

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 04:26 p.m.
Elizabeth A. Brown
Clerk of Supreme Court

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

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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 III** 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
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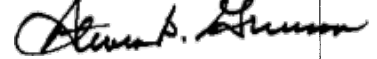
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*Dionice S. Juliano, M.D., Conrado
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/s/ Roya Rokni

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DOCUMENT 5

DOCUMENT 5



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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; ISAIAH 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.: **XXX**

JOINDER TO DEFENDANTS
VALLEY HEALTH SYSTEM, LLC
AND UNIVERSAL HEALTH
SERVICES, INC.'S REPLY TO
PLAINTIFFS' OPPOSITION TO
DEFENDANTS' MOTION FOR
SUMMARY JUDGMENT BASED
UPON THE EXPIRATION OF THE
STATUTE OF LIMITATIONS

23 Defendants Dionice Juliano, MD, Vishal Shah, MD, and Conrado Concio, MD,
24 (collectively, "Defendants") by and through their counsel of record, John H. Cotton, Esq., and
25 Brad J. Shipley, Esq., of the law firm of John H. Cotton & Associates, LTD., hereby join the
26 reply made by Defendants Valley System, LLC and Universal Health Services in support of their
27 for summary judgment pursuant based upon the expiration of the statute of limitations.
28

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

1 Defendants assert that each of the arguments made by Defendant Valley Health System LLC, in
2 support of Defendants' motion are meritorious and incorporates each by reference as if fully set
3 forth herein. Additionally, Defendants offer the following memorandum of points and authorities
4 in support of their joinder to the motion:

5
6 **Memorandum of Points and Authorities**

7 **I. Any Theory of Fraudulent Concealment would not apply to the physician**

8 **Defendants**

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

17
18 Furthermore, Plaintiff Brian Powell unequivocally demonstrated that he was on inquiry
19 notice no later than June 11, 2017, by explicitly identifying allegations of negligence and calling
20 for an investigation. There can be no argument that he was not on inquiry notice as of this date,
21 and summary judgment is therefore appropriately granted based upon the statute of limitations
22 for all of the joining Defendants here, as the Complaint was not filed before the June 11, 2018
23 deadline created by Plaintiff Brian Powell's own words.

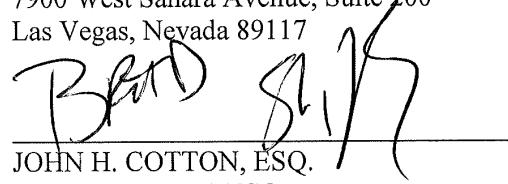
24
25 **II. CONCLUSION**

26 Based on the foregoing, summary judgment is appropriately granted in favor of
27 Defendants Concio, Shah and Juliano based upon the statute of limitations.
28

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

Dated this 21st day of October, 2020.

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



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.*

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CERTIFICATE OF ELECTRONIC SERVICE

I hereby certify that on the 21st day of October 2020, I served a true and correct copy of the foregoing ***JOINDER TO DEFENDANTS VALLEY HEALTH SYSTEM, LLC AND UNIVERSAL HEALTH SERVICES, INC.'S REPLY TO PLAINTIFFS' OPPOSITION TO DEFENDANTS' MOTION FOR SUMMARY JUDGMENT BASED UPON THE EXPIRATION OF 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.
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Attorneys for Plaintiffs

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


An Employee of John H. Cotton & Associates

DOCUMENT 6

DOCUMENT 6

**DISTRICT COURT
CLARK COUNTY, NEVADA****Malpractice - Medical/Dental****COURT MINUTES****October 26, 2020**

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

October 26, 2020 03:00 AM Minute Order

HEARD BY: Wiese, Jerry A. **COURTROOM:** Chambers

COURT CLERK: Kidd, Lauren

RECORDER:

REPORTER:

PARTIES PRESENT:

JOURNAL ENTRIES

For purposes of judicial economy, the Court hereby ORDERS the hearings currently scheduled on October 28, 2020, at 9:00 AM on Defendant Juliano's Motion for Summary Judgment, and Defendant Concio and Shah's Motion for Partial Summary Judgment on Emotional Distress Claims; Valley Health System, LLC and Universal Health Services, Inc.'s Motion for Summary Judgment Based Upon the Expiration of The Statute of Limitations; Defendants Dionice Juliano, MD, Conrado Concio, MD and Vishal Shah, MD's Joinder to Defendant's Motion for Summary Judgment on the Statute of Limitations; and Plaintiffs' Opposition to Defendant Juliano's Motion for Summary Judgment, And Defendants' Concio and Shah's Motion for Partial Summary Judgment on Emotional Distress Claims and Counter-Motion to Amend or Withdraw Plaintiffs' Responses to Defendants' Request for Admissions RESCHEDULED to November 4, 2020, at 9:00AM.

CLERK'S NOTE: A copy of the above minute order was distributed to all parties 10-26-20.//lk

DOCUMENT 7

DOCUMENT 7



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9
10 DISTRICT COURT
11 CLARK COUNTY, NEVADA
12

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

16 Plaintiffs,

17 vs.

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

23 Defendants.
24

Case No. A-19-788787-C

Dept. No.: 30

NOTICE OF ENTRY OF ORDER

25
26 PLEASE TAKE NOTICE that an ORDER was entered with the Court in the above-
27 captioned matter on the 29th day of October 2020, a copy of which is attached hereto.
28

1 DATED this 2nd ay of November, 2020

2
3 LEWIS BRISBOIS BISGAARD & SMITH LLP

4
5 By /s/ Adam Garth

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

16
17
18 **CERTIFICATE OF SERVICE**

19 I hereby certify that on this 2nd day of November, 2020, a true and correct copy of **NOTICE**
20 **OF ENTRY OF ORDER** was served by electronically filing with the Clerk of the Court using the
21 Odyssey E-File & Serve system and serving all parties with an email-address on record, who have
22 agreed to receive electronic service in this action.

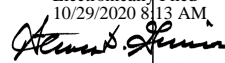
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29 By /s/ Roya Rokni

30 An Employee of
31 LEWIS BRISBOIS BISGAARD & SMITH LLP

ELECTRONICALLY SERVED
10/29/2020 8:14 AM

Electronically Filed
10/29/2020 8:13 AM

CLERK OF THE COURT

**DISTRICT COURT
CLARK COUNTY, NEVADA
-oOo-**

ESTATE OF REBECCA POWELL, through)
BRIAN POWELL, as Special Administrator;)
DARCI CREECY, individually and as an Heir;)
TARYN CREECY, individually and as an Heir;) CASE NO.: A-19-788787-C
ISAIAH KHOSROF, individually and as an) DEPT. NO.: XXX
Heir; LLOYD CREECY, individually,)
)
Plaintiffs,)
)
vs.)
)
VALLEY HEALTH SYSTEM, LLC (doing)
Business as "Centennial Hills Hospital)
Medical Center"), a foreign limited liability) ORDER
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.)

The above-referenced matter was scheduled for a hearing on November 4, 2020, with regard to Defendant Valley Health System LLC's (Valley's) and Universal Health Services, Inc.'s (Universal's) Motion for Summary Judgment Based upon the Expired Statute of Limitations. Defendants Dionice Juliano, M.D., Conrado Concio, M.D., and Vishal Shah, M.D. joined the Motion for Summary Judgment. Additionally, Defendant, Juliano's Motion for Summary Judgment and Defendants Concio and Shaw's Motion for Partial Summary Judgment on Emotional Distress Claims is on calendar. Finally, Plaintiff's Counter-Motion to Amend or Withdraw Plaintiffs' Responses to Defendants' Requests for Admissions is on calendar. Pursuant to A.O. 20-01 and subsequent administrative orders, these matters are deemed "non-essential," and may be decided after a hearing, decided on the papers, or continued. This Court has determined that it

1 would be appropriate to decide these matters on the papers, and consequently, this
2 Order issues.

3 **Defendants, Valley's and Universal's Motion for Summary Judgment Based**
4 **upon the Expiration of the Statute of Limitations.**

5 On May 3, 2017 Rebecca Powell ("Plaintiff") was taken to Centennial Hills
6 Hospital, a hospital owned and operated by Valley Health System, LLC ("Defendant")
7 by EMS services after she was discovered with labored breathing and vomit on her face.
8 Plaintiff remained in Defendant's care for a week, and her condition improved.
9 However, on May 10, 2017, Plaintiff complained of shortness of breath, weakness, and
10 a drowning feeling. In response to these complaints, Defendant Doctor Vishal Shah
11 ordered Ativan to be administered via IV push. Plaintiff's condition did not improve.
12 Defendant, Doctor Conrado Concio twice more ordered Ativan to be administered via
13 IV push, and Plaintiff was put in a room with a camera in order to better monitor her
14 condition. At 3:27 AM on May 11, 2017, another dose of Ativan was ordered. Plaintiff
15 then entered into acute respiratory failure, resulting in her death.

16 Plaintiff brought suit on February 4, 2019 alleging negligence/medical
17 malpractice, wrongful death pursuant to NRS 41.085, and negligent infliction of
18 emotional distress. Defendant previously filed a Motion to Dismiss these claims, which
19 was denied on September 25, 2019. The current Motion for Summary Judgment was
20 filed on September 2, 2020. Defendants Dionice Juliano, MD, Conrado Concio, MD,
21 and Vishal Shah, MD joined in this Motion on September 3, 2020. Plaintiff filed their
22 opposition September 16, 2020. Defendant filed its reply on October 21, 2020 and
23 Defendants Dionice Juliano, MD, Conrado Concio, MD, and Vishal Shah, MD joined
24 the reply on October 22, 2020.

25 Defendant claims that, pursuant to NRS 41A.097 Plaintiff's claims were brought
26 after the statute of limitations had run. In pertinent part, NRS 41A.097 states in
27 pertinent part: "an action for injury or death against a provider of health care may not
28 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." NRS 41A.097(2). There appears to be no dispute that the
Complaint was filed within 3 years after the date of injury (or death). The issue is
whether the Complaint was filed within 1 year after the Plaintiffs knew or should have

1 known of the injury. Defendants claim that they fall under the definition of a “provider
2 of health care” under NRS 41A.017 and that all of Plaintiff’s claims sound in
3 professional negligence. Therefore, all the claims are subject to NRS 41A.097.

4 Defendant claims that Plaintiff was put on inquiry notice of the possible cause of
5 action on or around the date of Plaintiff’s death in May of 2017 and therefore the suit,
6 brought on February 4, 2019, was brought after the statute of limitations had tolled.
7 Defendant makes this claim based on several theories. Defendant claims that since
8 Plaintiffs are suing for Negligent Infliction of Emotional Distress, and an element of
9 that claim is contemporaneous observation, that Plaintiff was put on notice of the
10 possible claim on the date of Ms. Powell’s death. Alternatively, Defendant argues that
11 since Plaintiff ordered and received Ms. Powell’s medical records no later than June
12 2017, they were put on notice upon the reception of those records. Finally, Defendant
13 argues that since Plaintiffs made two separate complaints alleging negligence, they
14 were aware of the possible claim for negligence and thus on inquiry notice. (On May 23,
15 2017, Defendants provide an acknowledgement by the Nevada Department of Health
16 and Human Services (“HHS”) that they received Plaintiff Brian Powell’s complaint
17 made against Defendants. And on June 11, 2017, Plaintiff Brian Powell filed a
18 complaint with the Nevada State Board of Nursing alleging negligence in that Decedent
19 was not properly monitored.)

20 Plaintiff argues that the date of accrual for the statute of limitations is a question
21 of fact for the jury and summary judgment is not appropriate at this stage where there
22 are factual disputes. Plaintiffs claim they were not put on inquiry notice of Defendant’s
23 negligence until they received the February 5, 2018, HHS report and therefore the
24 complaint, filed on February 4, 2019, was brought within the one-year statute of
25 limitations. Plaintiff makes this claim based on several pieces of evidence. First, while
26 the medical records were mailed to Plaintiffs on June 29, 2017, there is no evidence
27 that shows the records were ever received. Additionally, on June 28, 2017, Plaintiffs
28 were informed via the Certificate of Death, that Ms. Powell’s death was determined to
be a suicide. This prevented Plaintiff from ever considering negligence contributed to
her death. Plaintiffs argue the first time they could have suspected negligence was
when they received the report from HHS on February 5, 2018, that stated the facility

1 had committed violations with rules and/or regulations and deficiencies in the medical
2 care provided to Decedent.

3 Plaintiff claims that Defendant's present Motion for Summary Judgment is just
4 a regurgitation of Defendant's prior Motion to Dismiss on the same facts in violation of
5 Eighth Judicial District Court Rule (EJDCR) 2.24(a). Plaintiff claims this Motion is a
6 waste of time, money, and resources that rehashes the same arguments that the court
7 had already decided, and the Motion should be denied pursuant to EJDCR 2.24(a).

8 Summary judgment is appropriate if the pleadings, depositions, answers to
9 interrogatories, and admissions on file, together with the affidavits, if any, show that
10 there is no genuine issue as to any disputed material fact and that the moving party is
11 entitled to a judgment as a matter of law. NRCP 56(c). The tolling date ordinarily
12 presents a question of fact for the jury. *Winn v. Sunrise Hospital and Medical Center*,
13 128 Nev. 246, 252 (2012). "Only when the evidence irrefutably demonstrates that a
14 plaintiff was put on inquiry notice of a cause of action should the district court
15 determine this discovery date as a matter of law." *Id.* A plaintiff discovers an injury
16 when "he knows or, through the use of reasonable diligence, should have known of facts
17 that would put a reasonable person on inquiry notice of his cause of action." *Massey v.*
18 *Linton*, 99 Nev. 723 (1983). The time does not begin when the plaintiff discovers the
19 precise facts pertaining to his legal theory but when there is a general belief that
20 negligence may have caused the injury. *Id.* at 728.

21 There is a suggestion in the Defendants' Reply Brief that the Plaintiffs may have
22 been arguing that any delay in filing the Complaint may have been due to a fraudulent
23 concealment of the medical records, and that such a defense needs to be specifically
24 pled. This Court has not interpreted the Plaintiff's position to be one that the records
25 were "fraudulently concealed," only that there was no evidence that they had timely
26 received them. This Court will not take a position on this issue at this time, as it is not
27 necessary as part of the Court's analysis, and it does not change the opinion of the
28 Court either way.

29 Although the Complaints filed by Brian Powell, suggest that Plaintiff may have at
30 least been on inquiry notice in 2017, the fact that the family was notified shortly after
31 the decedent's death that the cause of death was determined to be a "suicide," causes
32 this Court some doubt or concern about what the family knew at that time period.

1 Since the family did not receive the report from the State Department of Health and
2 Human Services, indicating that their previously determined cause of death was in
3 error, it is possible that the Plaintiffs were not on inquiry notice until February 4, 2019.
4 This Court is not to grant a Motion to Dismiss or a Motion for Summary Judgment on
5 the issue of a violation of the Statute of Limitations, unless the facts and evidence
6 irrefutably demonstrate that Plaintiff was put on inquiry notice more than one year
7 prior to the filing of the complaint. This Court does not find that such evidence is
8 irrefutable, and there remains a genuine issue of material fact as to when the Plaintiffs
9 were actually put on inquiry notice. Such issue is an issue of fact, appropriate for
10 determination by the trier of fact. Consequently, Summary Judgment would not be
11 appropriate, and the Motion for Summary Judgment, and the Joinders thereto, must
12 be denied.

13 **Defendant, Juliano's Motion for Summary Judgment, and Defendant**
14 **Concio and Shah's Motion for Partial Summary Judgment on Emotional**
15 **Distress Claims.**

16 On or about 05/03/17, 41-year-old Rebecca Powell was transported to
17 Centennial Hospital. Rebecca ultimately died on 05/11/17. Plaintiffs allege that the
18 death was due to inadequate and absent monitoring, a lack of diagnostic testing, and
19 improper treatment. Furthermore, Plaintiffs allege that Rebecca Powell's negligent
20 death caused them Negligent Infliction of Emotional Harm.

21 Defendant, Doctor Dionice Juliano, argues that based on the discovery which
22 has taken place, the medical records, and specifically his own affidavit, there are no
23 material facts suggesting he was responsible for the care and treatment of Rebecca
24 Powell after May 9, 2017.¹ Further, Defendant argues that for a claim for Negligent
25 Infliction of Emotional to survive, the plaintiff must be physically present for the act
26 which is alleged to have inflicted that emotional distress.

27 Defendants further argue that Summary Judgment is warranted because the
28 Plaintiff failed to timely respond to Requests for Admission, and consequently,

¹ Dr. Dionice Juliano's Affidavit indicates that the patient was admitted on May 3, 2017, by the physician working the night shift. Dr. Juliano saw her for the first time on May 4, 2017, and was her attending physician, until he handed her off at the end of a "week-on, week-off" rotation on Monday, May 8, 2017. He had no responsibility for her after May 8, as he was off duty until Tuesday, May 16, 2017. The Plaintiffs' Complaint is critical of the acts or omissions which occurred on May 10 and 11, 2017.

1 pursuant to NRCP 36, they are deemed admitted. Defendants argue that Plaintiffs have
2 no good cause for not responding.

3 Plaintiffs argue that Defendants prematurely filed their motions since there is
4 over a year left to conduct discovery. Moreover, Plaintiffs argue that Defendants acted
5 in bad faith during a global pandemic by sending the admission requests and by not
6 working with Defendants' counsel to remind Plaintiffs' counsel of the missing
7 admission requests. Moreover, since Defendants have not cited any prejudice arising
8 from their mistake of submitting its admission requests late, this Court should deem
9 Plaintiffs' responses timely or allow them to be amended or withdrawn. Plaintiffs ask
10 this Court to deny the premature motions for Summary Judgment and allow for
discovery to run its natural course.

11 Pursuant to NRCP 56, and the relevant case law, summary judgment is
12 appropriate when the evidence establishes that there is no genuine issue of material
13 fact remaining and the moving party is entitled to judgment as a matter of law. All
14 inferences and evidence must be viewed in the light most favorable to the non-moving
15 party. A genuine issue of material fact exists when a reasonable jury could return a
16 verdict for the non-moving party. See NRCP 56, *Ron Cuzze v. University and*
17 *Community College System*, 123 Nev. 598, 172 P.3d 131 (2008), and *Golden Nugget v.*
18 *Ham*, 95 Nev. 45, 589 P.2d 173 (1979), and *Oehler v. Humana, Inc.*, 105 Nev. 348
19 (1987). While the pleadings are construed in the light most favorable to the non-
20 moving party, however, that party is not entitled to build its case on "gossamer threads
of whimsy, speculation, and conjecture." *Miller v. Jones*, 114 Nev. 1291 (1998).

21 With regard to the Requests for Admissions, NRCP 36(a)(3) provides that a
22 matter is deemed admitted unless, within 30 days after being served, the party sends
23 back a written answer objecting to the matters. Here, Plaintiff's counsel failed to
24 respond to Defendants' counsel request for admissions during the allotted time.
25 Defendants' counsel argues that Plaintiffs should not be able to withdraw or amend
26 their responses because their attorney was personally served six different times and
27 emailed twice as notice that they were served the admission requests. On the other
28 hand, Plaintiffs' counsel argued that their late response was due to consequences from
the unprecedented global pandemic that affected their employees and work. NRCP
36(b) allows the Court to permit the admission to be withdrawn or amended if it would

1 promote the presentation of the merits. Since Nevada courts, as a public policy, favor
2 hearing cases on its merits, and because this Court finds that the global pandemic
3 should count as “good cause,” this Court will allow Plaintiffs’ late responses to be
4 recognized as timely responses. They were filed approximately 40 days late, but the
5 Court finds that the delay was based on “good cause,” and that they will be recognized
6 as if they had been timely responses.

7 Under *State v. Eaton*, 101 Nev. 705, 710 P.2d 1370 (1985), to prevail in a claim
8 for Negligent Infliction of Emotional Distress, the following elements are required: (1)
9 the plaintiff was located near the scene; (2) the plaintiff was emotionally injured by the
10 contemporaneous sensory observance of the accident; and (3) the plaintiff was closely
11 related to the victim. The Plaintiffs argue that although there has been a historical
12 precedent requiring the plaintiff to have been present at the time of the accident. This
13 Court previously held in this case that the case of *Crippens v. Sav On Drug Stores*, 114
14 Nev., 760, 961 P.2d 761 (1998), precluded the Court from granting a Motion to Dismiss.
15 Although the burden for a Motion for Summary Judgment is different, the Court is still
16 bound by the Nevada Supreme Court’s decision in *Crippens*, which indicated, “it is not
17 the precise position of plaintiff or what the plaintiff saw that must be examined. The
18 overall circumstances must be examined to determine whether the harm to the plaintiff
19 was reasonably foreseeable. Foreseeability is the cornerstone of this court’s test for
20 negligent infliction of emotional distress.” *Id.* The Court still believes that the
21 “foreseeability” element is more important than the location of the Plaintiffs, pursuant
22 to the Court’s determination in *Crippens*, and such an analysis seems to be a factual
23 determination for the trier of fact. Consequently, Summary Judgment on the basis of
24 the Plaintiff’s failure to be present and witness the death of the decedent, seems
25 inappropriate.

26 With regard to the argument that Dr. Juliano did not participate in the care of
27 the Plaintiff during the relevant time period, the Plaintiff’s objection simply indicates
28 that the motion is premature, but fails to set forth any facts or evidence to show that
Dr. Juliano was in fact present or involved in the care of the decedent during the
relevant time period. The Court believes that this is what the Nevada Supreme Court
was referring to when it said that a Plaintiff is not entitled to build its case on
“gossamer threads of whimsy, speculation, and conjecture.” *Miller v. Jones*, 114 Nev.

1 1291 (1998). As the Plaintiffs have been unable to establish or show any facts or
2 evidence indicating that Dr. Juliano was present during the relevant time period, the
3 Court believes that no genuine issues of material fact remain in that regard and Dr.
4 Juliano is entitled to Summary Judgment. With regard to all other issues argued by the
5 parties, the Court finds that genuine issues of material fact remain, and summary
6 judgment would therefore not be appropriate.

7 Based upon the foregoing, and good cause appearing,

8 **IT IS HEREBY ORDERED** that Defendants Valley's and Universal's Motion
9 for Summary Judgment Based upon the Expiration of the Statute of Limitations, and
all Joinders thereto are hereby **DENIED**.

10 **IT IS FURTHER ORDERED** that Defendant Juliano's Motion for Summary
11 Judgment is hereby **GRANTED**, and Dr. Juliano is hereby Dismissed from the Action,
without prejudice.

12 **IT IS FURTHER ORDERED** that the Defendants, Concio and Shah's Motion
13 for Partial Summary Judgment on the Negligent Infliction of Emotional Distress
14 Claims is hereby **DENIED**. All joinders are likewise **DENIED**.

15 **IT IS FURTHER ORDERED** that because the Court has ruled on these
16 Motions on the papers, the hearing scheduled for November 4, 2020, with regard to the
foregoing issues is now moot, and will be taken off calendar.

17 Dated this 28th day of October, 2020.

Dated this 29th day of October, 2020

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JERRY A. WIESE II
DISTRICT COURT JUDGE
EIGHTH JUDICIAL DISTRICT COURT
DENVER, CO
JERRY A. WIESE
District Court Judge

1 **CSERV**

2
3 DISTRICT COURT
CLARK COUNTY, NEVADA

4
5
6 Estate of Rebecca Powell,
Plaintiff(s)

CASE NO: A-19-788787-C

7 vs.

DEPT. NO. Department 30

8
9 Valley Health System, LLC,
Defendant(s)

10
11 **AUTOMATED CERTIFICATE OF SERVICE**

12
13 This automated certificate of service was generated by the Eighth Judicial District
14 Court. The foregoing Order was served via the court's electronic eFile system to all
recipients registered for e-Service on the above entitled case as listed below:

15 Service Date: 10/29/2020

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7

8 If indicated below, a copy of the above mentioned filings were also served by mail

9 via United States Postal Service, postage prepaid, to the parties listed below at their last

known addresses on 11/2/2020

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13	Paul Padda	Paul Padda Law, PLLC
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DOCUMENT 8

DOCUMENT 8



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14 *LLC dba Centennial Hills Hospital Medical*
15 *Center*

10 DISTRICT COURT
11 CLARK COUNTY, NEVADA

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; ISAIAH KHOSROF, individually and as
18 an Heir; LLOYD CREECY, individually,;

16 Plaintiffs,

17 vs.

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

23 Defendants.

Case No. A-19-788787-C

Dept. No.: 30

NOTICE OF ENTRY OF ORDER

26 PLEASE TAKE NOTICE that an ORDER was entered with the Court in the above-
27 captioned matter on the 17th day of December 2020, a copy of which is attached hereto.
28

1 DATED this 17th day of December, 2020

2
3 LEWIS BRISBOIS BISGAARD & SMITH LLP

4
5 By /s/ Adam Garth

6 S. BRENT VOGEL

7 Nevada Bar No. 6858

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11 Las Vegas, Nevada 89118

12 Tel. 702.893.3383

13 *Attorneys for Attorneys for Defendant Valley*

14 *Health System, LLC dba Centennial Hills Hospital*

15 *Medical Center*

16
17
18 **CERTIFICATE OF SERVICE**

19 I hereby certify that on this 17th day of December, 2020, a true and correct copy of **NOTICE**
20 **OF ENTRY OF ORDER** was served by electronically filing with the Clerk of the Court using the
21 Odyssey E-File & Serve system and serving all parties with an email-address on record, who have
22 agreed to receive electronic service in this action.

23 Paul S. Padda, Esq.
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Shah, M.D.*

By /s/ Roya Rokni

An Employee of

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ORDER

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Attorneys for Plaintiffs

**DISTRICT COURT
CLARK COUNTY, NEVADA**

ESTATE OF REBECCA POWELL, through
Brian Powell as Special Administrator;
DARCI CREECY, individually; TARYN
CREECY, individually; ISAAH KHOSROF,
individually; 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; ROES A-Z;

Defendants.

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

**ORDER DENYING DEFENDANT
VALLEY HEALTH SYSTEM, LLC'S
MOTION TO STAY ON ORDER
SHORTENING TIME**

The above-referenced matter was scheduled for a hearing on November 25, 2020 with regard to Defendant Valley Health System's Motion for Stay. Pursuant to Administrative Order 20-01, and subsequent administrative orders, this matter was deemed "non-essential," and as

Estate of Rebecca Powell, et al. v. Valley Health System, LLC, et al.
District Court Case No. A-19-788787-C, Dept. 30

1 such, this Court has determined that it would be appropriate to decide this matter on the papers.
2 A minute order was circulated on November 23, 2020 to the parties, the contents of which
3 follows:

4 On May 3, 2017, Plaintiff was found by EMS at her home. She was unconscious, labored
5 in her breathing, and had vomit on her face. EMS provided emergency care and transported her
6 to Defendant Hospital, and she was admitted. Plaintiff continued to improve while she was
7 admitted. However, on May 10, 2017 Plaintiff complained of shortness of breath, weakness, and
8 a "drowning feeling." One of her doctors ordered Ativan to be administered via an IV push. On
9 May 11, another doctor ordered two more doses of Ativan and ordered several tests, including a
10 chest CT to be performed. However, the CT could not be performed due to Plaintiff's inability to
11 remain still during the test. She was returned to her room where she was monitored by a camera
12 to ensure she kept her oxygen mask on. Plaintiffs, in their complaint, alleged the monitoring was
13 substandard and Defendant should have used a better camera or in person monitoring, among
14 other theories of substandard care. Another dose of Ativan was ordered at 3:27 AM and Plaintiff
15 entered into acute respiratory failure, which resulted in her death. The other named Plaintiffs
16 claimed they were in Decedent's hospital room and observed Defendant's negligence.

17 Plaintiffs ordered Decedent's medical records on May 25, 2017; however, there were
18 issues with delivery, and it is unclear exactly when Plaintiffs received them. Decedent's husband,
19 a named Plaintiff, filed a complaint with the State of Nevada Department of Health and Human
20 Services ("HHS") sometime before May 23, 2017. Approximately six weeks after the death of
21 Decedent, Plaintiffs received the death certificate which listed the cause of death as a suicide from
22 Cymbalta Intoxication. On February 5, 2018 HHS responded to Plaintiff's complaint. The letter
23 said that after an investigation, HHS concluded that the facility had committed violations by not
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1 following rules and/or regulations as well as finding there were deficiencies in the medical care
2 provided to Decedent.

3 On February 4, 2019, Plaintiff's filed suit alleging negligence/medical malpractice,
4 wrongful death pursuant to NRS 41.085, and negligent infliction of emotional distress. Defendant
5 did not file an answer but filed a Motion to Dismiss on June 19, 2020 alleging the statute of
6 limitations had tolled. Plaintiff answered the motion. The court denied the Motion to Dismiss on
7 September 25, 2019. Defendant filed an Answer to Plaintiff's complaint on April 15, 2020.
8

9 Defendants Valley Health System, LLC and Universal Health Services, Inc. then filed a
10 'Motion for Summary Judgment Based Upon the Expiration of the Statute of Limitations.'
11 Defendants Dionice Juliano, M.D., Conrado Concio, M.D., and Vishal Shah, M.D. joined the
12 Motion for Summary Judgment. Additionally, Defendant Juliano filed a Motion for Summary
13 Judgment, and Defendants Concio and Shaw filed a Motion for Partial Summary Judgment on
14 Emotional Distress Claims. Plaintiffs filed a Counter-Motion to Amend or Withdraw Plaintiffs
15 Responses to Defendants Requests for Admissions. All of these items were on the November 04,
16 2020 calendar. An Order deciding these motions was filed on October 29, 2020. The Order denied
17 Defendants, Valley Health System and Universal's Motion for Summary Judgment and related
18 Joinders; granted Defendant Juliano's Motion for Summary Judgment, and dismissed Dr. Juliano
19 from the case without prejudice; and denied Defendants Concio and Shah's Motion for Partial
20 Summary Judgment on the Emotional Distress Claims.
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24 Now, Defendant Valley Health System, LLC (VHS) seeks an order staying the case
25 pending an appeal of the October 29, 2020, Order denying its Motion for Summary Judgment
26 Based Upon the Expiration of the Statute of Limitations. Defendant VHS alleges that it may be
27 irreparably prejudiced by having to continue defending this action and potentially being forced
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1 to try all issues when the matter raised by the aforesaid Motion is case dispositive.

2 This matter has been pending since February, 2019. It is currently set for trial on May 23,
3 2022. Initial expert disclosures are to be made on or before June 18, 2021, rebuttal expert
4 disclosures are due on August 27, 2021, and discovery is to be completed on or before October
5 28, 2021. Valley argues that it is currently preparing a Petition for Writ of Mandamus, and is first
6 seeking a stay with the district Court pursuant to NRAP 8(a)(1)(A). The decision whether to grant
7 a motion for a stay in proceedings is left to the sound discretion of the Court. Nevada Tax
8 Commission v. Brent Mackie, 74 Nev. 273, 276 (1958). The factors to be considered by the Court
9 when considering whether to issue a stay in the proceedings when an appellate issue is pending
10 before the Nevada Supreme Court are (1) whether the object of the writ petition will be defeated
11 if the stay is denied; (2) whether the petitioner will suffer irreparable or serious injury if the stay
12 is denied; (3) whether the real party in interest will suffer irreparable or serious injury if the stay
13 is granted; and (4) whether petitioner is likely to prevail on the merits in the writ petition. NRAP
14 8(c); Fritz Hansen A/S v. Eighth Judicial District Court, 116 Nev. 650, 657 (2000).

15 Defendant, VHS argues that each of the 4 factors weigh in favor of granting a stay. The
16 Plaintiffs, on the other hand, argue that none of the factors weigh in favor of the Defendant. This
17 Court finds and concludes as follows: 1) Trial is currently not scheduled until May of 2022, and
18 consequently, even if a stay is denied, it is likely that the Supreme Court would rule on the
19 "potential" Writ of Mandamus, prior to the parties going to Trial. Consequently, the Court does
20 not find that the purpose of the writ petition would be defeated if the stay were denied. 2) The
21 only injury or damage that the Petitioner would suffer if the stay were denied, would be continued
22 litigations and the costs associated therewith. The Court has consistently held that ongoing
23 litigation and the expenses associated therewith do not cause "irreparable harm." Consequently,
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1 the Court does not find that the Petitioner would suffer irreparable harm or serious injury if the
2 stay were denied. 3) Although the Plaintiffs are correct that memories dim as time passes, such a
3 fact applies to all witnesses equally Plaintiff's witnesses as well as Defendants' witnesses.
4 Consequently, the Court does not find that the Plaintiffs would suffer irreparable or serious injury
5 if the stay were granted. 4) The Court cannot find that the Petitioners are likely to prevail on the
6 merits, as this Court previously found, and continues to believe, that the Death Certificate
7 identifying Ms. Powell's cause of death as a "suicide," may have tolled the statute of limitations,
8 in that such a conclusion or determination by the Medical Examiner, would clearly not suggest
9 "negligence" on the part of any medical care provider. Although the Defendants suggest that the
10 Plaintiffs possessed inquiry notice much earlier, the Court could not find that the families
11 questioning of the cause of death equated with inquiry notice of negligence. Consequently, this
12 Court concluded that when the Plaintiffs knew or should have known, of the alleged negligence
13 of the Defendants, was an issue of fact which overcame the Defendants' Motion for Summary
14 Judgment. Consequently, the Court cannot find that there is a likelihood of success on the merits.

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18 Another issue which is important in this Court's analysis, is the fact that a Writ has
19 apparently not yet been filed. If the Court were to grant the Stay as requested, it is possible that 6
20 months, or even a year from now, the Writ may still not be filed, so the Court would have stayed
21 the case for no reason.

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Based upon all these reasons, considering the relevant factors set forth above, finding that they weigh in favor of the non-moving party, and good cause appearing,

IT IS HEREBY ORDERED that the Defendant's Motion for Stay is hereby **DENIED**.

Dated this _____ day of December, 2020.

Dated this 17th day of December, 2020



JERRY A. WIESE, II
DISTRICT COURT JUDGE
EIGHTH JUDICIAL DISTRICT COURT
DEPARTMENT 30
APR 22 2021 10:30 AM
JERRY A. WIESE
District Court Judge

Respectfully submitted by:

PAUL PADDALAW

/s/ Paul S. Padda

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James P. Kelly, Esq.
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Las Vegas, Nevada 89103

Attorneys for Plaintiffs

1 **CSERV**

2
3 DISTRICT COURT
4 CLARK COUNTY, NEVADA

5
6 Estate of Rebecca Powell,
7 Plaintiff(s)

CASE NO: A-19-788787-C

8 vs.

DEPT. NO. Department 30

9 Valley Health System, LLC,
10 Defendant(s)

11 **AUTOMATED CERTIFICATE OF SERVICE**

12
13 This automated certificate of service was generated by the Eighth Judicial District
14 Court. The foregoing Order was served via the court's electronic eFile system to all
recipients registered for e-Service on the above entitled case as listed below:

15 Service Date: 12/17/2020

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