death Claim is subsumed within the Professional Negligence Claim, therefore the NRS 41A.097 period of limitations applies to that claim as well.

Plaintiff will argue that NRS 11.190(4)(e) explicitly grant a two-year period of limitations for actions for wrongful death. While it is true that NRS 11.190 does provide such a two-year period, this does not change the fact that NRS 41A.097 explicitly imposes a one-year period for all actions for "injury or death" caused by alleged professional negligence.

It is clear from the complaint that the second claim is premised entirely on the same negligence alleged in the first claim. The one-year from discovery statute of limitations imposed by NRS 41A.097 therefore applies.

///

1 This interpretation does not render any statutory language meaningless. The legislature
2 clearly intended to have two different limitations periods for wrongful death—one for those
3 claims premised upon a death occurring due to professional negligence, and another for those
4 based upon any other type of negligence. As the wrongful death alleged here clearly sounds in
5 professional negligence, the one-year discovery rule applies.
6

7 **D. The Negligent Infliction of Emotional Distress Claims fail as a matter of law.**

8 Negligent infliction of emotional distress has four required elements: 1) The defendant
9 negligently caused an accident or injury, 2) the plaintiff had a close familial relationship to the
10 injured person, 3) the plaintiff witnessed the injury, and 4) As a result of witnessing the injury,
11 the plaintiff suffered distress. *Boorman v. Nevada Memorial Cremation Society*, 126 Nev 301
12 (2010).
13

14 Plaintiffs have attempted to artfully plead their untimely professional negligence as any
15 other tort in order to avoid the unfortunate reality that the statute of limitations bars all of their
16 claims. Because these claims are premised on exactly the same negligence that they will be
17 unable to prove, as a matter of law, in the professional negligence claims, the negligent infliction
18 of emotional distress claims are barred along with the professional negligence claims.
19

20 However, to the extent that this Court finds that such a claim can stand on its own
21 without Plaintiffs being able to prove the professional negligence they allege forms the basis for
22 the claim, this claim still fails as a matter of law because Plaintiff fails to plead any facts that
23 would satisfy the required elements.

24 The facts, as plead by Plaintiffs, simply do not support any such claim. Plaintiffs must do
25 more than allege conclusory statements reciting the required elements of the claim. Here, they
26 have failed to do even that, and in fact some allegations in the Complaint directly undermine
27 their claims.
28

Specifically, while the Complaint does not allege that the Plaintiffs were physically present when the death of the decedent occurred, the affidavit in support does mention that when the decedent appeared to be improving, “family returned to their homes out-of-state based on the information they received.” It is unclear which family exactly returned home, but each of the Plaintiffs asserting Negligent Infliction of Emotional distress reside out of state, and none allege that they actually witnessed the death of the decedent or any specific acts of negligence which caused them distress. In the absence of the proper allegation, and in light of the clear evidence in the pleadings suggesting that these plaintiffs were in fact *present* at the time of the decedent’s death, the claims for negligent infliction of emotional distress fail, as a matter of law.

IV. Conclusion

Despite the great deference given to Plaintiffs allegations of fact under Nevada law at this early stage, Plaintiffs have failed to state a claim upon which relief can be granted. The Complaint must be dismissed with respect to Dr. Concio and Dr. Juliano.

Dated this 12th day of June, 2019.

JOHN H. COTTON & ASSOCIATES, LTD.
7900 West Sahara Avenue, Suite 200
Las Vegas, Nevada 89117

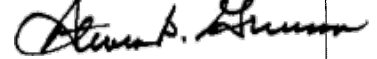
/s/ Brad Shipley
JOHN H. COTTON, ESQ.
BRAD SHIPLEY, ESQ.
*Attorneys for Defendants Dionice S. Juliano, M.D.,
and Conrado Concio, M.D.*

CERTIFICATE OF ELECTRONIC SERVICE

I hereby certify that on the 12th day of June 2019, I served a true and correct copy of the foregoing ***DEFENDANT CONRADO CONCIO, MD, AND DIONICE JULIANO, MD'S MOTION TO DISMISS*** by electronic means was submitted electronically for filing and/or service with the Eighth Judicial District Court, made in accordance with the E-Service List, to the following individuals:

Paul S. Padda, Esq.
PAUL PADDA LAW, PLLC
4560 South Decatur Boulevard, Ste. 300
Las Vegas, NV 89103
Attorneys for Plaintiffs


An Employee of John H. Cotton & Associates



1 **JOIN**
2 JOHN H. COTTON, ESQ.
3 Nevada Bar Number 5268
4 JHCotton@jhcottonlaw.com
5 BRAD SHIPLEY, ESQ.
6 Nevada Bar Number 12639
7 BShipley@jhcottonlaw.com
8 **JOHN H. COTTON & ASSOCIATES, LTD.**
9 7900 West Sahara Avenue, Suite 200
10 Las Vegas, Nevada 89117
11 Telephone: (702) 832-5909
12 Facsimile: (702) 832-5910
13 *Attorneys for Defendants Dionice S. Juliano, M.D.,*
14 *Conrado Concio, M.D. and Vishal S. Shah, M.D.*

9 **DISTRICT COURT**
10 * * *
11 **CLARK COUNTY, NEVADA**

11 ESTATE OF REBECCA POWELL, through
12 BRIAN POWELL, as Special Administrator;
13 DARCI CREECY, individually and as an Heir;
14 TARYN CREECY, individually and as an
15 Heir; ISAAH KHOSROF, individually and as
16 an Heir; LLOYD CREECY, individually,

17 Plaintiffs,

18 vs.

19 VALLEY HEALTH SYSTEM, LLC (doing
20 business as "Centennial Hills Hospital Medical
21 Center"), a foreign limited liability company;
22 UNIVERSAL HEALTH SERVICES, INC., a
23 foreign corporation; DR. DIONICE S.
24 JULIANO, M.D., an individual; Dr.
25 CONRADO C.D. CONCIO, M.D., an
26 individual; DR. VISHAL S. SHAH, M.D., an
27 individual; DOES 1-10; and ROES A-Z;

28 Defendants.

CASE NO.: **A-19-788787-C**
DEPT. NO.: **XIV**

DEFENDANT VISHAL SHAH, MD'S
JOINDER TO DEFENDANTS
CONCIO AND JULIANO'S MOTION
TO DISMISS

23 Defendant Vishal Shah, MD, by and through his counsel of record, John H. Cotton, Esq.,
24 and Brad J. Shipley, Esq., of the law firm of John H. Cotton & Associates, LTD., hereby joins
25 Defendants Conrado Concio, MD and Dionice Juliano, MD's Motion to Dismiss, pursuant to
26 EDCR 2.20(d).

27 ///

John H. Cotton & Associates, Ltd.
7900 West Sahara, Suite 200
Las Vegas, Nevada 89117

Memorandum of Points and Authorities

All of the arguments made on behalf of Defendants Concio and Juliano apply equally to Defendant Shah. The statute of limitations has, as a matter of law, expired with respect to these claims against Defendant Shah and therefore dismissal is appropriate pursuant to NRS 41A.097. The wrongful death and negligent infliction of emotional distress claims similarly fail as a matter of law, and Defendant Shah incorporates by reference and fully adopts the points and authorities set forth therein, as if they had been fully articulated here.

Defendant Shah does *not* join Defendant Juliano's arguments based upon NRS 41A.071, as those arguments are personal to Defendant Juliano, but nonetheless submits that all other arguments are meritorious and the Court should therefore dismiss the Complaint on behalf of all three Defendants.

Dated this 13th day of June.

JOHN H. COTTON & ASSOCIATES, LTD.
7900 West Sahara Avenue, Suite 200
Las Vegas, Nevada 89117

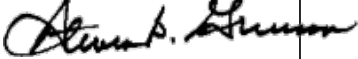
/s/ Brad Shipley
JOHN H. COTTON, ESQ.
BRAD SHIPLEY, ESQ.
*Attorneys for Defendants Dionice S. Juliano, M.D.,
Conrado Concio, M.D. and Vishal S. Shah, M.D*

CERTIFICATE OF ELECTRONIC SERVICE

I hereby certify that on the 13th day of June 2019, I served a true and correct copy of the foregoing ***DEFENDANT VISHAL SHAH, MD'S JOINDER TO DEFENDANTS CONCIO AND JULIANO'S MOTION TO DISMISS*** by electronic means was submitted electronically for filing and/or service with the Eighth Judicial District Court, made in accordance with the E-Service List, to the following individuals:

Paul S. Padda, Esq.
PAUL PADDA LAW, PLLC
4560 South Decatur Boulevard, Ste. 300
Las Vegas, NV 89103
Attorneys for Plaintiffs


An Employee of John H. Cotton & Associates



1 **MTD**
2 MICHAEL E. PRANGLE, ESQ.
3 Nevada Bar No. 8619
4 ZACHARY J. THOMPSON, ESQ.
5 Nevada Bar No. 11001
6 HALL PRANGLE & SCHOONVELD, LLC
7 1160 North Town Center Drive, Ste. 200
8 Las Vegas, Nevada 89144
9 Phone: 702-889-6400
10 Facsimile: 702-384-6025
11 efile@hpslaw.com
12 *Attorneys for Defendant*
13 *Valley Health System, LLC, dba*
14 *Centennial Hills Hospital Medical Center*

9 **DISTRICT COURT**

10 **CLARK COUNTY, NEVADA**

11 ESTATE OF REBECCA POWELL, through
12 BRIAN POWELL, as Special Administrator;
13 DARCI CREECY, individually and as an Heir;
14 TARYN CREECY, individually and as an Heir;
15 ISAAH KHOSROF, individually and as an Heir;
16 LLOYD CRRECY, individually;

17 Plaintiffs,

18 vs.

19 VALLEY HEALTH SYSTEM, LLC (doing
20 business as "Centennial Hills Hospital Medical
21 Center"), a foreign limited liability company;
22 UNIVERSAL HEALTH SERVICES, INC., a
23 foreign corporation; DR. DIONICE S. JULIANO,
24 M.D., an individual; DR. CONRADO C.D.
25 CONCIO, M.D., an individual; DR. VISHAL S.
26 SHAH, M.D., an individual; DOES 1-10; and
27 ROES A-Z;

28 Defendants.

CASE NO. A-19-788787-C

DEPT NO. XIV

**DEFENDANT CENTENNIAL HILLS
HOSPITAL'S MOTION TO DISMISS
PLAINTIFFS' COMPLAINT**

HEARING REQUESTED

23 COMES NOW, Defendant VALLEY HEALTH SYSTEM, LLC dba Centennial Hills
24 Hospital Medical Center (hereinafter referred to as "Centennial Hills Hospital") by and through
25 its attorneys HALL PRANGLE & SCHOONVELD, LLC and files this MOTION TO DISMISS
26 PLAINTIFFS' COMPLAINT. This Motion is made and based on the papers and pleadings on
27 file herein, the points and authorities attached hereto and such argument of counsel which may
28 . . .

1 be adduced at the time of the hearing on said Motion.

2 DATED this 19th day of June, 2019.

3 HALL PRANGLE & SCHOONVELD, LLC

4
5 By: /s/: Zachary Thompson, Esq
6 MICHAEL E. PRANGLE, ESQ.
7 Nevada Bar No. 8619
8 ZACHARY J. THOMPSON, ESQ.
9 Nevada Bar No. 11001
10 1160 North Town Center Drive, Ste. 200
11 Las Vegas, Nevada 89144
12 *Attorneys for Defendant*
13 *Valley Health System, LLC, dba*
14 *Centennial Hills Hospital Medical Center*

15 **NOTICE OF MOTION**

16 PLEASE TAKE NOTICE that the undersigned will bring the foregoing **DEFENDANT**
17 **CENTENNIAL HILLS HOSPITAL'S MOTION TO DISMISS PLAINTIFFS'**
18 **COMPLAINT** for hearing before the above entitled court on the ____ day of
19 _____, 2019 at the hour of ____ a.m. in Department No. XIV, or as soon
20 thereafter as counsel be heard.

21 DATED this 19th day of June, 2019.

22 HALL PRANGLE & SCHOONVELD, LLC

23 By: /s/: Zachary Thompson, Esq
24 MICHAEL E. PRANGLE, ESQ.
25 Nevada Bar No. 8619
26 ZACHARY J. THOMPSON, ESQ.
27 Nevada Bar No. 11001
28 1160 North Town Center Drive, Ste. 200
Las Vegas, Nevada 89144
Attorneys for Defendant
Valley Health System, LLC, dba
Centennial Hills Hospital Medical Center

MEMORANDUM OF POINTS AND AUTHORITIES

I.

INTRODUCTION

On February 4, 2019, the Estate of Rebecca Powell and individual heirs (collectively “Plaintiffs”) filed an untimely Complaint against Centennial Hills Hospital, Dionice Juliano, MD, Conrado Concio, MD, and Vishal Shah, MD (collectively “Defendants”), for alleged professional negligence/wrongful death arising out of the care and treatment Ms. Powell received at Centennial Hills Hospital.¹ See Complaint filed February 4, 2019. Plaintiffs contend that Defendants breached standard of care by purportedly failing to recognize and consider drug-induced respiratory distress, allowing the administration of Ativan, and failing to otherwise treat or monitor Ms. Powell. See Complaint at ¶ 28. Plaintiffs allege that these deviations caused her death on May 11, 2017 and that they observed the alleged negligence. See Complaint at ¶ 29; see also Complaint at ¶¶ 41-56 (asserting shock as a result of the observance or contemporaneous witnessing of the alleged negligence). Plaintiffs do not allege any negligent care, treatment, actions or inactions by Defendants after Ms. Powell’s death on May 11, 2017. Consequently, under the facts pled, the statute of limitations began to run on May 11, 2017. Although the statute of limitations began to run on May 11, 2017, Plaintiffs failed to file their Complaint until February 4, 2019, which is more than one year and eight months later. Since Plaintiffs failed to file their Complaint within NRS 41A.097(2)’s one-year statute of limitations, Centennial Hills Hospital respectfully requests that Plaintiffs’ Complaint should be dismissed.

II.

STATEMENT OF ALLEGED FACTS

Based upon the Complaint and the accompanying affidavit, Rebecca Powell overdosed on Benadryl, Cymbalta, and Ambien on May 3, 2017.² See Complaint at ¶ 18. Emergency

¹ The estate’s claims were purportedly brought through its Special Administrator, Plaintiff’s ex-husband Brian Powell. However, the Complaint was filed before Mr. Powell, the patient’s ex-husband, submitted his Petition for Appointment of Special Administrator on February 21, 2019.

² For purposes this NRCP 12(b)(5) motion only, the Court must accept the allegations of Plaintiffs’ Complaint as true to determine whether Plaintiffs’ Complaint is legally sufficient.

1 medical services were called, and Ms. Powell was found unconscious with labored breathing and
2 vomit on her face. *See* Complaint at ¶ 18. She was transported to Centennial Hills Hospital
3 where she was admitted. *See* Complaint at ¶ 18. One week into her admission, on May 10,
4 2017, Ms. Powell complained of shortness of breath, weakness, and a drowning feeling, and
5 Vishal Shah, MD, ordered Ativan to be administered via IV push. *See* Complaint at ¶ 21. On
6 May 11, 2017, Conrado Concio, MD, ordered two doses of Ativan via IV push. *See* Complaint
7 at ¶ 22. To assess her complaints, a chest CT was ordered, but the providers were unable to
8 obtain the chest CT due to Ms. Powell's anxiety, and she was returned to her room. *See*
9 Complaint at ¶ 22; *see also* Complaint, Ex. A at p. 3. Ms. Powell was placed in a room with a
10 camera monitor. *See* Complaint at ¶ 22. Pursuant to the doctor's orders, a dose of Ativan was
11 administered at 03:27. *See* Complaint, Ex. A at p. 3. Subsequently, Ms. Powell suffered acute
12 respiratory failure, which resulted in her death on May 11, 2017. *See* Complaint at ¶ 22.
13 Plaintiffs observed the alleged negligence, her rapid deterioration, and the results of the alleged
14 negligence. *See* Complaint at ¶¶ 44-45, 52-53.

15 On February 4, 2019, which was one year, eight months, and twenty-four days after Ms.
16 Powell's death, Plaintiffs filed the subject Complaint seeking relief under the following causes
17 of action: 1) negligence/medical malpractice; 2) wrongful death pursuant to NRS 41.085; 3)
18 negligent infliction of emotional distress on behalf of Darci, Taryn, and Isaiah; and 4) negligent
19 infliction of emotional distress on behalf of Lloyd Creecy. Plaintiffs included the Affidavit of
20 Sami Hashim, MD, which sets forth alleged breaches of the standard of care. Plaintiffs' claims
21 sound in professional negligence, which subjects the claims to NRS 41A.097(2)'s one-year
22 statute of limitations requirement. Since Plaintiffs failed to file their Complaint within one-year
23 after they discovered or through the use of reasonable diligence should have discovered the
24 injury, Plaintiffs failed to timely file their Complaint, which necessitated the instant motion. *See*
25 NRS 41A.097(2).

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III.

STANDARD OF REVIEW

Nevada Rule of Civil Procedure 12(b) provides for dismissal of a cause of action for the “failure to state a claim upon which relief can be granted.” *See* NRCP 12(b)(5). A motion to dismiss tests the legal sufficiency of the claim set out against the moving party. *See Zalk-Josephs Co. v. Wells-Cargo, Inc.*, 81 Nev. 163, 400 P.2d 621 (1965). Dismissal is appropriate where a plaintiff’s allegations “are insufficient to establish the elements of a claim for relief.” *Hampe v. Foote*, 118 Nev. 405, 408, 47 P.3d 438, 439 (2002), *overruled in part on other grounds by Buzz Stew, LLC v. City of N. Las Vegas*, 124 Nev. 224, 228, 181 P.3d 670, 672 (2008). To survive dismissal under NRCP 12, a complaint must contain “facts, which if true, would entitle the plaintiff to relief.” *Buzz Stew, LLC v. City of N. Las Vegas*, 124 Nev. 224, 228, 181 P.3d 670, 672 (2008). Hence, in analyzing the validity of a claim the court is to accept plaintiff’s factual allegations “as true and draw all inferences in the Plaintiff’s favor.” *Id.* Nevertheless, the court is not bound to accept as true a plaintiff’s legal conclusions, and “[t]hreadbare recitals of the elements of a cause of action, supported by mere conclusory statements, do not suffice.” *Ashcroft v. Iqbal*, 556 U.S. 662, 678, 129 S. Ct. 1937 (2009) (analyzing the federal counterpart to NRCP 12). Moreover, the court may not take into consideration matters outside of the pleading being attacked. *Brelant v. Preferred Equities Corp.*, 109 Nev. 842, 847, 858 P.2d 1258, 1261 (1993).

IV.

ARGUMENT

A. Plaintiffs’ Claims Sounds in Professional Negligence/Wrongful Death and Are Subject to NRS 41A.097(2)’s One-Year Statute of Limitations.

NRS 41A.097(2) provides the statute of limitations for injuries or the wrongful death of a person based upon an alleged error or omission in practice by a provider of health care or based upon the alleged “professional negligence” of the provider of health care. *See* NRS 41A.097(2)(a)-(c) (applying to actions for injury or death against a provider of health care

1 “based upon alleged professional negligence of the provider of health care” or “from error or
2 omission in practice by the provider of health care).

3 To determine whether a plaintiff’s claim sounds in “professional negligence,” the Court
4 should look to the gravamen of the claim to determine the character of the action, not the form
5 of the pleadings. See *Szyborski v. Spring Mountain Treatment Ctr.*, 403 P.3d 1280, 1285
6 (Nev. 2017) (“Therefore, we must look to the gravamen or ‘substantial point or essence’ of each
7 claim rather than its form to see whether each individual claim is for medical malpractice or
8 ordinary negligence.”) (quoting *Estate of French*, 333 S.W.3d at 557 (citing Black’s Law
9 Dictionary 770 (9th ed. 2009))); see also *Lewis v. Renown*, 432 P.3d 201 (Nev. 2018)
10 (recognizing that the Court had to look to the gravamen of each claim rather than its form to
11 determine whether the claim sounded in professional negligence); *Andrew v. Coster*, 408 P.3d
12 559 (Nev. 2017), cert. denied, 138 S. Ct. 2634, 201 L. Ed. 2d 1037 (2018); see generally *Egan v.*
13 *Chambers*, 299 P.3d 364, 366 n. 2 (Nev.2013) (citing *State Farm Mut. Auto. Ins. Co. v.*
14 *Wharton*, 88 Nev. 183, 495 P.2d 359, 361 (1972)); see also *Brown v. Mt. Grant Gen. Hosp.*, No.
15 3:12-CV-00461-LRH, 2013 WL 4523488, at *8 (D. Nev. Aug. 26, 2013).

16 A claim sounds in “professional negligence” if the claim arises out of “the failure of a
17 provider of health care, in rendering services, to use the reasonable care, skill or knowledge
18 ordinarily used under similar circumstances by similarly trained and experienced providers of
19 health care.” NRS 41A.015. A “provider of health care” includes, in pertinent part, a
20 physician, a nurse, and a licensed hospital. See NRS 41A.017. Consequently, if a plaintiff’s
21 claim arises out of the alleged failure of a physician, nurse, and/or hospital to use reasonable
22 care, skill, or knowledge, used by other similarly trained and experienced providers, in rendering
23 services to the patient, the plaintiff’s claim sounds in professional negligence.

24 Generally, “[a]llegations of breach of duty involving medical judgment, diagnosis, or
25 treatment indicate that a claim is for medical malpractice.” *Szyborski.*, 403 P.3d at 1284
26 (citing *Papa v. Brunswick Gen. Hosp.*, 132 A.D.2d 601, 517 N.Y.S.2d 762, 763 (1987) (“When
27 the duty owing to the plaintiff by the defendant arises from the physician-patient relationship or
28 is substantially related to medical treatment, the breach thereof gives rise to an action sounding

1 in medical malpractice as opposed to simple negligence.”); *Estate of French v. Stratford House*,
2 333 S.W.3d 546, 555 (Tenn. 2011) (“If the alleged breach of duty of care set forth in the
3 complaint is one that was based upon medical art or science, training, or expertise, then it is a
4 claim for medical malpractice.”); see also *Lewis v. Renown Reg'l Med. Ctr.*, 432 P.3d 201 (Nev.
5 2018) (holding that Plaintiffs’ elder abuse claim under NRS 41.1495 sounded in professional
6 negligence where it involved alleged failures to check on the patient while under monitoring).

7 For example, in *Lewis v. Renown*, the Nevada Supreme Court recognized that a claim for
8 elder abuse arising out of alleged failure to properly check or monitor a patient or otherwise
9 provide adequate care sounded in professional negligence. See generally *Lewis v. Renown*, 432
10 P.3d 201 (Nev. 2018). Since the gravamen of Plaintiff’s claim was professional negligence, the
11 Court affirmed the District Court’s dismissal of the elder abuse claim on statute of limitations
12 grounds. *Id.* In reaching this holding, the Court reasoned as follows:

13 In *Szymborski* we considered the distinction between claims for medical
14 negligence and claims for ordinary negligence against a healthcare provider in the
15 context of the discharge and delivery by taxi of a disturbed patient to his
16 estranged father’s house, without notice or warning. *Id.* at 1283-1284. In contrast
17 to allegations of a healthcare provider’s negligent performance of nonmedical
18 services, “[a]llegations of [a] breach of duty involving medical judgment,
19 diagnosis, or treatment indicate that a claim is for [professional negligence].” *Id.*
20 at 1284. The gravamen of Lewis’ claim for abuse and neglect is that Renown
21 failed to adequately care for Sheila by failing to monitor her. Put differently,
22 Renown breached its duty to provide care to Sheila by failing to check on her
23 every hour per the monitoring order in place. We are not convinced by Lewis’
24 arguments that a healthcare provider’s failure to provide care to a patient presents
25 a claim distinct from a healthcare provider’s administration of substandard care;
26 both claims amount to a claim for professional negligence where it involves a
27 “breach of duty involving medical judgment, diagnosis, or treatment.” *Id.* Lewis’
28 allegations that Renown failed to check on Sheila while she was under a
monitoring order necessarily involve a claim for a breach of duty in the
administration of medical treatment or judgment. Thus, we affirm the district
court’s dismissal of Lewis’ claims against Renown because his claim for abuse
and neglect sounds in professional negligence and is time barred pursuant to NRS
41A.097(2).

25 *Id.* (emphasis added).

26 Similarly, in this case, Plaintiffs’ claims for negligence/medical malpractice pursuant to
27 NRS 41A, wrongful death pursuant to NRS 41.05, and negligent infliction of emotion distress,
28 all sound in professional negligence. Plaintiffs’ first cause of action for negligence/medical

malpractice is explicitly one for professional negligence subject to NRS 41A and is based upon the report from Sami Hashim, MD. *See* Complaint at ¶¶ 26-33 and Dr. Hashim's Aff. Plaintiffs' second cause of action is based upon the same alleged failures to provide medical services below the applicable standard of care and the same affidavit from Dr. Hashim. *See* Complaint at ¶¶ 34-40. Plaintiffs' third and fourth causes of action for negligent infliction of emotional distress are also based upon the same alleged deviations in the standard of care and the same affidavit as the professional negligence claim. *See* Complaint at ¶¶ 41-48; 49-56. As a result, it is clear Plaintiffs' claims sound in professional negligence or that the gravamen of their claims is professional negligence. Consequently, Plaintiffs' claims are necessarily subject to NRS 41A.097(2)'s statute of limitations.

B. Plaintiffs' Complaint Should be Dismissed Because it was Filed After the One-Year Statute of Limitations Expired.

Pursuant to NRS 41A.097(2), an action for injury or death against a provider of health care may not be commenced more than one year after the plaintiff discovers or through the use of reasonable diligence should have discovered the injury of a person based upon alleged professional negligence and/or from an error or omission by a provider of health care. *See* NRS 41A.097(2). "A plaintiff 'discovers' his injury when 'he knows or, through the use of reasonable diligence, should have known of facts that would put a reasonable person on inquiry notice of his cause of action.'" *Eamon v. Martin*, No. 67815, 2016 WL 917795, at *1 (Nev. App. Mar. 4, 2016) (quoting *Massey v. Litton*, 99 Nev. 723, 728, 669 P.2d 248, 252 (1983)). "A person is placed on 'inquiry notice' when he or she 'should have known of facts that would lead an ordinarily prudent person to investigate the matter further.'" *Id.* (quoting *Winn v. Sunrise Hosp. & Med. Ctr.*, 128 Nev. 246, 252, 277 P.3d 458, 462 (2012) (internal quotations marks omitted)). "This does not mean that the accrual period begins when the plaintiff discovers the precise facts pertaining to his legal theory, but only to the general belief that someone's

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1 negligence may have cause[d] the injury.” *Id.*³ “Thus, the plaintiff ‘discovers’ the injury when
2 ‘he had facts before him that would have led an ordinarily prudent person to investigate further
3 into whether [the] injury may have been caused by someone’s negligence.’” *Id.* (quoting *Winn*,
4 128 Nev. at 252, 277 P.3d at 462).

5 The date on which the one-year statute of limitation begins to run may be decided as a
6 matter of law where uncontroverted facts establish the accrual date. *See Golden v. Forage, No.*
7 *72163*, 2017 WL 4711619, at *1 (Nev. App. Oct. 13, 2017) (“The date on which the one-year
8 statute of limitation began to run is ordinarily a question of fact for the jury, and may be decided
9 as a matter of law only where the uncontroverted facts establish the accrual date.”) (citing *Winn*
10 *v. Sunrise Hosp. & Med. Ctr.*, 128 Nev. 246, 251, 277 P.3d 458, 462 (2012) (recognizing that
11 the district court may determine the accrual date as a matter of law where the accrual date is
12 properly demonstrated)); *see also Dignity Health v. Eighth Judicial Dist. Court of State, ex rel.*
13 *Cty. of Clark, No. 66084*, 2014 WL 4804275, at *2 (Nev. Sept. 24, 2014).

14 If the Court finds that the plaintiff failed to commence an action against a provider of
15 health care before the expiration of the statute of limitations under NRS 41A.097, the Court may
16 properly dismiss the Complaint pursuant to NRCP 12(b)(5). *See, e.g., Egan ex rel. Egan v.*
17 *Adashek, No. 66798*, 2015 WL 9485171, at *2 (Nev. App. Dec. 16, 2015) (affirming district
18 court’s dismissal of action under NRCP 12(b)(5) where the plaintiff failed to file within the
19 statute of limitations set forth in NRS 41A.087); *Rodrigues v. Washinsky*, 127 Nev. 1171, 373
20 P.3d 956 (2011) (affirming district court’s decision granting motion to dismiss the plaintiffs’
21 claims for failure to comply with NRS 41A.097); *Domnitz v. Reese*, 126 Nev. 706, 367 P.3d 764
22 (2010) (affirming district court’s decision dismissing plaintiff’s claim after finding that plaintiff
23 had been placed on inquiry notice prior to one year before his complaint was filed and that the
24 statute of limitations had expired pursuant to NRS 41A.97(2)).

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28 ³ Similarly, this does not mean that the accrual period begins when the Plaintiff becomes aware of the precise
causes of action he or she may pursue. *Golden v. Forage, No. 72163*, 2017 WL 4711619, at *1 (Nev. App. Oct. 13,
2017) (“The plaintiff need not be aware of the precise causes of action he or she may ultimately pursue.”).

1 In this case, NRS 41A.097(2)'s one-year statute of limitations began to run on the date of
2 Ms. Powell's death (May 11, 2017). Per the Complaint, the individually named Plaintiffs,
3 including Darci Creecy, Taryn Creecy, Isaiah Creecy, and Lloyd Creecy, contemporaneously
4 observed the alleged negligence and Ms. Powell's rapid deterioration leading up to her death on
5 May 11, 2017. See Complaint at ¶ 20 (died on May 11, 2017); see also Complaint at ¶¶ 45-46
6 and 52-53 (allegedly contemporaneously observing Ms. Powell rapidly deteriorate and die).

7 In fact, such contemporary observance of the alleged negligence is an element of
8 Plaintiffs' claims for negligent infliction of emotional distress. In order to establish negligent
9 infliction of emotional distress under Nevada law, a plaintiff must generally show that he or she
10 was a bystander, who is closely related to the victim of an accident, be located near the scene of
11 such accident and suffer "shock" that caused emotional distress resulting from the "observance
12 or contemporaneous sensory of the accident." *State v. Eaton*, 101 Nev. 705, 714, 710 P.2d
13 1370, 1376 (1985) (allowing recovery for negligent infliction of emotional distress to witness of
14 car accident in which the plaintiff's baby daughter was killed); see also *Grotts v. Zahner*, 989
15 P.2d 912, 920 (Nev. 1999). "[R]ecover may not be had under this cause of action, for the 'grief
16 that may follow from the [injury] of the related accident victim.'" *Eaton*, at 714, 710 P.2d at
17 1376. In fact, in cases where emotional distress damages are not secondary to physical injuries,
18 "proof of 'serious emotional distress' causing physical injury or illness must be presented."
19 *Olivero v. Lowe*, 116 Nev. 395, 399-405 (Nev. 2000).

20 Since Plaintiffs allege that they contemporaneously observed the alleged negligence and
21 deterioration of Ms. Powell leading up to her death, the Plaintiffs knew, or should have known,
22 of facts that would put a reasonably person on inquiry notice by May 11, 2017. Plaintiffs were
23 aware of facts that would lead an ordinarily prudent person to investigate the matter further at
24 that time. Under Nevada law, Plaintiffs did not have to know precise facts or legal theories for
25 their claims; rather, they only needed to be placed on inquiry notice. Here, under the facts
26 alleged in the Complaint, Plaintiffs were placed on inquiry notice because they were aware of
27 facts that would lead an ordinarily prudent person to investigate the matter further.

28 ///

Given this, the one-year statute of limitations under NRS 41A.097(2) began to run on May 11, 2017. Thus, Plaintiffs were required to file their Complaint by May 11, 2018. Plaintiffs failed to file their Complaint until February 4, 2019. Since Plaintiffs failed to file their Complaint within the one-year statute of limitations provided by NRS 41A.097(2), Plaintiffs' Complaint was untimely. Therefore, the Centennial Hills Hospital respectfully requests that this Court dismiss Plaintiffs' Complaint in its entirety with prejudice.

V.

CONCLUSION

Based on the foregoing, Centennial Hills Hospital respectfully requests that this Court dismiss Plaintiffs' Complaint with prejudice.

DATED this 19th day of June, 2019.

HALL PRANGLE & SCHOONVELD, LLC

By: /s/: Zachary Thompson, Esq.
MICHAEL E. PRANGLE, ESQ.
Nevada Bar No. 8619
ZACHARY J. THOMPSON, ESQ.
Nevada Bar No. 11001
1160 N. Town Center Dr., Ste. 100
Las Vegas, NV 89144
Attorneys for Defendant
Valley Health System, LLC, dba
Centennial Hills Hospital Medical Center

AFFIRMATION

Pursuant to NRS 239B.030

The undersigned does affirm that the preceding document does not contain the Social Security Number of any person.

DATED this 19th day of June, 2019.

HALL PRANGLE & SCHOONVELD, LLC

By: /s/: Zachary Thompson, Esq.
MICHAEL E. PRANGLE, ESQ.
Nevada Bar No. 8619
ZACHARY J. THOMPSON, ESQ.
Nevada Bar No. 11001
1160 N. Town Center Dr., Ste. 100
Las Vegas, NV 89144
Attorneys for Defendant
Valley Health System, LLC, dba
Centennial Hills Hospital Medical Center

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that I am an employee of HALL PRANGLE & SCHOONVELD, LLC; that on the 19th day of June, 2019, I served a true and correct copy of the foregoing **DEFENDANT CENTENNIAL HILLS HOSPITAL'S MOTION TO DISMISS PLAINTIFFS' COMPLAINT** as follows:

 X the E-Service Master List for the above referenced matter in the Eighth Judicial District Court e-filing System in accordance with the electronic service requirements of Administrative Order 14-2 and the Nevada Electronic Filing and Conversion Rules;

 U.S. Mail, first class postage pre-paid to the following parties at their last known address;

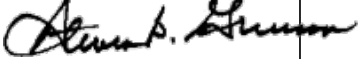
 Receipt of Copy at their last known address:

Paul Padda, Esq.
Joshua Y, Ang, Esq.
PAUL PADDA LAW, PLLC
4560 South Decatur Blvd., Suite 300
Las Vegas, NV 89103
Attorneys for Plaintiffs

John H. Cotton, Esq.
Brad Shipley, Esq.
JOHN H. COTTON & ASSOCIATES, LTD.
7900 West Sahara Avenue, Suite 200
Las Vegas, NV 89117
Attorneys for Defendants Dionice S. Juliano, M.D., Conrado Concio, M.D. and Vishal S. Shah, M.D.

/s/ Reina Claus

An employee of HALL PRANGLE & SCHOONVELD, LLC



1 **JOIN**
2 MICHAEL E. PRANGLE, ESQ.
3 Nevada Bar No. 8619
4 ZACHARY J. THOMPSON, ESQ.
5 Nevada Bar No. 11001
6 HALL PRANGLE & SCHOONVELD, LLC
7 1160 North Town Center Drive, Ste. 200
8 Las Vegas, Nevada 89144
9 Phone: 702-889-6400
10 Facsimile: 702-384-6025
11 efile@hpslaw.com
12 *Attorneys for Defendant*
13 *Valley Health System, LLC, dba*
14 *Centennial Hills Hospital Medical Center*

9 **DISTRICT COURT**

10 **CLARK COUNTY, NEVADA**

11 ESTATE OF REBECCA POWELL, through
12 BRIAN POWELL, as Special Administrator;
13 DARCI CREECY, individually and as an Heir;
14 TARYN CREECY, individually and as an Heir;
15 ISAAH KHOSROF, individually and as an Heir;
16 LLOYD CRRECY, individually;

17 Plaintiffs,

18 vs.

19 VALLEY HEALTH SYSTEM, LLC (doing
20 business as "Centennial Hills Hospital Medical
21 Center"), a foreign limited liability company;
22 UNIVERSAL HEALTH SERVICES, INC., a
23 foreign corporation; DR. DIONICE S. JULIANO,
24 M.D., an individual; DR. CONRADO C.D.
25 CONCIO, M.D., an individual; DR. VISHAL S.
26 SHAH, M.D., an individual; DOES 1-10; and
27 ROES A-Z;

28 Defendants.

CASE NO. A-19-788787-C

DEPT NO. XIV

**DEFENDANT CENTENNIAL HILLS
HOSPITAL'S JOINDER TO
DEFENDANTS CONRADO
CONCIO, MD, AND DIONICE
JULIANO, MD'S MOTION TO
DISMISS**

Hearing Date: July 30, 2019

Hearing Time: 9:30 am

23 COMES NOW, Defendant VALLEY HEALTH SYSTEM, LLC dba Centennial Hills
24 Hospital Medical Center (hereinafter referred to as "Centennial Hills Hospital") by and through
25 its attorneys HALL PRANGLE & SCHOONVELD, LLC, and hereby submits its Joinder to
26 Defendants Conrado Concio, MD, and Dionice Juliano, MD's Motion to Dismiss.

27 Centennial Hills Hospital hereby adopts, as though fully set forth herein, the points and
28 authorities, arguments and papers contained in Defendants Conrado Concio, MD, and Dionice

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

1 Juliano, MD's Motion to Dismiss ("Motion to Dismiss") to the extent that the arguments apply
2 equally to Centennial Hills Hospital.

3 This joinder is made and based upon the attached Memorandum of Points and
4 Authorities, the pleadings and papers on file herein, and any oral argument of counsel at the time
5 of hearing in this matter.

6 DATED this 26th day of June, 2019.

HALL PRANGLE & SCHOONVELD, LLC

7
8 By: /s/: Zachary Thompson, Esq
9 MICHAEL E. PRANGLE, ESQ.
Nevada Bar No. 8619
10 ZACHARY J. THOMPSON, ESQ.
Nevada Bar No. 11001
11 1160 North Town Center Drive, Ste. 200
12 Las Vegas, Nevada 89144
13 *Attorneys for Defendant*
14 *Valley Health System, LLC, dba*
15 *Centennial Hills Hospital Medical Center*
16
17
18
19
20
21
22
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CERTIFICATE OF SERVICE

I HEREBY CERTIFY that I am an employee of HALL PRANGLE & SCHOONVELD, LLC; that on the 26th day of June, 2019, I served a true and correct copy of the foregoing **DEFENDANT CENTENNIAL HILLS HOSPITAL'S JOINDER TO DEFENDANTS CONRADO CONCIO, MD, AND DIONICE JULIANO, MD'S MOTION TO DISMISS** as follows:

 X the E-Service Master List for the above referenced matter in the Eighth Judicial District Court e-filing System in accordance with the electronic service requirements of Administrative Order 14-2 and the Nevada Electronic Filing and Conversion Rules;

 U.S. Mail, first class postage pre-paid to the following parties at their last known address;

 Receipt of Copy at their last known address:

Paul Padda, Esq.
Joshua Y, Ang, Esq.
PAUL PADDA LAW, PLLC
4560 South Decatur Blvd., Suite 300
Las Vegas, NV 89103
Attorneys for Plaintiffs

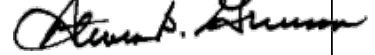
John H. Cotton, Esq.
Brad Shipley, Esq.
JOHN H. COTTON & ASSOCIATES, LTD.
7900 West Sahara Avenue, Suite 200
Las Vegas, NV 89117
Attorneys for Defendants Dionice S. Juliano, M.D., Conrado Concio, M.D. and Vishal S. Shah, M.D.

/s/ Reina Claus

An employee of HALL PRANGLE & SCHOONVELD, LLC

PAUL PADDALAW, PLLC
4560 South Decatur Boulevard, Suite 300
Las Vegas, Nevada 89103
Tele: (702) 366-1888 • Fax (702) 366-1940

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CLERK OF THE COURT



OPPS

PAUL S. PADDALAW, ESQ. (NV Bar #10417)

Email: psp@paulpaddalaw.com

SUNEEL J. NELSON, ESQ. (NV

JOSHUA Y. ANG, ESQ. (NV Bar #14026)

Email: ja@paulpaddalaw.com

PAUL PADDALAW, PLLC

4560 South Decatur Boulevard, Suite 300

Las Vegas, Nevada 89103

Tele: (702) 366-1888

Fax: (702) 366-1940

Attorneys for Plaintiffs

IN THE EIGHTH JUDICIAL DISTRICT COURT

CLARK COUNTY, NEVADA

ESTATE OF REBECCA POWELL, through
BRIAN POWELL, as Special Administrator;
DARCI CREECY, individually and as an Heir;
TARYN CREECY, individually and as an Heir;
ISAIAH KHOSROF, individually and as an
Heir; LLOYD CREECY, individually,

Plaintiffs,

vs.

VALLEY HEALTH SYSTEM, LLC (doing
business as "Centennial Hills Hospital Medical
Center"), a foreign limited liability company;
UNIVERSAL HEALTH SERVICES, INC., a
foreign corporation; DR. DIONICE S.
JULIANO, M.D., an individual; Dr.
CONRADO C.D. CONCIO, M.D., an
individual; DR. VISHAL S. SHAH, M.D., an
individual; DOES 1-10; and ROES A-Z;

Defendants.

CASE NO.: A-19-788787-C

DEPT. NO.: XIV

**PLAINTIFFS' OPPOSITION TO
MOTION TO DISMISS FILED BY
DEFENDANTS DR. CONRADO C.D.
CONCIO, M.D. AND DR. DIONICE S.
JULIANO, M.D.**

I. INTRODUCTION

Pursuant to NRCPP 12(b)(5), Defendants Dr. Conrado C.D. Concio, M.D. (“Dr. Concio”), and Dr. Dionice S. Juliano, M.D. (“Dr. Juliano”), and Defendant Centennial Hills Hospital have filed motions advocating dismissal of Plaintiffs’ lawsuit in which Plaintiffs assert claims for wrongful death, professional negligence, and negligent infliction of emotional distress arising from the tragic death of 42-year-old Rebecca Powell while she was in the Defendants’ care at Centennial Hills Hospital on May 11, 2017.

Specifically, Defendants argue that dismissal of Plaintiffs’ claims is necessary because: (a) as to Dr. Juliano, the Plaintiffs’ affidavit of merit does not satisfy the “threshold pleading requirements” of NRS 41A.071 because, in violation of subsection (4) of the statute, the affidavit contains “absolutely no reference whatsoever to what Defendant Juliano actually undertook that [fell below the appropriate standard of care]” (Dr. Juliano’s Mot. 5:12-14); (b) as to each and all of the Defendants, Plaintiffs’ claims based upon professional negligence are time-barred under the one-year limitations period provided by NRS 41A.097; and, (c) Plaintiffs’ wrongful death claims are also time-barred because they should be “subsumed within their professional negligence claims” and therefore also subject to NRS 41A.097’s one-year limitations period rather than NRS 11.190(4)(e)’s two-year limitations period for actions for wrongful death.

As Plaintiffs demonstrate below, none of Defendants’ foregoing arguments provides grounds for dismissal under NRCPP 12(b)(5), either in whole or in any part, because: (1) as to Dr. Juliano, Plaintiff’s “affidavit of merit” specifically identifies acts deviating from the standard of care as required under NRS 41A.071(4); (2) Plaintiffs allege sufficient facts concerning when they had “inquiry notice” of their professional negligence claims, and Defendants’ concealment of relevant facts, such that the Court cannot find as a matter of law, based upon “uncontroverted

facts,” that Plaintiffs’ claims are untimely under NRS 41A.097; and (3) Defendants fail to present any legal authority for their contention that the Court should consider Plaintiffs’ wrongful death claims to be “subsumed within their professional negligence claims,” and therefore subject to NRS 41A.097’s one-year statute of limitations rather than NRS 11.190(4)(e)’s two-year limitations period for actions for wrongful death.

II. ANALYSIS

A. Motions to Dismiss Pursuant to NRCP 12(b)(5), Generally

Defendants’ motions to dismiss are brought pursuant to Nevada Rule of Civil Procedure (“NRCP”) 12(b)(5). Under the standard applicable to that Rule, this Court’s decision will be “subject to a rigorous standard of review on appeal” in keeping with the Nevada Supreme Court’s policy favoring having cases adjudicated on the merits. *See Buzz Stew, LLC v. City of North Las Vegas*, 124 Nev. 224, 227-28 (2008). In reviewing and considering Dr. Concio and Dr. Juliano’s motion, the Court must accept all factual allegations in Plaintiffs’ complaint as true and draw all inferences in their favor. *Id.* Plaintiffs’ complaint can only be dismissed under NRCP 12(b)(5) “if it appears beyond a doubt that [Plaintiffs] **could prove no set of facts**, which, if true, would entitle [them] to relief.” *Id.*¹ This leniency is also applicable to any arguments invoking the NRS 41A.071 affidavit requirement. “[B]ecause NRS 41A.071 governs the threshold requirements for initial pleadings in medical malpractice cases, not the ultimate trial of such matters, we must liberally construe this procedural rule of pleading in a manner that is consistent with our NRCP 12 jurisprudence.” *Borger v. Eighth Judicial Dist. Court ex rel. County of Clark*, 120 Nev. 1021, 1028 (2004).

¹ Emphasis supplied.

Under the very high standard required for dismissal under NRCp 12(b)(5), Defendants bear the burden of persuasion. *See Blackjack Bonding v. Las Vegas Municipal Court*, 116 Nev. 1213, 1217 (2000) (the appropriate standard requires a showing by the moving party of “beyond a doubt”).

B. Plaintiffs Satisfy NRS 41A.071(4)’s Requirements as to Dr. Juliano’s Professional Negligence.

Dr. Juliano seeks dismissal of the professional negligence claims asserted against him, arguing that the expert affidavit of Dr. Sami Hashim, M.D. (“Dr. Hashim”), attached to Plaintiff’s complaint in accordance with NRS 41A.071(4), does not sufficiently “set[] forth factually a specific act or acts of alleged negligence separately as to each [Dr. Juliano] in simple, concise and direct terms.” *See* NRS 41A.071(4). Examination of Dr. Hashim’s affidavit reveals, however, that Dr. Juliano’s specific acts of negligence, like those of Dr. Concio and Dr. Shah, are identified with clarity there. Indeed, Dr. Hashim devotes the better part of two pages identifying and describing, in detail, the “breach[es] of duty” committed by the three physician-defendants, including Dr. Juliano during a two-day period from May 10th to May 11th, 2017, when they were responsible for Rebecca Powell’s care as her condition worsened and she ultimately died. (*See* Dr. Hashim’s Supporting Affidavit, ¶7.) As but one example of the several breaches described in that section, Dr. Hashim describes that:

Without consideration of the probable drug side effects, adverse reactions and interactions, which were most probably directly related to the patient’s acute symptoms, [Dr. Juliano, Dr. Concio and Dr. Shah] ignored even the possibility that her medications might be the cause of her symptoms & declining health status. Consequently, not one of the three physicians aforementioned even placed drug(s) side effects/adverse reactions on any differential diagnosis.

(*Id.*, at pg. 8, ¶7A.) Dr. Hashim’s specific attribution of malpractice to Dr. Juliano is plain, and Dr. Juliano’s argument that he his acts of negligence have not been identified with sufficient

specificity in Plaintiffs’ affidavit of merit fails. Further, in light of the Nevada Supreme Court’s directive to liberally construe NRS 41A.071’s requirements in a manner consistent with our NRCP 12 jurisprudence, any ambiguity or uncertainty (though Plaintiffs maintain that there is none) must be resolved in favor of Plaintiffs. *See Borger*, 120 Nev. at 1028 and *See Buzz Stew, LLC*, 124 Nev. at 227-8. To the extent that Dr. Hashim’s attribution of malpractice to Dr. Julianio is at all vague—though it is not—his affidavit, liberally construed, still passes muster under NRS 41A.071(4). Dr. Julianio is therefore not entitled to dismissal of Plaintiffs’ claims for professional negligence against him.

C. Plaintiffs’ Professional Negligence Claims are Not, as a Matter of Law, Untimely under NRS 41A.097; and Plaintiffs’ Have Alleged Facts Sufficient to Raise an Inference of Concealment by Defendants so as to Warrant Tolling.

Defendants argue for dismissal of Plaintiffs’ claims for professional negligence because they contend that, “as a matter of law,” Plaintiffs’ claims were filed after expiration of the one-year statute of limitations provided by NRS 41A.097 for professional negligence claims. Specifically, Defendants argue that, because Plaintiffs did not file their complaint until February 4, 2019, “in order for Plaintiffs’ claims to survive the statute of limitations, Plaintiffs must not have discovered their claim until after February 4, 2018,” approximately eight months after the death of Rebecca Powell on May 11, 2017. (Dr. Julianio’s Mot. 6:18-20.) Failing to draw all inferences in Plaintiffs’ favor, as required on a motion for dismissal pursuant to NRCP 12(b)(5), Defendants’ conclude that “it is impossible that Plaintiffs could have exercised reasonable diligence and yet not have discovered the claim until almost eight months later.” (*Id.* at 6:22.)

The statute of limitations for a medical malpractice claim begins to run when the plaintiff “knows or, through the use of reasonable diligence, should have known of facts that would put a reasonable person on inquiry notice of his cause of action.” *Massey v. Litton*, 99 Nev. 723, 728,

669 P.2d 248, 252 (1983); *see also Pope v. Gray*, 104 Nev. 358, 362–63, 760 P.2d 763, 764–65 (1988) (applying the discovery rule established in *Massey* to wrongful death actions based on medical malpractice). The accrual date for a statute of limitations is a question of law when the facts are uncontroverted. *Winn v. Sunrise Hosp. & Med. Ctr.*, 128 Nev. —, —, 277 P.3d 458, 462–63 (2012); *cf. Doyle v. Ripplinger*, 126 Nev. 706, 367 P.3d 764 (2010) (table) (reversing order granting summary judgment where plaintiffs established material issue of fact concerning when they knew sufficient facts to be put on “inquiry notice,” commencing running of the limitations period).

In *Pope*, the Nevada Supreme Court reversed an order dismissing Pope’s claims as untimely, finding that the district court had erred by resolving the relevant factual issues on a motion. There, the Supreme Court rejected defendant’s argument that “Pope should have been alerted to possible malpractice when the doctors informed her that they were not certain of the cause of death, or, at the very latest...when the autopsy report listing acute gastrojejunitis as the cause of death was filed.” *Pope*, 104 Nev. at 365, 760 P.2d at 767. To the contrary, citing the district court’s obligation to construe all allegations in favor of the non-movant under Rule 41(b), the Nevada Supreme Court reasoned as follows:

Pope's mother died suddenly, after no apparent long-standing illness. Even though the doctors told Pope, on the day of her mother's death, that they did not know why she died, given Magill's age, surgical treatment, and serious manifestation of poor health two days before her death, death alone would not necessarily suggest, to a reasonably prudent person, that the decedent succumbed to the effects of medical malpractice.

Although the autopsy report specifying acute gastrojejunitis as the cause of death was apparently placed with Magill's medical records on June 2, 1986, available for Pope's examination, Pope advanced at least a reasonable argument that she should not have been expected to suspect malpractice until September 17, 1982, when she received her mother's death certificate.

1 *Pope*, 104 Nev. at 366, 760 P.2d at 768.

2
3 Here, Dr. Hashim’s affidavit describes why, despite Plaintiffs’ diligent efforts to learn the
4 true cause of Rebecca Powell’s death, it is entirely realistic to infer—as we must—that they did
5 not have sufficient facts, nor could they have obtained sufficient facts based upon the incomplete,
6 and often misleading, information they received from Defendants. Indeed, as Dr. Hashim’s
7 confirms, as of January 23, 2019, the date upon which he signed his affidavit, “all records were
8 requested, not all records were provided by Centennial Hills Hospital & Medical Center.” (Dr.
9 Hashim’s Supporting Affidavit, pg. 2, ¶6A.) Consequently, even at that late date, only a partial
10 reconstruction of the timeline of the events preceding Rebecca Powell’s death has been possible.
11 (*Id.*) Moreover, in his review of such records, Dr. Hashim has found numerous, troubling
12 inconsistencies supporting an inference that Defendants have engaged in concealment, which
13 warrants tolling of the statute of limitations.
14

15
16 Nowhere are the inconsistencies more glaring than in Dr. Hashim’s review of the death
17 certificate. As Dr. Hashim describes: “Notwithstanding clear evidence of intentional over-dosing
18 of [Benadryl, Cymbalta and ETOH], [Rebecca Powell’s] Death Certificate noted the *only* cause
19 of death was due to: “Complications of Cymbalta Intoxication.” (*Id.* at pg. 2, ¶6B.) That could
20 not have been accurate, Dr. Hashim explains, because “[m]etabolically, Cymbalta has a half-shelf
21 life of approximately 12-24 hours, up to 48 hours if an over-amount is ingested. The patient
22 didn’t have a downward health status until 150 hours+ had transpired. Therefore, the possibility
23 that she died from Cymbalta intoxication or complication of, is not realistic.” (*Id.* at pg. 3, ¶6B.)
24 Further, “[t]here was no medical evidence of the patient ingesting Ambien, Benadryl or ETOH,
25 nor did toxicology reports reveal any of those substances.” (*Id.*)
26
27
28

1 But the troubling discrepancies in the records did not end there. As Dr. Hashim explains,
2 his opinions are also drawn from information he learned from an investigative report by the
3 Department of Health and Human Services—NV Bureau of Health Quality and Compliance,
4 which he says “not only reinforced my findings, but revealed many other below standard of care
5 violations, all related directly to the wrongful death of the patient.” (Dr. Hashim Supporting
6 Affidavit, pg. 5, ¶8.) There remain issues of fact concerning when Plaintiffs had inquiry notice
7 regarding Defendants’ negligence as a cause of Rebecca Powell’s death. Further, Dr. Hashim’s
8 affidavit confirms that the full picture has not emerged without the production of an investigative
9 report by an outside agency. Defendants’ motions to dismiss on the grounds of that Plaintiffs’
10 claims are untimely under NRS 41A.097 must be denied because there are factual issues that
11 cannot be resolved on a motion here.
12

13
14 **D. Plaintiffs’ Wrongful Death and NIED Claims are Not Subsumed Under their**
15 **Professional Negligence Claims for Purposes of the Statute of Limitations.**

16 Defendants argue that all of Plaintiffs’ claims, including those for wrongful death and NIED,
17 “sound in” professional negligence and should therefore be subject to a one-year limitations
18 period pursuant to NRS 41A.097(2). Between them, however, they have not cited a controlling
19 precedent that requires the Court to apply the shorter one-year limitations period rather than the
20 two year period applicable under 11.190(4)(e). Plaintiffs respectfully submit that their claims for
21 wrongful death and NIED, if prevailing, would provide them with avenues of distinct relief to
22 remedy distinct harms from those contemplated in their medical malpractice claims. As such,
23 Plaintiffs’ claims for wrongful death and NIED should be measured under distinct limitations
24 period.
25
26
27
28

1
2 **III. CONCLUSION**

3 For all of the reasons set forth herein, all aspects of the Defendants' subject motions to
4 dismiss and joinders must be denied.

5
6 DATED this 13th day of August, 2019.

7 Respectfully submitted by:

8 PAUL PADDA LAW, PLLC

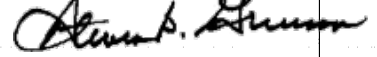
9 By: /s/ Suneel J. Nelson
10 SUNEEL J. NELSON, ESQ.
11 4560 South Decatur Boulevard, Suite 300
12 Las Vegas, Nevada 89103

13 *Attorneys for Plaintiffs*

14
15 **CERTIFICATE OF SERVICE**

16 The undersigned hereby certifies that copies of the foregoing document were served on
17 this 13th day of April 2019, via the Court's electronic service and filing system ("Odyssey") upon
18 all parties and their counsel.
19

20
21 /S/
22 An Employee of Paul Padda Law, PLLC
23
24
25
26
27
28



1 **RPLY**
2 JOHN H. COTTON, ESQ.
3 Nevada Bar Number 5268
4 JHCotton@jhcottonlaw.com
5 BRAD SHIPLEY, ESQ.
6 Nevada Bar Number 12639
7 BShipleyr@jhcottonlaw.com
8 **JOHN H. COTTON & ASSOCIATES, LTD.**
9 7900 West Sahara Avenue, Suite 200
10 Las Vegas, Nevada 89117
11 Telephone: (702) 832-5909
12 Facsimile: (702) 832-5910
13 *Attorneys for Defendants Conrado Concio, M.D.,*
14 *Vishal Shah, M.D., and Dionice Juliano, M.D.*

9 **DISTRICT COURT**
10 * * *
11 **CLARK COUNTY, NEVADA**

11 ESTATE OF REBECCA POWELL, through
12 BRIAN POWELL, as Special Administrator;
13 DARCI CREECY, individually and as an Heir;
14 TARYN CREECY, individually and as an
15 Heir; ISAIAH KHOSROF, individually and as
16 an Heir; LLOYD CREECY, individually,

15 Plaintiffs,

16 vs.

17 VALLEY HEALTH SYSTEM, LLC (doing
18 business as "Centennial Hills Hospital Medical
19 Center"), a foreign limited liability company;
20 UNIVERSAL HEALTH SERVICES, INC., a
21 foreign corporation; DR. DIONICE S.
22 JULIANO, M.D., an individual; Dr.
23 CONRADO C.D. CONCIO, M.D., an
24 individual; DR. VISHAL S. SHAH, M.D., an
25 individual; DOES 1-10; and ROES A-Z;

22 Defendants.

CASE NO.: **A-19-788787-C**
DEPT. NO.: **XXX**

DEFENDANT CONRADO CONCIO,
MD, VISHAL SHAH, MD, AND
DIONICE JULIANO, MD'S REPLY
IN SUPPORT OF THEIR MOTION
TO DISMISS AND JOINDER
THERE TO

23 Defendants Conrado Concio, MD, Vishal Shah, MD, and Dionice Juliano, MD by and
24 through their counsel of record, John H. Cotton, Esq., and Brad J. Shipley, Esq., of the law firm
25 of JOHN H. COTTON & ASSOCIATES, LTD, pursuant to NRCP 12(b)(5), NRS 41A.097, and
26 NRS 41A.071 hereby submits the following reply to Plaintiff's Opposition, based on the
27 following points and authorities:
28

John H. Cotton & Associates, Ltd.
7900 West Sahara, Suite 200
Las Vegas, Nevada 89117

Memorandum of Points and Authorities

I. Plaintiffs' Affidavit and Complaint are insufficient with respect to Dr. Juliano

Plaintiffs assert that the conclusory statements set forth in the affidavit with respect to Dr. Juliano are sufficient to meet the burden imposed by NRS 41A.071. They are not. Dr. Juliano concedes that the affidavit does include statements that Dr. Juliano fell below the standard of care, but there are absolutely no facts alleged as far as what he specifically did to justify that conclusion.

Plaintiffs' affidavit devotes more than a full page describing the medical chronology of the decedent during her time in the hospital. The affidavit also later specifically identifies the time period during which the alleged deviations from the standard of care occurred as being May 10 and 11. The affidavit describes in detail, on pages 3 and 4, the actions that the affidavit later describes as deviating from the standard of care. The affidavit references specific orders made by Dr. Concio and by Dr. Shah, and actions taken by other professionals as well, but there is not a single reference to an order given by Dr. Juliano or any action or inaction taken by him whatsoever. In this respect, the affidavit fails to allege any duty to this patient, because Dr. Juliano simply had no responsibility to this patient during the time that the affidavit alleges she began her decline.

Defendant Juliano asserts that the affidavit fails to establish all of the elements of negligence with respect to him, as required by NRS 41A.071. However, even if the affidavit is found to meet the relevant heightened pleading standard, the claims still ultimately fail for the reasons set forth below that are applicable to all three moving Defendants.

II. Plaintiffs have not alleged any basis for tolling with respect to Defendants Shah, Concio, or Juliano.

Plaintiffs opposition fails with respect to Defendants Concio, Shah and Juliano, and

1 Plaintiffs have provided absolutely no basis as to why the statute of limitations should not bar the
2 claims. Plaintiffs' reliance on *Pope v. Gray*, 104 Nev. 358 (1988) is misplaced, and a thorough
3 review of *Winn v. Sunrise Hospital*, 128 Nev. 246 (2012) reveals why Plaintiffs' Complaint lacks
4 necessary details that ultimately render it unable to state a claim as a matter of law against these
5 moving Defendants.

6
7 *Pope* indeed stands for the proposition, as Plaintiffs suggest, that Courts should not
8 dispose of cases on motion when there is a viable factual dispute. Beyond that however, *Pope* is
9 simply inapplicable in cases where drawing all reasonable inferences in favor of Plaintiffs it is
10 clear that Plaintiffs have failed to timely bring their claim.

11 Plaintiffs rely on the parenthetical statement in the expert affidavit that "all records were
12 requested, not all records were provided by Centennial Hills Hospital & Medical Center," but the
13 relevant case law is clear that this statement is wholly insufficient to create any kind of factual
14 dispute in the instant case, especially with respect to Defendants Concio, Shah, and Juliano.

15
16 First and foremost, the relevant date is not the date that the entirety of the medical records
17 were received, but rather, pursuant to *Massey v. Litton*, 99 Nev. 723 (1983), it is the date that the
18 Plaintiff knew or should have known through reasonable diligence sufficient facts to be on
19 inquiry notice of the claim. *Massey* at 252. Here, it belies belief that Plaintiffs did not have
20 sufficient facts within eight months of the death of the decedent to put them on inquiry notice of
21 the claim. Plaintiffs are only entitled to reasonable inferences, and there is simply nothing in the
22 Complaint that merits a *reasonable* inference that the one-year statute of limitations has been
23 met. Plaintiffs have notably not requested to amend the Complaint to add such allegations, but
24 rather have chosen to rely on mere argument in opposition. However, Defendants assert that the
25 reason Plaintiffs have failed to request such amendment is because the actual facts would directly
26 undermine their claims and Plaintiffs instead are attempting to sidestep these damning facts by
27
28

1 omitting them entirely and demanding inferences in their favor which are clearly not reasonable
2 in light of the entire context of the complaint and affidavit.

3 However, even if Plaintiffs are granted the inference, without making the requisite
4 allegations, that the statute of limitations should be tolled, the basis provided as applied to these
5 moving Defendants flies directly in the face of the controlling authority that even Plaintiffs
6 acknowledge in their opposition but do not discuss, set forth in *Winn v. Sunrise Hospital*.

7
8 In *Winn*, the Supreme Court of Nevada explicitly held that “[o]ne defendant’s
9 concealment cannot toll the statute of limitations as to a second defendant who played no role in
10 the concealment.” *Winn* at 257. Here, there is simply no allegation or even argument that
11 Defendants Concio, Shah, or Juliano failed to provide any records, instead, the only information
12 provided is the statement in the affidavit that records were not provided by *Centennial Hills*.
13 Plaintiffs are entitled to reasonable inferences, but they are not entitled to the benefit of
14 inferences based on allegations they have not even plead. There is absolutely no allegation that
15 the moving Defendants ever concealed or failed to deliver records, nor is there any allegation
16 they were ever in possession of the same or that any records were ever requested of them.

17
18 Based on the allegations as plead, even giving Plaintiffs every reasonable inference in
19 their favor, there can be no doubt that at least with respect to Defendants Concio, Shah and
20 Juliano, all of the claims for professional negligence are barred, as a matter of law, by that
21 applicable one-year statute of limitations set forth in NRS 41A.097.

22
23 **III. With respect to the statute of limitations for wrongful death, the more specific**
24 **statute of limitations controls**

25 The statute of limitations for professional negligence is provided by NRS 41A.097.
26 Plaintiffs assert in their opposition that Defendants “have not cited a controlling precedent that
27 requires the Court to apply the shorter one-year limitations period rather than the two year period
28

1 applicable under 11.190(4)(e).

2 The moving Defendants are confused as to how this argument applies to the wrongful
3 death claims. The allegations of wrongful death set forth in the Complaint are based entirely on
4 the allegations of professional negligence. NRS 41A.097(2) clearly provides that “an action may
5 not be commenced more than...1 year after the plaintiff discovers...the injury...for [i]njury *or*
6 *wrongful death* of a person...based upon alleged professional negligence of the provider of
7 health care.” NRS 41A.097(2)(a) (emphasis added).

8
9 NRS 11.190(4)(e) provides a statute of limitations for wrongful death, generally, but
10 NRS 41A.097 explicitly provides the statute of limitations for wrongful death due to professional
11 negligence, specifically. The canons of construction dictate that a specific statute controls over a
12 general one. Plaintiffs have provided no authority to suggest anything that the statute of
13 limitations for wrongful death due to professional negligence, which is what is alleged here, is
14 anything other than the one-year period after discovery set forth in NRS 41A.097.
15

16 **IV. Plaintiffs have not responded to these moving Defendants’ argument with respect to**
17 **the NIED claim and it should therefore be deemed unopposed pursuant to**
18 **EDCR 2.20.**

19 Defendants made two different arguments as to why the NIED claims fail. The first was
20 based on the statute of limitations, which Defendants maintain is meritorious. However, more
21 importantly, Plaintiffs claims for NIED fail for an additional reason shown in Defendants’
22 motion which is not even addressed by Plaintiffs and therefore merits dismissal pursuant to
23 EDCR 2.20.
24

25 In order for a claim of Negligent Infliction of Emotional Distress to survive, Plaintiffs
26 must allege that they were physically present at the time of the conduct that forms the basis for
27 the claims. While Plaintiffs have utterly failed to allege such here, their Complaint and affidavit
28

1 actually directly undermine any inference that they were physically present.

2 As has already been stated, Plaintiffs are only entitled to *reasonable* inferences and they
3 are only entitled to inferences based on facts actually plead in the Complaint or set forth in the
4 affidavit in support of the Complaint. Plaintiffs have not alleged any facts which could support
5 an inference that they were physically present at the time of the decedent's death and they have
6 alleged no other actions which could possibly form the basis of an NIED claim. Even giving
7 Plaintiffs the benefit of every reasonable inference it is clear that this claim must fail as a matter
8 of law.
9

10 **V. Conclusion**

11 Despite the great deference given to Plaintiffs allegations of fact under Nevada law at this
12 early stage, Plaintiffs have failed to state a claim upon which relief can be granted. The
13 Complaint must be dismissed with respect to Dr. Concio, Dr. Shah, and Dr. Juliano.
14

15 Dated this 17th day of September 2019.

16 **JOHN H. COTTON & ASSOCIATES, LTD.**
17 7900 West Sahara Avenue, Suite 200
Las Vegas, Nevada 89117

18 
19 _____
20 JOHN H. COTTON, ESQ.
BRAD SHIPLEY, ESQ.

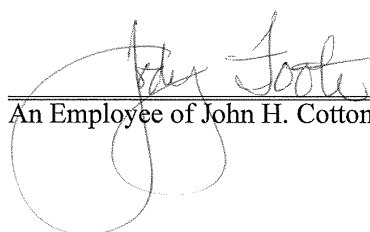
21 *Attorneys for Defendants Dionice S. Juliano, M.D.,*
22 *Vishal Shah, MD, and Conrado Concio, M.D.*
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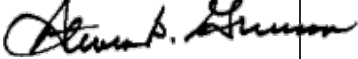
CERTIFICATE OF ELECTRONIC SERVICE

I hereby certify that on the 17th day of September 2019, I served a true and correct copy of the foregoing ***DEFENDANT CONRADO CONCIO, MD, VISHAL SHAH, MD, AND DIONICE JULIANO, MD'S REPLY IN SUPPORT OF THEIR MOTION TO DISMISS AND JOINDER THERETO*** by electronic means was submitted electronically for filing and/or service with the Eighth Judicial District Court, made in accordance with the E-Service List, to the following individuals:

Paul S. Padda, Esq.
Suneel J. Nelson, Esq.
PAUL PADDA LAW, PLLC
4560 South Decatur Boulevard, Ste. 300
Las Vegas, NV 89103
Attorneys for Plaintiffs

Michael E. Prangle, Esq.
Zachary J. Thompson, Esq.
HALL PRANGLE & SCHOONVELD, LLC
1150 North Town Center Dr., Ste. 200
Las Vegas, NV 89144
Attorneys for Defendant Valley Health System, LLC, dba Centennial hills Hospital Medical Center


An Employee of John H. Cotton & Associates



RIS
MICHAEL E. PRANGLE, ESQ.
Nevada Bar No. 8619
ZACHARY J. THOMPSON, ESQ.
Nevada Bar No. 11001
HALL PRANGLE & SCHOONVELD, LLC
1160 North Town Center Drive, Ste. 200
Las Vegas, Nevada 89144
Phone: 702-889-6400
Facsimile: 702-384-6025
efile@hpslaw.com
Attorneys for Defendant
Valley Health System, LLC, dba
Centennial Hills Hospital Medical Center

DISTRICT COURT

CLARK COUNTY, NEVADA

ESTATE OF REBECCA POWELL, through
BRIAN POWELL, as Special Administrator;
DARCI CREECY, individually and as an Heir;
TARYN CREECY, individually and as an Heir;
ISAAH KHOSROF, individually and as an Heir;
LLOYD CRRECY, individually;

Plaintiffs,

vs.

VALLEY HEALTH SYSTEM, LLC (doing
business as “Centennial Hills Hospital Medical
Center”), a foreign limited liability company;
UNIVERSAL HEALTH SERVICES, INC., a
foreign corporation; DR. DIONICE S. JULIANO,
M.D., an individual; DR. CONRADO C.D.
CONCIO, M.D., an individual; DR. VISHAL S.
SHAH, M.D., an individual; DOES 1-10; and
ROES A-Z;

Defendants.

CASE NO. A-19-788787-C

DEPT NO. XIV

**DEFENDANT CENTENNIAL HILLS
HOSPITAL’S REPLY IN SUPPORT
OF MOTION TO DISMISS
PLAINTIFFS’ COMPLAINT**

Hearing Date: September 25, 2019
Hearing Time: 9:00 a.m.

COMES NOW, Defendant VALLEY HEALTH SYSTEM, LLC dba Centennial Hills
Hospital Medical Center (hereinafter referred to as “Centennial Hills Hospital”) by and through
its attorneys HALL PRANGLE & SCHOONVELD, LLC and files this REPLY IN SUPPORT
OF MOTION TO DISMISS PLAINTIFFS’ COMPLAINT.

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

1 This reply is made and based upon the papers and pleadings on file herein, the points and
2 authorities attached hereto, and any argument of counsel which may be adduced at the time of
3 the hearing on this matter.

4 DATED this 18th day of September, 2019.

5 HALL PRANGLE & SCHOONVELD, LLC
6

7 By: /s/: Zachary Thompson, Esq
8 MICHAEL E. PRANGLE, ESQ.
9 Nevada Bar No. 8619
10 ZACHARY J. THOMPSON, ESQ.
11 Nevada Bar No. 11001
12 1160 North Town Center Drive, Ste. 200
13 Las Vegas, Nevada 89144
14 *Attorneys for Defendant*
15 *Valley Health System, LLC, dba*
16 *Centennial Hills Hospital Medical Center*
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MEMORANDUM OF POINTS AND AUTHORITIES

I.

INTRODUCTION

Centennial Hills Hospital moved to dismiss Plaintiffs' Complaint because Plaintiffs failed to timely file it within the one-year statute of limitations period as required by NRS 41A.097(2). *See* Defendant Centennial Hills Hospital's Motion to Dismiss Plaintiffs' Complaint ("Motion to Dismiss"). Centennial Hills Hospital showed that, under the facts pled, the statute of limitations began to run on May 11, 2017, yet Plaintiffs failed to file their Complaint until February 4, 2019. In response, Plaintiffs have not demonstrated that NRS 41A.097(2)'s one-year statute of limitations is inapplicable and have not shown that the statute did not begin to run on May 11, 2017. *See* Opposition at pp. 1-9. Therefore, Centennial Hills Hospital respectfully requests that this Court dismiss Plaintiffs' Complaint in its entirety.

II.

ARGUMENT

A. Plaintiffs' Wrongful Death and Negligent Infliction of Emotional Distress Claims Are Subject to NRS 41A.097's One-Year Statute of Limitations.

In the Motion to Dismiss, Centennial Hills Hospital showed that Plaintiffs' claims for wrongful death and negligent infliction of emotional distress are subject to NRS 41A.097(2)'s one-year statute of limitations because they are claims against a provider of health care which sound in professional negligence or which arise out of alleged errors or omissions in practice by a provider of health care. *See* Motion to Dismiss at pp. 5-8. Those claims sound in professional negligence because they involve medical judgment, diagnosis, and/or treatment of Ms. Powell. Since they sound in professional negligence or otherwise arise out of alleged errors or omissions

1 in practice by a provider of health care, NRS 41A.097(2)'s one-year statute of limitations
2 applies under its express terms.

3 In response, Plaintiffs do not dispute that their wrongful death or negligent infliction of
4 emotional distress claims are brought against providers of health care. Plaintiffs also do not
5 dispute that those claims sound in professional negligence, nor could they since those claims
6 arise out of the same alleged failures to provide medical services, which involved medical
7 judgment, diagnoses, and/or treatment, and are based on the same affidavit of merit that
8 Plaintiffs used to support their professional negligence claim. *See* Complaint at ¶¶ 34-40, 41-48,
9 49-56; *see also* Complaint, Ex. A (Dr. Hashim's Affidavit). Additionally, Plaintiffs have not
10 cited to any case law or authority to support their contention that those claims should not be
11 subject to NRS 41A.097(2)'s one-year statute of limitations when, as here, they involve the
12 medical judgment, diagnosis, or treatment by the hospital and the co-defendant physicians.
13

14 In light of the foregoing and in accordance with the case law and authority discussed in
15 its Motion to Dismiss, Centennial Hills Hospital respectfully requests that this Court find that
16 Plaintiffs' wrongful death and negligent infliction of emotional distress causes of action sound in
17 professional negligence and are subject to NRS 41A.097(2)'s one-year statute of limitations.
18 The application of NRS 41A.097(2) under these circumstances is necessary to preclude
19 Plaintiffs' from evading through artful pleading the statutory protections afforded to providers of
20 health care.
21

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23
24 **A. Plaintiffs' Complaint Should be Dismissed Because it was Filed After the One-Year
Statute of Limitations Expired.**

25 In the Motion to Dismiss, Centennial Hills Hospital established that the one-year statute
26 of limitations because to run on May 11, 2017, because knew, or should have known, of facts
27 that would put a reasonably person on inquiry notice at that time. As discussed in the Motion to
28

Dismiss, Nevada law is clear that the one-year statute of limitations begins to run when a plaintiff discovers, or through the exercise of reasonable diligence, should have discovered the injury. *See* NRS 41A.097(2); *see also* *Eamon v. Martin*, No. 67815, 2016 WL 917795, at *1 (Nev. App. Mar. 4, 2016). A plaintiff “discovers” his injury, for purposes of that statute, when he knows or, through the use of reasonable diligence, should have known of facts that would put a reasonable person on “inquiry notice” of his cause of action. *See Eamon*, 2016 WL 917795, at *1. A plaintiff is placed on such “inquiry notice” when he should have known of facts that would lead an ordinarily prudent person to investigate the matter further into whether the injury may have been caused by someone’s negligence. *Id.*; *see also Winn v. Sunrise Hosp. & Med. Ctr.*, 128 Nev. 246, 252, 277 P.3d 458, 462 (2012). In order to be placed on “inquiry notice,” the plaintiff does not have to discover the precise facts pertaining to his or her legal theory; rather, he only has to have had facts before him that would have led an ordinarily prudent person to investigate further into whether the injury was caused by someone’s negligence. *See id.*

In response, Plaintiffs appear to argue that Plaintiffs did not have or could not have obtained sufficient facts that would lead an ordinarily prudent person to investigate the matter further because they purportedly received incomplete medical records. *See* Opposition at p. 7. In support, Plaintiffs’ rely upon Dr. Hashim’s affidavit from January 23, 2019, wherein Dr. Hashim asserts that all records were requested, but not all records were received.¹ *See* Opposition at p. 7 (citing Complaint, Ex. A, ¶ 6). Significantly, Dr. Hashim did not describe what records were requested, which records were received, when they were received, or what, if any, additional medical records were or would have been needed to initiate further investigation.

¹ Defendant obviously disputes this assertion, but the Court is not required to resolve this in relation to the Motion to Dismiss because Plaintiffs’ own allegations and affidavit make it clear that they had sufficient information to place them on inquiry notice.

1 See Complaint, Ex. A, ¶ 6. Despite the lack of specifics, Plaintiffs argue from Dr. Hashim's
2 statement that they did not or could not have sufficient facts to place them on inquiry notice.
3 See generally Opposition at p. 7.

4 However, Dr. Hashim's affidavit actually demonstrates that Plaintiffs had been placed on
5 inquiry notice because it confirms that Plaintiffs received medical records and that he was able
6 to offer opinions of alleged deviations based upon the same. Under Nevada law, when a patient
7 receives medical records that are later relied upon by the expert for his affidavit of merit, the
8 plaintiff has been placed on inquiry notice. See, e.g., *Dignity Health v. Eighth Judicial Dist.*
9 *Court of State, ex rel. Cty. of Clark*, No. 66084, 2014 WL 4804275, at *2 (Nev. Sept. 24, 2014)
10 (concluding that the one-year statute of limitations began to run when the plaintiff received
11 medical records that were used to support standard of care violations). Here, Plaintiffs' expert,
12 Dr. Hashim, confirmed that Plaintiffs received medical records, and he offered opinions of
13 alleged deviations from the standard of care based upon the same. Of course, Dr. Hashim also
14 received additional information from the Death Certificate and from the investigation from the
15 Department of Health and Human Services, but the information "reinforced" the opinions he
16 formed based upon the medical records and supported others. See Complaint, Ex. A, ¶ 6B and ¶
17 8. Thus, it cannot be disputed that Dr. Hashim had information before him from the Centennial
18 Hills Hospital medical records from which he could opine as to alleged deviations from the
19 standard of care. As a result, Dr. Hashim's affidavit shows that Plaintiffs had information
20 before them from the medical records that would lead an ordinarily prudent person to investigate
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1 further whether the injury was caused by someone's negligence. Consequently, Plaintiffs had
2 clearly been placed on inquiry notice.²

3 **B. Plaintiffs' Have Not Demonstrated that NRS 41A.097's One-Year Statute of**
4 **Limitations Should be Tolled.**

5 Plaintiff mistakenly argues that purported inconsistencies with the Death Certificate and
6 an investigative report from the Department of Health and Human Services support an inference
7 of concealment, which warrant tolling of the statute of limitations. See Opposition at p. 7. In
8 order to establish that the one-year discovery period should be tolled, Plaintiffs are required to
9 show the following (1) that defendant intentionally withheld information, and (2) that this
10 withholding would have hindered a reasonably diligent plaintiff from procuring an expert
11 affidavit. See *Libby v. Eighth Jud. Dist. Ct.*, 130 Nev. 359, 367, 325 P.3d 1276, 1281 (2014)
12 ("We have previously determined that NRS 41A.097(3)'s tolling provision applies only when
13 there has been an intentional act that objectively hindered a reasonably diligent plaintiff from
14 timely filing suit.") (citing *Winn v. Sunrise Hosp. & Med. Ctr.*, 128 Nev. 246, 255, 277 P.3d
15 458, 464 (2012)). However, Plaintiffs have not alleged, let alone established, that Centennial
16 Hills Hospital intentionally withheld information, and, just as significantly, Plaintiffs have not
17 alleged or shown that any information withheld would have hindered a reasonably diligent
18 plaintiff from procuring an expert affidavit.
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22 Instead, Plaintiffs argue that the Death Certificate somehow supports an inference of
23 concealment because Dr. Hashim believes that the finding was incorrect. See Opposition at p.
24 7. Specifically, Plaintiffs contend that the Death Certificate incorrectly found the cause of death
25 to be "Complications of Cymbalta Intoxication," which Dr. Hashim asserts could not have been
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27
28 ² Plaintiffs have not argued or alleged that they received the medical records outside of the one-year statute of
limitations period. The court does not have to resolve when the records were sent/received because Plaintiffs have
not alleged that the records were received outside of the one-year period following Ms. Powell's death.

1 accurate because of Cymbalta's half-life and the amount of time that lapsed before the patient
2 expired. If Dr. Hashim's assertions are true, they do not support an inference of concealment by
3 Centennial Hills Hospital because the findings on the Death Certificate would have been made
4 by the Coroner, not the hospital or the co-defendant physicians. Additionally, the Death
5 Certificate would not have hindered a reasonably diligent plaintiff from procuring an expert
6 affidavit; rather, it would have allowed an expert to opine regarding its allegedly incorrect cause
7 of death as Dr. Hashim did here. Moreover, if Dr. Hashim's opinions regarding the cause of
8 death are correct, this would only demonstrate that Plaintiffs had access to more information that
9 would have led an ordinarily prudent person to investigate the findings further. Thus, not only
10 does the Death Certificate does not support tolling, it actually supports finding that Plaintiffs
11 were placed on inquiry notice before the expiration of the statute of limitations.
12

13
14 Next, Plaintiffs appear to argue that the statute of limitations should have been tolled
15 until they received the investigative report from the Department of Health and Human Services
16 because they did not have a "full picture" without the report. *See* Opposition at p. 8. This
17 argument is not persuasive for at least two reasons. First, this is not the standard. Plaintiffs are
18 not required to have the "full picture" to trigger inquiry notice. Rather, Plaintiffs are placed on
19 such inquiry notice when they knew or should have known of facts that would lead an ordinarily
20 prudent person to investigate the matter further, and, to be placed on inquiry notice, the plaintiff
21 does not have to discover the precise facts pertaining to his or her legal theory. Thus, there is
22 no obligation for Plaintiffs to discover the precise facts or obtain a full picture before they are on
23 inquiry notice. Consequently, it was not necessary for Plaintiffs to receive the investigative
24 report to be placed on inquiry notice. Second, Dr. Hashim did not require the investigative
25 report to form opinions regarding alleged violations of the standard of care. As discussed
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1 above, Dr. Hashim stated that the investigative report “reinforced” his findings, which shows
2 that he had enough information from the medical records to form opinions regarding deviations
3 from the standard of care without the investigative report. *See* Complaint, Ex. A, ¶ 6B and ¶ 8.
4 Thus, it is clear the investigative report was not necessary to place Plaintiffs on inquiry notice,
5 and the investigative report does not serve as a basis to toll NRS 41A.097(2)’s one-year statute
6 of limitations.
7

8 **III.**

9 **CONCLUSION**

10 Based on the foregoing and upon the arguments set forth in Centennial Hills Hospital
11 Motion to Dismiss, Centennial Hills Hospital respectfully requests that this Court dismiss
12 Plaintiffs’ Complaint with prejudice.
13

14 DATED this 18th day of September, 2019.

15 HALL PRANGLE & SCHOONVELD, LLC

16
17 By: /s/: Zachary Thompson, Esq
MICHAEL E. PRANGLE, ESQ.
Nevada Bar No. 8619
ZACHARY J. THOMPSON, ESQ.
Nevada Bar No. 11001
1160 N. Town Center Dr., Ste. 100
Las Vegas, NV 89144
Attorneys for Defendant
Valley Health System, LLC, dba
Centennial Hills Hospital Medical Center
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CERTIFICATE OF SERVICE

I HEREBY CERTIFY that I am an employee of HALL PRANGLE & SCHOONVELD, LLC; that on the 18th day of September, 2019, I served a true and correct copy of the foregoing **DEFENDANT CENTENNIAL HILLS HOSPITAL'S REPLY IN SUPPORT OF ITS MOTION TO DISMISS PLAINTIFFS' COMPLAINT** as follows:

 X the E-Service Master List for the above referenced matter in the Eighth Judicial District Court e-filing System in accordance with the electronic service requirements of Administrative Order 14-2 and the Nevada Electronic Filing and Conversion Rules;

 U.S. Mail, first class postage pre-paid to the following parties at their last known address;

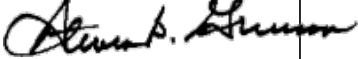
 Receipt of Copy at their last known address:

Paul Padda, Esq.
Joshua Y, Ang, Esq.
PAUL PADDA LAW, PLLC
4560 South Decatur Blvd., Suite 300
Las Vegas, NV 89103
Attorneys for Plaintiffs

John H. Cotton, Esq.
Brad Shipley, Esq.
JOHN H. COTTON & ASSOCIATES, LTD.
7900 West Sahara Avenue, Suite 200
Las Vegas, NV 89117
Attorneys for Defendants Dionice S. Juliano, M.D., Conrado Concio, M.D. and Vishal S. Shah, M.D.

/s/ Reina Claus

An employee of HALL PRANGLE & SCHOONVELD, LLC



1 **MTD**
2 MICHAEL E. PRANGLE, ESQ.
3 Nevada Bar No. 8619
4 ZACHARY J. THOMPSON, ESQ.
5 Nevada Bar No. 11001
6 HALL PRANGLE & SCHOONVELD, LLC
7 1160 North Town Center Drive, Ste. 200
8 Las Vegas, Nevada 89144
9 Phone: 702-889-6400
10 Facsimile: 702-384-6025
11 efile@hpslaw.com
12 *Attorneys for Defendant*
13 *Valley Health System, LLC, dba*
14 *Centennial Hills Hospital Medical Center*
15 *and Universal Health Services, Inc.*

9 **DISTRICT COURT**

10 **CLARK COUNTY, NEVADA**

11 ESTATE OF REBECCA POWELL, through
12 BRIAN POWELL, as Special Administrator;
13 DARCI CREECY, individually and as an Heir;
14 TARYN CREECY, individually and as an Heir;
15 ISAAH KHOSROF, individually and as an Heir;
16 LLOYD CREECY, individually;

17 Plaintiffs,

18 vs.

19 VALLEY HEALTH SYSTEM, LLC (doing
20 business as "Centennial Hills Hospital Medical
21 Center"), a foreign limited liability company;
22 UNIVERSAL HEALTH SERVICES, INC., a
23 foreign corporation; DR. DIONICE S. JULIANO,
24 M.D., an individual; DR. CONRADO C.D.
25 CONCIO, M.D., an individual; DR. VISHAL S.
26 SHAH, M.D., an individual; DOES 1-10; and
27 ROES A-Z;

28 Defendants.

CASE NO. A-19-788787-C

DEPT NO. XIV

DEFENDANT UNIVERSAL
HEALTH SERVICES, INC.'S
MOTION TO DISMISS OR,
ALTERNATIVELY, MOTION FOR
SUMMARY JUDGMENT FOR
LACK OF JURISDICTION

HEARING REQUESTED

24 COMES NOW, Defendant UNIVERSAL HEALTH SERVICES, INC. (hereinafter
25 referred to as "UHS") by and through its attorneys HALL PRANGLE & SCHOONVELD, LLC,
26 and hereby submits its Motion to Dismiss or, Alternatively, Motion for Summary Judgment for
27 Lack of Jurisdiction.
28

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

This motion is made and based upon the papers and pleadings on file herein, the points and authorities attached hereto, and any argument of counsel which may be allowed at the time of the hearing on this matter.

DATED this 23rd day of September, 2019.

HALL PRANGLE & SCHOONVELD, LLC

By: /s/: Zachary Thompson, Esq
MICHAEL E. PRANGLE, ESQ.
Nevada Bar No. 8619
ZACHARY J. THOMPSON, ESQ.
Nevada Bar No. 11001
1160 North Town Center Drive, Ste. 200
Las Vegas, Nevada 89144
Attorneys for Defendant
Valley Health System, LLC, dba
Centennial Hills Hospital Medical Center
and Universal Health Services, Inc.

MEMORANDUM OF POINTS AND AUTHORITIES

I.

INTRODUCTION

This matter arises out of the death of Rebecca Powell at Centennial Hills Hospital on May 11, 2017. On February 4, 2019, Plaintiffs filed an untimely Complaint against Centennial Hills Hospital, Dionice Juliano, MD, Conrado Concio, MD, Vishal Shah, MD, and Universal Health Services, Inc. (collectively “Defendants”).¹ In the Complaint, Plaintiffs allege that the hospital and physicians breached the standard of care by failing to properly treat or monitor Ms. Powell, which they contend led to Ms. Powell’s death. *See* Complaint at ¶¶ 28-29. In addition

¹ The failure to timely file the Complaint is addressed in co-defendants separate motions to dismiss, which will be joined in a separate pleading by Universal Health Services, Inc.

1 to asserting claims against the co-defendant hospital and physicians, Plaintiffs also named
2 Universal Health Services, Inc. (“UHS”), which was not involved in Ms. Powell’s care and
3 treatment, solely on the grounds that the entity was a parent corporation of Valley Health
4 System, LLC, which does business as Centennial Hills Hospital Medical Center. *See, e.g.,*
5 Complaint at ¶¶ 11 and 17.

6
7 Plaintiffs’ claims against UHS cannot be maintained in this Court because Plaintiff did
8 not plead sufficient facts from which the Court could find personal jurisdiction over UHS, and
9 Plaintiffs cannot meet its burden to present competent evidence of essential facts which would
10 support jurisdiction. Accordingly, UHS respectfully requests that this Court dismiss it pursuant
11 to Nevada Rule of Civil Procedure 12(b)(2). Alternatively, UHS respectfully requests that this
12 Court consider the Affidavit of Michelle Carson, Esq., attached hereto as Exhibit A, which
13 confirms the UHS entity’s lack of involvement with the subject care, and enter summary
14 judgment in UHS’s favor for lack of jurisdiction.
15

16
17 **II.**

18 **STATEMENT OF FACTS**

19 Centennial Hills Hospital Medical Center is an acute care medical facility located in Las
20 Vegas, Nevada. *See Carson Aff., ¶ 3.* Centennial Hills Hospital Medical Center is a fictitious
21 name for Valley Health System, LLC. *See Carson Aff., ¶ 4.* Valley Health System, LLC, is an
22 indirect subsidiary of Universal Health Services, Inc. (“UHS”). *See Carson Aff., ¶ 4.* UHS is
23 simply a holding company. *See Carson Aff., ¶ 5.* UHS is located at in King of Prussia,
24 Pennsylvania. *See Carson Aff., ¶ 1.* UHS performs no separate day-to-day operations. *See*
25 *Carson Aff., ¶ 5.* UHS does not provide healthcare services, and it does not provide operational
26 management services to its subsidiary facilities, including Centennial Hills Hospital. *See Carson*
27
28

1 Aff., ¶ 7. UHS did not provide any of the healthcare services or patient care at issue in this
2 litigation. *See Carson Aff.*, ¶ 8.

3 **III.**

4 **ARGUMENT**

5 Nevada Rule of Civil Procedure 12(b)(2) provides for dismissal of a complaint due to
6 “lack of jurisdiction over the person.” If a party moves to dismiss the complaint for lack of
7 jurisdiction over the person, the plaintiff bears the burden to make a prima facie showing with
8 competent evidence of essential facts which, if true, would support jurisdiction. *See Viega*
9 *GmbH v. Eighth Jud. Dist. Ct.*, 130 Nev. 368, 328 P.3d 1152, 1156 (2014) (“To avoid dismissal
10 of the German Viega companies at this stage of the proceedings below, the [plaintiff] was
11 required to make a prima facie showing with ‘competent evidence of essential facts’ that, if true,
12 would support jurisdiction.”) (quoting *Trump v. Eighth Judicial Dist. Court*, 109 Nev. 687, 692,
13 857 P.2d 740, 743 (1993) (“‘When a challenge to personal jurisdiction is made, the plaintiff has
14 the burden of introducing competent evidence of essential facts which establish a prima facie
15 showing that personal jurisdiction exists.’”) (quoting *Abbott-Interfast v. District Court*, 107 Nev.
16 871, 873, 821 P.2d 1043, 1044 (1991))).

17 In order to meet this burden, the plaintiff cannot rely upon the allegations in the
18 complaint; rather, the plaintiff must produce evidence in support of all facts necessary for a
19 finding of personal jurisdiction. *See Trump*, 109 Nev. at 692-93, 857 P.2d at 744 (“[T]he burden
20 of proof never shifts to the party challenging jurisdiction.”). If the plaintiff fails to meet the
21 burden to produce evidence in support of all facts necessary to find personal jurisdiction, the
22 complaint should be dismissed. *See Viega GmbH*, 130 Nev. at 328 P.3d at 1156; *see also* Nev.
23 R. Civ. Pro. 12(b)(2).

1 In order to avoid dismissal, the plaintiff would have to show that jurisdiction is proper
2 over the parties challenging jurisdiction. “Jurisdiction over a nonresident defendant is proper
3 only if the plaintiff shows that the exercise of jurisdiction satisfies the requirements of Nevada’s
4 long-arm statute and does not offend principles of due process.” *Viega GmbH*, 130 Nev. 368,
5 328 P.3d at 1156 (citing *Arbella Mut. Ins. Co. v. Eighth Judicial Dist. Court*, 122 Nev. 509, 512,
6 134 P.3d 710, 712 (2006); *Consipio Holding, BV v. Carlberg*, 128 Nev. 454, 458, 282 P.3d 751,
7 754 (2012) (“Nevada’s long-arm statute permits personal jurisdiction over a nonresident
8 defendant unless the exercise of jurisdiction would violate due process.”)). “Nevada’s long-arm
9 statute, NRS 14.065, reaches the constitutional limits of due process under the Fourteenth
10 Amendment, which requires that the defendant have such minimum contacts with the state that
11 the defendant could reasonably anticipate being haled into court here, thereby complying with
12 ‘traditional notions of fair play and substantial justice.’” *Id.* (quoting *Arbella*, 122 Nev. at 512,
13 134 P.3d at 712 (internal quotation marks omitted) (citing *Int’l Shoe Co. v. Washington*, 326
14 U.S. 310, 316, 66 S.Ct. 154, 90 L.Ed. 95 (1945))).
15
16

17 Accordingly, the Court must analyze and determine whether the exercise of jurisdiction
18 over the parties challenging personal jurisdiction satisfies due process. *See id.* In order to
19 satisfy due process, the plaintiff must show that the non-resident defendants’ contacts are
20 sufficient to obtain either general jurisdiction or specific personal jurisdiction, and the plaintiff
21 must show that it is reasonable to subject the non-resident defendants to suit in the forum state.
22 *Id.* (citing *Arbella*, 122 Nev. at 512, 516, 134 P.3d at 712, 714).
23
24

25 To obtain general jurisdiction, the foreign company’s contacts with the forum state must
26 be so continuous and systematic as to render it essentially at home in the forum state. *See id.* at
27 368, 328 P.3d 1152, 1156–57 (“A court may exercise general jurisdiction over a foreign
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1 company when its contacts with the forum state are so continuous and systematic' as to render
2 [it] essentially at home in the forum State.”); *see also Arbella*, 122 Nev. at 513, 134 P.3d at 712
3 (“[G]eneral personal jurisdiction exists when the defendant's forum state activities are so
4 substantial or continuous and systematic that it is considered present in that forum and thus
5 subject to suit there, even though the suit's claims are unrelated to that forum.”) (internal
6 quotation marks omitted)). Typically, a corporation is “at home” only where it is incorporated
7 or has its principle place of business. *See id.* at 368, 328 P.3d at 1158. If the corporation was
8 not incorporated in the forum state, the foreign corporation will not be subject to broad, general
9 jurisdiction in the forum state even if its subsidiary conducts substantial business there. *See id.*
10 Thus, a plaintiff cannot meet its burden to show general jurisdiction by simply showing that a
11 foreign corporation’s subsidiary conducts business in the forum state.
12

13
14 Alternatively, to obtain specific personal jurisdiction, the foreign company must
15 purposefully avail itself of the forum’s market or establish contacts in the forum and
16 affirmatively direct conduct there, and the claims must arise from that purposeful contact or
17 conduct targeting the forum. *See id.* at 368, 328 P.3d 1152, 1156–57; *see also Arbella*, 122 Nev.
18 at 513, 134 P.3d at 712–13 (“[a] state may exercise specific personal jurisdiction only where:
19 (1) the defendant purposefully avails himself of the privilege of serving the market in the forum
20 or of enjoying the protection of the laws of the forum, or where the defendant purposefully
21 establishes contacts with the forum state and affirmatively directs conduct toward the forum
22 state, and (2) the cause of action arises from that purposeful contact with the forum or conduct
23 targeting the forum.”). In order to show the applicability of specific personal jurisdiction, the
24 plaintiff must show more than ownership or control of a subsidiary in the forum state. *See id.* at
25 368, 328 P.3d 1152, 1158–59 (“Corporate entities are presumed separate, and thus, indicia of
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mere ownership are not alone sufficient to subject a parent company to jurisdiction based on its subsidiary's contacts.”).

In determining whether a parent corporation is subject to either general or specific personal jurisdiction, the mere existence of a relationship between a parent company and its subsidiaries is not sufficient to establish personal jurisdiction over the parent on the basis of the subsidiaries minimum contacts with the forum. *See id.* at 368, 328 P.3d at 1157. In *Viega*, the Nevada Supreme Court explained this rule as follows:

But corporate entities are presumed separate, and thus, the mere “existence of a relationship between a parent company and its subsidiaries is not sufficient to establish personal jurisdiction over the parent on the basis of the subsidiaries’ minimum contacts with the forum.” *Doe v. Unocal Corp.*, 248 F.3d 915, 925 (9th Cir.2001); *see also McCulloch Corp. v. O'Donnell*, 83 Nev. 396, 399, 433 P.2d 839, 840–41 (1967) (holding that “[t]he mere fact of stock ownership by one corporation in another does not authorize jurisdiction over the stockholder corporation”). Subsidiaries' contacts have been imputed to parent companies only under narrow exceptions to this general rule, including “alter ego” theory and, at least in cases of specific jurisdiction, the “agency” theory. *Unocal Corp.*, 248 F.3d at 926. The alter ego theory allows plaintiffs to pierce the corporate veil to impute a subsidiary's contacts to the parent company by showing that the subsidiary and the parent are one and the same. *See, e.g., Goodyear*, 564 U.S. at —, 131 S.Ct. at 2857 (implying, but not deciding, that an alter ego theory would be appropriate in such a situation); *see also Platten v. HG Bermuda Exempted, Ltd.*, 437 F.3d 118, 139 (1st Cir.2006); *Patin v. Thoroughbred Power Boats, Inc.*, 294 F.3d 640, 653 (5th Cir.2002). The rationale behind this theory is that the alter ego subsidiary is the same entity as its parent, and thus, the jurisdictional contacts of the subsidiary are also jurisdictional contacts of the parent. *Patin*, 294 F.3d at 653. Unlike with the alter ego theory, the corporate identity of the parent company is preserved under the agency theory; the parent nevertheless “is held for the acts of the [subsidiary] agent” because the subsidiary was acting on the parent's behalf. *F. Hoffman–La Roche, Ltd. v. Superior Court*, 130 Cal.App.4th 782, 30 Cal.Rptr.3d 407, 418 (2005) (internal quotation marks omitted); *Wesley-Jessen Corp. v. Pilkington Visioncare, Inc.*, 863 F.Supp. 186, 188–89 (D.Del.1993) (“This [agency] theory does not treat the parent and subsidiary as one entity, but rather attributes specific acts to the parent because of the parent's authorization of those acts.”).

Id. (emphasis added).

...

1 In this case, Plaintiffs cannot meet their burden to make a prima facie showing through
2 competent evidence that UHS is subject to the jurisdiction of this Court. Plaintiffs cannot
3 establish that UHS is subject to general jurisdiction because UHS is a foreign corporation with
4 its principle places of business in King of Prussia, Pennsylvania. *See Carson Aff.*, ¶ 1. Given
5 this, UHS's contact with the forum state is not so continuous and systematic so as to render it at
6 home in the forum state, and Plaintiffs cannot meet their burden to establish otherwise.
7

8 Plaintiffs also cannot meet their burden to show that UHS is subject to specific personal
9 jurisdiction. UHS is a separate and distinct corporation, which maintains separate corporate
10 existence from Centennial Hills Hospital. *See Carson Aff.*, ¶¶ 3-9. UHS does not operate or
11 manage services at Centennial Hills Hospital. *See Carson Aff.*, ¶ 8 (UHS does not provide
12 operational management services to its subsidiary facilities). UHS is simply a holding company
13 with no employees in the State of Nevada. *See Carson Aff.*, ¶¶ 5-6. Additionally, UHS did not
14 provide any services or patient care at issue. *See Carson Aff.*, ¶ 10. As a result, Plaintiffs
15 cannot show that UHS purposefully availed itself of the forum's market or established contacts
16 in the forum and affirmatively directed conduct there. Further, Plaintiffs cannot establish that
17 their claims arise from that any alleged purposeful contact or conduct targeting the forum.
18 Therefore, Plaintiffs cannot meet their burden to show that the UHS entity is subject to specific
19 personal jurisdiction.
20
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22 In light of the foregoing, Plaintiffs cannot meet their burden to establish general
23 jurisdiction, specific personal jurisdiction, and/or that it is reasonable to subject them to suit in
24 Nevada. As a result, exercising jurisdiction over UHS would not satisfy due process under the
25 Fourteenth Amendment. Since it would not satisfy due process under the Fourteenth
26 Amendment, Nevada's long-arm statute, NRS 14.065, does not permit personal jurisdiction over
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1 these foreign entities. Therefore, jurisdiction over UHS is not permitted and is not proper in this
2 case.

3 Since jurisdiction is not proper over these entities, Plaintiffs cannot avoid dismissal of
4 UHS pursuant to Nevada Rule of Civil Procedure 12(b)(2). As a result, UHS respectfully
5 requests that this Court dismiss Plaintiffs' Complaint with prejudice due to lack of jurisdiction
6 pursuant to Nevada Rule of Civil Procedure 12(b)(2). Alternatively, UHS respectfully requests
7 that this Court consider the Affidavit of Michelle Carson, Esq., and enter summary judgment in
8 UHS's favor for lack of jurisdiction.
9

10 **IV.**

11 **CONCLUSION**

12 Based on the foregoing, UHS respectfully requests that this Court dismiss Plaintiffs'
13 Complaint against it with prejudice pursuant to Nevada Rule of Civil Procedure 12(b)(2).
14 Alternatively, UHS respectfully requests that this Court consider the Affidavit of Michelle
15 Carson, Esq., which confirms the UHS entity's lack of involvement with the subject care, and
16 enter summary judgment in UHS's favor for lack of jurisdiction.
17

18 DATED this 23rd day of September, 2019.
19

20 HALL PRANGLE & SCHOONVELD, LLC
21

22 By: /s/: Zachary Thompson, Esq
23 MICHAEL E. PRANGLE, ESQ.
24 Nevada Bar No. 8619
25 ZACHARY J. THOMPSON, ESQ.
26 Nevada Bar No. 11001
27 1160 North Town Center Drive, Ste. 200
28 Las Vegas, Nevada 89144
*Attorneys for Defendant
Valley Health System, LLC, dba
Centennial Hills Hospital Medical Center
and Universal Health Services, Inc.*

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that I am an employee of HALL PRANGLE & SCHOONVELD, LLC; that on the 23rd day of September, 2019, I served a true and correct copy of the foregoing

DEFENDANT UNIVERSAL HEALTH SERVICES, INC.'S MOTION TO DISMISS

PLAINTIFFS' COMPLAINT as follows:

 X the E-Service Master List for the above referenced matter in the Eighth Judicial District Court e-filing System in accordance with the electronic service requirements of Administrative Order 14-2 and the Nevada Electronic Filing and Conversion Rules;

 U.S. Mail, first class postage pre-paid to the following parties at their last known address;

 Receipt of Copy at their last known address:

Paul Padda, Esq.
Joshua Y, Ang, Esq.
PAUL PADDA LAW, PLLC
4560 South Decatur Blvd., Suite 300
Las Vegas, NV 89103
Attorneys for Plaintiffs

John H. Cotton, Esq.
Brad Shipley, Esq.
JOHN H. COTTON & ASSOCIATES, LTD.
7900 West Sahara Avenue, Suite 200
Las Vegas, NV 89117
Attorneys for Defendants Dionice S. Juliano, M.D., Conrado Concio, M.D. and Vishal S. Shah, M.D.

/s/ Reina Claus

An employee of HALL PRANGLE & SCHOONVELD, LLC

Exhibit A

Exhibit A

AFFIDAVIT OF MICHELLE CARSON

COMMONWEALTH OF PENNSYLVANIA)
) ss:
COUNTY OF MONTGOMERY)

MICHELLE CARSON, being first duly sworn and upon her oath, deposes and says:

1. I am Associate General Counsel - Litigation for UHS of Delaware, Inc., the management company for Universal Health Services, Inc. ("UHS"), located at 367 South Gulph Road, King of Prussia, PA 19406.

2. The facts contained herein are true and correct to the best of my knowledge, information and belief.

3. Centennial Hills Hospital Medical Center is an acute care medical facility located at 6900 N. Durango Drive, Las Vegas, NV 89149.

4. Centennial Hills Hospital Medical Center is a fictitious name for Valley Health System LLC.

4. Valley Health System LLC is an indirect subsidiary of UHS.

5. UHS is and has been a holding company that operates through its subsidiary facilities. UHS performs no separate day-to-day operations.

6. UHS does not have any employees.

7. UHS is not registered to do business in the state of Nevada.

8. UHS is not licensed as a healthcare provider, does not provide healthcare services, and does not provide operational management services to its subsidiary facilities, including Centennial Hills Hospital Medical Center.

9. Each subsidiary facility, including Centennial Hills Hospital Medical Center, is licensed to provide healthcare services in its respective state.

1 10. UHS did not provide any of the healthcare services or patient care at issue in this
2 litigation.

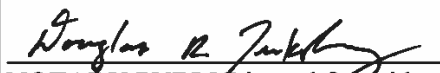
3 11. Everything stated within this affidavit is true and correct to the best of affiant's
4 knowledge, information and belief.

5 DATED this 15th day of August, 2019.

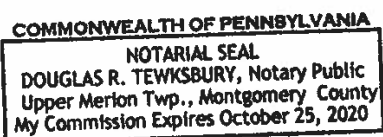
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7 

Michelle K. Carson

8 Subscribed and sworn to before me this
9 15th day of August, 2019.

10 

11 NOTARY PUBLIC in and for said
County and State



**DISTRICT COURT
CLARK COUNTY, NEVADA**

Malpractice - Medical/Dental

COURT MINUTES

September 25, 2019

A-19-788787-C	Estate of Rebecca Powell, Plaintiff(s) vs. Valley Health System, LLC, Defendant(s)
---------------	--

September 25, 2019 9:00 AM

All Pending Motions

HEARD BY: Wiese, Jerry A.

COURTROOM: RJC Courtroom 14A

COURT CLERK: Nylasia Packer

RECORDER: Vanessa Medina

PARTIES

PRESENT:	Nelson, Suneel J, ESQ	Attorney
	Padda, Paul S.	Attorney
	Shipley, Brad J	Attorney
	Thompson, Zachary J.	Attorney

JOURNAL ENTRIES

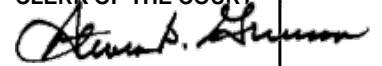
- DEFENDANT CENTENNIAL HILLS HOSPITAL'S JOINDER TO DEFENDANTS CONRADO CONCIO, MD AND DIONICE JULIANO, MD'S MOTION TO DISMISS...DEFENDANT CONRADO CONCIO, MD, AND DIONICE JULIANO, MD'S MOTION TO DISMISS... DEFENDANT VISHAL SHAH, M.D. JOINDER TO DEFENDANT'S CONCIO AND JULIANO'S MOTION TO DISMISS...DEFENDANT CENTENNIAL HILLS HOSPITAL'S MOTION TO DISMISS PLAINTIFFS' COMPLAINT...DEFENDANT UNIVERSAL HEALTH SERVICES, INC.'S JOINDER TO DEFENDANT CENTENNIAL HILLS HOSPITAL'S MOTION TO DISMISS PLAINTIFFS' COMPLAINT AND JOINDER TO DEFENDANTS CONRADO CONCIO, MD, AND DIONICE JULIANO, MD'S MOTION TO DISMISS...DEFENDANT UNIVERSAL HEALTH SERVICES, INC.'S JOINDER TO DEFENDANT CENTENNIAL HILLS HOSPITAL'S MOTION TO DISMISS PLAINTIFFS' COMPLAINT AND JOINDER TO DEFENDANTS CONRADO CONCIO, MD, AND DIONICE JULIANO, MD'S MOTION TO DISMISS...

Court Stated its findings and ORDERED, motions DENIED. Counsel to prepare orders.

PRINT DATE: 11/01/2019

Page 1 of 1

Minutes Date: September 25, 2019



1 MICHAEL E. PRANGLE, ESQ.
Nevada Bar No. 8619
2 ZACHARY J. THOMPSON, ESQ.
Nevada Bar No. 11001
3 HALL PRANGLE & SCHOONVELD, LLC
1140 North Town Center Drive, Ste. 350
4 Las Vegas, Nevada 89144
Phone: 702-889-6400
5 Facsimile: 702-384-6025
6 efile@hpslaw.com
Attorneys for Defendant
7 Valley Health System, LLC, dba
Centennial Hills Hospital Medical Center

8 DISTRICT COURT

9 CLARK COUNTY, NEVADA

10 ESTATE OF REBECCA POWELL, through
11 BRIAN POWELL, as Special Administrator;
DARCI CREECY, individually and as an Heir;
12 TARYN CREECY, individually and as an Heir;
ISAIAH KHOSROF, individually and as an Heir;
13 LLOYD CREECY, individually;

14 Plaintiffs,

15 vs.

16 VALLEY HEALTH SYSTEM, LLC (doing
business as "Centennial Hills Hospital Medical
17 Center"), a foreign limited liability company;
UNIVERSAL HEALTH SERVICES, INC., a
18 foreign corporation; DR. DIONICE S. JULIANO,
M.D., an individual; DR. CONRADO C.D.
19 CONCIO, M.D., an individual; DR. VISHAL S.
SHAH, M.D., an individual; DOES 1-10; and
20 ROES A-Z;

21 Defendants.

CASE NO. A-19-788787-C

DEPT NO. XIV

STIPULATION AND ORDER TO
DISMISS UNIVERSAL HEALTH
SERVICES, INC. WITHOUT
PREJUDICE

23 IT IS HEREBY STIPULATED and agreed by and between the parties through their
24 respective counsel that Defendant UNIVERSAL HEALTH SERVICE, INC., shall be dismissed,
25 without prejudice, from the instant litigation in case A-19-788787-C, with each party to bear
26 their own attorneys' fees and costs.

27 IT IS FURTHER STIPULATED and agreed that if Plaintiffs later discover facts which
28 indicate UNIVERSAL HEALTH SERVICE, INC. is a proper party and has liability for the

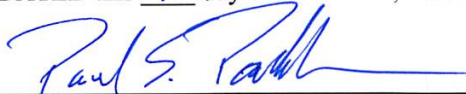
HALL PRANGLE & SCHOONVELD, LLC
1140 NORTH TOWN CENTER DRIVE, STE. 350
LAS VEGAS, NEVADA 89144
TELEPHONE: 702-889-6400 FACSIMILE: 702-384-6025

claims asserted in the Complaint, if Plaintiffs move for relief to amend their Complaint to add UNIVERSAL HEALTH SERVICE, INC. only, and only if the Court holds that amendment is appropriate, the amendment shall relate back to the date of the filing of the Complaint, February 2, 2019, in this matter.

UNIVERSAL HEALTH SERVICE, INC., reserves all other defenses, including, but not limited to the defenses previously asserted in Universal Health Services, Inc.'s Motion to Dismiss, or, Alternatively, Motion for Summary Judgment for Lack of Jurisdiction and Universal Health Services, Inc.'s Joinder to Defendant Centennial Hills Hospital's Motion to Dismiss Plaintiffs' Complaint and Joinder to Defendants Conrado Concio, MD, and Dionice Juliano, MD's Motion to Dismiss, including the lack of jurisdiction and statutes of limitations defenses set forth therein.

IT IS SO STIPULATED.

DATED this 27th day of November, 2019.



PAUL S. PADUA, ESQ.
Nevada Bar No. 10417
PAUL PADUA LAW, PLLC
4560 South Decatur Blvd., Suite 300
Las Vegas, NV 89103
Attorneys for Plaintiffs

DATED this 27th day of November, 2019.

 Bar No. 14845

MICHAEL E. PRANGLE, ESQ.
Nevada Bar No. 8619
ZACHARY J. THOMPSON, ESQ.
Nevada Bar No. 11001
HALL PRANGLE & SCHOONVELD, LLC
1140 N. Town Center Dr., Ste. 350
Las Vegas, NV 89144
*Attorneys for Defendant Valley Health System,
LLC, dba Centennial Hills Hospital Medical
Center*

DATED this ____ day of November, 2019.

JOHN H. COTTON, ESQ.
Nevada Bar No. 5268
BRAD SHIPLEY, ESQ.
Nevada Bar No. 12639
JOHN H. COTTON & ASSOCIATES, LTD.
7900 West Sahara Avenue, Suite 200
Las Vegas, NV 89117
*Attorneys for Defendants Dionice S. Juliano,
M.D., Conrado Concio, M.D. and Vishal S.
Shah, M.D.*

1 claims asserted in the Complaint, if Plaintiffs move for relief to amend their Complaint to add
2 UNIVERSAL HEALTH SERVICE, INC. only, and only if the Court holds that amendment is
3 appropriate, the amendment shall relate back to the date of the filing of the Complaint, February
4 2, 2019, in this matter.

5 UNIVERSAL HEALTH SERVICE, INC., reserves all other defenses, including, but not
6 limited to the defenses previously asserted in Universal Health Services, Inc.'s Motion to
7 Dismiss, or, Alternatively, Motion for Summary Judgment for Lack of Jurisdiction and
8 Universal Health Services, Inc.'s Joinder to Defendant Centennial Hills Hospital's Motion to
9 Dismiss Plaintiffs' Complaint and Joinder to Defendants Conrado Concio, MD, and Dionice
10 Juliano, MD's Motion to Dismiss, including the lack of jurisdiction and statutes of limitations
11 defenses set forth therein.

12 **IT IS SO STIPULATED.**

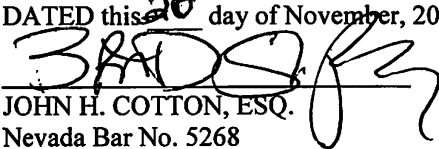
13 DATED this ____ day of November, 2019.

DATED this ____ day of November, 2019.

15 PAUL S. PADDA, ESQ.
Nevada Bar No. 10417
16 PAUL PADDA LAW, PLLC
4560 South Decatur Blvd., Suite 300
17 Las Vegas, NV 89103
18 *Attorneys for Plaintiffs*

MICHAEL E. PRANGLE, ESQ.
Nevada Bar No. 8619
ZACHARY J. THOMPSON, ESQ.
Nevada Bar No. 11001
HALL PRANGLE & SCHOONVELD, LLC
1140 N. Town Center Dr., Ste. 350
Las Vegas, NV 89144
*Attorneys for Defendant Valley Health System,
LLC, dba Centennial Hills Hospital Medical
Center*

21 DATED this ^{26th} day of November, 2019.

22 
23 JOHN H. COTTON, ESQ.
Nevada Bar No. 5268
24 BRAD SHIPLEY, ESQ.
Nevada Bar No. 12639
25 JOHN H. COTTON & ASSOCIATES, LTD.
7900 West Sahara Avenue, Suite 200
26 Las Vegas, NV 89117
27 *Attorneys for Defendants Dionice S. Juliano,
M.D., Conrado Concio, M.D. and Vishal S.
28 Shah, M.D.*

HALL PRANGLE & SCHOONVELD, LLC
1140 NORTH TOWN CENTER DRIVE, STE. 350
LAS VEGAS, NEVADA 89144
TELEPHONE: 702-889-6400 FACSIMILE: 702-384-6025

ORDER

IT IS HEREBY ORDERED that Defendant UNIVERSAL HEALTH SERVICE, INC. shall be dismissed, without prejudice, from the instant litigation in case A-19-788787-C, with each party to bear their own attorneys' fees and costs.

DATED this 3rd day of December, 2019.


DISTRICT COURT JUDGE

Respectfully Submitted by:

HALL PRANGLE & SCHOONVELD, LLC


MICHAEL E. PRANGLE, ESQ.

Nevada Bar No. 8619

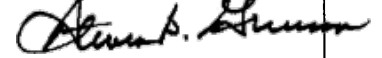
ZACHARY J. THOMPSON, ESQ.

Nevada Bar No. 11001

1140 North Town Center Drive, Ste. 350

Las Vegas, Nevada 89144

*Attorneys for Defendant Valley Health System, LLC,
dba Centennial Hills Hospital Medical Center*



1 ANS
2 ROBERT C. McBRIDE, ESQ.
3 Nevada Bar No.: 7082
4 CHELSEA R. HUETH, ESQ.
5 Nevada Bar No.: 10904
6 McBRIDE HALL
7 8329 W. Sunset Road, Suite 260
8 Las Vegas, Nevada 89113
9 Telephone No. (702) 792-5855
10 Facsimile No. (702) 796-5855
11 E-mail: rcmcbride@mcbridehall.com
12 E-mail: crhueth@mcbridehall.com
13 Attorneys for Defendants,
14 Valley Health System, LLC, dba
15 Centennial Hills Hospital Medical Center
16 and Universal Health Services, Inc.

12 DISTRICT COURT

13 CLARK COUNTY, NEVADA

14 ESTATE OF REBECCA POWELL, through
15 BRIAN POWELL, as Special Administrator;
16 DARCI CREECY, individually and as an Heir;
17 TARYN CREECY, individually and as an Heir;
18 ISAIAH KHOSROF, individually and as an Heir;
19 LLOYD CREECY, individually;

20 Plaintiffs,

21 vs.

22 VALLEY HEALTH SYSTEM, LLC (doing
23 business as "Centennial Hills Hospital Medical
24 Center"), a foreign limited liability company;
25 UNIVERSAL HEALTH SERVICES, INC., a
26 foreign corporation; DR. DIONICE S. JULIANO,
27 M.D., an individual; DR. CONRADO C.D.
28 CONCIO, M.D., an individual; DR. VISHAL S.
SHAH, M.D., an individual; DOES 1-10; and
ROES A-Z;

Defendants.

CASE NO. A-19-788787-C

DEPT NO. XIV

DEFENDANT VALLEY HEALTH
SYSTEM, LLC, dba CENTENNIAL
HILLS HOSPITAL MEDICAL
CENTER'S ANSWER TO
PLAINTIFFS' COMPLAINT

26 COMES NOW, Defendant, Valley Health System, LLC, dba Centennial Hills Hospital
27 Medical Center, by and through its attorneys of the law firm of McBRIDE HALL and hereby
28

1 provides its answer to Plaintiffs' Complaint as follows:

2 I.

3 **ARBITRATION EXEMPTION**

4 1. In answering paragraphs 1 and 2 of Plaintiffs' Complaint, this answering
5 Defendant states that the allegations call for legal conclusion, as such no response is required. To
6 the extent a response is required, this answering Defendant states it is without sufficient
7 information to form a belief as to the truth of the allegations contained in said paragraphs and
8 therefore denies the same.
9

10 II.

11 **JURISDICTION, VENUE AND LEGAL BASIS FOR THIS ACTION**

12 2. In answering paragraph 3 of Plaintiffs' Complaint, this answering Defendant
13 states that the allegations call for legal conclusion, as such no response is required. To the extent
14 a response is required, this answering Defendant states it is without sufficient information to
15 form a belief as to the truth of the allegations contained in said paragraphs and therefore denies
16 the same.
17

18 III.

19 **THE PARTIES**

20 3. In answering paragraphs 4, 5, 6, 7, 8 and 9 of Plaintiffs' Complaint, this
21 answering Defendant states it is without sufficient information to form a belief as to the truth of
22 the allegations contained in said paragraphs and therefore denies the same.
23

24 4. In answering paragraph 10 of Plaintiffs' Complaint, this answering Defendant
25 admits only the Valley Health System, LLC, doing business as Centennial Hills Hospital
26 Medical Center, is a foreign limited liability company licensed to practice healthcare services in
27 the State of Nevada. As to the remaining allegations, this answering Defendant states it is
28

1 without sufficient information to form a belief as to the truth of the allegations contained in said
2 paragraphs and therefore denies the same.

3 5. In answering paragraph 11 of Plaintiffs' Complaint, this answering Defendant
4 admits only the Valley Health System, LLC, is an indirect subsidiary of Universal Health
5 Services, Inc. a foreign corporation. As to the remaining allegations, this answering Defendant
6 denies each and every allegations contained in said paragraphs.

7
8 6. In answering paragraphs 12, 13 and 14 of Plaintiffs' Complaint, this answering
9 Defendant states it is without sufficient information to form a belief as to the truth of the
10 allegations contained in said paragraphs and therefore denies the same.

11 7. In answering paragraph 15 and 16 of Plaintiffs' Complaint, this answering
12 Defendant states that the allegations call for legal conclusion, as such no response is required. To
13 the extent a response is required, this answering Defendant states it is without sufficient
14 information to form a belief as to the truth of the allegations contained in said paragraphs and
15 therefore denies the same.
16

17 IV.

18 FACTUAL BACKGROUND

19 8. In answering paragraph 17 of Plaintiffs' Complaint, this answering Defendant
20 denies that Centennial Hills Hospital Medical Center is operated by UHS. As to the remaining
21 allegations, this answering Defendant states it is without sufficient information to form a belief
22 as to the truth of the allegations contained in said paragraphs and therefore denies the same.
23

24 9. In answering paragraph 18 of Plaintiffs' Complaint, this answering Defendant
25 states it is without sufficient information to form a belief as to the truth of the allegations
26 contained in said paragraph and therefore denies the same.

27 10. In answering paragraph 19 of Plaintiffs' Complaint, this answering Defendant
28 denies that Centennial Hills Hospital breached the standard of care and that any alleged breach of

1 the standard of care cause Plaintiff's death. As to the remaining allegations, this answering
2 Defendant states that the allegations therein call for an expert opinion and, as such, do not
3 require a response. To the extent a response is required, the answering Defendant states it is
4 without sufficient information to form a belief as to the truth of the allegations contained in said
5 paragraph and therefore denies the same.

6
7 11. In answering paragraph 20 of Plaintiffs' Complaint, this answering Defendant
8 denies that Centennial Hills Hospital breached the standard of care. As to the remaining
9 allegations, this answering Defendant states it is without sufficient information to form a belief
10 as to the truth of the allegations contained in said paragraphs and therefore denies the same.

11
12 12. In answering paragraph 21 of Plaintiffs' Complaint, this answering Defendant
13 states it is without sufficient information to form a belief as to the truth of the allegations
14 contained in said paragraph and therefore denies the same.

15
16 13. In answering paragraph 22 of Plaintiffs' Complaint, this answering Defendant
17 denies that Defendant Centennial Hills Hospital breached the standard of care. As to the
18 remaining allegations, this answering Defendant states that the allegations therein call for an
19 expert opinion and, as such, do not require a response. To the extent a response is required, the
20 answering Defendant states it is without sufficient information to form a belief as to the truth of
21 the allegations contained in said paragraph and therefore denies the same.

22
23 14. In answering paragraph 23 and 24 of Plaintiffs' Complaint, this answering
24 Defendant states that the allegations therein call for an expert opinion and, as such, do not
25 require a response. To the extent a response is required, the answering Defendant states it is
26 without sufficient information to form a belief as to the truth of the allegations contained in said
27 paragraph and therefore denies the same.

28
15. In answering paragraph 25 of Plaintiffs' Complaint, this answering Defendant
denies that Defendant Centennial Hills Hospital breached the standard of care. As to the

1 remaining allegations, this answering Defendant states that the allegations therein call for an
2 expert opinion and, as such, do not require a response. To the extent a response is required, the
3 answering Defendant states it is without sufficient information to form a belief as to the truth of
4 the allegations contained in said paragraph and therefore denies the same.

5
6 **V.**

7 **FIRST CAUSE OF ACTION**

8 **[On Behalf Of The Estate Of Rebecca Powell (Through Special Administrator Brien),
9 Darci, Taryn and Isaiah Against All Defendants]
10 Negligence / Medical Malpractice**

11 16. In answering paragraph 26 of Plaintiffs' Complaint, this answering Defendant
12 repeats and repleads its answers to paragraphs 1 through 25 of Plaintiffs' Complaint.

13 17. In answering paragraph 27 of Plaintiffs' Complaint, this answering Defendant
14 states that the allegations call for legal conclusion, as such no response is required.

15 18. In answering paragraph 28, 29, 30, 31, 32 and 33 of Plaintiffs' Complaint, this
16 answering Defendant denies each and every allegation.

17 **VI.**

18 **SECOND CAUSE OF ACTION**

19 **[On Behalf Of The Estate Of Rebecca Powell (Through Special Administrator Brien),
20 Darci, Taryn and Isaiah Against All Defendants]
21 Wrongful Death Pursuant to NRS 41.085**

22 19. In answering paragraph 34 of Plaintiffs' Complaint, this answering Defendant
23 repeats and repleads its answers to paragraphs 1 through 33 of Plaintiffs' Complaint.

24 20. In answering paragraphs 35 and 36 of Plaintiffs' Complaint, this answering
25 Defendant states that the allegations call for legal conclusion, as such no response is required.

26 21. In answering paragraphs 37, 38, 39 and 40 of Plaintiffs' Complaint, this
27 answering Defendant denies each and every allegation.

28 **VII.**

THIRD CAUSE OF ACTION

**[On Behalf Of Darci, Taryn and Isaiah Against All Defendants]
Negligent Infliction Of Emotional Distress**

22. In answering paragraph 41 of Plaintiffs' Complaint, this answering Defendant repeats and repleads its answers to paragraphs 1 through 40 of Plaintiffs' Complaint.

23. In answering paragraph 42 of Plaintiffs' Complaint, this answering Defendant states that the allegations call for legal conclusion, as such no response is required. To the extent a response is required, the answering Defendant states it is without sufficient information to form a belief as to the truth of the allegations contained in said paragraph and therefore denies the same.

24. In answering paragraph 43 of Plaintiffs' Complaint, this answering Defendant denies that Centennial Hills Hospital breached the standard of care. As to the remaining allegations, this answering Defendant states it is without sufficient information to form a belief as to the truth of the allegations contained in said paragraph and therefore denies the same.

25. In answering paragraphs 44, 45, 46, 47 and 48 of Plaintiffs' Complaint, this answering Defendant denies each and every allegation.

VIII.
FOURTH CAUSE OF ACTION
[On Behalf Of Lloyd Creecy Against All Defendants]
Negligent Infliction Of Emotional Distress

26. In answering paragraph 49 of Plaintiffs' Complaint, this answering Defendant repeats and repleads its answers to paragraphs 1 through 48 of Plaintiffs' Complaint.

27. In answering paragraph 50 of Plaintiffs' Complaint, this answering Defendant states that the allegations call for legal conclusion, as such no response is required. To the extent a response is required, the answering Defendant states it is without sufficient information to form a belief as to the truth of the allegations contained in said paragraph and therefore denies the same.

28. In answering paragraphs 51, 52, 53, 54, 55 and 56 of Plaintiffs' Complaint, this answering Defendant denies each and every allegation.

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PRAYER FOR RELIEF

This answering Defendant denies that Plaintiffs are entitled to any of the requested relief as contained within Plaintiffs' Complaint.

GENERAL DENIAL

This answering Defendant denies each and every allegation contained in Plaintiffs' Complaint that is not specifically admitted to be true.

FIRST AFFIRMATIVE DEFENSE

Defendant alleges that Plaintiffs' Complaint on file herein fails to state claims upon which relief can be granted.

SECOND AFFIRMATIVE DEFENSE

Defendant alleges that the damages, if any, were caused in whole or in part, or were contributed to by reason of the negligence or wrongful conduct of Plaintiffs.

THIRD AFFIRMATIVE DEFENSE

All risks and dangers involved in the factual situation described in the Complaint were open, obvious, and known to Plaintiff and said Plaintiff voluntarily assumed said risks and dangers.

FOURTH AFFIRMATIVE DEFENSE

Plaintiffs' damages, if any, were caused by and due to an unavoidable condition or occurrence.

FIFTH AFFIRMATIVE DEFENSE

Defendant alleges that the occurrence referred to in the Complaint, and all injuries and damages, if any, resulting therefrom were caused by the acts or omissions of a third party over whom Defendant had no control.

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Defendant has fully performed and discharged all obligations owed to Plaintiffs, including meeting the requisite standard of care to which Plaintiffs were entitled.

SEVENTH AFFIRMATIVE DEFENSE

Defendant alleges that at all times mentioned in Plaintiffs' Complaint, Plaintiff was suffering from a medical condition(s) which Defendants did not cause, nor was Defendant responsible for said medical condition(s).

EIGHTH AFFIRMATIVE DEFENSE

If Plaintiffs have sustained any injuries or damages, such were the result of intervening and/or superseding events, factors, occurrences, or conditions, which were in no way caused by Defendant, and for which Defendant is not liable.

NINTH AFFIRMATIVE DEFENSE

Defendant alleges that it is not guilty of fraud, oppression or malice, express or implied, in connection with the care rendered to Plaintiff at any of the times or places alleged in the Complaint.

TENTH AFFIRMATIVE DEFENSE

Defendant alleges that pursuant to Nevada law, it would not be jointly liable and that if liability is imposed, such liability would be several for that portion of Plaintiffs' damages, if any, that represents the percentage attributable to Defendant.

ELEVENTH AFFIRMATIVE DEFENSE

The risks and consequences, if any, attendant to the recommendations and treatment proposed by this Defendant were fully explained to Plaintiff who freely consented to such treatment and thereby assumed risks involved in such matter.

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TWELFTH AFFIRMATIVE DEFENSE

Plaintiffs' Complaint is void ab initio as it does not include an affidavit which meets with requirements of N.R.S. 41A.

THIRTEENTH AFFIRMATIVE DEFENSE

To the extent Plaintiffs have been reimbursed from any source for any special damages claimed to have been sustained as a result of the incidents alleged in Plaintiffs' Complaint, Defendant may elect to offer those amounts into evidence and, if Defendant so elects, Plaintiffs' special damages shall be reduced by those amounts pursuant to NRS 42.021.

FOURTEENTH AFFIRMATIVE DEFENSE

Defendant alleges that at all relevant times this Defendant was acting in good faith and not with recklessness, oppression, fraud or malice.

FIFTEENTH AFFIRMATIVE DEFENSE

Plaintiffs have failed to allege any facts sufficient to satisfy Plaintiffs' burden of proof by clear and convincing evidence that this Answering Defendant engaged in any conduct that would support an award of punitive damages.

SIXTEENTH AFFIRMATIVE DEFENSE

No award of punitive damages can be awarded against this Answering Defendant under the facts and circumstances alleged in Plaintiffs' Complaint.

SEVENTEENTH AFFIRMATIVE DEFENSE

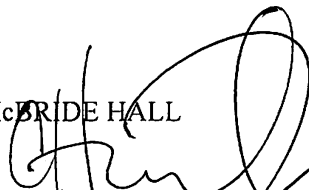
Defendant hereby incorporates by reference those affirmative defenses enumerated in Rule 8 of the Nevada Rules of Civil Procedure as if fully set forth herein. In the event further investigation or discovery reveals the applicability of any such defenses, Defendant reserves the right to seek leave of Court to amend its Answer to specifically assert the same. Such defenses are herein incorporated by reference for the specific purpose of not waiving the same.

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WHEREFORE, Defendant prays for relief as follows:

1. That Plaintiffs take nothing by way of the Complaint on file herein.
2. For reasonable attorney's fees and costs incurred in defending this litigation.
3. For such other and further relief as this Court deems just and proper in the premises.

DATED this 15th day of April, 2020.

McBRIDE HALL


ROBERT C. McBRIDE, ESQ.
Nevada Bar No.: 7082
CHELSEA R. HUETH, ESQ.
Nevada Bar No.: 10904
8329 W. Sunset Road, Suite 260
Las Vegas, Nevada 89113
Attorneys for Defendants,
Valley Health System, LLC, dba
Centennial Hills Hospital Medical Center

1 **CERTIFICATE OF SERVICE**

2 I HEREBY CERTIFY that on the 15th day of April 2020, I served a true and correct copy
3 of the foregoing **DEFENDANT VALLEY HEALTH SYSTEM, LLC, dba CENTENNIAL**
4 **HILLS HOSPITAL MEDICAL CENTER'S ANSWER TO PLAINTIFF'S COMPLAINT**
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
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 Paul S. Padda, Esq.
14 Brandon C. Verde, Esq.
15 PAUL PADDA LAW, PLLC
16 4560 South Decatur Boulevard, Suite 300
17 Las Vegas, Nevada 89103
18 *Attorneys for Plaintiffs*

John H. Cotton, Esq.
Brad Shipley, Esq.
JOHN H. COTTON & ASSOCIATES, LTD.
7900 West Sahara Avenue, Suite 200
Las Vegas, NV 89117
Attorneys for Defendants,
Dionice S. Juliano, M.D., Conrado Concio,
M.D. and Vishal S. Shah, M.D.

19
20 /s/Stephanie Lazo
21 An Employee of McBRIDE HALL
22
23
24
25
26
27
28

1 S. BRENT VOGEL
Nevada Bar No. 6858
2 Brent.Vogel@lewisbrisbois.com
ADAM GARTH
3 Nevada Bar No. 15045
Adam.Garth@lewisbrisbois.com
4 LEWIS BRISBOIS BISGAARD & SMITH LLP
6385 S. Rainbow Boulevard, Suite 600
5 Las Vegas, Nevada 89118
Telephone: 702.893.3383
6 Facsimile: 702.893.3789
Attorneys for Defendant Valley Health System,
7 *LLC dba Centennial Hills Hospital Medical*
Center

8
9 DISTRICT COURT
10 CLARK COUNTY, NEVADA
11

12 ESTATE OF REBECCA POWELL, through
BRIAN POWELL, as Special Administrator;
13 DARCI CREECY, individually and as Heir;
TARYN CREECY, individually and as an
14 Heir; ISAAH KHOSROF, individually and as
an Heir; LLOYD CREECY, individually;;

15 Plaintiffs,

16 vs.
17

18 VALLEY HEALTH SYSTEM, LLC (doing
business as "Centennial Hills Hospital Medical
Center"), a foreign limited liability company;
19 UNIVERSAL HEALTH SERVICES, INC., a
foreign corporation; DR. DIONICE S.
20 JULIANO, M.D., an individual; DR.
CONRADO C.D. CONCIO, M.D., an
21 individual; DR. VISHAL S. SHAH, M.D., an
individual; DOES 1-10; and ROES A-Z;;

22 Defendants.
23

Case No. A-19-788787-C

Dept. No.: 30

**DECLARATION OF GINA ARROYO,
PURSUANT TO NRS 53.045 IN SUPPORT
OF DEFENDANTS' VALLEY HEALTH
SYSTEM, LLC AND UNIVERSAL
HEALTH SERVICES, INC.'S MOTION
FOR SUMMARY JUDGMENT ON
STATUTE OF LIMITATIONS**

24
25 STATE OF NEVADA }

26 COUNTY OF CLARK }

27 I, GINA ARROYO, declare as follows:

28 1. I am over the age of eighteen and I make this affidavit solely in my capacity as an

1 Area Manager for MRO Corp., the company responsible for providing Disclosure Management
2 Services that include Release of Information (ROI) Services for the processing of requests for copies
3 of Protected Health Information (PHI) on behalf of Centennial Hills Hospital ("CHH") in Las
4 Vegas, Nevada.

5 2. In my capacity, I manage a proprietary platform for the secure and compliant
6 exchange of PHI between CHH and other entities, including other providers, government agencies,
7 payers, third-party requesters and patients, including law firms as well as to patients and their
8 families. In my position, I and members of my team, have complete access to all patient medical
9 records from CHH, and are responsible for processing all medical records requests for said records.
10 I therefore have personal knowledge of our system through which we have obtained all medical
11 records requests for CHH. Any such requests are directed to our organization to obtain the records,
12 process, and transmit to the requesting party. I have held this position during since April, 2017 and
13 retain it today. Therefore, I am competent to testify to the facts contained herein.

14 3. Upon receipt of a request for medical records from any individual or entity, it is the
15 responsibility of my organization to review the request, determine whether the requesting party has
16 provided sufficient documentation to obtain the records, and upon such proof, retrieving those
17 records from CHH's electronic medical records (EMR) program.

18 4. Once retrieved, we assemble the medical records in accordance with the request from
19 the person or entity. If required by a legal entity who needs a certificate of the records custodian,
20 we obtain the required certificate of the custodian of records for CHH, Melanie Thompson. Ms.
21 Thompson is currently the records custodian for CHH, and she was the custodian at the time the
22 records requested in this case were received. If a patient or family member requests medical records,
23 no certificate of the records custodian is required and is not provided.

24 5. I have reviewed our database system in which we log every request for medical
25 records for CHH to determine the timeline for the records requested in this matter, and the specific
26 records provided attendant to each request for the information containing the first request which
27 CHH received concerning Rebecca Powell.

28 6. On May 25, 2017, MRO received a request for medical records from Taryn Creecy,

one of the plaintiffs in this matter, along with a copy of a court order requiring that Centennial Hills Hospital provide a complete copy of Rebecca Powell's medical chart (**Exhibit "A" hereto**).

7. Our records indicate that on June 2, 2017, the request for the medical records for Mrs. Powell was processed by MRO personnel. As part of that process, a ROI specialist validated the documentation provided by the requesting party to ensure that the requesting party was an authorized recipient. Thereafter, the ROI specialist used the information on the authorization request to populate records from the CHH EMR according to patient identifiers, date of service, and the specific records requested. The ROI specialist then electronically imported the medical records to our ROI Online® portal and performed a quality review on all pages to ensure accuracy and compliance with the request documentation. Thereafter, the records were released to MRO's national service center for a second quality control check and shipment to the requesting party.

8. On June 5, 2017, we determined that the records for Mrs. Powell were requested by Taryn Creecy, her daughter, and that the records were requested to be sent to a post office box. We confirmed that Ms. Creecy needed to obtain a court order for the records since she was not the patient. We verified the request along with the attached court order (**Exhibit "A"**).

9. On June 7, 2017, we sent an invoice to Ms. Creecy (**Exhibit "B"**) which included all fees associated with the provision of 1,165 pages of Mrs. Powell's medical records from CHH. The 1,165 pages invoiced represented the entirety of medical records for Mrs. Powell with no exclusions.

10. On June 12, 2017, we received payment for the 1,165 pages of records (**Exhibit "C"**). On June 13, 2017, we sent out the complete 1,165 pages to Ms. Creecy to the address provided on the request documentation.

11. On June 23, 2017, we received the package back from the United State Postal Service due to undeliverability to the addressee (**Exhibit "D"**).

12. Upon return of the records, our notes indicate that on June 28, 2017, we contacted Ms. Creecy and she advised us that the post office box to which she requested the records be sent was in the name of her father, Brian Powell, and that the Post Office likely returned them since she was an unknown recipient at the post office box. She thereafter requested that we resend the records to him at that post office box address.

13. On June 29, 2017, we re-sent the records addressed to Mr. Powell at the post office box previously provided and we did not receive the records back thereafter.

14. Again, we provided copies of all medical records for Mrs. Powell as part of this medical records request, since that was what the authorization and court order called for, and no records for this patient were excluded from that packet.

15. As to those matters stated herein of which I have personal knowledge, I affirm the truth and accuracy of such facts. As to any facts that are not within my personal knowledge, I am informed and believe that such matters are true and correct.

Dated this 1st day of September, 2020.


GINA ARROYO

No Notary Required per NRS 53.045

* Put Records on CD

AUTHORIZATION TO USE AND DISCLOSE PROTECTED HEALTH INFORMATION	
<input checked="" type="checkbox"/>	Initial here if requesting information from Centennial Hills 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.
<input checked="" type="checkbox"/>	Initial here if requesting access to review original medical records.
<input checked="" type="checkbox"/>	Initial here if requesting patient record to be provided in electronic format (CD) or secure e-mail.
<input checked="" type="checkbox"/>	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.

Patient Name at Time of Treatment: REBECCA ANN POWELL Date of Birth: 5/30/1978 Social Security Number: [REDACTED]
 Street Address: P.O. Box 750131 Home Phone Number: 216 571 9522
 City: LAS VEGAS State: NV Zip Code: 89136-0131 Work Phone Number: [REDACTED]
 Email: [REDACTED]

This document authorizes Centennial Hills 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.

1. Person(s)/Organization(s) authorized to receive the PHI: ☒ Centennial Hills Hospital Medical Center

2. Purpose of Requested Use or Disclosure:

3. Description of the information included in Use or Disclosure: Treatment date(s) 5/3/2017 to 5/11/2017

☒ Billing Record ☒ History and Physical ☒ Emergency Department
☒ All PHI in Medical Record (Complete Chart Copy) ☒ Operative Report ☒ Other (please specify): ALL RECORDS, IMAGES AND TRANSCRIPTS
☒ Radiology Images CD ☒ X-Ray Report BOTH SOFT AND HARD COPY
☒ Discharge Summary ☒ Lab Reports/Pathology Reports

4. By signing my initials next to the specific category of highly confidential information, I am authorizing Centennial Hills 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.

☐ HIV/AIDS ☐ Drug and Alcohol Information ☐ Genetic Information
☐ Mental Health Information ☐ Sexually Transmitted Disease Information ☐ Tuberculosis Information

5. Please list a date or event at which point this Authorization will expire (not to exceed 1 year):

NOTICE OF RIGHTS AND OTHER INFORMATION:

1. 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 Centennial Hills Hospital Medical Center, Health Information Management Department at 6900 North Durango Boulevard, Las Vegas, Nevada, 89149. Phone: (702) 629-1300 Fax: (702) 629-1645. Cancellation of my authorization will be effective when Centennial Hills Hospital Medical Center receives my signed request, but it will not apply to the information that was used or disclosed prior to that date.

2. 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.


3. 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.

4. 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: [Signature] Date: 5/25/17
 Signature of Legal Representative: [Signature] Print Name: Jayna Creeley Date: 5/25/17 Relationship to Patient: Daughter

Witness: [Signature] Date: 5/25/17
☐ I Will Pick Up PHI
☐ Mail PHI
☐ Please Fax PHI To Physician Indicated

Reason Patient Unable to Sign: [REDACTED] Staff Initials: [REDACTED]

BAR CODE  RI1001	Centennial Hills Hospital MEDICAL CENTER AUTHORIZATION TO USE AND DISCLOSE PROTECTED HEALTH INFORMATION (PMM# 78329158) (R 8/15) (FOD)	PATIENT IDENTIFICATION
---	--	------------------------

RECEIVED

CASSADY LAW OFFICES, P.C.

10799 W. Twain Avenue
Las Vegas, Nevada 89135
(702) 650-4480 - Fax 650-5561

MAY 25 2017

CLERK OF THE COURT

- DISPOSITIONS
- ☐ - Voluntary Dismissal
 - ☐ - Transferred (before/during trial)
 - ☐ - Involuntary (statutory) Dismissal
 - ☐ - Judgment on Arbitration Award
 - ☐ - Stipulated Dismissal
 - ☐ - Stipulated Judgment
 - ☒ - Summary Judgment
 - ☐ - Non-Jury (bench) Trial
 - ☐ - Jury Trial

1 **ORDER**

2 CASSADY LAW OFFICES, P.C.

3 Jasen E. Cassady, Esq.

4 Nevada Bar No. 8018

5 jasen@cassadylawoffices.com

6 Brandi K. Cassady, Esq.

7 Nevada Bar No. 12714

8 brandi@cassadylawoffices.com

9 Brendan M. McGraw, Esq.

10 Nevada Bar No. 11653

11 brendan@cassadylawoffices.com

12 10799 West Twain Avenue

13 Las Vegas, Nevada 89135

14 Phone: (702) 650-4480

15 Fax: (702) 650-5561

16 Attorneys for the Estate

Electronically Filed

05/25/2017

Heather L. Hume

CLERK OF THE COURT

**DISTRICT COURT
CLARK COUNTY, NEVADA**

In the Matter of the Estate of

REBECCA ANN POWELL a/k/a

REBECCA A. POWELL a/k/a

REBECCA POWELL,

Deceased.

CASE NO.: P-17-091793-E

DEPT NO.: PC-1

Probate

ORDER TO RELEASE MEDICAL RECORDS

THE COURT, having reviewed the Ex Parte Petition to Release Medical Records, and good cause appearing,

IT IS HEREBY ORDERED, ADJUDGED AND DECREED that the medical records for REBECCA ANN POWELL a/k/a REBECCA A. POWELL a/k/a REBECCA POWELL, held with any and all medical facilities, hospitals, clinics, physicians, rehabilitation facilities, acute care facilities, nurse practitioners, and any other person or entity having medical records for the Decedent, including, but not limited to:

CENTENNIAL HILLS HOSPITAL and its health care providers, nurses, doctors, staff, nurse practitioners, on-site pharmacy, and/or affiliates;

shall release copies of said medical records to TARYN CREECY or her attorneys.

DATED this 24 day of May, 2017.

Submitted by:

CASSADY LAW OFFICES, P.C.

By: *Brendan M. McGraw*

Brendan M. McGraw, Esq.
Nevada Bar No. 11653

Heather L. Hume
DISTRICT COURT JUDGE

CERTIFIED COPY
DOCUMENT ATTACHED IS A
TRUE AND CORRECT COPY
OF THE ORIGINAL ON FILE

Heather L. Hume
CLERK OF THE COURT

MAY 25 2017

RECEIVED

CASSADY LAW OFFICES, P.C.

MAY 25 2017

10799 W. Twain Avenue
Las Vegas, Nevada 89135
(702) 650-4480 - Fax 650-5561

CLERK OF THE COURT

- DISPOSITIONS
- ☐ - Voluntary Dismissal
 - ☐ - Transferred (before/during trial)
 - ☐ - Involuntary (statutory) Dismissal
 - ☐ - Judgment on Arbitration Award
 - ☐ - Stipulated Dismissal
 - ☐ - Stipulated Judgment
 - ☒ - Summary Judgment
 - ☐ - Non-Jury (bench) Trial
 - ☐ - Jury Trial

ORDER

CASSADY LAW OFFICES, P.C.

Jasen E. Cassady, Esq.

Nevada Bar No. 8018

jasen@cassadylawoffices.com

Brandi K. Cassady, Esq.

Nevada Bar No. 12714

brandi@cassadylawoffices.com

Brendan M. McGraw, Esq.

Nevada Bar No. 11653

brendan@cassadylawoffices.com

10799 West Twain Avenue

Las Vegas, Nevada 89135

Phone: (702) 650-4480

Fax: (702) 650-5561

Attorneys for the Estate

Electronically Filed

05/25/2017

Heather L. Smith

CLERK OF THE COURT

DISTRICT COURT
CLARK COUNTY, NEVADA

In the Matter of the Estate of

REBECCA ANN POWELL a/k/a

REBECCA A. POWELL a/k/a

REBECCA POWELL,

Deceased.

CASE NO.: P-17-091793-E

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CENTENNIAL HILLS HOSPITAL and its health care providers, nurses, doctors, staff, nurse practitioners, on-site pharmacy, and/or affiliates;

shall release copies of said medical records to TARYN CREECY or her attorneys.

DATED this 24 day of May, 2017.

[Signature]
DISTRICT COURT JUDGE

Submitted by:

CASSADY LAW OFFICES, P.C.

By: *[Signature]*

Brendan M. McGraw, Esq.

Nevada Bar No. 11653



JOHN R. KASICH
GOVERNOR
Donald J. Patil
Registrar, BMV

Ohio

USA IDENTIFICATION CARD

1820UL1926900000



Under 21 until 06-20-2018

15 Sex: F
16 HL: 5-05
17 Wt: 180
18 Eyes: BRO
19 Hair: BRO

06-20-1995

1 CREECY
2 TARYN NICOLE
8 4572 TURNEY RD
CLEVELAND, OH 44105



1d LICENSE NO. 3 BIRTHDATE 1b ISSUE DATE
TZ901113 06-20-1995 01-07-2015

9 CLASS 1b EXPIRES
REG 06-20-2018

NONDRIVER

Taryn Crecy



* Put Records on CD

AUTHORIZATION TO USE AND DISCLOSE PROTECTED HEALTH INFORMATION	
TC	Initial here if requesting information from Centennial Hills 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.

REBECCA ANN POWELL		5/30/1978	
Patient Name at Time of Treatment		Date of Birth	Social Security Number
P.O. Box 750131			216 571 9522
Street Address			Home Phone Number
LAS VEGAS	NV	89/36-0131	
City	State	Zip Code	Work Phone Number
Email			

This document authorizes Centennial Hills 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.

1. Person(s)/Organization(s) authorized to receive the PHI:		<input type="checkbox"/> Centennial Hills Hospital Medical Center
2. Purpose of Requested Use or Disclosure:		
3. Description of the information included in Use or Disclosure:		Treatment date(s): 5/3/2017 to 5/11/2017
<input checked="" type="checkbox"/> Billing Record	<input checked="" type="checkbox"/> History and Physical	<input checked="" type="checkbox"/> Emergency Department
<input checked="" type="checkbox"/> All PHI in Medical Record (Complete Chart Copy)	<input checked="" type="checkbox"/> Operative Report	<input checked="" type="checkbox"/> Other (please specify):
<input checked="" type="checkbox"/> Radiology Images CD	<input checked="" type="checkbox"/> X-Ray Report	ALL RECORDS, IMAGES AND BOTH SOFT AND HARD COPY
<input checked="" type="checkbox"/> Discharge Summary	<input checked="" type="checkbox"/> Lab Reports/Pathology Reports	
4. By signing my initials next to the specific category of highly confidential information, I am authorizing Centennial Hills 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.		
HIV/AIDS	TC Drug and Alcohol Information	Genetic Information
TC Mental Health Information	Sexually Transmitted Disease Information	Tuberculosis Information
5. Please list a date or event at which point this Authorization will expire (not to exceed 1 year):		

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 Centennial Hills Hospital Medical Center, Health Information Management Department at 6900 North Durango Boulevard, Las Vegas, Nevada, 89149. Phone: (702) 629-1300 Fax: (702) 629-1645. Cancellation of my authorization will be effective when Centennial Hills 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	Date
Jaryn Creevy	5/25/17
Signature of Legal Representative	Date
Jaryn Creevy	5/25/17
Print Name	Relationship To Patient
Jaryn Creevy	Daughter

Witness	Date
	<input type="checkbox"/> I Will Pick Up PHI
	<input type="checkbox"/> Mail PHI
	<input type="checkbox"/> Please Fax PHI To Physician Indicated

Reason Patient Unable to Sign	Staff Initials:
<input type="checkbox"/> Patient received copy of authorization	



RI1001

Centennial Hills Hospital
MEDICAL CENTER

AUTHORIZATION TO USE AND DISCLOSE
PROTECTED HEALTH INFORMATION

(PMM# 78329158) (R 8/15) (FOD)

PATIENT IDENTIFICATION

MRO
1000 Madison Avenue, Suite 100
Norristown, PA 19403

Verification Needed
17117315
June 07, 2017



Phone: (610) 994-7500
Fax: (610) 962-8421

Taryn Creecy
P.O. Box 750131
Las Vegas, NV 89136

Reference ID:

MRO Request ID: 17117315

MRO Online Tracking Number: TVHS7ABJBYXFG

On 5/25/2017 the following healthcare provider received your request for copies of medical records:

Centennial Hills Hospital
6900 North Durango Drive
Las Vegas, NV 89149

You requested records for: REBECCA POWELL

Fees

Search and Retrieval Fee:	\$0.00
Number of Pages:	1165
Tier 1:	\$93.20
Tier 2:	\$0.00
Tier 3:	\$0.00
Media pages/materials:	0
Media Fee:	\$0.00
Certification Fee:	\$0.00
Adjustments:	\$0.00
Postage:	\$1.19
Sales Tax:	\$7.69
TOTAL:	\$102.08
Paid at Facility:	(\$0.00)
Paid to MRO:	(\$0.00)
BALANCE DUE:	\$102.08

VERIFICATION NEEDED

MRO processes requests for copies of medical records on behalf of your healthcare provider.

Your request for medical records has yielded 1165 pages of records. In order to process your request in compliance with HIPAA, we need to verify that you requested these records and that the address listed above is correct. (See 45 CFR § 164.514).

To verify your request information, please pay the balance due. Federal and state laws permit healthcare providers and companies like MRO to charge patients a "reasonable, cost-based fee" for copies of their medical records. (See 45 CFR § 164.524(c)(4)). You may pay the balance on the invoice by check by sending payment to MRO, P.O. Box 6410, Southeastern, PA 19398-6410 or online using a credit card at www.roilog.com. If you have any questions, please call MRO at (610) 994-7500.

If you want to modify your request, please check the modification option on the next page and submit a revised request that is more specific as to which parts (e.g., tests, progress notes, etc.) or dates of service you would like to have sent to you along with this form by fax to (610) 962-8421, via email at RequestInformation@MROCorp.com, or by U.S. mail to MRO, 1000 Madison Avenue Suite 100, Norristown, PA 19403.

If you want to cancel your request, please check off the cancellation option below and send this form to MRO by fax to (610) 962-8421 or email RequestInformation@MROCorp.com, or by U.S. mail to MRO, 1000 Madison Avenue Suite 100, Norristown, PA 19403.

By paying this invoice, you are representing that you have reviewed and approved the charges and have agreed to pay them. Any dispute relating to this invoice must be presented before paying this invoice. Any dispute not so presented is waived. All disputes must be resolved by arbitration under the Federal Arbitration Act through one or more neutral arbitrators before the American Arbitration Association. Class arbitrations are not permitted. Disputes must be brought only in the claimant's individual capacity and not as a representative of a member or class. An arbitrator may not consolidate more than one person's claims nor preside over any form of class proceeding.

Please contact MRO at (610) 994-7500 for any questions regarding this invoice.
MRO is the medical copy request processor for:
Centennial Hills Hospital

PAYMENT:

You may pay this invoice online at:

www.roilog.com

You can send a check to:

MRO
P.O. Box 6410,
Southeastern, PA 19398-6410

MRO Tax ID (EIN): 01-0661910

*Please write the Request # on the check
or return this invoice with the payment*

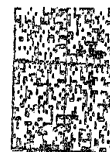
CC Payment Receipt

Transaction Status:	Approved
Transaction Date and Time:	6/12/2017 3:44:19 PM
Transaction Reference No.:	961989
Approval Code:	0000932555
Order Number:	17117315
Charge Amount:	\$102.08
Credit Card Number:	XXXXXXXXXXXX2733
Credit Card Holder:	Brian M. Powell

MRO
1000 Mac
Suite 100
Norristown, PA 19403

RETURN SERVICE
REQUESTED

FIRST CLASS



ZIP 19403 \$0
02 4W
0000346605 JUN

Handwritten signature

Taryn Creecy
Personal
P.O. Box 750131
Las Vegas, NV 89136



NIXIE 851 7E 1 0106/23/17
RETURN TO SENDER
ATTEMPTED - NOT KNOWN
UNABLE TO FORWARD
SC: 19403242625 2104N174110-0033E

1 S. BRENT VOGEL
Nevada Bar No. 6858
2 Brent.Vogel@lewisbrisbois.com
ADAM GARTH
3 Nevada Bar No. 15045
Adam.Garth@lewisbrisbois.com
4 LEWIS BRISBOIS BISGAARD & SMITH LLP
6385 S. Rainbow Boulevard, Suite 600
5 Las Vegas, Nevada 89118
Telephone: 702.893.3383
6 Facsimile: 702.893.3789
Attorneys for Defendant Valley Health System,
7 *LLC dba Centennial Hills Hospital Medical*
Center

9 DISTRICT COURT

10 CLARK COUNTY, NEVADA

12 ESTATE OF REBECCA POWELL, through
BRIAN POWELL, as Special Administrator;
13 DARCI CREECY, individually and as Heir;
TARYN CREECY, individually and as an
14 Heir; ISAIAH KHOSROF, individually and as
an Heir; LLOYD CREECY, individually,;

15 Plaintiffs,

16 vs.

17 VALLEY HEALTH SYSTEM, LLC (doing
business as "Centennial Hills Hospital Medical
18 Center"), a foreign limited liability company;
UNIVERSAL HEALTH SERVICES, INC., a
19 foreign corporation; DR. DIONICE S.
JULIANO, M.D., an individual; DR.
20 CONRADO C.D. CONCIO, M.D., an
individual; DR. VISHAL S. SHAH, M.D., an
21 individual; DOES 1-10; and ROES A-Z,;

22 Defendants.
23

Case No. A-19-788787-C

Dept. No.: 30

**DECLARATION OF MELANIE
THOMPSON, PURSUANT TO NRS 53.045
IN SUPPORT OF DEFENDANTS'
VALLEY HEALTH SYSTEM, LLC AND
UNIVERSAL HEALTH SERVICES,
INC.'S MOTION FOR SUMMARY
JUDGMENT ON STATUTE OF
LIMITATIONS**

25 STATE OF NEVADA }

26 COUNTY OF CLARK }

27 I, MELANIE THOMPSON, declare as follows:

28 1. I am over the age of eighteen and I make this affidavit in my capacity as the Health

1 Information Manager for Centennial Hills Hospital ("CHH") in Las Vegas, Nevada.

2 2. In my capacity, I am the medical records custodian for CHH and am responsible for
3 maintaining copies of all medical records for patients of CHH. Medical records for patients are
4 created from the electronic medical records (EMR) system for CHH. All information pertaining to
5 the patient, including, but not limited to notes, labs, physician orders, consultations, and anything
6 having to do with the patient is maintained in our EMR by patient medical record number. It is
7 cross-referenced by the patient's date of birth to assure that we obtain information on the correct
8 patient should that record be requested.

9 3. As the medical records custodian, I provide certifications for all medical records
10 requests which are requested by some legal entity. If another medical provider, patient or patient's
11 family requests such records, CHH does not provide a certificate from me.

12 3. CHH employs MRO as service to process all requests for medical records from any
13 individual or entity. As part of that role, MRO maintains access to our EMR and assembles all
14 medical records requests to comport with the specific documents requested by the party seeking the
15 records. In that regard, MRO downloads all records compliant with the specific request from our
16 EMR, assembles them into a package, invoices the requesting party before the records are
17 disseminated, obtains payment from the requesting party and then prepares the records for
18 dissemination. In the event a legal entity is requesting a copy of the medical records, I provide a
19 certification that I maintain the records at CHH and attest to the accuracy thereof. If records are
20 requested by a someone other than who needs a legal certification for evidentiary purposes, my
21 certificate is not included among the records provided to the requesting party.

22 4. I have reviewed Ms. Creecy's medical records request for Mrs. Powell's complete
23 medical records dated May 25, 2017. Since these records were requested by an individual, my
24 certificate as the custodian would not, and did not, accompany the medical records which were
25 provided to her. However, I have access to the medical records file which was provided to Ms.
26 Creecy pertaining to Mrs. Powell in June, 2017. I have compared that file with the EMR, the source
27 from which all medical records for a patient are derived. In comparing the medical records, with
28 the EMR, I am able to determine that a full and complete copy of Mrs. Powell's patient file was

1 provided to Ms. Creecy and contained all 1165 pages of medical records. No records were excluded
2 from those provided to Ms. Creecy in June, 2017.

3 5. As to those matters stated herein of which I have personal knowledge, I affirm the
4 truth and accuracy of such facts. As to any facts that are not within my personal knowledge, I am
5 informed and believe that such matters are true and correct.

6 Dated this 26 day of August, 2020.

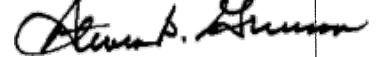
7 
8 MELANIE THOMPSON

9 No Notary Required per NRS 53.045
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15 By
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DOCUMENT 2

DOCUMENT 2



1 **JOIN**

2 JOHN H. COTTON, ESQ.
3 Nevada Bar Number 5268
4 JHCotton@jhcottonlaw.com

5 BRAD SHIPLEY, ESQ.
6 Nevada Bar Number 12639
7 BShipley@jhcottonlaw.com

8 **JOHN H. COTTON & ASSOCIATES, LTD.**

9 7900 West Sahara Avenue, Suite 200
10 Las Vegas, Nevada 89117
11 Telephone: (702) 832-5909
12 Facsimile: (702) 832-5910
13 *Attorneys for Defendants Dionice S. Juliano, M.D.,*
14 *Conrado Concio, M.D. and Vishal S. Shah, M.D.*

15 **DISTRICT COURT**

16 * * *

17 **CLARK COUNTY, NEVADA**

18 ESTATE OF REBECCA POWELL, through
19 BRIAN POWELL, as Special Administrator;
20 DARCI CREECY, individually and as an Heir;
21 TARYN CREECY, individually and as an
22 Heir; ISAIAH KHOSROF, individually and as
23 an Heir; LLOYD CREECY, individually,

24 Plaintiffs,

25 vs.

26 VALLEY HEALTH SYSTEM, LLC (doing
27 business as "Centennial Hills Hospital Medical
28 Center"), a foreign limited liability company;
UNIVERSAL HEALTH SERVICES, INC., a
foreign corporation; DR. DIONICE S.
JULIANO, M.D., an individual; Dr.
CONRADO C.D. CONCIO, M.D., an
individual; DR. VISHAL S. SHAH, M.D., an
individual; DOES 1-10; and ROES A-Z;

Defendants.

CASE NO.: **A-19-788787-C**
DEPT. NO.: **30**

DEFENDANTS DIONICE JULIANO,
MD, CONRADO CONCIO, MD, AND
VISHAL SHAH, MD,'S JOINDER TO
DEFENDANTS MOTION FOR
SUMMARY JUDGMENT ON THE
STATUTE OF LIMITATIONS

Defendants Dionice Juliano, MD, Conrado Concio, MD, and Vishal Shah, MD,
("Defendants") by and through their counsel of record, John H. Cotton, Esq., and Brad J.
Shipley, Esq., of the law firm of John H. Cotton & Associates, LTD., hereby joins defendant
Valley Health System, LLC's ("Centennial Hills"), Motion for Summary Judgment Based on the
Statute of Limitations pursuant to EDCR 2.20(d), based on all the papers, pleadings, documents

John H. Cotton & Associates, Ltd.
7900 West Sahara, Suite 200
Las Vegas, Nevada 89117

1 on file, and all applicable statutes and case law, and the following memorandum of points and
2 authorities:

3 ***Memorandum of Points and Authorities***

4 All of the arguments made on behalf of Centennial Hills apply equally to Defendants
5 Juliano, Concio, and Shah, and Defendants therefore incorporate the same by reference as if fully
6 set forth herein. The statute of limitations has, as a matter of law, expired with respect to these
7 claims against Defendant Shah and therefore dismissal is appropriate pursuant to NRS 41A.097.
8 The wrongful death and negligent infliction of emotional distress claims similarly fail as a matter
9 of law.
10

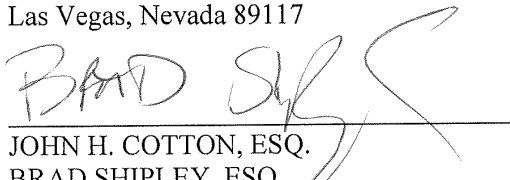
11 In addition to those arguments raised by Centennial Hills, Defendants assert here that
12 pursuant to *Winn v. Sunrise Hospital*, 128 Nev. 246 (2012), summary judgment is additionally
13 appropriate with respect to the joining Defendants because there simply cannot be any argument
14 the statute could ever be tolled with respect to these Defendants based on any theory of
15 concealment or failure to provide the records because there is no factual dispute whatsoever
16 regarding the fact that the joining Defendants were not responsible for keeping or maintaining
17 the records or providing them to the Plaintiff, as that role falls squarely on Centennial Hills
18 Hospital.
19

20 Dated this 3rd day of September 2020.
21

22 **JOHN H. COTTON & ASSOCIATES, LTD.**

23 7900 West Sahara Avenue, Suite 200

24 Las Vegas, Nevada 89117

25 
26

27 JOHN H. COTTON, ESQ.

28 BRAD SHIPLEY, ESQ.

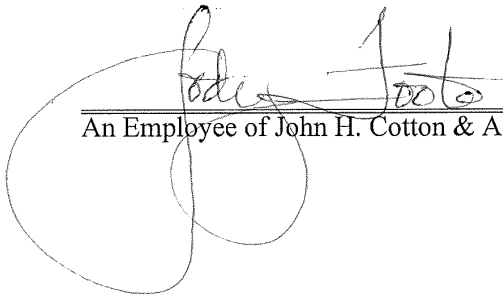
*Attorneys for Defendants Dionice S. Juliano, M.D.,
Conrado Concio, M.D. and Vishal S. Shah, M.D*

John H. Cotton & Associates
7900 W. Sahara, Suite 200
Las Vegas, NV 89117

CERTIFICATE OF ELECTRONIC SERVICE

I hereby certify that on the 3rd day of September 2020, I served a true and correct copy of the foregoing ***DEFENDANTS DIONICE JULIANO, MD, CONRADO CONCIO, MD, AND VISHAL SHAH, MD,'S JOINDER TO DEFENDANTS MOTION FOR SUMMARY JUDGMENT ON THE STATUTE OF LIMITATIONS*** by electronic means was submitted electronically for filing and/or service with the Eighth Judicial District Court, made in accordance with the E-Service List, to the following individuals:

Paul S. Padda, Esq.
PAUL PADDA LAW, PLLC
4560 South Decatur Boulevard, Ste. 300
Las Vegas, NV 89103
Attorneys for Plaintiffs


An Employee of John H. Cotton & Associates