

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; ISIAAH 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.

Electronically Filed
Mar 30 2021 03:48 p.m.
Elizabeth A. Brown
Clerk of Supreme Court

Supreme Court No. 82250

District Court No. A-19-
788787-C

**REAL PARTIES IN INTEREST'S, ESTATE OF REBECCA POWELL,
through BRIAN POWELL, as Special Administrator; DARCI CREECY,
individually and as Heir; TARYN CREECY, individually and as Heir;
ISIAAH KHOSROF, individually and as Heir; and LLOYD CREECY,
ANSWER TO VALLEY HEALTH SYSTEMS, LLC's PETITION FOR
WRIT OF MANDAMUS**

REAL PARTIES IN INTEREST'S APPENDIX

Volume 2

Pages 237-435

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Attorneys for Real Parties In Interest

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EXHIBIT ‘M’

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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; ISAIAH KHOSROF, individually and as
an Heir; LLOYD CREECY, individually,,
15

16 Plaintiffs,
17

18 vs.
19

20 VALLEY HEALTH SYSTEM, LLC (doing
business as "Centennial Hills Hospital Medical
Center"), a foreign limited liability company;
21 UNIVERSAL HEALTH SERVICES, INC., a
foreign corporation; DR. DIONICE S.
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

24 Defendants.
25

26 STATE OF NEVADA }

27 COUNTY OF CLARK }

28 I, GINA ARROYO, declare as follows:

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

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**

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,

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

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

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

16 9. On June 7, 2017, we sent an invoice to Ms. Creecy (**Exhibit "B"**) which included all
17 fees associated with the provision of 1,165 pages of Mrs. Powell's medical records from CHH. The
18 1,165 pages invoiced represented the entirety of medical records for Mrs. Powell with no exclusions.

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

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

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

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

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

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

9 Dated this 1st day of September, 2020.


GINA ARROYO

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11 No Notary Required per NRS 53.045
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28

EXHIBIT ‘A’

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

1 **ORDR**

2 CASSADY LAW OFFICES, P.C.
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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 Shinn
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 Shinn
DISTRICT COURT JUDGE

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

Heather Shinn
CLERK OF THE COURT

MAY 25 2017

* Put Records on CD

AUTHORIZATION TO USE AND DISCLOSE PROTECTED HEALTH INFORMATION	
	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.	

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: _____

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 ☒ Lab Reports/Pathology Reports BOTH HARD AND SOFT COPY
☒ Discharge Summary ☒ Genetic Information
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: Taryn Creeley Print Name: Taryn Creeley Date: 5/25/17 Relationship to Patient: Daughter

Witness: _____ Date: _____
☐ I Will Pick Up PHI
☐ Mail PHI
☐ Please Fax PHI To Physician Indicated

Reason Patient Unable to Sign

☐ Patient received copy of authorization

Staff Initials: _____



RI1001

Centennial Hills Hospital
MEDICAL CENTER

AUTHORIZATION TO USE AND DISCLOSE
PROTECTED HEALTH INFORMATION

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

PATIENT IDENTIFICATION

RECEIVED

MAY 25 2017

CASSADY LAW OFFICES, P.C.

10799 W. Twain Avenue

Las Vegas, Nevada 89135

(702) 650-4480 - Fax 650-5561

CLERK OF THE COURT

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

1 **ORDER**

2 CASSADY LAW OFFICES, P.C.

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4 Nevada Bar No. 8018

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6 Brandi K. Cassady, Esq.

7 Nevada Bar No. 12714

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10 Nevada Bar No. 11653

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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 J. 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.

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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. Petil
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



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

9 CLASS 1b EXPIRES
REG 06-20-2018

NONDRIVER



* 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
 Patient Name at Time of Treatment
 P.O. Box 750131
 Street Address
 LAS VEGAS
 City
 NV
 State
 89136-0131
 Zip Code
 [Redacted]
 Social Security Number
 216 571 9522
 Home Phone Number
 [Redacted]
 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: ☐ 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
☒ All PHI In Medical Record (Complete Chart Copy)
☒ Radiology Images CD
☒ Discharge Summary
☒ History and Physical
☒ Operative Report
☒ X-Ray Report
☒ Lab Reports/Pathology Reports
☒ Emergency Department
☒ Other (please specify): ALL RECORDS, IMAGES AND TRANSCRIPTS BOTH SOFT AND HARD COPY

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.

TC HIV/AIDS
 TC Mental Health Information
 TC Drug and Alcohol Information
 Sexually Transmitted Disease Information
 Genetic 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: [Signature] Date: 15/25/17
 Signature of Legal Representative: [Signature] Print Name: Taryn Creevy Date: 15/25/17 Relationship To Patient: Daughter

Witness: _____ Date: _____
☐ I Will Pick Up PHI
☐ Mail PHI
☐ Please Fax PHI To Physician Indicated

Reason Patient Unable to Sign: _____ Staff Initials: _____
☐ Patient received copy of authorization



RI1001

Centennial Hills Hospital
MEDICAL CENTER
 AUTHORIZATION TO USE AND DISCLOSE
 PROTECTED HEALTH INFORMATION
 (PMN# 78329158) (R 8/15) (FOD)

PATIENT IDENTIFICATION

EXHIBIT ‘B’

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*

EXHIBIT ‘C’

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

EXHIBIT ‘D’

MRO
1000 Main
Suite 100
Norristown, PA 19403



RETURN SERVICE
REQUESTED

FIRST CLASS



ZIP 19403 \$0
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Handwritten signature

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



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UNABLE TO FORWARD
2104N174110-00332
SC: 19403242625
0106/23/17

EXHIBIT ‘N’

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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; ISALAH KHOSROF, individually and as
an Heir; LLOYD CREECY, individually,;

15 Plaintiffs,

16 vs.

17 VALLEY HEALTH SYSTEM, LLC (doing
18 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 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**

24
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.

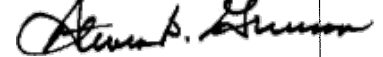
7 
8 MELANIE THOMPSON

9 No Notary Required per NRS 53.045

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By

EXHIBIT ‘D’



1 **JOIN**
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5 BRAD SHIPLEY, ESQ.
6 Nevada Bar Number 12639
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8 **JOHN H. COTTON & ASSOCIATES, LTD.**
9 7900 West Sahara Avenue, Suite 200
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11 Telephone: (702) 832-5909
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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; 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.

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

23 Defendants Dionice Juliano, MD, Conrado Concio, MD, and Vishal Shah, MD,
24 ("Defendants") by and through their counsel of record, John H. Cotton, Esq., and Brad J.
25 Shipley, Esq., of the law firm of John H. Cotton & Associates, LTD., hereby joins defendant
26 Valley Health System, LLC's ("Centennial Hills"), Motion for Summary Judgment Based on the
27 Statute of Limitations pursuant to EDCR 2.20(d), based on all the papers, pleadings, documents
28

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 JOHN H. COTTON, ESQ.
27 BRAD SHIPLEY, ESQ.

28 *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 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

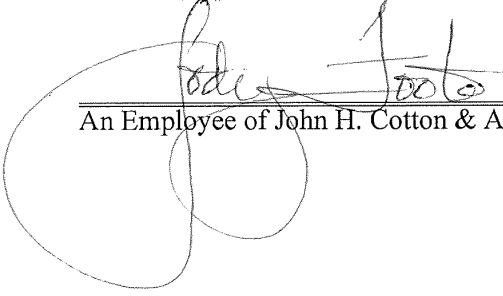
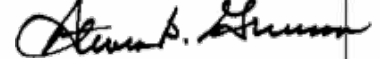

An Employee of John H. Cotton & Associates

EXHIBIT ‘E’

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Steven D. Grierson
CLERK OF THE COURT



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

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Attorney for Plaintiffs

DISTRICT COURT
CLARK COUNTY, NEVADA

ESTATE OF REBECCAL POWELL, through
Brian Powell as Special Administrator;
DARCI CREECY, individually; TARYN
CREECY, individually; ISAIAH 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. NO. XXX (30)

PLAINTIFFS' OPPOSITION TO
VALLEY HEALTH SYSTEM, LLC'S
MOTION FOR SUMMARY JUDGMENT
SEEKING DISMISSAL ON STATUTE
OF LIMITATIONS GROUNDS

Pursuant to Nevada Rule of Civil Procedure 56 and Eighth Judicial District Court Rule
2.20, Plaintiffs hereby respond to Defendants Valley Health Systems, LLC ("VHS") and

1

Estate of Rebecca Powell, et. al. v. Valley Health System, LLC et. al.
Eighth Judicial District Court, Case No. A-19-788787-C
Plaintiffs' Opposition to Valley Health System, LLC's Motion for Summary Judgment

Universal Health Services, Inc.’s (“UHS”)¹ motion styled “*Valley Health System, LLC And Universal Health System Services, Inc.’s Motion For Summary Judgment Based Upon The Expiration Of The Statute Of Limitations.*”² The motion currently pending before the Court, filed on September 2, 2020, is simply a rehash of a prior motion filed by VHS on June 19, 2019 – the only distinction being that the current motion is styled a motion for summary judgment whereas the prior motion was labelled a motion to dismiss. Simply slapping a new label on an old motion does not improve the merits of the same arguments previously considered and rejected by the Court. Instead, the only thing VHS accomplishes by filing an old motion with a new label is to require undersigned counsel to divert attention from prosecuting the merits of this case and once again respond to an issue that has already been decided by this Court. In the process, VHS wastes this Court’s precious time by requiring it to revisit a decided issue.

For the reasons set forth in the memorandum of points and authorities below, the Court should deny VHS’s motion for summary judgment for the same reasons it previously rejected the motion to dismiss that was presented by VHS arguing a statute of limitations defense. In support this opposition, Plaintiffs rely upon all papers on file in this case, but especially

¹ Counsel for VHS and UHS are apparently unacquainted with the procedural history in this case. UHS was dismissed, without prejudice, on December 5, 2019. To the extent UHS is requesting to become a Defendant again by joining in the motion filed by VHS, Plaintiff do not oppose that request.

² Referred to herein for ease of reference as “VHS MSJ.”

Plaintiffs' filing of August 13, 2019 (fully incorporated by reference herein), and the Appendix attached hereto (which includes the Declaration of Paul S. Padda, Esq.).

MEMORANDUM OF POINTS AND AUTHORITIES

I.

STATEMENT OF FACTS

This is a wrongful death case in which it is alleged that Rebecca Powell died while in the care of Centennial Hills Hospital on account of negligence by the hospital and its medical personnel. Ms. Powell was the mother of three children – Isaiah, Taryn and Darci. *See* App. 2, 19.³ Ms. Powell died on May 11, 2017. App. 3. According to the State of Nevada Certificate of Death (issued on June 28, 2017), Ms. Powell's cause of death was listed as a "suicide." *Id.*

According to Rebecca Powell's former husband, Brian Powell, he could not visit with Rebecca while she was in the hospital because he was "turned away by the nurses." App. 85. However, he has stated under oath that, following Rebecca's death on May 11, 2017, "I did meet with Taryn, Isaiah and one of Rebecca's friends to speak with the doctor and risk manager after Rebecca's death, but they didn't provide any information." App. 86, 88. Following notification by the State of Nevada on June 28, 2017 that his former wife's death was a "suicide," Brian Powell filed a complaint with the State of Nevada Department of Health and Human Services ("HHS") seeking further answers.

³ "App. ____." refers to the referenced page(s) of the Appendix attached and filed herewith.

1 By letter dated February 5, 2018, HHS notified Mr. Powell that it conducted an
2 “investigation” of Centennial Hills Hospital and found that the facility had “violation(s) with
3 rules and/or regulations.” App. 4. HHS’s report, dated February 5, 2018 and presumably
4 mailed to Mr. Powell that same day, noted a number of deficiencies in the medical care
5 provided to Rebecca Powell including, among other things, that Rebecca was exhibiting
6 symptoms that should have triggered a higher level of care. App. 16 (“the physician should
7 have been notified, the RRT activated and the level of care upgraded”).

9 Within one year of the HHS investigative report dated February 5, 2018, Rebecca
10 Powell’s family filed a Complaint in this Court on February 4, 2019 alleging wrongful death.
11 App. 4, 17. The HHS investigative report stands in stark contrast to the death certificate
12 suggesting Ms. Powell died of a suicide. See App. 3, 4-16. In support of the Complaint,
13 Plaintiffs attached a medical affidavit from Dr. Sami Hashim, M.D. opining that in his opinion
14 Ms. Powell was the victim of a “wrongful death” on account of several failures and breaches by
15 the Defendants. App. 44. Dr. Hashim’s affidavit references both the Certificate of Death and
16 the HHS Report of Investigation. App. 39-45.

19 On September 2, 2020 Defendant VHS filed a motion for summary judgment alleging
20 this lawsuit should be dismissed on the grounds that the Complaint was not filed within the
21 appropriate statute of limitations period. In support of its argument, VHS relies primarily upon
22 the allegations in the Complaint, the medical affidavit that was prepared by Dr. Sami Hashim,
23 M.D. at the time the Complaint was filed on February 4, 2019 and the declaration of Gina
24 Arroyo (attached to VHS MSJ as Exhibit M). Ms. Arroyo, an employee of a medical records
25

1 retrieval company, claims she was notified by Taryn Creecy that records Ms. Creecy had
2 allegedly requested were never received. Mr. Arroyo further testifies that “[o]n June 29, 2017,
3 we re-sent the records addressed to Mr. Powell at the post office box previously provided and
4 we did not receive the records back thereafter.” VHS MSJ, Exhibit M, ¶ 13.

5
6 **II.**

7 **ARGUMENTS**

8 **A. THE STANDARD OF REVIEW APPLICABLE TO THIS CASE COUNSELS**
9 **THAT WHETHER PLAINTIFFS TIMELY FILED THEIR COMPLAINT IS**
10 **A QUESTION OF FACT**

11 In Massey v. Linton, 99 Nev. 723 (1983), the Nevada Supreme Court held that a
12 Plaintiff “discovers” his injury “when he knows or, through the use of reasonable diligence,
13 should have known of facts that would put a reasonable person on *inquiry notice* of his cause of
14 action.” “While difficult to define in concrete terms, a person is put on “inquiry notice” when
15 he or she should have known of facts that ‘would lead an ordinary prudent person to investigate
16 the matter further.” Winn v. Sunrise Hospital and Medical Center, 128 Nev. 246, 252 (2012)
17 (*quoting* Black’s Law Dictionary 1165 (9th ed. 2009). The Nevada Supreme Court has held that
18 the accrual date for NRS 41A.097’s one-year discovery period ordinarily presents a question of
19 fact to be decided by the jury. *See Winn*, 128 Nev. at 258. “Only when the evidence irrefutably
20 demonstrates that a plaintiff was put on inquiry notice of a cause of action should the district
21 court determine this discovery date as a matter of law.” *Id.*

22 . . .

23 . . .

B. THE COURT SHOULD REJECT VHS’S MOTION FOR SUMMARY JUDGMENT (AND AWARD PLAINTIFFS REASONABLE FEES AND COSTS) BECAUSE IT SIMPLY SEEKS TO RELITIGATE AN ISSUE ALREADY DECIDED BY THE COURT AND THEREFORE VIOLATES THIS COURT’S RULE 2.24

On September 25, 2019, the Court denied Defendants’ motion to dismiss on statute of limitations grounds. App. 77. Defendant VHS acknowledges this fact in its motion for summary judgment. *See* VHS MSJ, p. 4. Yet, notwithstanding this admission, VHS continues to pursue the same arguments that were previously considered and denied by the Court.

Under this Court’s Eighth Judicial District Court Rule (“EDCR”) 2.24(a) “[n]o motions once heard and disposed of may be renewed in the same cause, *nor may the same matters therein embraced be reheard, unless by leave of the court granted upon motion therefor*, after notice of such motion to the adverse parties.”⁴ This rule exists for a reason: namely so parties are not required to waste time, money and limited resources litigating issues that have already been decided. The point of seeking leave first is so the Court and non-moving party understand what issues the moving party seeks to litigate and whether it has any new evidence to offer. Otherwise, allowing parties to re-label previously denied motions would result in an inequitable waste of a non-moving parties time and resources. That is exactly what has occurred here.

During that past several days, undersigned counsel on behalf of Plaintiffs has responded to over 200 written discovery requests propounded by Defendants. During this same period, undersigned counsel has been required to yet again respond to legal issues previously decided

⁴ Emphasis supplied.

1 by this Court. The record in this case clearly demonstrates that VHS has violated this Court's
2 EDCR 2.24 insofar as leave was never provided by the Court for the filing of a motion for
3 summary judgment that embraces the same issues previously decided. Simply slapping the
4 label of "summary judgment" on a previously denied motion to dismiss is a flagrant abuse of
5 the process and violates the spirit and purpose of EDCR 2.24.

6
7 Undersigned counsel for Plaintiffs has been required to expend unnecessary time and
8 resources on responding to a motion that is even weaker (given the facts presented herein) than
9 was its predecessor motion to dismiss which presented the same arguments. The Court should
10 affirm the principles of EDCR 2.24 and award Plaintiffs their reasonable attorney fees and
11 costs.

12
13 **C. THE OBVIOUS INCONSISTENCY BETWEEN THE DEATH**
14 **CERTIFICATE AND THE HHS REPORT OF INVESTIGATION CREATE**
15 **GENUINE ISSUES OF MATERIAL FACT AS TO WHEN PLAINTIFFS HAD**
16 **INQUIRY NOTICE WHICH ONLY A JURY CAN DECIDE**

17 Following Rebecca Powell's death on May 11, 2017, the family received no concrete
18 facts or answers from Centennial Hills Hospital or its medical personnel. *See App. 86.*
19 Approximately six weeks later, the family was notified by the State of Nevada that Rebecca
20 died of "suicide" and noted that alleged fact in block "28a" of the Certificate of Death. *App. 3.*
21 At that point, no reasonable person would be on "inquiry notice" that their loved one died from
22 medical malpractice when the State of Nevada was characterizing the death in an official
23 document as a "suicide." Obviously, a suicide is a willful act in which a person takes their own
24 life.

1 Seeking more answers, Brian Powell filed a complaint with Nevada HHS. App. 5. The
2 agency conducted an “investigation” and rendered findings directly in contradiction to the prior
3 finding of suicide. By letter dated February 5, 2018, which was apparently mailed to Brian
4 Powell’s United States Postal Service “PO Box,”⁵ and did not reach him until several days later,
5 the State of Nevada notified him of several concerning issues relating to the medical care
6 rendered to Rebecca Powell. The investigation found, among other things, that Rebecca’s
7 “[c]linical record lacked documented evidence the patient’s vital signs were monitored on
8 5/11/2017 from 4:47 AM through 6:10 AM, when the patient was found unresponsive.” App.
9 12. Given that the Certificate of Death alleges Rebecca died from “Complications of
10 Duloxetine (Cymbalta) Intoxication,” which it characterized as a suicide, this would suggest she
11 overdosed while in the hospital. How is that possible? Of course, that suggestion would be
12 inconsistent with the Nevada HHS finding that Rebecca was “in respiratory distress was
13 unattended and was not upgraded to a higher level of care.” App. 5. Nevada HHS notified
14 Brian Powell by letter dated February 5, 2018 that “[b]ased on the completed investigation, it
15 was concluded that the facility or agency [Centennial Hills Hospital] had violation(s) with rules
16 and/or regulations.” App. 4.
17
18
19

20 Rebecca Powell’s family filed the instant action within one year of the date of the
21 Nevada HHS letter – on February 4, 2019.⁶ The letter notified them, for the first time, that what
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23
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25 ⁵ See App. 4.

26 ⁶ The letter was actually received later than February 5, 2018.

1 was listed on the Certificate of Death was inaccurate. In the face of the foregoing, all of which
2 Defendant VHS has been aware of since the initiation of this lawsuit since the Nevada HHS
3 investigative report and Certificate of Death are referenced throughout the medical affidavit⁷
4 filed with the Complaint, Defendant VHS continues to argue, frivolously, that this lawsuit is
5 untimely.
6

7 Based upon the documents provided in the Appendix filed with this Opposition,
8 Plaintiffs have clearly shown there are genuine issues of material fact regarding when they
9 received inquiry notice. Confronting a similar set of facts in the Winn case, the Nevada
10 Supreme Court reversed the trial court's grant of summary judgment by concluding that
11 whether a father discovered facts placing him on inquiry notice of potential claims for
12 malpractice when he was informed that patient had suffered extensive brain injury during heart
13 surgery was a question of fact, for limitations purposes.
14

15 Although Defendant VHS relies upon the declaration of Gina Arroyo, who testifies
16 records were mailed to Taryn Creecy but cannot confirm they were actually received by her, the
17 declaration is of no merit on the issue before the Court. Even assuming Taryn Creecy received
18 the medical documents, which Ms. Arroyo alleges were mailed on June 29, 2017,⁸ the State of
19 Nevada issued a Certificate of Death one day earlier, on June 28, 2017, ruling Rebecca Powell's
20 death a suicide. Thus, under the standard articulated in Winn, "no ordinary prudent person"
21
22

23 ⁷ See App. 39-45.
24

25 ⁸ VHS MSJ, Exhibit M.
26

1 would investigate further in the face of an official record finding their loved one committed
2 suicide. Yet, Brian Powell did pursue the matter further by asking the Nevada HHS to
3 investigate her care which it did and concluded there were violations. At this point, the family
4 had inquiry notice for the first time.

5 While VHS can argue the facts and disagree with Nevada HHS's findings, including the
6 import of those findings, what is beyond dispute is that there are genuine issues of material fact
7 as to when the family had inquiry notice of potential medical malpractice and those are
8 questions only a jury can decide.
9

10 **D. THE FACT THAT THE CHILDREN AND FATHER OF REBECCA**
11 **POWELL ARE SUING UNDER A THEORY OF NEGLIGENT INFLECTION**
12 **OF EMOTIONAL DISTRESS DOES NOT MEAN THEY WERE ON**
13 **INQUIRY NOTICE WHEN THEY SUFFERED SENSORY SHOCK**

14 In what can only charitably be called the most frivolous argument advanced in the
15 motion for summary judgment, Defendant VHS argues that if Lloyd, Taryn, Darci and Isaiah
16 Creecy are each suing under a negligent infliction of emotional distress ("NIED") theory, then
17 they were on "notice" of Defendants alleged negligence at the time they experienced sensory
18 shock. This argument is patently absurd. Whether a breach of the duty of care occurred would
19 often not be discovered until much later irrespective of whatever sensory shock a person
20 observed at the time. A plaintiff obviously knows what he or she feels and experiences in the
21 moment, not necessarily what legal theory applies to their situation. Under VHS's tortured
22 logic, the fact that Plaintiffs are now suing for negligent infliction of emotional distress means,
23 from VHS's perspective, that they knew when they experienced sensory shock and
24
25

1 contemporaneous observance of Rebecca’s condition that someone was negligent. This is both
2 conclusory and illogical. Negligence is only a theory that applies to a set of “facts.” That facts
3 exist which may give rise to a cause of action does not mean the plaintiff is aware of the legal
4 theory or has notice that someone may be responsible for their shock and condition of their
5 loved one.
6

7 In this case, Plaintiffs had no access nor were they provided with any information (App.
8 86) at the time Rebecca was in the hospital that suggested she was the victim of medical
9 negligence. VHS argues out of both sides of its figurative “mouth” by arguing on the one hand
10 that the NIED claims are evidence of “notice” but then admitting in Gina Arroyo’s declaration
11 that medical records were not mailed or otherwise provided to Taryn Creecy until June 29,
12 2017. The medical records themselves establish nothing since the State of Nevada ruled
13 Rebecca’s death a suicide one day earlier; a conclusion later contradicted by Nevada HHS’s
14 investigative findings issued on February 5, 2018.
15

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III.

CONCLUSION

For the reasons set forth herein, Plaintiffs respectfully request that the Court deny Defendants' motion for summary judgment for the same reasons it previously denied the motion to dismiss asserting the same arguments. Simply put, Plaintiffs' Complaint initiating this lawsuit was timely filed. And if it was not, as previously noted by the Nevada Supreme Court in a case with similar facts, that's a question for the jury to decide.

Respectfully submitted,

/s/ Paul S. Padda

Paul S. Padda, Esq.
James P. Kelly, Esq.
4560 South Decatur Boulevard, Suite 300
Las Vegas, Nevada 89103
Attorneys for Plaintiffs

Dated: September 16, 2020

CERTIFICATE OF SERVICE

Pursuant to Nevada Rules of Civil Procedure 5, the undersigned hereby certifies that on this day, September 16, 2020, I filed and served a true and correct copy of the above document entitled **PLAINTIFFS' OPPOSITON TO VALLEY HEALTH SYSTEM, LLC'S MOTION FOR SUMMARY JUDGMENT SEEKING DISMISSAL ON STATUTE OF LIMITATIONS GROUNDS** on all parties/counsel of record in the above entitled matter through the Court's electronic filing system.

/s/ Jennifer Greening

Jennifer Greening, Paralegal
PAUL PADDA LAW, PLLC

DECLARATION OF PAUL S. PADDA, ESQ.

I, Paul S. Padda, do hereby declare the following:

1. I am providing this declaration based upon my personal knowledge. I am above the age of 18 and not a party to the litigation referenced in the proceeding paragraph. I am competent to testify to the matters set forth herein.
2. I am counsel of record for Plaintiffs in the case pending before this Court styled Estate of Rebecca Powell, et. al. vs. Valley Health System, LLC, et. al., Clark County District Court, Case No. A-19-788787-C.
3. In conjunction with and in support of Plaintiffs' Opposition to Defendant Valley Health System, LLC's Motion for Summary Judgment I have attached an Appendix with various documents. Included among those documents is a State of Nevada Certificate of Death (redacted in part). Also included is a State of Nevada Department of Health and Human Services Report issued to Brian Powell on February 5, 2018. The Report details numerous deficiencies on the part of Valley Health System, LLC (doing business as Centennial Hills Hospital). Both the death certificate and the Report are self-authenticating documents pursuant to Nevada Revised Statute 52.125.
4. Also included is a color photograph of Rebecca Powell with her children Isaiah, Darci and Taryn Creecy. This photograph was provided to my office by Ms. Powell's father Lloyd Creecy and has been provided to Defendants as part of Plaintiffs' First Supplemental Disclosures, PLTF #141.
5. Finally, included among the court filed documents printed from the Court's electronic docketing system is also a copy of the Estate of Rebecca Powell's response to Interrogatory number 10 to Defendants' Requests for Interrogatories. As counsel of record for Plaintiff, I assisted in the drafting of this response and having it served upon counsel for Defendants.

I declare, under penalty of perjury, that the foregoing is true and correct to the best of my knowledge and belief.



Paul S. Padda, Esq.

Dated: September 16, 2020



STATE OF NEVADA

CERTIFICATION OF VITAL RECORD

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

CASE FILE NO. 3956121

CERTIFICATE OF DEATH

2017011740

STATE FILE NUMBER

TYPE OR
PRINT IN
PERMANENT
BLACK INK

DECEDENT

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

PARENTS

DISPOSITION

TRADE CALL

CERTIFIER

REGISTRAR

CAUSE OF
DEATH

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

1a. DECEASED-NAME (FIRST,MIDDLE,LAST,SUFFIX) Rebecca Ann POWELL				2. DATE OF DEATH (Mo/Day/Year) May 11, 2017		3a. COUNTY OF DEATH Clark	
3b. CITY, TOWN, OR LOCATION OF DEATH Las Vegas		3c. HOSPITAL OR OTHER INSTITUTION -Name (If not either, give street and city) Centennial Hills Hospital Medical Center		3d. Hosp. or Inst. indicate DOA, OP/Emer. Rm. Inpatient(Specify) Inpatient		4. SEX Female	
5. RACE (Specify) White		6. Hispanic Origin? Specify No - Non-Hispanic		7a. AGE-Last birthday (Years) 41		7b. UNDER 1 YEAR MOS DAYS	
9a. STATE OF BIRTH (If not US/CA, name country) Ohio		9b. CITIZEN OF WHAT COUNTRY United States		10. EDUCATION 16		11. MARITAL STATUS (Specify) Divorced	
13. SOCIAL SECURITY NUMBER		14a. USUAL OCCUPATION (Give Kind of Work Done During Most of Year) Registered Nurse		14b. KIND OF BUSINESS OR INDUSTRY Medical		12. SURVIVING SPOUSE'S NAME (Last name prior to first marriage) Ever in US Armed Forces? No	
15a. RESIDENCE - STATE Nevada		15b. COUNTY Clark		15c. CITY, TOWN OR LOCATION Las Vegas		15d. STREET AND NUMBER 7589 Splashing Rock Drive	
16. FATHER/PARENT - NAME (First Middle Last Suffix) Lloyd CREECY				17. MOTHER/PARENT - NAME (First Middle Last Suffix) Elaine ROBERTSON			
18a. INFORMANT- NAME (Type or Print) Taryn N CREECY				18b. MAILING ADDRESS (Street or R.F.D. No, City or Town, State, Zip) 7589 Splashing Rock Drive Las Vegas, Nevada 89131			
19a. BURIAL, CREMATION, REMOVAL, OTHER (Specify) Cremation		19b. CEMETERY OR CREMATORY - NAME Palm Crematory		19c. LOCATION City or Town State Las Vegas Nevada 89101			
20a. FUNERAL DIRECTOR - SIGNATURE (Or Person Acting as Such) LAWRENCE NEUBAUER		20b. FUNERAL DIRECTOR LICENSE NUMBER FD27		20c. NAME AND ADDRESS OF FACILITY Affordable Cremation and Burial Services 2127 W Charleston Blvd Las Vegas NV 89102			
TRADE CALL - NAME AND ADDRESS Hiles Funeral Home 438 W Sunset Road #A Henderson NV 89015							
21a. To the best of my knowledge, death occurred at the time, date and place and due to the cause(s) stated. (Signature & Title) JENNIFER N CORNEAL MD				22a. On the basis of examination and/or investigation, in my opinion death occurred at the time, date and place and due to the cause(s) stated. (Signature & Title) JENNIFER N CORNEAL MD			
21b. DATE SIGNED (Mo/Day/Yr) June 23, 2017		21c. HOUR OF DEATH 06:57		22b. DATE SIGNED (Mo/Day/Yr) June 23, 2017		22c. HOUR OF DEATH 06:57	
21d. NAME OF ATTENDING PHYSICIAN IF OTHER THAN CERTIFIER (Type or Print) Jennifer N Corneal MD				22d. PRONOUNCED DEAD (Mo/Day/Yr) May 11, 2017			
23a. NAME AND ADDRESS OF CERTIFIER (PHYSICIAN, ATTENDING PHYSICIAN, MEDICAL EXAMINER, OR CORONER) (Type or Print) Jennifer N Corneal MD 1704 Pinto Lane Las Vegas, NV 89106				23b. LICENSE NUMBER 15917			
24a. REGISTRAR (Signature) SUSAN ZANNIS				24b. DATE RECEIVED BY REGISTRAR (Mo/Day/Yr) June 23, 2017		24c. DEATH DUE TO COMMUNICABLE DISEASE YES <input type="checkbox"/> NO <input checked="" type="checkbox"/>	
25. IMMEDIATE CAUSE (ENTER ONLY ONE CAUSE PER LINE FOR (a), (b), AND (c).) PART I (a) Complications Of Duloxetine (Cymbalta) Intoxication DUE TO, OR AS A CONSEQUENCE OF: (b) DUE TO, OR AS A CONSEQUENCE OF: (c) DUE TO, OR AS A CONSEQUENCE OF: (d) DUE TO, OR AS A CONSEQUENCE OF:							
PART II OTHER SIGNIFICANT CONDITIONS-Conditions contributing to death but not resulting in the underlying cause given in Part I.						26. AUTOPSY (Specify Yes or No) No	
20a. ACC. SUICIDE, HOMICIDE, UNDET. OR PENDING INVEST. (Specify) Suicide		28b. DATE OF INJURY (Mo/Day/Yr)		28c. HOUR OF INJURY		28d. DESCRIBE HOW INJURY OCCURRED Administration Of Excess Duloxetine (Cymbalta)	
28a. INJURY AT WORK (Specify Yes or No) No		28f. PLACE OF INJURY- At home, farm, street, factory, office building, etc. (Specify) Home		28g. LOCATION STREET OR R.F.D. No. 7589 Splashing Rock Drive		28h. CITY OR TOWN STATE Las Vegas Nevada	

LOCAL REGISTRAR

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

VRS-Rev-20120523a



426091

DATE ISSUED:

JUN 28 2017

Registrar of Vital Statistics

By: *[Signature]*

This copy not valid unless prepared on watermarked security paper displaying date, seal and signature of Registrar.
SOUTHERN NEVADA HEALTH DISTRICT • P.O. Box 3902 • Las Vegas • NV 89127 • 702-759-1070 • Tax ID # 88-0151573

PROBATE000014



STATE OF NEVADA

BRIAN SANDOVAL
Governor

RICHARD WHITLEY, MS
Director, DHHS



JULIE KOTCHEVAR
Administrator, DPBH

VACANT
Chief Medical Officer

**DEPARTMENT OF HEALTH AND HUMAN SERVICES
DIVISION OF PUBLIC AND BEHAVIORAL HEALTH
BUREAU OF HEALTH CARE QUALITY AND COMPLIANCE**
727 Fairview Dr., Suite E, Carson City, NV 89701
Telephone: 775-684-1030, Fax: 775-684-1073
dpbh.nv.gov

February 5, 2018

Brian Powell
Po Box 750131
Las Vegas, NV 89136

Re: Complaint Number NV00049271

Dear Mr. Powell,

With reference to your complaint against Centennial Hills Hospital Medical Center, an unannounced inspection was completed on 09/21/2017 to investigate your concerns about care and services.

During the investigation, the State Inspector interviewed patients/residents, reviewed their records, interviewed staff, and made observations while the facility or agency was in operation. The facility's or agency's actions were evaluated using applicable state and/or federal rules and regulations to determine if they were in compliance.

Based on the completed investigation, it was concluded that the facility or agency had violation(s) with rules and/or regulations. The Bureau will take appropriate measures to ensure the facility/agency is well-informed of the specifics of violation(s), and that they will exercise their due diligence in preventing similar incidents in the future. A copy of the report is enclosed.

Thank you for reporting your concerns. Please know that your voice will help improve the services of health facilities and agencies. If we can be of further assistance, please contact the office, at 702-486-6515 in LV, 775-684-1030 in Carson City.

Sincerely,

DPBH Complaint Coordinator

PRINTED: 02/05/2018
FORM APPROVED

Division of Public and Behavioral Health

STATEMENT OF DEFICIENCIES AND PLAN OF CORRECTION		(X1) PROVIDER/SUPPLIER/CLIA IDENTIFICATION NUMBER: NVS5086HOS	(X2) MULTIPLE CONSTRUCTION A. BUILDING: _____ B. WING: _____		(X3) DATE SURVEY COMPLETED 09/21/2017
NAME OF PROVIDER OR SUPPLIER CENTENNIAL HILLS HOSPITAL MEDICAL CEN			STREET ADDRESS, CITY, STATE, ZIP CODE 6900 N DURANGO DR LAS VEGAS, NV 89149		
(X4) ID PREFIX TAG	SUMMARY STATEMENT OF DEFICIENCIES (EACH DEFICIENCY MUST BE PRECEDED BY FULL REGULATORY OR LSC IDENTIFYING INFORMATION)	ID PREFIX TAG	PROVIDER'S PLAN OF CORRECTION (EACH CORRECTIVE ACTION SHOULD BE CROSS-REFERENCED TO THE APPROPRIATE DEFICIENCY)	(X5) COMPLETE DATE	
S 000	<p>Initial Comments</p> <p>This Statement of Deficiencies was generated as a result of complaint investigation conducted at your facility and completed on 9/21/17 in accordance with Nevada Administrative Code, Chapter 449, Hospital.</p> <p>The census at the time of the survey was 270.</p> <p>The sample size was five.</p> <p>There were two complaints investigated.</p> <p>Complaint #NV00049271 was substantiated.</p> <p>The allegation a patient in respiratory distress was unattended and was not upgraded to a higher level of care was substantiated (See Tag S 300).</p> <p>Complaint #NV00049721 with the following allegations could not be substantiated:</p> <p>Allegation 1: sterile technique was not implemented when suturing a re-opened surgical incision.</p> <p>Allegation 2: a re-opened surgical incision was sutured without using local anesthesia.</p> <p>Allegation 3: pain medication was not administered in a timely manner.</p> <p>Allegation 4: an anesthesia vial was left at bedside in a patient's room.</p> <p>The investigation into the allegations included:</p> <p>Review of five clinical records including the patient of concern.</p> <p>Interviews were conducted with the Chief of Nursing Operations (CNO) and an Emergency</p>	S 000			

If deficiencies are cited, an approved plan of correction must be returned within 10 days after receipt of this statement of deficiencies.
LABORATORY DIRECTOR'S OR PROVIDER/SUPPLIER REPRESENTATIVE'S SIGNATURE

TITLE

(X6) DATE

10/27/17

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If continuation sheet 1 of 12

PLTF 54

PRINTED: 02/05/2018
FORM APPROVED

Division of Public and Behavioral Health

STATEMENT OF DEFICIENCIES AND PLAN OF CORRECTION		(X1) PROVIDER/SUPPLIER/CLIA IDENTIFICATION NUMBER: NVS5086HOS	(X2) MULTIPLE CONSTRUCTION A. BUILDING: _____ B. WING: _____		(X3) DATE SURVEY COMPLETED 09/21/2017
NAME OF PROVIDER OR SUPPLIER CENTENNIAL HILLS HOSPITAL MEDICAL CEN			STREET ADDRESS, CITY, STATE, ZIP CODE 6900 N DURANGO DR LAS VEGAS, NV 89149		
(X4) ID PREFIX TAG	SUMMARY STATEMENT OF DEFICIENCIES (EACH DEFICIENCY MUST BE PRECEDED BY FULL REGULATORY OR LSC IDENTIFYING INFORMATION)	ID PREFIX TAG	PROVIDER'S PLAN OF CORRECTION (EACH CORRECTIVE ACTION SHOULD BE CROSS-REFERENCED TO THE APPROPRIATE DEFICIENCY)	(X5) COMPLETE DATE	
S 000	Continued From page 1 Department Physician. Observation of a medical surgical hospitalization unit including two patient rooms. Review of the facility policies title Pain Management, Wound Care Therapeutic Support Services Guidelines, Sterile Products: Aseptic Technique, Hand Hygiene and Drug Storage. The findings and conclusions of any investigation by the Division of Public and Behavioral Health shall not be construed as prohibiting any criminal or civil investigations, actions or other claims for relief that may be available to any party under applicable federal, state or local laws. The following deficiency was identified:	S 000			
S 300 SS=G	NAC 449.3622 Appropriate Care of Patient 1. Each patient must receive, and the hospital shall provide or arrange for, individualized care, treatment and rehabilitation based on the assessment of the patient that is appropriate to the needs of the patient and the severity of the disease, condition, impairment or disability from which the patient is suffering. This Regulation is not met as evidenced by: Based on observation, interview, record review and document review, the facility failed to ensure a patient in respiratory distress was monitored and received the necessary care for 1 of 5 sampled residents (Resident #2). Findings include:	S 300		10/27/17	

If deficiencies are cited, an approved plan of correction must be returned within 10 days after receipt of this statement of deficiencies.

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Division of Public and Behavioral Health

STATEMENT OF DEFICIENCIES AND PLAN OF CORRECTION		(X1) PROVIDER/SUPPLIER/CLIA IDENTIFICATION NUMBER: NVS5086HOS	(X2) MULTIPLE CONSTRUCTION A. BUILDING: _____ B. WING: _____		(X3) DATE SURVEY COMPLETED 09/21/2017
NAME OF PROVIDER OR SUPPLIER CENTENNIAL HILLS HOSPITAL MEDICAL CEN		STREET ADDRESS, CITY, STATE, ZIP CODE 6900 N DURANGO DR LAS VEGAS, NV 89149			
(X4) ID PREFIX TAG	SUMMARY STATEMENT OF DEFICIENCIES (EACH DEFICIENCY MUST BE PRECEDED BY FULL REGULATORY OR LSC IDENTIFYING INFORMATION)	ID PREFIX TAG	PROVIDER'S PLAN OF CORRECTION (EACH CORRECTIVE ACTION SHOULD BE CROSS-REFERENCED TO THE APPROPRIATE DEFICIENCY)		(X5) COMPLETE DATE
S 300	<p>Continued From page 2</p> <p>Patient #2</p> <p>Patient #2 was admitted on 5/3/17, with diagnoses including intentional medication overdose and acute respiratory failure.</p> <p>A Physician progress note dated 5/9/17 at 2:06 PM, documented the patient did not complain of shortness of breath (SOB). The patient was status post intubation with Methicillin Resistant Staphylococcus Aureus (MRSA) pneumonia.</p> <p>The Pulmonologist consultation report dated 5/9/17 at 5:49 PM, indicated the patient did not have inflammation of the pleura, no blood in sputum, secretions were compatible with aspiration and MRSA. The treatment plan included breathing treatment, oxygen as needed and to decrease steroids.</p> <p>The Nursing progress dated 5/10/17 at 2:00 AM, documented the patient had a non-productive cough and SOB. The patient received oxygen at 2 liters per minute (lpm) and a breathing treatment as needed. The progress note did not document the patient's vital signs.</p> <p>On 5/10/17 at 3:41 AM, the clinical record documented the following vital signs: heart rate 76 beats per minutes (bpm) and respiratory rate 16 breaths per minute (br/m). The vital signs report did not document the blood pressure (B/P) or oxygen saturation (SPO2). The patient was receiving oxygen at 3 lpm via nasal cannula.</p> <p>On 5/10/17 at 8:00 AM, the clinical record documented the following vital signs: temperature 36.6 Fahrenheit, heart rate 96 bpm, respiratory rate 18 br/m, B/P 133/76, SPO2 96% with oxygen at 2 lpm via nasal cannula.</p>	S 300			

If deficiencies are cited, an approved plan of correction must be returned within 10 days after receipt of this statement of deficiencies.

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PLTF 56

Division of Public and Behavioral Health

STATEMENT OF DEFICIENCIES AND PLAN OF CORRECTION		(X1) PROVIDER/SUPPLIER/CLIA IDENTIFICATION NUMBER: NVS5086HOS	(X2) MULTIPLE CONSTRUCTION A. BUILDING: _____ B. WING: _____		(X3) DATE SURVEY COMPLETED 09/21/2017
NAME OF PROVIDER OR SUPPLIER CENTENNIAL HILLS HOSPITAL MEDICAL CEN			STREET ADDRESS, CITY, STATE, ZIP CODE 6900 N DURANGO DR LAS VEGAS, NV 89149		
(X4) ID PREFIX TAG	SUMMARY STATEMENT OF DEFICIENCIES (EACH DEFICIENCY MUST BE PRECEDED BY FULL REGULATORY OR LSC IDENTIFYING INFORMATION)	ID PREFIX TAG	PROVIDER'S PLAN OF CORRECTION (EACH CORRECTIVE ACTION SHOULD BE CROSS-REFERENCED TO THE APPROPRIATE DEFICIENCY)		(X5) COMPLETE DATE
S 300	<p>Continued From page 3</p> <p>On 5/10/17 at 3:04 PM, the clinical record documented the following vital signs: heart rate 98 bpm, respiratory rate 20 br/m, B/P 133/76 and SPO2 95% with oxygen at 3 lpm via nasal cannula.</p> <p>The Nursing progress note dated 5/10/17 at 3:13 PM, documented the patient was resting in bed with SOB and fatigue. The patient was monitored with cameras due to being on a legal hold.</p> <p>The Nursing progress note dated 5/10/17 at 4:11 PM, revealed the patient complained of labored breathing. A physician was notified and orders were obtained for a chest x-ray and arterial blood gases. The progress note documented the patient was treated with breathing treatments and Ativan without satisfactory results. The progress note did not document vital signs.</p> <p>The Respiratory Therapist (RT) progress note dated 5/10/17 at 4:32 PM, documented the patient complained of respiratory distress when a radiology test was being conducted. The facility Rapid Response Team (RRT) was activated and checked the patient. The patient was returned to her room with the following vital signs: heart rate 115 bpm, SPO2 98% with oxygen at 6 lpm and a respiratory rate 28 br/m. Arterial blood gas (ABG) analysis was drawn with no critical results.</p> <p>The chest X-ray results dated 5/10/17 at 4:32 PM, documented persistent bilateral interstitial infiltrates with no changes since the previous chest-X-ray.</p> <p>The Pulmonologist consultation dated 5/10/17 at 5:15 PM, documented the patient complained of dyspnea (difficult or labored breathing) when a</p>	S 300			

If deficiencies are cited, an approved plan of correction must be returned within 10 days after receipt of this statement of deficiencies.

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Division of Public and Behavioral Health

STATEMENT OF DEFICIENCIES AND PLAN OF CORRECTION		(X1) PROVIDER/SUPPLIER/CLIA IDENTIFICATION NUMBER: NVS5086HOS	(X2) MULTIPLE CONSTRUCTION A. BUILDING: _____ B. WING: _____		(X3) DATE SURVEY COMPLETED 09/21/2017
NAME OF PROVIDER OR SUPPLIER CENTENNIAL HILLS HOSPITAL MEDICAL CEN			STREET ADDRESS, CITY, STATE, ZIP CODE 6900 N DURANGO DR LAS VEGAS, NV 89149		
(X4) ID PREFIX TAG	SUMMARY STATEMENT OF DEFICIENCIES (EACH DEFICIENCY MUST BE PRECEDED BY FULL REGULATORY OR LSC IDENTIFYING INFORMATION)	ID PREFIX TAG	PROVIDER'S PLAN OF CORRECTION (EACH CORRECTIVE ACTION SHOULD BE CROSS-REFERENCED TO THE APPROPRIATE DEFICIENCY)		(X5) COMPLETE DATE
S 300	<p>Continued From page 4</p> <p>radiology study was being conducted and the RRT was activated. The patient did not have inflammation of the pleura (membranes that cover the lungs) and the chest X-ray showed some changes, but not fluids in the pleura. The increased dyspnea was possibly caused by "too rapid taper steroids". The treatment plan was to resume the steroids every eight hours, breathing treatment and pulmonary hygiene. Steroids were resumed as per Pulmonologist recommendation.</p> <p>The RT treatment report dated 5/10/17 at 10:22 PM, revealed the patient was receiving Oxygen via nasal cannula at 3 liter per minute (LPM) with an Oxygen saturation of 92 percent (%).</p> <p>The RT evaluation prior to a respiratory treatment performed on 5/10/17 at 11:51 PM, revealed breath sounds were diminished in all pulmonary lobes.</p> <p>The Medication Administration Record (MAR) dated 5/10/17 at 11:52 PM, documented Ipratropium 0.02 %, Levalbuterol 0.63 milligrams (mg) and Acetylcysteine 20 inhalation were administered. The patient's vital signs were documented as follows: pulse 100 bpm and respiratory rate at 22 br/m.</p> <p>The post respiratory treatment evaluation performed on 5/11/17 at 12:10 AM, revealed unchanged breath sounds (diminished) in all pulmonary lobes. The patient was receiving Oxygen via nasal cannula at 3 liter per minute (LPM) with an Oxygen saturation of 95%.</p> <p>The Respiratory therapy treatment report dated 5/11/17 at 2:00 AM, lacked the patient's respiratory status information or vital sign data. The respiratory therapy treatment note was blank.</p>	S 300			

If deficiencies are cited, an approved plan of correction must be returned within 10 days after receipt of this statement of deficiencies.

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PRINTED: 02/05/2018
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Division of Public and Behavioral Health

STATEMENT OF DEFICIENCIES AND PLAN OF CORRECTION	(X1) PROVIDER/SUPPLIER/CLIA IDENTIFICATION NUMBER: NVS5086HOS	(X2) MULTIPLE CONSTRUCTION A. BUILDING: _____ B. WING: _____	(X3) DATE SURVEY COMPLETED 09/21/2017
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NAME OF PROVIDER OR SUPPLIER CENTENNIAL HILLS HOSPITAL MEDICAL CEN	STREET ADDRESS, CITY, STATE, ZIP CODE 6900 N DURANGO DR LAS VEGAS, NV 89149
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(X4) ID PREFIX TAG	SUMMARY STATEMENT OF DEFICIENCIES (EACH DEFICIENCY MUST BE PRECEDED BY FULL REGULATORY OR LSC IDENTIFYING INFORMATION)	ID PREFIX TAG	PROVIDER'S PLAN OF CORRECTION (EACH CORRECTIVE ACTION SHOULD BE CROSS-REFERENCED TO THE APPROPRIATE DEFICIENCY)	(X5) COMPLETE DATE
S 300	<p>Continued From page 5</p> <p>The Nursing progress note dated 5/11/17 at 3:15 AM, documented the patient was checked by two Registered Nurses (RN). The patient complained of anxiety and difficulty breathing. A physician and RT were notified and an order for Ativan was obtained. The nursing progress note indicated the patient kept pulling the Oxygen off, and RT recommended to monitor the patient closely. The Nurse Supervisor was notified about the need of a sitter to monitor the patient. The Camera Room was notified to check the patient via surveillance camera for removing the Oxygen. A technician at the Camera Room indicated the room could not be seen clearly through the camera and suggested to move the patient to another room with a camera. The note documented the patient seemed relaxed after the administration of the medication Ativan. The patient's vital signs were not documented in this note. There was no evidence the patient was changed to another room as suggested by the Camera Room technician.</p> <p>The RT evaluation prior to a respiratory treatment performed on 5/11/17 at 4:08 AM, revealed the breath sounds were diminished in all pulmonary lobes. The patient's Oxygen saturation was 90% and Oxygen was administered with a non-rebreather mask, however, the rate of Oxygen flow was not documented. The following vital signs were documented: heart rate of 130 bpm and respiratory rate of 30 br/m. There was no evidence the attending physician was notified about the increased heart rate and respiratory rate.</p> <p>The MAR dated 5/11/17 at 4:18 AM, documented Ipratropium 0.02 %, Levalbuterol 0.63 mg and Acetylcysteine 20 inhalation were administered.</p>	S 300		

If deficiencies are cited, an approved plan of correction must be returned within 10 days after receipt of this statement of deficiencies.

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Division of Public and Behavioral Health

STATEMENT OF DEFICIENCIES AND PLAN OF CORRECTION	(X1) PROVIDER/SUPPLIER/CLIA IDENTIFICATION NUMBER: NVS5086HOS	(X2) MULTIPLE CONSTRUCTION A. BUILDING: _____ B. WING: _____	(X3) DATE SURVEY COMPLETED 09/21/2017
---	--	--	--

NAME OF PROVIDER OR SUPPLIER CENTENNIAL HILLS HOSPITAL MEDICAL CEN	STREET ADDRESS, CITY, STATE, ZIP CODE 6900 N DURANGO DR LAS VEGAS, NV 89149
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(X4) ID PREFIX TAG	SUMMARY STATEMENT OF DEFICIENCIES (EACH DEFICIENCY MUST BE PRECEDED BY FULL REGULATORY OR LSC IDENTIFYING INFORMATION)	ID PREFIX TAG	PROVIDER'S PLAN OF CORRECTION (EACH CORRECTIVE ACTION SHOULD BE CROSS-REFERENCED TO THE APPROPRIATE DEFICIENCY)	(X5) COMPLETE DATE
S 300	<p>Continued From page 6</p> <p>The patient's vital signs were documented as follows: pulse 130 bpm and respiratory rate at 30 br/m.</p> <p>The post respiratory treatment evaluation performed on 5/11/17 at 4:47 AM, revealed unchanged breath sounds (diminished) in all pulmonary lobes. The patient was receiving Oxygen via non-rebreather mask with Oxygen at 15 lpm, SPO2 of 90% and unchanged breath sounds. There was no evidence the attending physician was notified about the change in the patient's condition.</p> <p>The Nursing progress note dated 5/11/17 at 8:57 AM, documented at approximately 6:10 AM the patient was found unresponsive with the Oxygen mask in her feet and Cardio-Pulmonary Resuscitation (CPR) was initiated.</p> <p>The Respiratory therapy progress note dated 5/11/17 at 10:20 AM, indicated therapist entered the room during a Code Blue and CPR was initiated. The note documented a physician pronounced the patient at 6:50 AM and CPR ended.</p> <p>The Legal 2000 (Legal hold) Patient Frequency Observation Record date 5/11/17, revealed the patient was monitored in room 701 via camera every 15 minutes from 5/10/17 at 7:00 PM though 5/11/17 at 5:00 AM. The record documented the patient was awake/alert all the time, except on 5/10/17 at 11:00 PM and on 5/11/17 from 5:00 AM to 6:00 AM when it was documented the patient was sleeping. The record indicated a nurse called the sitter at 4:20 AM, the patient removed the intravenous (IV) lines, but they could not see the incident on monitor and suggested to change the patient to room 832. The record revealed at 6:10</p>	S 300		

If deficiencies are cited, an approved plan of correction must be returned within 10 days after receipt of this statement of deficiencies.

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If continuation sheet 7 of 12

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Division of Public and Behavioral Health

STATEMENT OF DEFICIENCIES AND PLAN OF CORRECTION		(X1) PROVIDER/SUPPLIER/CLIA IDENTIFICATION NUMBER: NVS5086HOS	(X2) MULTIPLE CONSTRUCTION A. BUILDING: _____ B. WING: _____		(X3) DATE SURVEY COMPLETED 09/21/2017
NAME OF PROVIDER OR SUPPLIER CENTENNIAL HILLS HOSPITAL MEDICAL CEN			STREET ADDRESS, CITY, STATE, ZIP CODE 6900 N DURANGO DR LAS VEGAS, NV 89149		
(X4) ID PREFIX TAG	SUMMARY STATEMENT OF DEFICIENCIES (EACH DEFICIENCY MUST BE PRECEDED BY FULL REGULATORY OR LSC IDENTIFYING INFORMATION)	ID PREFIX TAG	PROVIDER'S PLAN OF CORRECTION (EACH CORRECTIVE ACTION SHOULD BE CROSS-REFERENCED TO THE APPROPRIATE DEFICIENCY)		(X5) COMPLETE DATE
S 300	<p>Continued From page 7</p> <p>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 approx. (approximately) one hour".</p> <p>Clinical record lacked documented evidence the patient's vital signs were monitored on 5/11/17 from 4:47 AM through 6:10 AM, when the patient was found unresponsive. There was no evidence a physician or the Rapid Response Team (RRT) were notified about the abnormal vital signs obtained at 4:08 AM, 4:18 AM, 4:47 AM and the patient's change in condition. The record did not document if the patient was moved to another room with a better camera resolution to monitor if Oxygen mask was removed.</p> <p>The RN who provided care to the patient on 5/11/17, submitted a statement dated 8/4/17, which indicated the patient was complaining of shortness of breath (SOB) from the previous shift and the RT provided breathing treatments several times but the patient was uncooperative. The patient was medicated with Ativan. The RN stated the attending physician was notified about the SOB and an order for a computerized tomography (CT) was obtained. Due to the SOB and anxiety, the CT could not be performed and the physician ordered another dose of Ativan. The RN indicated after the medication was administered, vital signs stabilized and the patient fell asleep at approximately 4:15 AM. A Certified Nursing Assistant (CNA) and the RN rotated hourly to check the patient. The statement documented the vital signs were at baseline and the patient was monitored via camera. The RN continued to provide care to other patients and hourly rounds were performed by a CNA at 5:00 AM and "all was well". The RN's statement continued that at no point it was believed the</p>	S 300			

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If continuation sheet 8 of 12

PLTF 61

Division of Public and Behavioral Health

STATEMENT OF DEFICIENCIES AND PLAN OF CORRECTION		(X1) PROVIDER/SUPPLIER/CLIA IDENTIFICATION NUMBER: NVS6086HOS	(X2) MULTIPLE CONSTRUCTION A. BUILDING: _____ B. WING: _____		(X3) DATE SURVEY COMPLETED 09/21/2017
NAME OF PROVIDER OR SUPPLIER CENTENNIAL HILLS HOSPITAL MEDICAL CEN			STREET ADDRESS, CITY, STATE, ZIP CODE 6900 N DURANGO DR LAS VEGAS, NV 89149		
(X4) ID PREFIX TAG	SUMMARY STATEMENT OF DEFICIENCIES (EACH DEFICIENCY MUST BE PRECEDED BY FULL REGULATORY OR LSC IDENTIFYING INFORMATION)	ID PREFIX TAG	PROVIDER'S PLAN OF CORRECTION (EACH CORRECTIVE ACTION SHOULD BE CROSS-REFERENCED TO THE APPROPRIATE DEFICIENCY)		(X5) COMPLETE DATE
S 300	<p>Continued From page 8</p> <p>patient was in critical distress because the patient's condition was related to anxiety and the concerns had been reported to the Charge Nurse.</p> <p>The discharge summary dated 5/23/17, revealed the attending physician had been notified on 5/10/17 at 5:00 PM, when the patient complained of shortness of breath. The physician ordered arterial blood gases (ABG) and a chest X-ray. The physician documented the chest-X-ray and the ABG results were reviewed and an RN was directed to contact a Pulmonologist for an evaluation. The discharge summary indicated the attending physician was notified on 5/11/17 in the morning the patient expired. There was no evidence the attending physician was notified of the patient's increased respiratory and heart rate obtained at 4:08 AM and 4:47 AM.</p> <p>On 8/2/17 at 1:50 PM, the Chief of Nursing Operations (CNO) indicated Patient #2 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.</p> <p>On 9/21/17 at 12:26 PM, the facility Process Improvement Manager indicated the patient was not monitored by telemetry and the cardiac monitoring documentation available for 5/11/17 was the electrocardiogram performed during the Code Blue.</p> <p>On 8/2/17 at 2:22 PM, an observation was conducted on the behavioral monitoring unit where staff monitored patients in their room via camera. A CNA (sitter) and a RN were on duty. The RN explained the purpose of the monitoring was to ensure the patients with psychiatric</p>	S 300			

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PLTF 62

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Division of Public and Behavioral Health

STATEMENT OF DEFICIENCIES AND PLAN OF CORRECTION		(X1) PROVIDER/SUPPLIER/CLIA IDENTIFICATION NUMBER: NVS5086HOS	(X2) MULTIPLE CONSTRUCTION A. BUILDING: _____ B. WING: _____		(X3) DATE SURVEY COMPLETED 09/21/2017
NAME OF PROVIDER OR SUPPLIER CENTENNIAL HILLS HOSPITAL MEDICAL CEN			STREET ADDRESS, CITY, STATE, ZIP CODE 6900 N DURANGO DR LAS VEGAS, NV 89149		
(X4) ID PREFIX TAG	SUMMARY STATEMENT OF DEFICIENCIES (EACH DEFICIENCY MUST BE PRECEDED BY FULL REGULATORY OR LSC IDENTIFYING INFORMATION)	ID PREFIX TAG	PROVIDER'S PLAN OF CORRECTION (EACH CORRECTIVE ACTION SHOULD BE CROSS-REFERENCED TO THE APPROPRIATE DEFICIENCY)	(X5) COMPLETE DATE	
S 300	<p>Continued From page 9</p> <p>behaviors were safe in their rooms. If a patient was out of bed, pulled lines out or got out the room, the nurse was notified immediately. The RN indicated it was only a visual monitoring and it was not capable of monitoring vital signs or if the patient was breathing or not.</p> <p>On 9/21/17 at 10:38 AM, a CNA explained rounds were performed every hour and as needed to each room. The CNA checked for comfort, pain or other issues or concerns the patients manifested. If there was any change in the patient's condition, the CNA notified the Licensed Nurse immediately. Vital signs were obtained by CNAs. If any of the vital signs were out of the normal parameters, the vital signs would be repeated and the nurse would be notified. The CNA described normal parameter for vital signs: B/P: 130/60, HR:60 bpm, RR: 14-16 br/m, SPO2: 91% and above.</p> <p>On 9/21/17 at 10:47 AM, another CNA indicated rounds were performed every hour and as needed. The CNA explained during the rounds they checked the patients for comfort, pain, distress or other concerns from the patient. The CNA verbalized vital signs were obtained by CNAs and the normal parameters were described as follow: B/P: 120/60, HR: 60 -88 bpm, SPO2: above 92% and RR 16-18 br/m. If any of the vital signs were out of parameter, the nurse would be notified.</p> <p>On 9/21/17 at 11:02 AM, a 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 90%. If a patient presented with a HR of 140 bpm and RR of 30 br/m, the physician must be notified immediately and the RRT activated.</p>	S 300			

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PLTF 63

Division of Public and Behavioral Health

STATEMENT OF DEFICIENCIES AND PLAN OF CORRECTION		(X1) PROVIDER/SUPPLIER/CLIA IDENTIFICATION NUMBER: NVS5086HOS	(X2) MULTIPLE CONSTRUCTION A. BUILDING: _____ B. WING: _____		(X3) DATE SURVEY COMPLETED 09/21/2017
NAME OF PROVIDER OR SUPPLIER CENTENNIAL HILLS HOSPITAL MEDICAL CEN			STREET ADDRESS, CITY, STATE, ZIP CODE 6900 N DURANGO DR LAS VEGAS, NV 89149		
(X4) ID PREFIX TAG	SUMMARY STATEMENT OF DEFICIENCIES (EACH DEFICIENCY MUST BE PRECEDED BY FULL REGULATORY OR LSC IDENTIFYING INFORMATION)	ID PREFIX TAG	PROVIDER'S PLAN OF CORRECTION (EACH CORRECTIVE ACTION SHOULD BE CROSS-REFERENCED TO THE APPROPRIATE DEFICIENCY)	(X5) COMPLETE DATE	
S 300	<p>Continued From page 10</p> <p>On 9/21/17 at 11:20 AM, an RT Supervisor explained non-rebreather mask was used as the last resort when a patient had respiratory problems that did not improve with breathing treatment, pulmonary hygiene and the SPO2 was lower than 90%. The RT Supervisor indicated if a non-rebreather mask was placed, the patient had to be upgraded to the next level of care. The RT Supervisor stated any RT could notify the physician and the RRT if after an assessment it was determined a patient was in respiratory distress. The RT Supervisor confirmed according to the vital signs documented in the record on 5/11/17 at 4:08 AM and 4:47 AM, Patient #2 was in respiratory distress and required an upgrade of the level of care. The RT Supervisor explained SPO2 lower than 90%, changes in skin color, the use of the accessory respiratory muscles, increase in heart and respiratory rates and abnormal arterial blood gases could be identified such as signs and symptoms of respiratory distress. The RT Supervisor verbalized the normal SPO2 was 90% or above but depended of the patient's condition.</p> <p>On 9/21/17 at 12:01 PM, the RT who provided care to Patient #2 on 5/10/17 during the day, had been worked with the patient since she was extubated and transferred from Intensive Care to the med-surge unit. The RT was present when the patient complained of a respiratory distress in the radiology unit and the RRT was activated. An Emergency Department physician responded to the incident, stabilized the patient and transferred back to her room. After that time, the RT provided a breathing treatment several times throughout the day but vital signs were stable. The RT explained a non- rebreather mask was used when a patient was not oxygenating (SPO2 was lower than 90%) and required an upgrade level of</p>	S 300			

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STATEMENT OF DEFICIENCIES AND PLAN OF CORRECTION		(X1) PROVIDER/SUPPLIER/CLIA IDENTIFICATION NUMBER: NVS5086HOS	(X2) MULTIPLE CONSTRUCTION A. BUILDING: _____ B. WING: _____		(X3) DATE SURVEY COMPLETED 09/21/2017
NAME OF PROVIDER OR SUPPLIER CENTENNIAL HILLS HOSPITAL MEDICAL CEN			STREET ADDRESS, CITY, STATE, ZIP CODE 6900 N DURANGO DR LAS VEGAS, NV 89149		
(X4) ID PREFIX TAG	SUMMARY STATEMENT OF DEFICIENCIES (EACH DEFICIENCY MUST BE PRECEDED BY FULL REGULATORY OR LSC IDENTIFYING INFORMATION)	ID PREFIX TAG	PROVIDER'S PLAN OF CORRECTION (EACH CORRECTIVE ACTION SHOULD BE CROSS-REFERENCED TO THE APPROPRIATE DEFICIENCY)	(X5) COMPLETE DATE	
S 300	<p>Continued From page 11</p> <p>care. After reviewing Patient #2's clinical record for 5/11/17 at 4:08 AM and 4:47 AM, the RT concluded the physician should have been notified, the RRT activated and the level of care upgraded.</p> <p>Facility policy titled RRT dated December 2016, documented the RRT was established to aid in the preservation of patient life based on an early recognition of life threatening conditions. The policy documented the RRT could be activated when changes occurred in a patient that included acute change in heart rate less than 40 or more than 130 bpm, respiratory rate less than 8 or more than 28 br/m, acute change in saturation less than 90% despite oxygen and shortness of breath.</p> <p>Severity: 3 Scope: 1</p> <p>Complaint # NV00049271</p>	S 300			

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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 I.

6 ARBITRATION EXEMPTION

7
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 II.

17 JURISDICTION, VENUE AND LEGAL BASIS FOR THIS ACTION

18
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 ...

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.
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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.*

17 21. The day before, on May 10, 2017 in the wee hours of the morning, Rebecca started
18 coughing and complained of shortness of breath, weakness and a "drowning" feeling. *Id.* Pursuant
19 to this, the drug Ativan was ordered to be administered to Rebecca by Dr. Shah via IV push. *Id.*
20 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

Rebecca's shortness of breath and "anxiety." *Id.* At the very least, a portable x-ray should have been ordered when the patient was returned to her room, but it was not. *Id.* Later, an RT-Tech noted that Rebecca needed to be monitored by a "sitter" due to her attempting to remove her oxygen mask. *Id.* However, no sitter was assigned, nor was Rebecca moved to another room with adequate monitoring capabilities. *Id.* Indeed, the camera monitor of the room Rebecca was in 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. *Id.* Rebecca 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 May 11, 2017 when the patient was suffering from respiratory insufficiency. *Id.* Given that Rebecca had been receiving daily doses of Midazolam, Acetylcysteine and at least four other drugs known to cause adverse respiratory side effects, and that Rebecca went into Code Blue status within 90 minutes after Ativan dosing, it is highly probable that the administration of back-to-back doses of Ativan via IV Push to her (while she was already in respiratory distress), alongside the inadequate and absent monitoring, and other act or omissions falling below standard of care, as notes by the DHHS Investigative Report, all directly led to Rebecca's acute respiratory failure resulting in the final cardiorespiratory event and her death. *Id.*

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

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.*

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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 ...
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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), Dacri, 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.

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.

19 30. Plaintiffs Dacri, Taryn and Isaiah, the heirs of Rebecca, as well as her Estate, have
20 suffered damages, including but not limited to significant pain and suffering, as a result of
21 Defendants' negligence in excess of \$15,000.00.
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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.
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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.
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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.
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12 46. These Plaintiffs, and each of them, have suffered damages as a result of
13 Defendants' actions in excess of \$15,000.00.
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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 51. In this case, Defendants (physicians and medical services corporations operating
16 a for-profit hospital) owed Rebecca a duty of care to provide reasonable and safe services. They
17 breached this duty of care towards Rebecca by providing her with medical service that fell below
18 the acceptable standards of practice and care. See Exhibit A (fully incorporated by reference
19 herein). Specifically, Defendants acted below the standard of care when, among other things
20 detailed in Exhibit A, they failed to recognize and consider the differential diagnosis of drug-
21 induced respiratory distress, inappropriately administering and/or allowing the administration of
22 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.
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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
24 prosecute this matter;

25 ...

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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-noté, 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, M.D.

Dated: 1/23/2019

Sworn to me before this 23rd day

of January 2019.

Bonnie Leung
Notary Public



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

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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 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.

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

Defendants Conrado Concio, MD, and Dionice Juliano, MD 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, pursuant to NRCP 12(b)(5), NRS 41A.097, and NRS 41A.071 hereby
move to dismiss Plaintiffs' Complaint with respect to Defendants Conrado Concio, MD, and
Dionice Juliano, MD, as the action is barred by the applicable statute of limitations, and no

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

13 Specifically, with respect to both Defendants, the statute of limitations has clearly long
14 passed, and the pleadings, even taken as true, necessitate such a finding as a matter of law. With
15 respect to Defendant Juliano, Plaintiffs have also failed to give him adequate notice of the
16 allegations against him by failing to properly allege with any specificity in the required expert
17 affidavit what it actually is that he did that fell below the standard of care.
18

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

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

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

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 Juliano. While it
10 is true that the affidavit does mention twice, in paragraphs 6 and 7, that Defendant Juliano
11 (erroneously referred to as Juliano Dionice and Dr. Dionice), fell below the appropriate standard
12 of care, there is absolutely no reference whatsoever to what acts Defendant Juliano 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 Juliano.
15

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

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

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

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 ///
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1 Furthermore, while Plaintiffs will no doubt argue in opposition that the nature of the
2 decedent's death caused an exceptionally long delay in discovering the claim, Plaintiffs' own
3 allegations undermine this argument. While Plaintiff is entitled to factual deference on a motion
4 to dismiss, they also must be bound by the facts that they themselves alleged. The gravamen of
5 the Complaint is that the decedent was slowly improving before she suddenly and unexpectedly
6 turned for the worst and died. Accepting this allegation as true, Plaintiffs must be held to the
7 strictest timeframes possible under the discovery rule. Plaintiffs cannot simultaneously argue that
8 the negligence here was so egregious as to warrant punitive damages but at the same time claim
9 that they had no indication whatsoever of the possible existence of a claim against any healthcare
10 providers until eight months after the sudden death of the decedent.
11

12 Finally, to the extent that Plaintiff argues that the statute of limitations should somehow
13 be tolled, Plaintiffs fail to allege any concealment on the part of these moving Defendants. The
14 statute of limitations is therefore not subject to any tolling provision with respect to Defendant
15 Juliano and Defendant Concio.
16

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

19 Plaintiff will argue that NRS 11.190(4)(e) explicitly grant a two-year period of
20 limitations for actions for wrongful death. While it is true that NRS 11.190 does provide such a
21 two-year period, this does not change the fact that NRS 41A.097 explicitly imposes a one-year
22 period for all actions for "injury or death" caused by alleged professional negligence.
23

24 It is clear from the complaint that the second claim is premised entirely on the same
25 negligence alleged in the first claim. The one-year from discovery statute of limitations imposed
26 by NRS 41A.097 therefore applies.
27

28 ///

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

18
19 However, to the extent that this Court finds that such a claim can stand on its own
20 without Plaintiffs being able to prove the professional negligence they allege forms the basis for
21 the claim, this claim still fails as a matter of law because Plaintiff fails to plead any facts that
22 would satisfy the required elements.

23
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

1 Specifically, while the Complaint does not allege that the Plaintiffs were physically
2 present when the death of the decedent occurred, the affidavit in support does mention that when
3 the decedent appeared to be improving, "family returned to their homes out-of-state based on the
4 information they received." It is unclear which family exactly returned home, but each of the
5 Plaintiffs asserting Negligent Infliction of Emotional distress reside out of state, and none allege
6 that they actually witnessed the death of the decedent or any specific acts of negligence which
7 caused them distress. In the absence of the proper allegation, and in light of the clear evidence in
8 the pleadings suggesting that these plaintiffs were in fact *present* at the time of the decedent's
9 death, the claims for negligent infliction of emotional distress fail, as a matter of law.
10

11 **IV. Conclusion**

12 Despite the great deference given to Plaintiffs allegations of fact under Nevada law at this
13 early stage, Plaintiffs have failed to state a claim upon which relief can be granted. The
14 Complaint must be dismissed with respect to Dr. Concio and Dr. Juliano.
15

16 Dated this 12th day of June, 2019.

17 **JOHN H. COTTON & ASSOCIATES, LTD.**
18 7900 West Sahara Avenue, Suite 200
19 Las Vegas, Nevada 89117

20 /s/ Brad Shipley
21 JOHN H. COTTON, ESQ.
22 BRAD SHIPLEY, ESQ.
23 *Attorneys for Defendants Dionice S. Juliano, M.D.,*
24 *and Conrado Concio, M.D.*
25
26
27
28

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
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An Employee of John H. Cotton & Associates



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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 ISAIAH 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.
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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. *Breliant 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 *Szymborski 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.” *Szymborski.*, 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
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).

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)).

25 ///

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27
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 ///

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

7 V.

8 **CONCLUSION**

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

11 DATED this 19th day of June, 2019.

12 HALL PRANGLE & SCHOONVELD, LLC

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

19 **AFFIRMATION**

20 ***Pursuant to NRS 239B.030***

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

23 DATED this 19th day of June, 2019.

24 HALL PRANGLE & SCHOONVELD, LLC

25 By: /s/: Zachary Thompson, Esq.
26 MICHAEL E. PRANGLE, ESQ.
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27 ZACHARY J. THOMPSON, ESQ.
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28 1160 N. Town Center Dr., Ste. 100
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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:

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**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 NRCP 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 NRCP 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

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

6
7 **II. ANALYSIS**

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

9 Defendants’ motions to dismiss are brought pursuant to Nevada Rule of Civil Procedure
10 (“NRCP”) 12(b)(5). Under the standard applicable to that Rule, this Court’s decision will be
11 “subject to a rigorous standard of review on appeal” in keeping with the Nevada Supreme Court’s
12 policy favoring having cases adjudicated on the merits. *See Buzz Stew, LLC v. City of North Las*
13 *Vegas*, 124 Nev. 224, 227-28 (2008). In reviewing and considering Dr. Concio and Dr. Juliano’s
14 motion, the Court must accept all factual allegations in Plaintiffs’ complaint as true and draw all
15 inferences in their favor. *Id.* Plaintiffs’ complaint can only be dismissed under NRCP 12(b)(5)
16 “if it appears beyond a doubt that [Plaintiffs] **could prove no set of facts**, which, if true, would
17 entitle [them] to relief.” *Id.*¹ This leniency is also applicable to any arguments invoking the NRS
18 41A.071 affidavit requirement. “[B]ecause NRS 41A.071 governs the threshold requirements
19 for initial pleadings in medical malpractice cases, not the ultimate trial of such matters, we must
20 liberally construe this procedural rule of pleading in a manner that is consistent with our NRCP
21 12 jurisprudence.” *Borger v. Eighth Judicial Dist. Court ex rel. County of Clark*, 120 Nev. 1021,
22 1028 (2004).

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28 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 anv 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 NRCPP 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. Juliano is at all vague—though it is not—his affidavit, liberally construed, still passes muster under NRS 41A.071(4). Dr. Juliano 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. Juliano's Mot. 6:18-20.) Failing to draw all inferences in Plaintiffs' favor, as required on a motion for dismissal pursuant to NRCPP 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.*)
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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.
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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
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27
28

**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

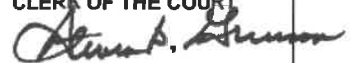
- DEFENDANT CENTENNIAL HILLS HOSPITAL'S JOINDER TO DEFENDANTS CONRADO CONCIO, MD AND DIONICE JULIANO, MD'S MOTION TO DISMISS...DEFENDANT CONRADO CONCIO, MD, AND DIONICE JULIANO, MD'S MOTION TO DISMISS... DEFENDANT VISHAL SHAH, M.D. JOINDER TO DEFENDANT'S CONCIO AND JULIANO'S MOTION TO DISMISS...DEFENDANT 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 **NEO**
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 1140 North Town Center Drive, Ste. 350
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 **DISTRICT COURT**
16 **CLARK COUNTY, NEVADA**

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

23 Plaintiffs,

24 vs.

25 VALLEY HEALTH SYSTEM, LLC (doing
26 business as "Centennial Hills Hospital Medical
27 Center"), a foreign limited liability company;
28 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

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

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

HALL PRANGLE & SCHOONVELD, LLC
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SUITE 350
LAS VEGAS, NEVADA 89144
TELEPHONE: 702-889-6400 FACSIMILE: 702-384-6025

1 PLEASE TAKE NOTICE that a Stipulation and Order to Dismiss Universal health
2 Services, Inc. without Prejudice was entered in the above entitled matter on the 3rd day of
3 December, 2019, a copy of which is attached hereto.

4
5 DATED this 5th day of December, 2019.

6 HALL PRANGLE & SCHOONVELD, LLC

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 1140 North Town Center Drive, Ste. 350
13 Las Vegas, Nevada 89144
14 *Attorneys for Defendant Valley Health System, LLC, dba*
15 *Centennial Hills Hospital Medical Center*
16
17
18
19
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21
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23
24
25
26
27
28

HALL PRANGLE & SCHOONVELD, LLC

1140 NORTH TOWN CENTER DRIVE

SUITE 350

LAS VEGAS, NEVADA 89144

TELEPHONE: 702-384-6025 FACSIMILE: 702-384-6025

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that I am an employee of HALL PRANGLE & SCHOONVELD, LLC; that on the 5th day of December, 2019, I served a true and correct copy of the foregoing **NOTICE OF ENTRY OF STIPULATION AND ORDER TO DISMISS UNIVERSAL HEALTH SERVICES, INC. WITHOUT PREJUDICE** via 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 to the following parties:

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 MICHAEL E. PRANGLE, ESQ.
Nevada Bar No. 8619
2 ZACHARY J. THOMPSON, ESQ.
Nevada Bar No. 11001
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efile@hpslaw.com
6 *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
Center"), a foreign limited liability company;
17 UNIVERSAL HEALTH SERVICES, INC., a
foreign corporation; DR. DIONICE S. JULIANO,
18 M.D., an individual; DR. CONRADO C.D.
CONCIO, M.D., an individual; DR. VISHAL S.
19 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

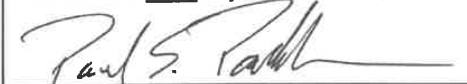
HALL PRANGLE & SCHOONVELD, LLC
1140 NORTH TOWN CENTER DRIVE, STE. 350
LAS VEGAS, NEVADA 89144
TELEPHONE: 702-889-6400 FACSIMILE: 702-384-6025

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 27th day of November, 2019.

14 

15 PAUL S. PADMA, ESQ.
16 Nevada Bar No. 10417
17 PAUL PADMA LAW, PLLC
18 4560 South Decatur Blvd., Suite 300
19 Las Vegas, NV 89103
20 *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*

21 DATED this ____ day of November, 2019.

22 _____
23 JOHN H. COTTON, ESQ.
24 Nevada Bar No. 5268
25 BRAD SHIPLEY, ESQ.
26 Nevada Bar No. 12639
27 JOHN H. COTTON & ASSOCIATES, LTD.
28 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.*

HALL PRANGLE & SCHOONVELD, LLC
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TELEPHONE: 702-889-6400 FACSIMILE: 702-384-6025

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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
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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.**

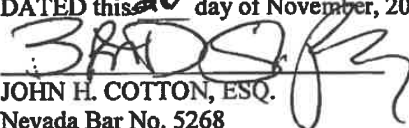
13 DATED this ____ day of November, 2019.

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 ^{20th} 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.*

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TELEPHONE: 702-899-6400 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*

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RESP
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 Email: psp@paulpaddalaw.com
JAMES P. KELLY, ESQ.
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 Las Vegas, Nevada 89103
 Tele: (702) 366-1888
 Fax: (702) 366-1940
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

RESPONSES TO DEFENDANTS
JULIANO, CONCIO AND SHAH'S
FIRST SET OF INTERROGATORIES
TO PLAINTIFF ESTATE OF
REBECCA POWELL THROUGH
BRIAN POWELL AS SPECIAL
ADMINISTRATOR

**TO: DEFENDANTS JULIANO, CONCIO AND SHAH and their attorneys of
 record.**

COMES NOW Plaintiff, BRIAN POWELL AS SPECIAL ADMINISTRATOR, by and
 through his attorneys of record, PAUL S. PADDA, ESQ. and JAMES P. KELLY, ESQ., of

1 controversy, the parties' relative access to relevant information, the parties' resources, the
2 importance of the discovery in resolving the issues, and whether the burden or expense of the
3 proposed discovery outweighs its likely benefit.

4 Without waiving these objections, to the best of my knowledge, Rebecca Powell has not
5 been convicted of a felony during the time frame set forth in NRS §50.095.

6 Plaintiff reserves the right to amend and/or supplement this Answer as discovery
7 remains ongoing.

8
9 **INTERROGATORY NO. 10:**

10 Please identify any and all persons who have knowledge of the events giving rise to the
11 injuries alleged in your Complaint or who have knowledge of the facts relevant to the damages
12 you claim are related to the alleged injuries.

13
14 **RESPONSE TO INTERROGATORY NO. 10:**

15 Objection. Plaintiff objects to this interrogatory because it seeks the disclosure of
16 information that is unduly burdensome in that the information being sought is equally available
17 to both parties by way of the parties' initial and supplemental NRCp 16.1 document disclosures
18 and witness lists.

19
20 Without waiving these objections, I was not able to visit Rebecca while she was
21 hospitalized because I was turned away by the nurses. Lloyd Creecy, Taryn Creecy, Isaiah
22 Khosrof, Darci Creecy have information. I did meet with Taryn, Isaiah and one of Rebecca's
23 friends to speak with the doctor and risk manager after Rebecca's death, but they didn't provide
24 any information.

25
26 For further information that may be responsive to this Interrogatory, please refer to the
27 parties' initial and supplemental document disclosures and witness lists.
28

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

PAUL PADDA LAW, PLLC

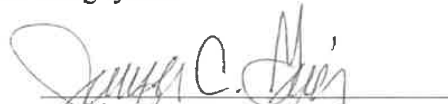


Paul S. Padda, Esq.
James P. Kelly, Esq.
4560 South Decatur Boulevard, Suite 300
Las Vegas, Nevada 89103
Attorneys for Plaintiffs

Dated: September 15, 2020

CERTIFICATE OF SERVICE

Pursuant to Nevada Rules of Civil Procedure 5, the undersigned hereby certifies that on this day, September 15, 2020, I served a true and correct copy of the above document entitled **RESPONSES TO DEFENDANTS JULIANO, CONCIO AND SHAH'S FIRST SET OF INTERROGATORIES TO PLAINTIFF ESTATE OF REBECCA POWELL THROUGH BRIAN POWELL AS SPECIAL ADMINISTRATOR** on all parties/counsel of record in the above entitled matter through the Court's electronic filing system.



Jennifer Greening, Paralegal
PAUL PADDA LAW, PLLC

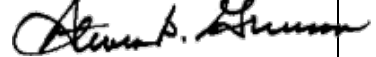
DECLARATION OF BRIAN POWELL PER NRS 53.045

1. My name is **BRIAN POWELL**, and I am over the age of 18 and competent to make this Declaration. All matters stated herein are within my personal knowledge and are true and correct.
2. I have read the foregoing **RESPONSES TO DEFENDANT JULIANO, CONCIO AND SHAH'S FIRST SET OF INTERROGATORIES TO PLAINTIFF BRIAN POWELL AS SPECIAL ADMINISTRATOR** and know the contents thereof; that the same is true of my own knowledge, except for those matters therein stated upon information and belief, and as to those matters, I believe them to be true.
3. I declare under penalty of perjury under the law of the State of Nevada that the foregoing is true and correct.

Executed this 27th day of AUGUST, 2020.


BRIAN POWELL

EXHIBIT ‘F’



RIS/OPPS

S. BRENT VOGEL
Nevada Bar No. 6858
Brent.Vogel@lewisbrisbois.com
ADAM GARTH
Nevada Bar No. 15045
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Facsimile: 702.893.3789
*Attorneys for Defendants Valley Health System,
LLC dba Centennial Hills Hospital Medical
Center and Universal Health Services, Inc.*

DISTRICT COURT

CLARK COUNTY, NEVADA

ESTATE OF REBECCA POWELL, through
BRIAN POWELL, as Special Administrator;
DARCI CREECY, individually and as Heir;
TARYN CREECY, individually and as an
Heir; ISALAH 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.: 14

**DEFENDANTS VALLEY HEALTH
SYSTEMS, LLC D/B/A CENTENNIAL
HILLS HOSPITAL MEDICAL CENTER
AND UNIVERSAL HEALTH SYSTEMS,
INC.'S REPLY TO PLAINTIFFS'
OPPOSITION TO DEFENDANT
JULIANO'S MOTION FOR SUMMARY
JUDGMENT, REPLY TO PLAINTIFFS'
OPPOSITION TO VALLEY HEALTH'S
JOINDER OF DEFENDANTS CONCIO
AND SHAH'S MOTION FOR PARTIAL
SUMMARY JUDGMENT ON
EMOTIONAL DISTRESS CLAIMS, AND
OPPOSITION TO PLAINTIFFS'
COUNTERMOTION TO AMEND OR
WITHDRAW PLAINTIFFS' RESPONSES
TO DEFENDANTS REQUESTS FOR
ADMISSION**

Date: October 28, 2020
Time: 9:00 a.m.

Defendants VALLEY HEALTH SYSTEM, LLC (doing business as "Centennial Hills
Hospital Medical Center"), a foreign limited liability company and UNIVERSAL HEALTH

SERVICES, INC., a foreign corporation (“CHH”), by and through their counsel of record, S. BRENT VOGEL, ESQ. and ADAM GARTH, ESQ. of LEWIS BRISBOIS BISGAARD & SMITH LLP, hereby file their reply to Plaintiffs’ Opposition to Defendant Juliano’s Motion for Summary Judgment, Defendants’ Concio’s and Shah’s Motion for Partial Summary Judgment on Emotional Distress Claims, as well as filing Opposition to Plaintiffs’ Countermotion to Amend or Withdraw Plaintiffs’ Responses to Defendants Requests for Admission.

I. INTRODUCTION

While CHH’s non-opposition and joinder to co-defendant’s motion was simply submitted in support of the respective motions of the co-defendants, the outrageous allegations and claims leveled by Plaintiffs’ counsel, the utter disregard for proper procedure, the manifestly incorrect statements of law leveled by him, and the breach of attorney obligations demonstrated by Plaintiffs’ counsel require a more expansive response.

Plaintiffs countermotion essentially states as follows: (1) Plaintiffs’ counsel admittedly failed at his job in not responding to requests for admission, (2) Defendants were somehow obligated to advise Plaintiffs’ counsel of his deficiency, (3) Defendants were supposed to make a motion before the Court to confirm the Plaintiffs’ failure to respond to requests for admission to deem them admitted, and (4) Defendants are obligated to demonstrate the prejudice they would suffer if the relief requested by Plaintiffs is granted. The only true statement among these is the first, i.e. Plaintiffs’ counsel failed to do his job. The rest of the assertions he makes lack any support in the law or fact.

Furthermore, Plaintiffs’ counsel specifically flouted EDCR 2.34(a) which requires that any discovery matter be first placed and heard before the Discovery Commissioner. Despite Plaintiffs’ counsel having admittedly known about his failure to respond on August 7, 2020 when co-defendants’ motion for summary judgment was made, Plaintiffs’ counsel waited more than two months to request the relief he now seeks, failing once again to conform with the rules. The modus operandi of Plaintiffs’ counsel is to ignore rules, ignore statutes, ignore the case law, ignore his ethical obligations, expect that his adversaries will let him skate by, and if not, he petitions the Court for its help in stepping into his shoes as the practitioner and looking for judicial cures for his practice

1 failures. That stops now.

2 Moreover, Plaintiffs' "substantive" opposition to co-defendants' motion and CHH's joinder
3 thereto is predicated on two factors: (1) a presumption that this Court will "let him off the hook"
4 and correct his practice failure, and (2) misapplying the case law to this scenario. That behavior
5 stops now, as well.

6 **II. CHH'S OPPOSITION TO PLAINTIFFS' COUNTERMOTION TO AMEND OR**
7 **WITHDRAW PLAINTIFFS' RESPONSES TO DEFENDANTS REQUEST FOR**
8 **ADMISSION**

9 **A. Plaintiffs' Counsel Failed to Comport with EDCR 2.34**

10 Plaintiffs' motion is procedurally defective. EDCR 2.34(a) specifically obligates a party
11 with a discovery issue to move for any relief thereunto pertaining before the Discovery
12 Commissioner. The rule states: "Unless otherwise ordered, all discovery disputes (except disputes
13 regarding any extension of deadlines set by the discovery scheduling order, or presented at a pretrial
14 conference or at trial) **must first** be heard by the discovery commissioner." (Emphasis supplied).
15 This rule is not discretionary. "Must" means must. Requests for admission fall under NRCP 36,
16 Section V of the NRCP, "Disclosures and Discovery." Any relief pertaining to a discovery issue is
17 covered by EDCR 2.34. Plaintiffs ignored that rule and chose instead to improperly seek this relief
18 before this Court. Plaintiffs' counsel had plenty of time to seek this relief. Plaintiffs' counsel sought
19 an extension of time to oppose the instant motion from co-defense counsel, receiving 2 months to
20 oppose. In that time, Plaintiffs' counsel could have made this motion before the Discovery
21 Commissioner on shortened time. He failed to do so. He chose instead to either believe the rules
22 did not apply to him and proceed in this forum, or simply failed to know there was such a rule, an
23 obligation he abandoned. Either way, he failed. Plaintiffs' motion should not be entertained by this
24 Court, for if rules are present to preserve an even playing field and place parties on notice of their
25 respective obligations, the consequences of failing to abide thereby must include the denial of the
26 relief sought and the imposition of appropriate sanctions.

27 **B. Plaintiffs Countermotion Should Be Denied in Its Entirety**

28 Plaintiffs' counsel's entire tactic is to paint the Defendants' counsel as bad actors and impose
obligations upon them that are not only non-existent, but run counter to the statute's specific dictates.

1 Moreover, Plaintiffs' counsel attempts to misdirect the Court from the obligations the law places
2 upon him.

3 Annexed hereto as **Exhibit "A"** are the notifications of service on April 17, 2020 of the
4 respective requests for admissions served by co-defendants' counsel. A review thereof demonstrates
5 that Mr. Padda not only received an email notice of the respective service of each of these requests
6 for admission once, **he personally received it twice**, at two different email addresses. Mr. Padda
7 takes the coward's way out and blames his staff for failing to properly calendar the deadlines for
8 responding to the specific requests for admission; however, Mr. Padda himself received the very
9 notice and copies of the requests for admission personally. Certainly, he cannot expect either the
10 attorneys or this Court to believe that in four months since having been served with the requests for
11 admission, he lacked knowledge due to a calendaring mishap using the "COVID-19 excuse" peddled
12 by so many who fail to fulfil their professional obligations. He received the documents personally.
13 In fact, the documents were served upon **six separate individuals** at Mr. Padda's firm. Is he saying
14 none of these people received notice?

15 Additionally, there is no evidence whatsoever to demonstrate an evil motive ascribed to
16 service of these requests for admission in April, 2020. Mr. Padda received a stay by way of an
17 Administrative Order of this Court in responding to the requests until July 1, 2020. Instead of the
18 usual 30 days, Mr. Padda had **more than 2 ½ months** to respond. He failed. Where in any
19 Administrative Order of this Court, or in NRCPC Rule 36, is there any obligation imposed upon
20 opposing counsel to contact their adversary, ask them where the required responses to requests for
21 admission are, and why they were not timely served? The answer is simple – there is none.
22 Discovery was not impeded by COVID-19 here. The only impediment is Plaintiffs' counsel's
23 incompetence. There was no attempt by any defendants' counsel to gain a tactical advantage. In
24 fact, NRCPC Rule 36 specifically imposes a consequence for failing to respond to requests for
25 admission – the requests are deemed admitted without further action from the requesting party.
26 Plaintiffs' counsel was given 45 more days to respond to the requests for admission than he
27 otherwise would have received via NRCPC Rule 36, and even with the extra time, he failed to do so.
28 Now, for some reason in Mr. Padda's eyes alone, Defendants' counsel are bad actors because Mr.

1 Padda failed miserably at his job representing his client.

2 Moreover, Mr. Padda states (without one shred of legal support), "Significantly, prior to
3 filing their dispositive motions, Defendants' counsel did not seek any formal declaration from the
4 Court that the RFA's to Plaintiffs were deemed admitted."¹ There is nothing in NRCP Rule 36
5 which either requires or suggests that the requesting party take any such step. There is no case
6 which requires any such action. In fact, the rules state "(3) **Time to Respond; Effect of Not**
7 **Responding.** A matter is admitted unless, within 30 days after being served, the party to
8 whom the request is directed serves on the requesting party a written answer or objection
9 addressed to the matter and signed by the party or its attorney. A shorter or longer time for
10 responding may be stipulated to under Rule 29 or be ordered by the court." Mr. Padda never
11 sought any extension or stipulation during the 30 day period, nor did he do so at any time
12 prior to the expiration of the deadline to respond. As he admits, he did nothing for 41 days
13 after his deadline expired.

14 As the Nevada Supreme Court stated:

15 It is well-settled that unanswered requests for admission may
16 be properly relied upon as a basis for granting summary
17 judgment. *Wagner v. Carex Investigations & Sec. Inc.*, 93 Nev.
18 627, 630, 572 P.2d 921, 923 (1977) (concluding that summary
19 judgment was properly based on admissions stemming from a
party's unanswered request for admission under NRCP 36,
even where such admissions were contradicted by previously
filed answers to interrogatories)

20 *Estate of Adams v. Fallini*, 132 Nev. 814, 820, 386 P.3d 621, 625 (2016)

21 The Nevada Supreme Court has gone so far as to hold that:

22 [E]ven if the requests were objectionable, [the party from whom the
23 admissions were sought] failed to object as required by NRCP
24 36(a). Accordingly, Emery cannot now claim that the requests were
25 improper: "Even if a request is objectionable, if a party fails to
26 object and fails to respond to the request, that party should be held
27 to have admitted the matter." *Jensen v. Pioneer Dodge Center, Inc.*,
702 P.2d 98, 100-01 (Utah 1985) (citing *Rutherford v. Bass Air*
Conditioning Co., 38 N.C. App. 630, 248 S.E.2d 887 (N.C. Ct. App.
1978)).

28 ¹ Plaintiffs' Opposition and Countermotion, p. 4

1 It is well settled that failure to respond to a request for admissions
2 will result in those matters being deemed conclusively
3 established. *Woods*, 107 Nev. at 425, 812 P.2d at 1297; *Dzack*, 80
4 Nev. at 347, 393 P.2d at 611. This is so even if the established
5 matters are ultimately untrue. *Lawrence v. Southwest Gas Corp.*, 89
6 Nev. 433, 514 P.2d 868 (1973); *Graham v. Carson-Tahoe Hosp.*, 91
7 Nev. 609, 540 P.2d 105 (1975). [The responding party's] failure to
8 respond or object to the Smiths' request for admissions entitles the
9 Smiths to have the assertions contained therein conclusively
10 established.

11 *Smith v. Emery*, 109 Nev. 737, 741-43, 856 P.2d 1386, 1389-90 (1993)

12 Plaintiffs' counsel advances the argument that it is somehow manifestly unfair to hold
13 Plaintiffs to their admissions due to his law office failure. However, it is instructive to ascertain
14 what is considered "good cause" in the context of vacating a default judgment when assessing how
15 to handle Plaintiffs' instant problem. To that end, the Nevada Supreme Court held "Though the
16 "good cause" contemplated by Rule 55(c) to vacate the entry of default may be somewhat broader
17 in scope than the "mistake, inadvertence, surprise or excusable neglect" referred to in Rule 60(b)(1)
18 for setting aside a default judgment, we are confident that it does not embrace inexcusable neglect.
19 *Intermountain Lumber & Builders Supply v. Glens Falls Ins. Co.*, 83 Nev. 126, 130, 424 P.2d 884,
20 886 (1967). As expressed in *Tahoe Vill. Realty, S.A. C.O. V. DeSmit*, 95 Nev. 131, 134, 590 P.2d
21 1158, 1161 (1979), "'It is a general rule that the negligence of an attorney is imputable to his client,
22 and that the latter cannot be relieved from a judgment taken against him, in consequence of the
23 neglect, carelessness, forgetfulness, or inattention of the former.' *Guardia v. Guardia*, 48 Nev. 230,
24 233-234, 229 P. 386, 387 (1924)."

25 In determining whether good cause existed to vacate a default judgment due to law office
26 failure, the Nevada Supreme Court considered the facts and circumstances surrounding the neglect
27 itself and the propriety of the underlying service of process. In so considering, the Court held that
28 the District Court did not abuse its discretion when finding inexcusable neglect by the attorney,
specifically stating:

First, although appellant asserts that he was not properly served with
process because the address listed on the proof of service was that of
his sister, the proof of service indicates that the summons and
complaint were served personally on appellant at that address, and
appellant's email to opposing counsel, dated the same day as service,

1 indicates that appellant received the documents. This is sufficient
2 evidence supporting the district court's decision that appellant was
3 properly served, despite appellant's arguments to
4 the contrary. *Radaker v. Scott*, 109 Nev. 653, 657, 855 P.2d 1037,
5 1040 (1993) (explaining that we will not disturb the district court's
6 factual determinations when supported by substantial evidence);
7 NRCP 4(d)(6). Appellant failed to timely file an answer, NRCP
8 12(a)(1), and the district court did not abuse its discretion in
9 concluding that his failure constituted inexcusable neglect and in
10 consequently refusing to set aside the default, notwithstanding the
11 court's failure to expressly vacate the November 2, 2012, order
12 setting aside the default.

13 *Bader v. Stoeckinger Family Ltd. P'ship*, 132 Nev. 942 (2016).

14 Similarly, the District Court, Clark County, even found that despite proper service upon an
15 unrepresented party who ultimately received representation, "the fact that Defendants' counsel then
16 coincidentally appeared in the case late in the afternoon after service of the requests did not nullify
17 the effect of the service." *Chiam Rest. v. Ojeda*, 2017 Nev. Dist. LEXIS 1923, *7, Case No.: A-15-
18 728135-B (Eighth Judicial District Court).

19 Plaintiffs' counsel's declaration and cries of COVID-19 upsetting his law practice are not
20 sufficient excuses and certainly do not demonstrate good cause. The evidence demonstrates that **he**
21 **personally** was served with the requests for admission, as were **at least four other individuals at**
22 **his firm**. Conspicuously absent from his declaration is when his firm resumed relatively normal
23 operations, or at least operations sufficient in his eyes, to constitute a proper time within which his
24 law office failure could no longer be used as an excuse. As the cases cited above demonstrate, there
25 are consequences for failing to perform one's job. Mr. Padda fails to explain how it became the
26 failure to calendar the deadline for responses had anything to do with his notice of the service of the
27 requests for admission themselves. The question is raised as to how many other deadlines he missed
28 in other cases and how many times he attempts to use COVID-19 as an excuse for his failures in
representation of his clients. After a while, the excuse wears thin as it has here.

Furthermore, Mr. Padda offers no rationale why he did not bring this motion before the
Discovery Commissioner as he was required to do. He offers no explanation as to why he failed to
bring what is now his countermotion as a separate motion on shortened time after receiving a 60 day
extension to oppose co-defendants' motion for summary judgment. He offers no explanation as to

1 where the emailed service of the requests for admission along with the documents themselves ever
2 landed after they were served. The answers to these questions are simple – he has no excuse or
3 plausible explanation. He is just adopting the “best defense is a good offense” tactic, hoping to paint
4 his adversaries as unscrupulous, uncooperative or otherwise unprofessional. This is projection on
5 his part raised to a new level.

6 NRCP Rule 36(b) provides an “out clause” regarding requests for admission. It does not,
7 nor should it, contemplate permitting a party who fails to respond to requests for admission, an
8 opportunity for a “do over” when those admissions clearly demonstrate facts which run counter to
9 the allegations of the opposing party. If that was the case, then NRCP Rule 36(a)(3) would be
10 deemed ineffective so long as a party merely asks for the “do over.” That cannot be what the
11 Legislature intended when enacting this statute.

12 Finally, Plaintiffs’ counsel flips the obligations to demonstrate prejudice on its ear by
13 asserting that Defendants are obligated to show prejudice if the relief he requests is granted. He
14 asserts that NRCP Rule 36(b) imposes this obligation on the Defendants in this matter. On the
15 contrary, it is the movant’s obligation to demonstrate the absence of prejudice to the non-moving
16 party. In other words, Plaintiffs’ counsel has the obligation to affirmatively and conclusively
17 demonstrate that Defendants will suffer no prejudice. Specifically, NRCP states in pertinent part: “
18 . . . the court may permit withdrawal or amendment if it would promote the presentation of
19 the merits of the action and if the court is not persuaded that it would prejudice the
20 requesting party in maintaining or defending the action on the merits.” The statute’s
21 language, in this case, requires proof that the Court be persuaded that Defendants are not prejudiced
22 in defending the action on the merits. The statute does not require that Defendants so prove, since
23 Defendants are not the moving party. It remains exclusively within the movant’s province to so
24 demonstrate, not the opposing party. This, Plaintiffs failed to do.

25 In fact, contrary to the Plaintiffs’ assertion of no prejudice to Defendants, it is stunning in
26 this matter that Plaintiffs’ counsel admits that he has lacked and continues to lack sufficient evidence
27 of negligent infliction of emotional distress (“NIED”) claims which would be exclusively within
28 Plaintiffs’ possession. Based upon a stipulation drafted by Plaintiffs’ counsel seeking an extension

1 of time to oppose this very motion, he admits that prior to initiating this lawsuit and up through and
2 including the date of the stipulation, he lacked sufficient evidence to demonstrate Plaintiffs' claims
3 for NIED. **Exhibit "B"** hereto is a copy of the signed stipulation in which he admits: "The parties
4 stipulate and agree that there is good cause for entering into the aforementioned stipulations. **These**
5 **stipulations shall function to allow time for Plaintiffs to confirm whether there is a factual**
6 **basis for their NIED claims, and specifically, to discuss with an appropriate expert whether**
7 **or not there are any alleged errors or omissions against Dr. Juliano in this case with regard to**
8 **Defendants' dispositive motions and joinders.**"

9 Plaintiffs' counsel admits in a court filed document to an ethical violation as well as a
10 statutory Rule 11 violation in which he affirmatively states he needed time to confirm whether he
11 even possessed a factual basis for alleging an NIED claim on behalf of Plaintiffs, and whether he
12 had expert support for claims leveled against Dr. Juliano. These facts and associated evidence are
13 part and parcel of a threshold investigation Plaintiffs' counsel must engage **before** initiating a
14 lawsuit. Moreover, these facts, especially those on NIED claims, are within the exclusive possession
15 of Plaintiffs' and their counsel. By asserting that he lacked sufficient evidence at the outset of the
16 litigation and lacks it to this day, Plaintiffs', through their counsel, cannot effectively assert that they
17 will be prejudiced by admitting the absence of any evidence that they lack the necessary elements
18 of any NIED claim. They have already admitted that much by this stipulation.

19 On the other hand, Defendants will be severely prejudiced if Plaintiffs' counter-motion is
20 granted. First, Defendants will have to employ experts, engage in substantial discovery of multiple
21 Plaintiffs' medical records (those of Darci Creedy, Taryn Creedy, Lloyd Creedy and Isaiah Khosrof),
22 potentially subjecting these Plaintiffs to independent medical examinations with psychiatrists, to
23 ascertain the extent of their emotional distress and how these conditions were somehow caused or
24 otherwise exacerbated by the alleged incident. Conspicuously absent from any discovery produced
25 by Plaintiffs' counsel are any medical records or other documents or information which substantiate
26 the NIED claims of three of the Plaintiffs named above. It is Plaintiffs' obligation to provide
27 affirmative evidence of NIED injuries. They have failed to do so to this date. However, they are
28 requesting relief from their failure to respond to requests for admission, which confirm the very

1 absence of evidence, all in an effort to exponentially increase defense litigation costs, when their
2 counsel already admitted he lacks any such evidence as stated in **Exhibit “B”**. The Defendants,
3 therefore, would be those more prejudiced by the Court granting Plaintiffs’ motion than by denying
4 it.

5 Thus, Plaintiffs failed to meet their burden in this matter in order to obtain the relief they
6 seek. Plaintiffs’ counter-motion should be denied in its entirety.

7 **III. CO-DEFENDANTS’ MOTIONS FOR SUMMARY JUDGMENT SHOULD BE**
8 **GRANTED IN THEIR ENTIRETY**

9 Plaintiffs’ opposition to co-defendants’ motion for summary judgment is predicated upon
10 this Court’s decision on a motion to dismiss (a different dismissal standard being applied) in an
11 unrelated case which lacks any binding precedent on this matter, as well as a flawed analysis of
12 the law on this issue.

13 It is Plaintiffs’ counsel’s position that the Supreme Court’s decision in *Crippens v. Sav On*
14 *Drug Stores*, 114 Nev. 760, 961 P.2d 761 (1998) effectively holds that an NIED claim is viable as
15 against any defendant so long as it is reasonably foreseeable that the plaintiff would suffer emotional
16 harm. That not the holding of *Crippens*. In fact, *Crippens* emphasized that previous decisions
17 regarding negligent infliction of emotional distress governed the case. *Crippens*, 114 Nev. at 762.

18 This case is governed by *State v. Eaton*, 101 Nev. 705, 710 P.2d 1370 (1985). Eaton requires
19 that a bystander plaintiff be closely related to the victim of an accident, be located near the
20 scene of the accident, and suffer a shock resulting from direct emotional impact stemming
from the sensory and contemporaneous observance of the accident.

21 *Id.* The Court then recognized that in the rare negligent infliction of emotional distress cases that
22 do not involve automobile accidents, the overall circumstances of the allegations must be considered
23 to see if a claim for negligent infliction of emotional distress is permissible.

24 The majority of the cases on negligent infliction of emotional distress have involved
25 automobile accidents, including Eaton. Thus, some of the language of these cases
cannot appropriately be applied to the negligence of a pharmacist dispensing drugs.

26 ...

26 Under this reasoning, it is not the precise position of plaintiff or what the plaintiff
27 saw that must be examined. The overall circumstances must be examined to
28 determine whether the harm to the plaintiff was reasonably foreseeable. Foreseeability is the cornerstone of this court’s test for negligent infliction of
emotional distress.

1 *Id.* at 762-63. The Court then concluded that because the pharmacist's negligence essentially caused
2 the plaintiff to poison her own mother, that it was foreseeable that she would have a claim for
3 negligent infliction of emotional distress. *Id.*

4 In this case, a daughter purchased prescription medication for her mother. The
5 daughter then initiated and continued administration until her mother was rendered
6 comatose. In effect, because of the pharmacist's negligence, the daughter poisoned
7 her mother. Under these facts, it was entirely foreseeable that the drug would
significantly harm the actual patient and that a close relative would continue
administration until the ultimate catastrophic effect was realized.

8 *Id.* at 763. It was the extreme situation of the pharmacist's negligence causing the daughter's direct
9 involvement in the injury to her mother that caused the Court to find that a claim for negligent
10 infliction of emotional distress could go to the jury. *Id.*

11 This case is nothing like the *Crippens* scenario. There was no physical injury to the Plaintiffs
12 at all in this case. There is nothing which Plaintiffs allege indicating that they personally had
13 anything to do with the decedent's passing. These issues alone are insufficient to serve as a basis
14 for a negligent infliction of emotional distress claim.

15 Courts have discussed the *Crippens* case and clarified that a Plaintiff must witness an actual
16 injury, and not simply the consequences of what they allege to be negligence in order to have a
17 factual basis to plead negligent infliction of emotional distress. The United States District Court for
18 the District of Nevada discussed this issue in *Derzaph v. Wynn Las Vegas, LLC*, 2016 U.S. Dist.
19 LEXIS 58598 (D. Nev. 2016). The Court held that the Plaintiffs did not have a negligent infliction
20 of emotional distress claim because they observed only the consequences of the alleged injury and
21 negligence, not the actual occurrence. *Id.* ("Plaintiffs Ethan and Elliot heard the sound of the
22 occurrence but failed to perceive the infliction of the injury. Instead, they observed the consequence
23 of the fall. Accordingly they have failed to state a claim upon which relief may be granted. Elliot
24 and Ethan Derzaphs' claims for negligent infliction of emotional distress are dismissed.").

25 This is the same situation before this Court with the NIED claims of four of the Plaintiffs.
26 They claim that they sustained emotional distress since they were present near where Ms. Powell
27 died and suffered shock from the contemporaneous observance of her death. Complaint, ¶¶ 42, 44,
28 52-53. They did not allege that they saw any negligent medical care (although that is not likely to

1 rise to the level of constituting a basis for a NIED claim in any event other than that described in
2 *Crippens*) or anything other than what they allege is the consequences of the Defendants' alleged
3 negligence. They offer **not one shred of evidence** to demonstrate either that they were physically
4 present at the time of her death, nor that they actually observed any alleged negligent conduct, nor
5 that they suffered any injury resulting therefrom. This is a motion for summary judgment. Plaintiffs
6 are required to present **evidence** supportive of their claims, evidence of which is in their exclusive
7 possession. They have failed to do so. Therefore, they have failed to rebut the evidence submitted
8 in support of the pending motion and their claims for negligent infliction of emotional distress
9 should be dismissed.

10 Plaintiffs set forth that under *Crippens* the Nevada Supreme Court allows foreseeability to
11 replace contemporaneous in sustaining an NIED claim. Plaintiffs then assert that committing
12 medical malpractice against a patient results in "foreseeable harm to" a plaintiff. Thus, they argue
13 that Plaintiffs did not need to observe the harm to the patient because they were emotionally harmed,
14 which was foreseeable. Essentially, Plaintiffs attempt to create a standard under *Crippens* that all
15 medical malpractice injuries will result in harm that is foreseeable. Therefore, the foreseeability
16 standard set forth in *Crippens* is met to support their NIED claim.

17 In reality, the *Crippens* decision was a very narrow holding examining a very unique set of
18 facts which is not present in the instant matter; namely, the plaintiff in *Crippens* was the unwitting
19 instrument of her own mother's demise. In *Crippens*, the Court found sufficient foreseeability where
20 a daughter purchased improperly filled prescription medication for her mother and "initiated and
21 continued administration until her mother was rendered comatose." *Id.* at 763. The daughter actually
22 participated in harming her mother and witnessed the harm as it was occurring to her mother. *Id.*
23 She did not merely learn about the harm from others after its occurrence. *Id.*

24 Here, unlike the *Crippens*, Plaintiffs in this case did not contemporaneously observe the
25 decedent physically suffer or have an adverse reaction to medication (although CHH does not
26 concede that this alone would be sufficient to support these claims either). Unlike *Crippens*,
27 Plaintiffs did not administer a medication to the decedent that contributed to or caused Ms. Powell's
28 death. Thus, *Crippens*' foreseeability standard is not applicable here. Additionally, there was no

1 injury producing event and no physical injury to the Plaintiffs at all in this case. Because Plaintiffs
2 fail to satisfy the contemporaneous observance requirement, it was not reasonably foreseeable that
3 they would be harmed, and they cannot prevail on their claim for NIED. Therefore, co-defendants'
4 motion for summary judgment seeking dismissal of Plaintiffs' claims for negligent infliction of
5 emotional distress should be granted in its entirety.

6 DATED this 21st day of October, 2020.

7
8 LEWIS BRISBOIS BISGAARD & SMITH LLP

9
10 By /s/ Adam Garth
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19 *LLC dba Centennial Hills Hospital Medical*
20 *Center and Universal Health Services, Inc.*
21
22
23
24
25
26
27
28

1 **CERTIFICATE OF SERVICE**

2 I hereby certify that on this 21st day of October, 2020, a true and correct copy
3 of **DEFENDANTS VALLEY HEALTH SYSTEMS, LLC D/B/A CENTENNIAL HILLS**
4 **HOSPITAL MEDICAL CENTER AND UNIVERSAL HEALTH SYSTEMS, INC.’S REPLY**
5 **TO PLAINTIFFS’ OPPOSITION TO DEFENDANT JULIANO’S MOTION FOR**
6 **SUMMARY JUDGMENT, REPLY TO PLAINTIFFS’ OPPOSITION TO VALLEY**
7 **HEALTH’S JOINDER OF DEFENDANTS CONCIO AND SHAH’S MOTION FOR**
8 **PARTIAL SUMMARY JUDGMENT ON EMOTIONAL DISTRESS CLAIMS, AND**
9 **OPPOSITION TO PLAINTIFFS’ COUNTERMOTION TO AMEND OR WITHDRAW**
10 **PLAINTIFFS’ RESPONSES TO DEFENDANTS REQUESTS FOR ADMISSION** was served
11 by electronically filing with the Clerk of the Court using the Odyssey E-File & Serve system and
12 serving all parties with an email-address on record, who have agreed to receive electronic service in
13 this action.

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22
23
24 By /s/ Roya Rokni
25 Roya Rokni, an Employee of
26 LEWIS BRISBOIS BISGAARD & SMITH LLP
27
28

EXHIBIT ‘A’

Garth, Adam

From: Brad Shipley <bshipley@jhcottonlaw.com>
Sent: Wednesday, October 14, 2020 11:34 AM
To: Garth, Adam
Subject: [EXT] FW: Notification of Service for Case: A-19-788787-C, Estate of Rebecca Powell, Plaintiff(s)vs.Valley Health System, LLC, Defendant(s) for filing Service Only, Envelope Number: 5945456

External Email

From: efilingmail@tylerhost.net <efilingmail@tylerhost.net>
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Notification of Service

Case Number: A-19-788787-C
Case Style: Estate of Rebecca Powell,
Plaintiff(s)vs.Valley Health System, LLC,
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Filing Details	
Case Number	A-19-788787-C
Case Style	Estate of Rebecca Powell, Plaintiff(s)vs.Valley Health System, LLC, Defendant(s)
Date/Time Submitted	4/17/2020 9:39 AM PST
Filing Type	Service Only
Filing Description	Defendants Juliano, Concio and Shah's First Set of Requests for Admission to Plaintiff Darci Creecy
Filed By	Jody Foote
Service Contacts	Valley Health System, LLC: Cynthia Crizaldo (ccrizaldo@mcbriehall.com)

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Notification of Service

Case Number: A-19-788787-C
Case Style: Estate of Rebecca Powell,
Plaintiff(s)vs.Valley Health System, LLC,
Defendant(s)
Envelope Number: 5945456

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Filing Details	
Case Number	A-19-788787-C
Case Style	Estate of Rebecca Powell, Plaintiff(s)vs.Valley Health System, LLC, Defendant(s)
Date/Time Submitted	4/17/2020 9:39 AM PST
Filing Type	Service Only
Filing Description	Defendants Juliano, Concio and Shah's First Set of Requests for Admission to Plaintiff Estate of Rebecca Powell Through Brian Powell as Special Administrator
Filed By	Jody Foote
Service Contacts	Estate of Rebecca Powell: Paul Padda (civil@paulpaddalaw.com)

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Notification of Service

Case Number: A-19-788787-C
Case Style: Estate of Rebecca Powell,
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Date/Time Submitted	4/17/2020 9:39 AM PST
Filing Type	Service Only
Filing Description	Defendants Juliano, Concio and Shah's First Set of Requests for Admission to Plaintiff Isaiah Khosrof
Filed By	Jody Foote
Service Contacts	Estate of Rebecca Powell: James Kelly (jpk@paulpaddalaw.com)

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Michelle Newquist (mnewquist@mcbridehall.com)
Candace Cullina (ccullina@mcbridehall.com)
Tiffane Safar (tsafar@mcbridehall.com)
Stephanie Lazo (slazo@mcbridehall.com)
Richard Carroll (rdcarroll@cktfmlaw.com)
Theresa Lopez (tmlopez@cktfmlaw.com)
Kellie Piet (kpiet@mcbridehall.com)

Conrado C.D. Concio MD:

Brad Shipley (bshipley@jhcottonlaw.com)
John Cotton (jhcotton@jhcottonlaw.com)
Jessica Pincombe (jpincombe@jhcottonlaw.com)
Jody Foote (jfoote@jhcottonlaw.com)

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Garth, Adam

From: Brad Shipley <bshipley@jhcottonlaw.com>
Sent: Wednesday, October 14, 2020 11:33 AM
To: Garth, Adam
Subject: [EXT] FW: Notification of Service for Case: A-19-788787-C, Estate of Rebecca Powell, Plaintiff(s)vs.Valley Health System, LLC, Defendant(s) for filing Service Only, Envelope Number: 5945456

External Email

From: efilingmail@tylerhost.net <efilingmail@tylerhost.net>
Sent: Friday, April 17, 2020 9:44 AM
To: Brad Shipley <bshipley@jhcottonlaw.com>
Subject: Notification of Service for Case: A-19-788787-C, Estate of Rebecca Powell, Plaintiff(s)vs.Valley Health System, LLC, Defendant(s) for filing Service Only, Envelope Number: 5945456



Notification of Service

Case Number: A-19-788787-C
Case Style: Estate of Rebecca Powell,
Plaintiff(s)vs.Valley Health System, LLC,
Defendant(s)
Envelope Number: 5945456

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Filing Details	
Case Number	A-19-788787-C
Case Style	Estate of Rebecca Powell, Plaintiff(s)vs.Valley Health System, LLC, Defendant(s)
Date/Time Submitted	4/17/2020 9:39 AM PST
Filing Type	Service Only
Filing Description	Defendants Juliano, Concio and Shah's First Set of Requests for Admission to Plaintiff Lloyd Creecy
Filed By	Jody Foote
Service Contacts	Conrado C.D. Concio MD: John Cotton (jhcotton@jhcottonlaw.com)

Brad Shipley (bshipley@jhcottonlaw.com)

Jessica Pincombe (jpincombe@jhcottonlaw.com)

Jody Foote (jfoote@jhcottonlaw.com)

Estate of Rebecca Powell:

Paul Padda (psp@paulpaddalaw.com)

James Kelly (jpk@paulpaddalaw.com)

Fay Diab (fay@paulpaddalaw.com)

Brandon Verde (BCV@paulpaddalaw.com)

Paul Padda (civil@paulpaddalaw.com)

Tony Abbatangelo (tony@paulpaddalaw.com)

Valley Health System, LLC:

Kellie Piet (kpier@mcbriehall.com)

Robert McBride (rmcbride@mcbriehall.com)

Cynthia Crizaldo (ccrizaldo@mcbriehall.com)

Michelle Newquist (mnewquist@mcbriehall.com)

Candace Cullina (ccullina@mcbriehall.com)

Tiffane Safar (tsafar@mcbriehall.com)

Stephanie Lazo (slazo@mcbriehall.com)

Richard Carroll (rdcarroll@cktfmlaw.com)

Theresa Lopez (tmlopez@cktfmlaw.com)

Chelsea Hueth (crhueth@mcbriehall.com)

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Garth, Adam

From: Brad Shipley <bshipley@jhcottonlaw.com>
Sent: Wednesday, October 14, 2020 11:32 AM
To: Garth, Adam
Subject: [EXT] FW: Notification of Service for Case: A-19-788787-C, Estate of Rebecca Powell, Plaintiff(s)vs.Valley Health System, LLC, Defendant(s) for filing Service Only, Envelope Number: 5945456

External Email

From: efilingmail@tylerhost.net <efilingmail@tylerhost.net>
Sent: Friday, April 17, 2020 9:42 AM
To: Brad Shipley <bshipley@jhcottonlaw.com>
Subject: Notification of Service for Case: A-19-788787-C, Estate of Rebecca Powell, Plaintiff(s)vs.Valley Health System, LLC, Defendant(s) for filing Service Only, Envelope Number: 5945456



Notification of Service

Case Number: A-19-788787-C
Case Style: Estate of Rebecca Powell,
Plaintiff(s)vs.Valley Health System, LLC,
Defendant(s)
Envelope Number: 5945456

This is a notification of service for the filing listed. Please click the link below to retrieve the submitted document.

Filing Details	
Case Number	A-19-788787-C
Case Style	Estate of Rebecca Powell, Plaintiff(s)vs.Valley Health System, LLC, Defendant(s)
Date/Time Submitted	4/17/2020 9:39 AM PST
Filing Type	Service Only
Filing Description	Defendants Juliano, Concio and Shah's First Set of Requests for Admission to Plaintiff Taryn Creecy
Filed By	Jody Foote
Service Contacts	Conrado C.D. Concio MD: Jody Foote (jfoote@jhcottonlaw.com)

Jessica Pincombe (jpincombe@jhcottonlaw.com)

John Cotton (jhcotton@jhcottonlaw.com)

Brad Shipley (bshipley@jhcottonlaw.com)

Estate of Rebecca Powell:

Tony Abbatangelo (tony@paulpaddalaw.com)

James Kelly (jpk@paulpaddalaw.com)

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Paul Padda (psp@paulpaddalaw.com)

Valley Health System, LLC:

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Robert McBride (rmcbride@mcbridehall.com)

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Tiffane Safar (tsafar@mcbridehall.com)

Stephanie Lazo (slazo@mcbridehall.com)

Richard Carroll (rdcarroll@cktfmlaw.com)

Theresa Lopez (tmlopez@cktfmlaw.com)

Kellie Piet (kpiet@mcbridehall.com)

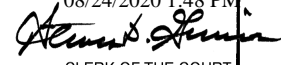
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EXHIBIT ‘B’


CLERK OF THE COURT

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

1 **SAO**
2 **PAUL S. PADDA, ESQ. (NV Bar #10417)**
3 **Email: *psp@paulpaddalaw.com***
4 **JAMES P. KELLY, ESQ. (NV Bar #8140)**
5 **Email: *jpk@paulpaddalaw.com***
6 **PAUL PADDA LAW, PLLC**
7 **4560 South Decatur Boulevard, Suite 300**
8 **Las Vegas, Nevada 89103**
9 **Tele: (702) 366-1888**
10 **Fax: (702) 366-1940**
11 ***Attorneys for Plaintiffs***

12 **DISTRICT COURT**
13 **CLARK COUNTY, NEVADA**

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

21 **Plaintiffs,**

22 **vs.**

23 **VALLEY HEALTH SYSTEM, LLC**
24 **(doing business as "Centennial Hills**
25 **Hospital Medical Center"), a foreign**
26 **limited liability company; UNIVERSAL**
27 **HEALTH SERVICES, INC., a foreign**
28 **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

STIPULATION AND ORDER REGARDING
DEFENDANT JULIANO'S MOTION FOR
SUMMARY JUDGMENT AND DEFENDANT
CONCIO AND SHAH'S MOTION FOR
PARTIAL SUMMARY JUDGMENT ON
EMOTIONAL DISTRESS CLAIMS

COME NOW Plaintiffs, ESTATE OF REBECCA POWELL, through BRIAN POWELL,
as Special Administrator, DARCI CREECY, TARYN CREECY, ISAIAH KHOSROF, and
LLOYD CREECY by and through their counsel of record, Paul S. Padda, Esq. and James P.

1 Kelly, Esq. of PAUL PADDALAW, PLLC, Defendants, DR. DIONICE S. JULIANO, M.D.,
2 DR. CONRADO C.D. CONCIO, M.D., and DR. VISHAL S. SHAH, M.D., by and through their
3 counsel of record John H. Cotton, Esq. and Brad Shipley, Esq. of JOHN H. COTTON &
4 ASSOCIATES, LTD., and Defendants, VALLEY HEALTH SYSTEM, LLC and UNIVERSAL
5 HEALTH SERVICES, INC., by and through their counsel of record S. Brent Vogel, Esq. and
6 Adam Garth, Esq. of LEWIS BRISBOIS BISGAARD & SMITH, LLP, and present the following
7 Stipulations for the Court's review and consideration:
8

9 **I. PROCEDURAL HISTORY**

10 Defendant Juliano's Motion for Summary Judgment and Defendant Concio and Shah's
11 Motion for Partial Summary Judgment on Emotional Distress Claims was filed on August 7, 2020
12 and requested a hearing on same. At this time, a hearing date has not been set. On August 10,
13 2020, Defendant Valley Health Systems, LLC and Universal Health Systems, Inc. filed their Non-
14 Opposition to Defendant Juliano's Motion for Summary Judgment and Joinder of Defendants
15 Concio and Shah's Motion for Partial Summary Judgment on Emotional Distress Claims.
16 Plaintiffs' Opposition to Defendants' Motions and Joinder thereto are currently due to be filed by
17 August 21, 2020.
18

19 **II. STIPULATIONS**

20 IT IS HEREBY STIPULATED that Plaintiffs' August 21, 2020 response deadline to
21 Defendant Juliano's Motion for Summary Judgment and Defendant Concio and Shah's Motion
22 for Partial Summary Judgment on Emotional Distress Claims and Defendant Valley Health
23 Systems, LLC and Universal Health Systems, Inc. joinder thereto be extended to October 13,
24 2020.
25

26 IT IS FURTHER STIPULATED that the hearing on Defendant Juliano's Motion for
27
28

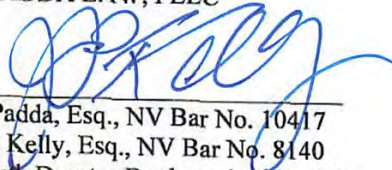
PAUL PADDA LAW, PLLC
4560 South Decatur Boulevard, Suite 300
Las Vegas, Nevada 89103
Tele: (702) 366-1888 • Fax (702) 366-1940

Summary Judgment and Defendant Concio and Shah's Motion for Partial Summary Judgment on Emotional Distress Claims and Defendant Valley Health Systems, LLC and Universal Health Systems, Inc. joinder thereto be extended and set by this Court in accordance with the above-stipulated opposition deadline.

The parties stipulate and agree that there is good cause for entering into the aforementioned stipulations. These stipulations shall function to allow time for Plaintiffs to confirm whether there is a factual basis for their NIED claims, and specifically, to discuss with an appropriate expert whether or not there are any alleged errors or omissions against Dr. Juliano in this case with regard to Defendants' dispositive motions and joinders.

Dated this 21 day of August 2020.

PAUL PADDA LAW, PLLC


Paul S. Padda, Esq., NV Bar No. 10417
James P. Kelly, Esq., NV Bar No. 8140
4560 South Decatur Boulevard, Suite 300
Las Vegas, Nevada 89103
Attorneys for Plaintiffs

Dated this 21st day of August 2020.

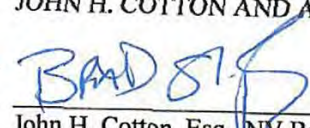
LEWIS BRISBOIS BISGAARD & SMITH, LLP

/s/ Adam Garth

S. Brent Vogel, Esq., NV Bar No. 6858
Adam Garth, Esq., NV Bar No. 15405
6385 S. Rainbow Boulevard, Suite 600
Las Vegas, NV 89118
Attorneys for Defendant Valley Health System,
LLC dba Centennial Hills Hospital Medical
Center and Universal Health Services, Inc.

Dated this 21st day of August 2020.

JOHN H. COTTON AND ASSOCIATES


John H. Cotton, Esq., NV Bar No. 5268
Brad J. Shipley, Esq., NV Bar No. 12639
7900 W. Sahara Avenue, Suite 200
Las Vegas, NV 89117
Attorneys for Defendants Dionice S. Juliano,
MD, Conrado Concio, MD and Vishal S. Shah,
MD

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

Estate of Rebecca Powell, et al. v. Valley Health System, LLC, et al., Case No. A-19-788787-C
Stipulation and Order Regarding Defendant Juliano's Motion For Summary Judgment and Defendant
Concio and Shah's Motion for Partial Summary Judgment on Emotional Distress Claims

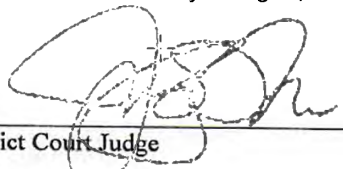
ORDER

IT IS HEREBY ORDERED that Plaintiffs' August 21, 2020 response deadline to Defendant Juliano's Motion for Summary Judgment and Defendant Concio and Shah's Motion for Partial Summary Judgment on Emotional Distress Claims and Defendant Valley Health Systems, LLC and Universal Health Systems, Inc. joinder thereto be extended to October 13, 2020.

IT IS FURTHER ORDERED that the hearing on Defendant Juliano's Motion for Summary Judgment and Defendant Concio and Shah's Motion for Partial Summary Judgment on Emotional Distress Claims and Defendant Valley Health Systems, LLC and Universal Health Systems, Inc. joinder thereto be extended and set by this Court in accordance with the above-stipulated opposition deadline to be heard by this Court on October 28, 2020, at 9AM.

Dated: _____

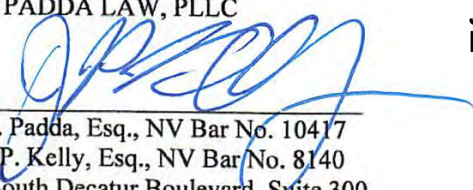
Dated this 24th day of August, 2020


District Court Judge

Respectfully submitted by:

PAUL PADDA LAW, PLLC

C7A DB8 8018 F3DC
Jerry A. Wiese
District Court Judge


Paul S. Padda, Esq., NV Bar No. 10417
James P. Kelly, Esq., NV Bar No. 8140
4560 South Decatur Boulevard, Suite 300
Las Vegas, Nevada 89103
Attorneys for Plaintiffs

Jennifer Greening

From: Garth, Adam <Adam.Garth@lewisbrisbois.com>
Sent: Friday, August 21, 2020 3:41 PM
To: Jennifer Greening
Cc: Brad Shipley; Paul Padda; Vogel, Brent; Rokni, Roya; Whitbeck, Johana; Armantrout, Heather; Atkinson, Arielle; John Cotton; Jody Foote
Subject: Re: [EXT] RE: Estate of Rebecca Powell v. Valley Health System, LLC -- Stipulation to Extend Deadlines

Ok to use my e-signature on both stipulations.



Adam Garth
Partner
Adam.Garth@lewisbrisbois.com

T: [702.693.4335](tel:702.693.4335) F: [702.366.9563](tel:702.366.9563)

[6385 South Rainbow Blvd., Suite 600, Las Vegas, NV 89118](#) | LewisBrisbois.com

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On Aug 21, 2020, at 3:16 PM, Jennifer Greening <Jennifer@paulpaddalaw.com> wrote:

Good afternoon, Counsel-

Attached is the revised SAO re: Defendants' MSJ & MPSJ for your review. Please advise if there are any additional changes, or if we have permission to affix your electronic signatures for submission to the Court.

Thank you.

Jennifer C. Greening
Paralegal
PAUL PADDA LAW, PLLC
Jennifer@paulpaddalaw.com
www.paulpaddalaw.com

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 Stipulation and 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:

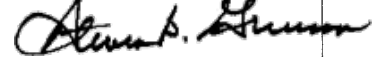
15 Service Date: 8/24/2020

16 Paul Padda	psp@paulpaddalaw.com
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19 Jessica Pincombe	jpinnacle@jhcottonlaw.com
20 John Cotton	jhcotton@jhcottonlaw.com
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22 Brad Shipley	bshipley@jhcottonlaw.com
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4	Paul Padda	civil@paulpaddalaw.com
5	Marlenne Casillas	marlennec@paulpaddalaw.com
6	Jennifer Greening	jennifer@paulpaddalaw.com
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EXHIBIT ‘G’



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.

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

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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.*

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

S. Brent Vogel
Adam Garth
LEWIS BRISBOIS BISGAARD & SMITH LLP
6385 S. Rainbow Blvd., Ste. 600
Las Vegas, NV 89118
*Attorneys for Defendant Valley Health System, LLC, dba
Centennial Hills Hospital Medical Center*


An Employee of John H. Cotton & Associates

1 CSERV

2 DISTRICT COURT
3 CLARK COUNTY, NEVADA
4

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: 11/5/2020

16 Paul Padda	psp@paulpaddalaw.com
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19 Jessica Pincombe	jpinnacle@jhcottonlaw.com
20 John Cotton	jhcotton@jhcottonlaw.com
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22 Brad Shipley	bshipley@jhcottonlaw.com
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24 Adam Garth	Adam.Garth@lewisbrisbois.com
25 Royak Rokni	roya.rokni@lewisbrisbois.com

1	James Kelly	jpk@paulpaddalaw.com
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4	Paul Padda	civil@paulpaddalaw.com
5	Marlenne Casillas	marlennec@paulpaddalaw.com
6	Jennifer Greening	jennifer@paulpaddalaw.com
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
10 known addresses on 11/6/2020

10	John Cotton	John H. Cotton & Associates, LTD.
11		Attn: John H. Cotton
12		7900 W. Sahara Ave. - Suite 200
13		Las Vegas, NV, 89117
14	Paul Padda	Paul Padda Law, PLLC
15		c/o: Paul Padda
16		4560 S. Decature Blvd, Suite 300
17		Las Vegas, NV, 89103

OPP

PAUL S. PADDALAW, ESQ.
Nevada Bar No. 10417
Email: psp@paulpaddalaw.com

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

Attorney for Plaintiffs

DISTRICT COURT
CLARK COUNTY, NEVADA

ESTATE OF REBECCA POWELL, through
Brian Powell as Special Administrator; DARCI
CREECY, individually; TARYN CREECY,
individually; ISAIAH 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

**PLAINTIFFS’ OPPOSITION TO
DEFENDANT VALLEY HEALTH
SYSTEM LLC’S MOTION FOR STAY
OF PROCEEDINGS**

Citing Nevada Rule of Appellate Procedure 8, Defendant Valley Health System, LLC
 (“VHS”) seeks a stay of all current discovery proceedings based upon its counsel’s opinion that
 “[t]here is no clearer case demonstrating irrefutable evidence of inquiry notice as this matter.”¹

¹ See Declaration of Adam Garth, ¶ 6 (lines 26-27).

Respectfully, counsel for VHS is demonstrably ill-informed (as shall be demonstrated below) and the motion filed on behalf of his client lacks any factual or legal support that would justify the “extraordinary relief”² requested. The Court’s Order filed on October 29, 2020³ denying VHS’s motion for summary judgment on the statute of limitations issue reached the correct result; namely that “there remains a genuine issue of material fact as to when the Plaintiffs were actually put on inquiry notice” given that the State of Nevada determined Rebecca Powell’s death a suicide. Although the physician Defendants in this case had 7-days to file a joinder to VHS’s motion pursuant to Eighth Judicial District Rule 2.20(d), the record in this case reflects they declined to do so. Accordingly, VHS stands alone in seeking a complete stay of all proceedings.

For the reasons set forth below, VHS’s motion for a stay should be denied. There is no factual or legal basis that supports the relief requested. Instead, the motion is little more than an attempt to delay proceedings and force Plaintiffs’ counsel to divert time and attention away from the merits of this case to responding to a frivolous and desperate legal maneuver. In support of this opposition, Plaintiffs rely upon the memorandum of points and authorities below, all papers on file in this litigation (especially Plaintiffs’ Opposition to VHS Motion for Summary Judgment which is fully incorporated by reference herein) and any additional argument the Court may permit.

² Extraordinary relief, such as that sought through a writ to the Supreme Court of Nevada or the Court of Appeals, is generally unavailable and disfavored when there is a “plain, speedy and adequate remedy in the ordinary course of law.” See Aspen Financial Services, Inc. v. Eighth Judicial District Court, 129 Nev. 878, 882 (2013) (*quoting Mineral County v. State Department of Conservation & Natural Resources*, 117 Nev. 235 (2001)).

³ Notice of Entry of the Order was filed on November 2, 2020.

MEMORANDUM OF POINTS AND AUTHORITIES

I. THE LEGAL STANDARD

As this Court is well aware, in evaluating a motion for summary judgment, pleadings and documentary evidence must be construed in the light which is most favorable to the party against whom the motion for summary judgment is directed. Mullis v. Nevada National Bank, 98 Nev. 510, 512 (1982). “Litigants are not to be deprived of a trial on the merits if there is the slightest doubt as to the operative facts.” Perez v. Las Vegas Medical Center, 107 Nev. 1, 4 (1991). The party seeking summary judgment bears the initial burden of proof to show there are no genuine issues of material fact. See Cuzze v. University and Community College System of Nevada, 123 Nev. 598, 602 (2007).

With respect to discovery based causes of action, such as medical malpractice claims, NRS 41A.097 provides that a cause of action against a health care provider 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. A person is put on inquiry notice of an injury, triggering the 1-year statute, when he or she should have known of facts that would lead an ordinarily prudent person to investigate the matter further.” Winn v. Sunrise Hospital & Medical Center, 129 Nev. 246, 252 (2012). Although the 1-year accrual date for NRS 41A.097 is normally a question for the trier of fact, a district court may decide the accrual date as a matter of law but only when the evidence is irrefutable. Id.

A party aggrieved by a “judgment or order” may seek a stay in the district court before seeking the same relief in the Supreme Court of Nevada or the Court of Appeals. See NRAP 8. In deciding whether to issue a stay, the appellate courts will consider the following four factors:

Estate of Rebecca Powell, et al. v. Valley Health System, LLC, et al.
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Plaintiffs’ Opposition to Defendant Valley Health System LLC’s Motion For A Stay

(1) whether the object of the appeal or writ petition will be defeated if the stay or injunction is denied, (2) whether the petitioner will suffer irreparable harm or serious injury if the stay is denied, (3) whether the respondent will suffer irreparable harm or serious injury if the stay is granted and (4) whether petitioner is likely to prevail on the merits of the appeal or writ petition. Id.

Although the decision to grant a stay is within the discretion of a court, stays seeking extraordinary relief are disfavored when there is a “plain, speedy and adequate remedy in the ordinary course of law.” See Aspen Financial Services, Inc. v. Eighth Judicial District Court, 129 Nev. 878, 882 (2013) (quoting Mineral County v. State Department of Conservation & Natural Resources, 117 Nev. 235 (2001)).

II. THIS COURT CORRECTLY DECIDED THAT REBECCA POWELL’S DEATH CERTIFICATE CREATES A GENUINE ISSUE OF MATERIAL FACT AS TO WHEN PLAINTIFFS WERE ON INQUIRY NOTICE OF POTENTIAL NEGLIGENCE

In seeking a stay, VHS alleges that Plaintiffs did not offer “any admissible evidence whatsoever”⁴ in opposition to the motion for summary judgment VHS filed on September 2, 2020. This is plainly not true. For instance, the most relevant and important item of evidence submitted by Plaintiffs in opposition to VHS’s motion for summary judgment is the State of Nevada Death Certificate, a self-authenticating document,⁵ listing Ms. Powell’s cause of death as a “suicide.”⁶ The document bears an attestation as to its authenticity and is signed by both

⁴ See Motion for Stay, p. 7.

⁵ See NRS 52.165.

⁶ See Bates #3 of the Appendix attached to Plaintiffs’ Opposition to VHS’s Motion for Summary Judgment. A copy of that Opposition and its Appendix is incorporated by reference

the Registrar of Vital Statistics and Dr. Jennifer N. Corneal, M.D. In evaluating this important item of evidence, this Court sagely concluded that “the fact that the family was notified shortly after the decedent’s death that the cause of death was determined to be a ‘suicide,’ causes this Court some doubt or concern about what the family knew at that time period.” *See* Order dated October 28, 2020, pp. 4-5. In addition to the Death Certificate, Plaintiffs also included the sworn interrogatory answer of Brian Powell, Special Administrator of Ms. Powell’s Estate, who testified that he could not visit Ms. Powell in the hospital because he was “turned away” and that the risk manager “didn’t provide any information”⁷ pertaining to Ms. Powell’s death.

Although VHS bore the burden of proof as the party seeking summary judgment, it provided no persuasive evidence to support its arguments of inquiry notice apart from two declarations from individuals named Gina Arroyo and Melanie Thompson,⁸ each claiming to have been involved with merely providing records to Ms. Powell’s family but no definitive statement as to whether those records were actually received by the family. And even if records were received, so what? VHS has not provided any evidence demonstrating that the records reveal negligence or the mere request for the records is evidence of suspicions of negligence.⁹

herein.

⁷ Bates #86 and #88 to Appendix in support of Plaintiffs’ Opposition to VHS’ Motion for Summary Judgment filed on September 16, 2020.

⁸ See Exhibits M and N to Defendant VHS’s Motion for Summary Judgment.

⁹ If this were the standard, following the death or injury of a loved one by a health care provider, an aggrieved family member should never request medical records lest the 1-year statutory time period be triggered. No court in Nevada has adopted such an absurd standard being advocated by VHS. A mere request for records, without more, is not tantamount to inquiry notice. Nor should the public policy of this State punish the aggrieved merely for seeking information and potential answers.

1 The other documents relied upon by VHS to supports its arguments of inquiry notice are
2 unauthenticated documents. Instead of deposing a single witness in this case and having those
3 witnesses authenticate documents, counsel for VHS would like the Court to simply accept his
4 opinion that “[t]here is no clearer case of demonstrating irrefutable evidence of inquiry notice as
5 this matter.” Opinions rendered by counsel are not evidence nor, under the facts of this case,
6 even remotely persuasive.

8 In essence, VHS is arguing out of both sides of its proverbial mouth. While it plans to
9 argue to a jury that Ms. Powell died from a suicide (meaning no negligence could have
10 occurred), it urges this Court to dismiss this case on the theory that a mere request for medical
11 records by Ms. Powell’s family suggests they somehow knew or suspected negligence was
12 involved in the death of their loved one. VHS seeks to improperly shift the burden of proof
13 under the summary judgment standard to Plaintiffs when in fact it is VHS’s obligation to show
14 irrefutable proof of inquiry notice. VHS has not even come close to meeting this burden.

16 **III. NOT A SINGLE FACTOR UNDER NRAP 8 SUPPORTS A STAY IN THIS**
17 **CASE AND THEREFORE THE COURT SHOULD EXERCISE ITS**
18 **DISCRETION AND DENY VHS’S MOTION**

19 Under each of the 4 factors set forth under NRAP 8(c), the Court should deny VHS’s
20 motion for a stay.

21 **A. The Object Of VHS’s Proposed Appeal Will Not Be Defeated If The Stay**
22 **Is Denied**

23 VHS has a “plain, speedy and adequate remedy in the ordinary course of law” that will
24 allow it to challenge the Court’s ruling on the inquiry notice issue at the conclusion of the case.
25 VHS’s claim that the object of the petition would be defeated if it is forced to participate in
26 discovery is without merit. VHS and the other Defendants have already propounded well over
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200 written discovery requests; all of which have been responded to by Plaintiffs. Relatedly, VHS's argument is hollow because it presumes that there is irrefutable evidence showing Plaintiffs were on inquiry notice. All that VHS presented in support of its motion for summary judgment were two declarations from individuals claiming to have mailed records to Plaintiffs. Neither one of these witnesses could even testify as to whether Plaintiffs actually received the documents. Without having deposed a single witness in this case, VHS's counsel is simply engaging in conjecture and speculation. Since the evidence in this case on the inquiry notice issue is far from irrefutable, this is an issue of fact that a jury must decide – and not a court of law.

B. VHS Will Not Suffer Irreparable Harm If Its Motion For Stay Is Denied

Litigation is always expensive and stressful for everyone involved. VHS counsel complains that allowing this lawsuit to proceed, without permitting a detour for a lengthy writ process, will compound costs and expenses. Putting aside that this presumes VHS will prevail on appeal, the clear fact is that VHS is the party increasing costs and expenses in this case by pursuing a frivolous motion and forcing Plaintiffs to respond. If VHS's logic were to be applied to every case, no lawsuit could ever proceed on the normal track when a court made a legal ruling that a party disliked and that party wanted to file a writ. VHS counsel recognizes the inherent weakness in his argument when he states "should the Nevada Supreme Court" rule in his client's favor. The operative word is should. In other words, there is no guarantee VHS can even prevail. However, the more important point is that, there is no irrefutable evidence that Plaintiffs were on inquiry notice. Therefore, the determination does not move to a legal question but instead remains an issue of fact for a jury to decide. What VHS is seeking is to deprive the jury of their rightful function.

C. Plaintiffs Will Suffer Irreparable Harm If The Stay Is Granted

Memories fade over time. Evidence is not always properly preserved. Allowing VHS to take a lengthy detour by way of writ is simply to postpone this case for a significant period of time which will result in real and appreciable harm to Plaintiffs. Why should VHS obtain this benefit, especially when there are open questions regarding inquiry notice in this case that are within the province of the jury to decide? Without even meeting the “irrefutable” standard that is required to move the inquiry notice issue from a factual question to a legal one, VHS feebly claims that Plaintiffs will benefit from a delay in this case because they will be ensured some finality should the Supreme Court rule in VHS favor. This is both silly and foolishly hopeful on the part of VHS. The fact of the matter is that Plaintiffs will be irreparably and seriously harmed if the Court were to grant VHS’s motion which will result in a significant delay in this case upending all of the deadlines set forth in the Court’s Scheduling Order filed on May 6, 2020.

D. It Is Highly Doubtful That VHS Can Prevail On Appeal

With only two declarations claiming medical records were mailed to Plaintiffs and conclusory, self-serving opinions from VHS’s counsel, it is highly doubtful that VHS can prevail on appeal. Indeed, it would be shocking if it did. This is especially true if the Supreme Court considers the same documents this Court considered, including the Certificate of Death issued by the State of Nevada which lists Rebecca Powell’s cause of death as “suicide.” Notably, counsel for VHS does not meaningfully address this fact in the motion to stay let alone address it all.

“Irrefutable” means that which is impossible to disprove.¹⁰ VHS wants this Court to find that it is impossible (e.g. irrefutable) for Plaintiffs to disclaim any knowledge or suspicion of negligence with respect to Rebecca Powell’s death. What would the Court base such a finding upon? Would it rely upon the declarations of Mss. Arroyo and Thompson and Mr. Garth? Would it rely upon unauthenticated documents such as the Complaint to the Nevada State Nursing Board¹¹ and Mr. Garth’s personal interpretation of the words in that document? The simple fact is VHS did an exceedingly poor job drafting a motion for summary judgment and now seeks to oddly shift the burden to Plaintiffs to disprove its claims/defenses. This is both legally improper and ill-informed. It is not Plaintiffs burden to present irrefutable evidence of inquiry notice. That burden belongs to VHS and it has failed to meet its burden. There is no reasonable probability, let alone even possibility, that VHS is likely to prevail on the merits of its appeal. Not with the scant evidence it relies upon.

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¹⁰ See <https://www.dictionary.com/browse/irrefutable>

¹¹ Motion for Stay, p. 6 (line 26).

CONCLUSION

The parties are in the midst of discovery. VHS has propounded extensive discovery and Plaintiffs have responded fully to that discovery. Plaintiffs have propounded their own written discovery upon VHS. Expert disclosures are due on June 18, 2021. Plaintiffs intend to fully meet that deadline. This case is moving forward on the proper track. VHS's ill-advised motion for a stay is simply a delay tactic. As is often noted, justice delayed is justice denied. The Court should deny VHS's motion for a stay.

PAUL PADDALAW, PLLC

/s/ Paul S. Padda

Paul S. Padda, Esq.
James P. Kelly, Esq.
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Las Vegas, Nevada 89103

Attorneys for Plaintiffs

November 19, 2020

CERTIFICATE OF SERVICE

Pursuant to Rule 5(b) of the Nevada Rules of Civil Procedure, I certify that I am an employee of Paul Padda Law, PLLC and that on this 19th day of November 2020, I served a true and correct copy of the above and foregoing document on all parties/counsel of record in the above entitled matter through hand service and/or efileNV eservice.

/s/ Jennifer C. Greening

An Employee of Paul Padda Law, PLLC

Estate of Rebecca Powell, et al. v. Valley Health System, LLC, et al.
District Court Case No. A-19-788787-C, Dept. 30
Plaintiffs' Opposition to Defendant Valley Health System LLC's Motion For A Stay

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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; ISIAH 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.

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.

22 Now, Defendant Valley Health System, LLC (VHS) seeks an order staying the case
23 pending an appeal of the October 29, 2020, Order denying its Motion for Summary Judgment
24 Based Upon the Expiration of the Statute of Limitations. Defendant VHS alleges that it may be
25 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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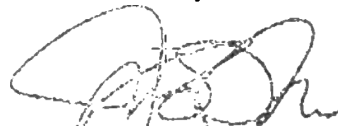
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Based upon all these reasons, considering the relevant factors set forth above, finding that they weigh in favor of the non-moving party, and good cause appearing,

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 3 06 PM '20
APR 22 3 06 PM '20

Jerry A. Wiese
District Court Judge

Respectfully submitted by:

PAUL PADDALAW

/s/ Paul S. Padda

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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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ORDER

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**DISTRICT COURT
CLARK COUNTY, NEVADA**

ESTATE OF REBECCA POWELL, through
Brian Powell as Special Administrator;
DARCI CREECY, individually; TARYN
CREECY, individually; ISAIAH 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. XXX (30)

**ORDER DENYING DEFENDANTS
CONRADO CONCIO, M.D. AND
DIONICE JULIANO, M.D.'S MOTION
TO DISMISS PLAINTIFFS'
COMPLAINT**

The above-referenced matter was scheduled for a hearing on September 25, 2019.

Appearing on behalf of Plaintiffs were Paul S. Padda, Esq. and Suneel J. Nelson, Esq.

Appearing on behalf of Defendants the movant, was Brad J. Shipley, Esq. and Zachary J.
Thompson, Esq.

...

...

*Order Denying Defendants Conrado Concio, M.D. and Dionice Juliano, M.D.'s Motion to Dismiss
Estate of Rebecca Powell, et. al. v. Centennial Hills Hospital Medical Center et. al.
Case No. A-19-788787-C, Dept. No. XXX (30)*

I.

PROCEDURAL POSTURE

1. On February 4, 2019, Plaintiffs filed a Complaint alleging medical malpractice, wrongful death and negligent infliction of emotional distress (“NIED”). Plaintiffs attached to their Complaint a sworn affidavit from Dr. Sami Hashim, M.D. in support of their first cause of action alleging medical malpractice.

2. On June 12, 2020, Defendants Conrado Concio, M.D. and Dionice Juliano, M.D. filed a motion to dismiss Plaintiffs’ Complaint alleging that Plaintiffs failed to timely file their Complaint within the statute of limitations time of one year pursuant to NRS 41A.097(2) and also failing to meet the threshold requirements of NRS 41A.071 for the claims of negligent infliction of emotional distress and professional negligence.

3. On June 13, 2019 Defendant Vishal Shah, M.D. filed a joinder to Defendants Conrado, M.D. and Dionice Juliano, M.D.’s motion to dismiss.

4. On June 26, 2019, Defendant Centennial Hills Hospital filed a joinder to Defendants Conrado, M.D. and Dionice Juliano, M.D.’s motion to dismiss.

5. On September 23, 2019, Defendant Universal Health Services, Inc. filed a joinder to Defendants Conrado, M.D. and Dionice Juliano, M.D.’s motion to dismiss.

6. The motion to dismiss and related matters were heard by the Court on September 25, 2019.

7. After considering the papers on file in this matter and the arguments of counsel, the Court hereby renders the following findings of fact and conclusions of law:

I.

FINDINGS OF FACT AND CONCLUSIONS OF LAW

8. The Court, addressing the statute of limitations issue, noted that the Supreme Court has been clear that the standard of when a claimant “knew or reasonably should have known” is generally an issue of fact for a jury to decide. However, the Court also noted that in this case, it does appear that the Complaint was not filed until a substantial period after the date of Rebecca Powell’s death. Therefore, Defendants may revisit the statute of limitations issue in

1 the future through a motion for summary judgment at which point the Court will reconsider the
2 issue at that time. (Transcript 18:4-13).

3 9. The Court further stated there is at least an insinuation that there was
4 concealment, and the Court understands the argument that you cannot hold one defendant
5 responsible for another defendant's concealment. However, if there was concealment in this
6 case, it also arguably prevented the Plaintiffs from having the inquiry notice they needed in
7 order to comply with the statute of limitations. (Transcript 18:14-23).

8 10. The Court further stated that, in medical malpractice cases, an issue of fact is
9 determined when that inquiry notice starts, and arguably, the inquiry notice may not start until
10 Plaintiffs receive the pertinent records (Transcript 18:24-19:3).

11 11. The Court further stated regarding a Nevada Rule of Civil Procedure 12(b)(5)
12 motion based upon a "failure to state a claim upon which relief can be granted" that Defendants
13 must show that "under no circumstances would Plaintiffs able to prevail." At this point in the
14 litigation, the Court determined that this an issue of fact to be determined at a later date as
15 Defendants have not met their burden. (Transcript 19:4-7).

16 12. With regard to the NIED claim, Court stated that Plaintiffs' correctly pled the
17 claim, and Plaintiffs' Complaint meets the requirements of NRS 41A.071. However, there is
18 inconsistency within Plaintiffs' Affidavit which creates a genuine issue of fact. Therefore,
19 some arguments may be brought up in a motion for summary judgment that the Court will
20 consider at a later time after more evidence is available (Transcript 19:12-19:25).

21 13. Defendant Centennial Hills Hospital Medical Center's motion to dismiss
22 Plaintiffs' Complaint based upon NRS 41A.097 and NRCP 12(b)(5) must be denied (Transcript
23 19:25-20:2).

24 14. The Court concludes that Plaintiffs' Complaint should not be dismissed at this
25 time with the evidence available to the Court.

26 . . .

27 . . .

28 . . .

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III.

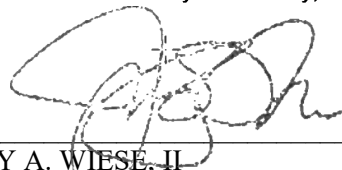
ORDER

Based upon the foregoing,

IT IS HEREBY ORDERED that Defendants Conrado Concio, M.D. and Dionice Juliano, M.D.'s Motion to Dismiss Plaintiffs' Complaint, and the subsequent joinders to that motion, on the grounds that (1) Plaintiffs untimely filed their complaint to satisfy the requirements of NRS 41A.097 and (2) that Plaintiffs failed to meet the threshold pleading requirements pursuant to NRS 41A.071 regarding Plaintiffs' claims of negligent infliction of emotional distress and professional negligence is DENIED without prejudice.

Dated this _____ day of _____, 2021.

Dated this 6th day of February, 2021



JERRY A. WIESE, II
DISTRICT COURT JUDGE
EIGHTH JUDICIAL DISTRICT COURT
DEPARTMENT 1
DBB 4BE A98C E349
Jerry A. Wiese
District Court Judge

Respectfully submitted by:

Approved as to Form and Content By:

PAUL PADDA LAW

JOHN H. COTTON & ASSOCIATES, LTD.

By: /s/ Paul S. Padda
Paul S. Padda, Esq.
Nevada Bar No. 10417
4650 S. Decatur Boulevard, Ste. 300
Las Vegas, Nevada 89103

By: /s/ Brad J. Shipley
Brad J. Shipley, Esq.
Nevada Bar No. 12639
7900 West Sahara Ave, Suite 200
Las Vegas, Nevada 89117

Attorneys for Plaintiffs

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

Dated this 4th day of February 2021.


From: [Brad Shipley](#)
To: [Jennifer Greening](#); [Garth Adam](#)
Cc: [Vogel, Brent](#); [Rokni, Roya](#); [Whitbeck, Johana](#); [Armantrout, Heather](#); [Atkinson, Arielle](#); [Paul Padda](#)
Subject: RE: Powell v. Valley Health - Proposed Orders re: 9/25/2019 Hearing
Date: Thursday, February 4, 2021 12:56:32 PM
Attachments: [image001.png](#)
[image002.png](#)
[image003.png](#)
[image004.png](#)
[image005.png](#)
[image006.png](#)

We have no objection to either order. You may use my e-signature for approval of the proposed orders.

Brad J. Shipley, Esq
John H. Cotton and Associates
7900 W. Sahara Ave. #200
Las Vegas, NV 89117
(702) 832-5909
(630) 269-1717

From: Jennifer Greening <Jennifer@paulpaddalaw.com>
Sent: Thursday, February 4, 2021 12:51 PM
To: Garth, Adam <Adam.Garth@lewisbrisbois.com>; Brad Shipley <bshipley@jhcottonlaw.com>
Cc: Vogel, Brent <Brent.Vogel@lewisbrisbois.com>; Rokni, Roya <Roya.Rokni@lewisbrisbois.com>; Whitbeck, Johana <Johana.Whitbeck@lewisbrisbois.com>; Armantrout, Heather <Heather.Armantrout@lewisbrisbois.com>; Atkinson, Arielle <Arielle.Atkinson@lewisbrisbois.com>; Paul Padda <psp@paulpaddalaw.com>
Subject: RE: Powell v. Valley Health - Proposed Orders re: 9/25/2019 Hearing

Thank you, Mr. Garth.

Jennifer C. Greening
Paralegal
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Los Angeles, California 90066
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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)

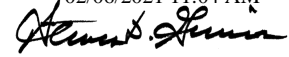
11 **AUTOMATED CERTIFICATE OF SERVICE**

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: 2/6/2021

16 Paul Padda	psp@paulpaddalaw.com
17 S. Vogel	brent.vogel@lewisbrisbois.com
18 Jody Foote	jfoote@jhcottonlaw.com
19 Jessica Pincombe	jpinnacle@jhcottonlaw.com
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22 Brad Shipley	bshipley@jhcottonlaw.com
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6	Diana Escobedo	diana@paulpaddalaw.com
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CLERK OF THE COURT

ORDR

PAUL S. PADDA
Nevada Bar No.: 10417
Email: psp@paulpaddalaw.com

PAUL PADDA LAW, PLLC
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Las Vegas, Nevada 89103
Tele: (702) 366-1888
Fax: (702) 366-1940
Attorneys for Plaintiffs

**DISTRICT COURT
CLARK COUNTY, NEVADA**

* * * * *

ESTATE OF REBECCA POWELL, through
Brian Powell as Special Administrator; DARCI
CREECY, individually; TARYN CREECY,
individually; ISAIAH 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. XXX (30)

**ORDER DENYING DEFENDANT
CENTENNIAL HILLS HOSPITAL
MEDICAL CENTER'S MOTION TO
DISMISS PLAINTIFFS' COMPLAINT**

The above-referenced matter was scheduled for a hearing on September 25, 2019.

Appearing on behalf of Plaintiffs was Paul S. Padda, Esq. and Suneel J. Nelson, Esq.

Appearing on behalf of Defendant Centennial Hills Hospital Medical Center, the movant, was

Brad J. Shipley, Esq. and Zachary J. Thompson, Esq.

...

*Order Denying Defendants Centennial Hills Hospital Medical Center and Universal Health Services, Inc.'s Motions to Dismiss
Estate of Rebecca Powell, et. al. v. Centennial Hills Hospital Medical Center et. al.
Case No. A-19-788787-C, Dept. No. XXX (30)*

PAUL PADDA LAW, PLLC
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Las Vegas, Nevada 89103
Tele: (702) 366-1888 • Fax (702) 366-1940

I.

PROCEDURAL HISTORY

1. On February 4, 2019, Plaintiffs filed a Complaint alleging medical malpractice, wrongful death and negligent infliction of emotional distress (“NIED”). Plaintiffs attached to their Complaint a sworn affidavit from Dr. Sami Hashim, M.D. in support of their first cause of action alleging medical malpractice.

2. On June 19, 2019, Defendant Centennial Hills Hospital Medical Center filed a motion to dismiss pursuant to Nevada Rule of Civil Procedure (“NRCPP”) 12(b)(5) alleging that Plaintiffs failed to timely file their Complaint within the statute of limitations time of one year pursuant to NRS 41A.071.

3. On September 23, 2019, Defendant Universal Health Services, Inc. filed a joinder to Defendant Centennial Hills Hospital Medical Center’s motion to dismiss.

4. The motion to dismiss and related matters were heard by the Court on September 25, 2019 (“the hearing”).

5. After considering the papers on file in this matter and the arguments of counsel, the Court hereby renders the following findings of fact and conclusions of law:

I.

FINDINGS OF FACT AND CONCLUSIONS OF LAW

6. The Court, addressing the statute of limitations issue at the hearing, noted that the Supreme Court of Nevada has been clear that the standard of when a claimant “knew or reasonably should have known” is generally an issue of fact for a jury to decide. However, the Court also noted that in this case it does appear that claim was not filed until a substantial period after the date of Rebecca Powell’s death. Therefore, the Court determined at the hearing that some arguments may be brought up later in a motion for summary judgment that the Court will consider following the filing of such a motion. (Transcript 18:4-13).

7. The Court further stated at the hearing that there is at least an insinuation that there was concealment, and the Court understands the argument that you cannot hold a Defendant responsible for another Defendants concealment. However, if there is concealment,

1 it arguably prevents the Plaintiffs from having the inquiry notice they need in order to comply
2 with the statute of limitations. (Transcript 18:14-23).

3 **8.** The Court further stated at the hearing that an issue of fact is determined when
4 that inquiry notice starts, and arguably, the inquiry notice may not start until a Plaintiff receives
5 the pertinent records (Transcript 18:24-19:3).

6 **9.** The Court further stated at the hearing that an NRCP 12(b)(5) motion for “failure
7 to state a claim upon which relief can be granted,” requires a defendant to show that “under no
8 circumstances would the plaintiffs be able to prevail.” The Court found that Defendants’s
9 motion did not meet this standard. Therefore, the Court determined this to be an issue of fact to
10 be determined at a later date (Transcript 19:4-7).

11 **10.** The Court finds and concludes that Defendant Centennial Hills Hospital Medical
12 Center’s motion to dismiss Plaintiffs’ Complaint based upon NRS 41A.097 and NRCP 12(b)(5)
13 must be denied (Transcript 19:25-20:2).

14 **11.** The Court also finds and concludes that Plaintiffs’ Complaint should not be
15 dismissed at this time with the evidence available to the Court.

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Las Vegas, Nevada 89103
Tele: (702) 366-1888 • Fax (702) 366-1940

III.

ORDER

Based upon the foregoing,

IT IS HEREBY ORDERED that Defendant Centennial Hills Hospital Medical Center's Motion to Dismiss Plaintiffs' Complaint, and the subsequent joinders to that motion, on the grounds that Plaintiffs untimely filed their Complaint to satisfy the requirements of NRS 41A.097 is DENIED without prejudice.

Dated this _____ day of _____, 2021.

Dated this 6th day of February, 2021



JERRY A. WIESE, II
DISTRICT COURT JUDGE
EIGHTH JUDICIAL DISTRICT COURT
DEPARTMENT 70
109 83D 7B85 F30D
Jerry A. Wiese
District Court Judge

Respectfully submitted by:

Approved as to Form and Content By:

PAUL PADDALAW

LEWIS BRISBOIS BISGAARD & SMITH

By: /s/ Paul S. Padda
Paul S. Padda, Esq.
Nevada Bar No. 10417
4650 S. Decatur Boulevard, Ste. 300
Las Vegas, Nevada 89103

By: /s/ Adam Garth
S. Brent Vogel, Esq.
Nevada Bar No. 6858
Adam Garth, Esq.
Nevada Bar No. 15045
6385 S. Rainbow Boulevard, Ste. 600
Las Vegas, Nevada 89118

Attorneys for Plaintiffs

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

Dated this 4th day of February 2021.

From: [Garth, Adam](#)
To: [Jennifer Greening](#); [Brad Shipley](#)
Cc: [Vogel, Brent](#); [Rokni, Roya](#); [Whitbeck, Johana](#); [Armantrout, Heather](#); [Atkinson, Arielle](#); [Paul Padda](#)
Subject: RE: Powell v. Valley Health - Proposed Orders re: 9/25/2019 Hearing
Date: Thursday, February 4, 2021 12:40:51 PM
Attachments: [image001.png](#)
[image002.png](#)
[image003.png](#)
[image004.png](#)
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[image006.png](#)
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You can sign my e-signature to the stipulation and submit for filing regarding the Centennial Hills order only. We can take no position regarding the other order as that pertains to co-defendant's motion and he will need to provide his approval.

Adam Garth



Adam Garth
Partner
Adam.Garth@lewisbrisbois.com
T: 702.693.4335 F: 702.366.9563

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From: Jennifer Greening <Jennifer@paulpaddalaw.com>
Sent: Thursday, February 4, 2021 12:34 PM
To: Garth, Adam <Adam.Garth@lewisbrisbois.com>; Brad Shipley <bshipley@jhcottonlaw.com>
Cc: Vogel, Brent <Brent.Vogel@lewisbrisbois.com>; Rokni, Roya <Roya.Rokni@lewisbrisbois.com>; Whitbeck, Johana <Johana.Whitbeck@lewisbrisbois.com>; Armantrout, Heather <Heather.Armantrout@lewisbrisbois.com>; Atkinson, Arielle <Arielle.Atkinson@lewisbrisbois.com>; Paul Padda <psp@paulpaddalaw.com>
Subject: [EXT] RE: Powell v. Valley Health - Proposed Orders re: 9/25/2019 Hearing

Attached is the hearing transcript for your review.

Thank you.

Jennifer C. Greening
Paralegal
PAUL PADDALAW, PLLC
Jennifer@paulpaddalaw.com
www.paulpaddalaw.com

Nevada Office:
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Tele: [\(702\) 366-1888](tel:(702)366-1888)
Fax: (702) 366-1940

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: 2/6/2021

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22 Brad Shipley	bshipley@jhcottonlaw.com
23 Tony Abbatangelo	Tony@thevegaslawyers.com
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25 Roy A Rokni	roya.rokni@lewisbrisbois.com

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