

**IN THE SUPREME COURT OF THE STATE OF NEVADA**

VALLEY HEALTH SYSTEM, LLC (doing business as  
“Centennial Hills Hospital Medical Center”), a foreign limited  
liability company,

Petitioner,

v.

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

Respondent,

and

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

Real Parties In Interest,

and

DR. DIONICE S. JULIANO, M.D., an individual; DR. CONRADO  
C.D. CONCIO, M.D., an individual; DR. VISHAL S. SHAH,  
M.D., an individual,

Additional Parties In Interest.

Supreme Court  
Electronically Filed  
Apr 22 2021 10:27 a.m.  
Elizabeth A. Brown  
Clerk of Supreme Court  
District Court  
No.: A-19-  
788787-C

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**PETITIONER’S APPENDIX TO MOTION FOR STAY PENDING  
DECISION ON WRIT OF MANDAMUS – VOLUME I**

---

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## **CERTIFICATE OF SERVICE**

I hereby certify that on this 22<sup>nd</sup> day of April, 2021, a true and correct copy of **PETITIONER’S APPENDIX TO MOTION FOR STAY PENDING DECISION ON WRIT OF MANDAMUS – VOLUME I** was served upon the following parties by electronic service through this Court’s electronic service system and also by placing a true and correct copy thereof in the United States Mail in Las Vegas, Nevada with first class postage fully prepaid:.

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

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*Dionice S. Juliano, M.D., Conrado  
Concio, M.D And Vishal S. Shah, M.D.*

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



# EXHIBIT 'A'

4.20.21 MINUTE ORDER RE DENIAL OF  
MOTION TO STAY ALL PROCEEDINGS

A-19-788787-C

**DISTRICT COURT  
CLARK COUNTY, NEVADA**

**Malpractice - Medical/Dental**

**COURT MINUTES**

**April 20, 2021**

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

---

**April 20, 2021      3:00 AM      Minute Order**

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

**COURT CLERK:** Lauren Kidd

**RECORDER:**

**REPORTER:**

**PARTIES**

**PRESENT:**

**JOURNAL ENTRIES**

- The above-referenced matter is scheduled for a hearing on 4/21/21 with regard to Defendant, Valley Health System LLC's Motion to Reconsider Motion for Stay Pending Petition for Writ of Mandamus. Pursuant to the administrative orders of the Court, including A.O. 21-03, this matter may be decided after a hearing, decided on the pleadings, or continued. Additionally, EDCR 2.23 provides that any matter may be decided with or without oral argument. This Court has determined that this matter may be decided on the pleadings, and consequently, this minute order issues.

This matter has been pending since February, 2019. It is currently set for trial on May 23, 2022. Initial expert disclosures are to be made on or before June 18, 2021, rebuttal expert disclosures are due on August 27, 2021, and discovery is to be completed on or before October 28, 2021.

Defendant Valley Health System LLC (aka CHH; doing business as "Centennial Hills Hospital Medical Center") moved this Court for summary judgment based upon an alleged expiration of the statute of limitations. CHH argued that Plaintiffs sought and received Ms. Powell's complete medical records from CHH just weeks after her death demonstrating their suspicion of alleged malpractice, and that Plaintiffs were therefore on inquiry notice when they received the medical records in June, 2017 since their own expert testified that he had sufficient evidence therein to allege malpractice.

PRINT DATE: 04/20/2021

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Minutes Date: April 20, 2021

CHH also argued that Plaintiffs failed to submit any admissible evidence whatsoever in opposition to that motion.

The Court issued an order denying CHH's motion on October 29, 2020. CHH then moved this Court for a stay of all proceedings prior to filing a Petition for a Writ of Mandamus. On December 17, 2020, this Court issued an order denying CHH's motion for a stay, due in part to the lack of likelihood that CHH would prevail on the merits, and the fact that a writ petition had not been filed. CHH has since filed its petition with the Nevada Supreme Court. In an order dated March 9, 2021, the Nevada Supreme Court issued an order directing an answer to CHH's writ petition, setting a briefing schedule of Plaintiffs' opposition by March 30, 2021 and CHH's reply by April 13, 2021. In its order, the Court stated "Having reviewed the petition, it appears that an answer may assist this court in resolving this matter." Defendant Valley Health System LLC's instant Motion to Reconsider the decision on the Motion for Stay Pending PWM was filed on 04/06/21 on OST.

Defendant CHH now argues that the Supreme Court's request for an Answer suggests a likelihood of success on the merits, and the Writ Petition has now been filed, so the Court should now grant the stay that was previously requested.

In opposition, the Plaintiff argues that the Motion is procedurally defective because a Motion for Reconsideration needs to be filed within 14 days from the 12/17/20 Notice of Entry of Order, which was filed by the Defendant. (See EDCR 2.24)

EDCR 2.24 states in pertinent part as follows:

EDCR 2.24 Rehearing of motions.

....

(b) A party seeking reconsideration of a ruling of the court, other than any order that may be addressed by motion pursuant to NRCP 50(b), 52(b), 59 or 60, must file a motion for such relief within 14 days after service of written notice of the order or judgment unless the time is shortened or enlarged by order. A motion for rehearing or reconsideration must be served, noticed, filed and heard as is any other motion. A motion for reconsideration does not toll the period for filing a notice of appeal from a final order or judgment.

Based on the foregoing, and good cause appearing, IT IS HEREBY ORDERED that Defendant's Motion for Reconsideration is hereby DENIED as untimely. The Court notes that this decision does not preclude the filing of a Motion to Stay with the Supreme Court.

The Court requests that counsel for the Plaintiff prepare an Order consistent with the foregoing, have it approved as to form and content by opposing counsel, and submit it to the Court for signature within 10 days.

Because this matter has been decided on the pleadings, the hearing scheduled for 4/21/21 will be

**A-19-788787-C**

taken off calendar, and consequently, there is no need for any parties or attorneys to appear.

CLERK'S NOTE: A copy of the above minute order was distributed to all parties 4-20-21./ /lk

# EXHIBIT ‘B’

10.2 .20 ORDER DENYING MOTION FOR  
SUMMARY JUDGMENT

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

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

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

ORDER

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

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

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

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

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

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

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

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

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



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

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

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

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

Although the Complaints filed by Brian Powell, suggest that Plaintiff may have at  
least been on inquiry notice in 2017, 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.

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

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

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

21 Defendant, Doctor Dionice Juliano, argues that based on the discovery which  
22 has taken place, the medical records, and specifically his own affidavit, there are no  
23 material facts suggesting he was responsible for the care and treatment of Rebecca  
24 Powell after May 9, 2017.<sup>1</sup> Further, Defendant argues that for a claim for Negligent  
25 Infliction of Emotional to survive, the plaintiff must be physically present for the act  
26 which is alleged to have inflicted that emotional distress.

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

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

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

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

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

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

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

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

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

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

7 Based upon the foregoing, and good cause appearing,

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

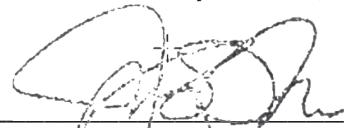
10 **IT IS FURTHER ORDERED** that Defendant Juliano's Motion for Summary  
11 Judgment is hereby **GRANTED**, and Dr. Juliano is hereby Dismissed from the Action,  
without prejudice.

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

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

17 Dated this 28<sup>th</sup> day of October, 2020.

Dated this 29<sup>th</sup> day of October, 2020



JERRY A. WIESE II  
DISTRICT COURT JUDGE  
EIGHTH JUDICIAL DISTRICT COURT  
DENVER, CO  
82839-1608  
Jerry A. Wiese  
District Court Judge

# EXHIBIT 'C'

ORDER DIRECTING ANSWER

IN THE SUPREME COURT OF THE STATE OF NEVADA

VALLEY HEALTH SYSTEM, LLC,  
D/B/A CENTENNIAL HILLS HOSPITAL  
MEDICAL CENTER, A FOREIGN  
LIMITED LIABILITY COMPANY,  
Petitioner,

vs.

THE EIGHTH JUDICIAL DISTRICT  
COURT OF THE STATE OF NEVADA,  
IN AND FOR THE COUNTY OF  
CLARK; AND THE HONORABLE  
JERRY A. WIESE, DISTRICT JUDGE,  
Respondents,

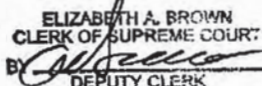
and

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; DR. DIONICE S.  
JULIANO, M.D., AN INDIVIDUAL; DR.  
CONRADO C.D. CONCIO, M.D., AN  
INDIVIDUAL; AND DR. VISHAL S.  
SHAH, M.D., AN INDIVIDUAL,  
Real Parties in Interest.

No. 82250

**FILED**

MAR 09 2021

ELIZABETH A. BROWN  
CLERK OF SUPREME COURT  
BY  DEPUTY CLERK

*ORDER DIRECTING ANSWER*

This original petition for a writ of mandamus challenges a district court order denying a motion for summary judgment in a tort action. Having reviewed the petition, it appears that an answer may assist this court in resolving this matter. Therefore, real parties in interest, on behalf of respondents, shall have 21 days from the date of this order to file and serve an answer, including authorities, against issuance of the requested



writ. NRAP 21(b)(1). If, however, any of the named real parties in interest do not believe they are interested parties in this writ proceeding, they shall so notify this court within that same time frame that they do not intend to file an answer for that reason. Petitioner shall have 14 days from service of the last-filed answer to file and serve any reply.

It is so ORDERED.

 A.C.J.

cc: Lewis Brisbois Bisgaard & Smith, LLP/Las Vegas  
John H. Cotton & Associates, Ltd.  
Paul Padua Law, PLLC



# EXHIBIT ‘D’

SCHEDULING ORDER AND  
ORDER SETTING FIRM CIVIL JURY TRIAL



1 SCHTO

2 DISTRICT COURT  
3 CLARK COUNTY, NEVADA

4 **Estate of Rebecca Powell**  
5 **vs.**  
6 **Valley Health System, LLC**

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

7 **SCHEDULING ORDER AND**  
8 **ORDER SETTING FIRM CIVIL JURY TRIAL**

9 **NATURE OF ACTION: MALPRACTICE - MED/DENTAL**

10 **TIME REQUIRED FOR TRIAL: 5 WEEKS**

11 **TRIAL READY DATE: JANUARY 31, 2022**

12 **DATES FOR SETTLEMENT CONFERENCE: PARTIES AGREE TO CONDUCT**  
13 **A PRIVATE MEDIATION TO BE**  
14 **SCHEDULED BY COUNSEL**

15 The parties herein appeared before the Honorable Jerry A. Wiese II, in Department 30  
16 of the Eighth Judicial District Court for a Mandatory Rule 16 Discovery Conference wherein  
17 all discovery deadlines were agreed upon and ordered by the Court. This order may only be  
18 amended or modified by further order of the court upon good cause shown,

19 **IT IS HEREBY ORDERED** that the parties will comply with the following  
20 deadlines:

21 A private mediation shall be conducted in July, 2021.

22 A status check regarding settlement/trial setting shall be conducted on JUNE 2,  
23 2021, at 9:00 AM in Department 30, Courtroom 14A located in the Regional Justice  
24 Center, 200 Lewis Avenue, Las Vegas, Nevada 89155.

25 All parties shall file motions to amend pleadings or add parties on or before  
26 6/18/2021.  
27  
28

1 All parties shall make initial expert disclosures pursuant to N.R.C.P. 16.1(a)(2) on or  
2 before **6/18/2021**.

3 All parties shall make rebuttal expert disclosures pursuant to N.R.C.P. 16.1(a)(2) on  
4 or before **8/27/2021**.

5 All parties shall complete discovery on or before **10/28/2021**.

6 All parties shall file dispositive motions on or before **11/30/2021**.

7 Unless otherwise directed by the court, all pretrial disclosures pursuant to N.R.C.P.  
8 16.1(a)(3) must be made at least 30 days before trial.

9 Motions for extensions of discovery shall be made in accordance with E.D.C.R. 2.35.  
10 The deadline for responding to discovery requests must fall on or before the date discovery  
11 closes. A deposition must be completed on or before the date discovery closes.

12 Unless otherwise ordered, discovery disputes (except disputes presented at a pre-trial  
13 conference or at trial) must first be heard by the Discovery Commissioner.

14 **IT IS HEREBY FURTHER ORDERED:**

15 A. The above entitled Medical Malpractice case is set for a **FIRM 5-week Jury**  
16 **Trial** commencing on **MAY 23, 2022, at 10:30 AM**. The trial will be held in Department  
17 30, Courtroom 14A located in the Regional Justice Center, 200 Lewis Avenue, Las Vegas,  
18 Nevada 89155.

19 B. A Pre-Trial Conference with the designated attorney and/or parties in proper  
20 person will be held on **APRIL 25, 2022, at 9:00 AM**. Trial counsel should be prepared to  
21 advise the court of any potential conflicts they or their witnesses have in the five (5) week  
22 stack.

1 C. A Calendar Call will be held on **MAY 16, 2022, at 9:00AM**. Trial Counsel  
2 (and any party in proper person) must appear. Parties must have the following ready for  
3 trial at the time of Calendar Call:  
4

- 5 (1) Typed exhibit lists;  
6 (2) List of depositions;  
7 (3) List of equipment needed for trial, including audiovisual equipment; and  
8 (4) Courtesy copies of any legal briefs on trial issues.

9 If counsel anticipates the need for audio visual equipment during trial, a request must be  
10 submitted to the District Court AV Department following the Calendar Call by contacting the  
11 AV Dept at 671-3300 or via E-Mail at [courthelpdesk@clarkcountycourts.us](mailto:courthelpdesk@clarkcountycourts.us).

12 D. The Joint Pre-trial Memorandum must be filed no later than **4:00 PM** on  
13 **Friday, MAY 13, 2022**, with a courtesy copy delivered to chambers. EDCR 2.67 must be  
14 fully complied with.

15 E. Stipulations to continue trial and discovery deadlines must comply with EDCR  
16 2.35. All Stipulations resulting in the continuance of a trial must include an Order and be  
17 submitted to Department 30 for signature by the District Court Judge. The Court generally  
18 is not inclined to grant continuances of the trial, absent a showing of good cause. A request  
19 for continuance of trial will result in the scheduling of an EDCR 1.90 conference.  
20

21 F. All motions in limine shall be filed at least **45** days prior to trial. Counsel are  
22 required to confer, **pursuant to EDCR 2.47**, at least **two weeks prior** to filing any motion in  
23 limine.

24 G. Orders shortening time will not be signed except in extreme emergencies.

25 ***AN UPCOMING TRIAL DATE IS NOT AN EXTREME EMERGENCY***  
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1 H. All original depositions anticipated to be used in any manner during the trial must be  
2 delivered to the clerk on a date and time to be determined at the time of the Pretrial Conference. If  
3 deposition testimony is anticipated to be used in lieu of live testimony, a designation (by page/line  
4 citation) of the portions of the testimony to be offered must be filed and served by facsimile or hand,  
5 two (2) judicial days prior to the Calendar Call. Any objections or counterdesignations (by page/line  
6 citation) of testimony must be filed and served by facsimile or hand, one (1) judicial day prior to the  
7 commencement of trial. Counsel shall advise the clerk prior to publication.  
8

9 I. In accordance with EDCR 2.67, counsel shall meet, review, and discuss exhibits. All  
10 exhibits must comply with EDCR 2.27. Two (2) sets must be three hole punched placed in three  
11 ring binders along with the exhibit list. The sets must be delivered to the Courtroom Clerk on a date  
12 and time to be determined at the time of the Pretrial Conference. Any demonstrative exhibits  
13 including exemplars anticipated to be used must be disclosed prior to the calendar call. Pursuant to  
14 EDCR 2.68, at the Calendar Call, counsel shall be prepared to stipulate or make specific objections  
15 to individual proposed exhibits. Unless otherwise agreed to by the parties, demonstrative exhibits  
16 are marked for identification but not admitted into evidence.

17 J. In accordance with EDCR 2.67, counsel shall meet and discuss jury instructions,  
18 special interrogatories, if requested, and verdict forms. Each side shall provide the Court, at the  
19 Calendar Call, an agreed set of jury instructions and proposed form of verdict along with any  
20 additional proposed jury instructions with an electronic copy in Word format.

21 Failure of the designated trial attorney or any party appearing in proper person to  
22 appear for any court appearances or to fully comply with EDCR 2.67 or this trial Order shall  
23 result in any of the following: (1) dismissal of the action (2) default judgment; (3) monetary  
24 sanctions; (4) vacation of trial date; and/or any other appropriate remedy or sanction.  
25

26 Counsel must advise the Court immediately when the case settles or is otherwise  
27 resolved prior to trial. A stipulation which terminates a case by dismissal shall indicate  
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whether a Scheduling Order has been filed and, if a trial date has been set, the date of that trial.

DATED: May 6, 2020



\_\_\_\_\_  
JERRY A. WIESE II, District Judge

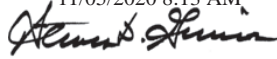
I hereby certify that on or about the date signed, a copy of this Order was electronically served, pursuant to NEFCR 9, to all registered parties, via eFileNV, and/or served via US Mail, at any address listed below.

/s/ Angela McBride

ANGELA MCBRIDE, Judicial Executive Assistant

# EXHIBIT ‘E’

DEFENDANT VALLEY HEALTH SYSTEM  
LLC’S MOTION FOR STAY ON ORDER  
SHORTENING TIME

  
CLERK OF THE COURT

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

DISTRICT COURT

CLARK COUNTY, NEVADA

ESTATE OF REBECCA POWELL, through  
BRIAN POWELL, as Special Administrator;  
DARCI CREECY, individually and as 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.: 30

**DEFENDANT VALLEY HEALTH  
SYSTEM LLC'S MOTION FOR STAY ON  
ORDER SHORTENING TIME**

**HEARING REQUESTED**

COMES NOW, Defendant VALLEY HEALTH SYSTEM, LLC (doing business as  
"Centennial Hills Hospital Medical Center"), a foreign limited liability company ("CHH"), by and  
through its counsel of record S. Brent Vogel, Esq., and Adam Garth, Esq., of the Law Firm LEWIS  
BRISBOIS BISGAARD & SMITH, and hereby submits this Motion to Stay on Order Shortening



1 Time.

2 This Motion is based upon the following Memorandum of Points and Authorities, the  
3 pleadings and papers on file herein, the attached exhibits, and any oral argument allowed and  
4 offered at the hearing of this matter.

5 DATED this 3<sup>rd</sup> day of November, 2020

6  
7 LEWIS BRISBOIS BISGAARD & SMITH LLP

8  
9 By /s/ Adam Garth  
10 S. BRENT VOGEL  
11 Nevada Bar No. 6858  
12 ADAM GARTH  
13 Nevada Bar No. 15045  
14 6385 S. Rainbow Boulevard, Suite 600  
15 Las Vegas, Nevada 89118  
16 Tel. 702.893.3383  
17 *Attorneys for Defendant Valley Health System,*  
18 *LLC dba Centennial Hills Hospital Medical*  
19 *Center*  
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**ORDER SHORTENING TIME**

It appearing to the satisfaction of the Court, and good cause appearing therefore,

IT IS HEREBY ORDERED that DEFENDANT VALLEY HEALTH SYSTEM LLC'S  
MOTION FOR STAY ON ORDER SHORTENING TIME shall be heard on the 25th  
day of  
NOV. 20 9:00 AM  
\_\_\_\_\_, 20\_\_\_\_, at the hour of \_\_\_\_\_m. in Department 30.

DATED this \_\_\_\_\_ day of November, 2020.

Dated this 5th day of November, 2020



\_\_\_\_\_  
DISTRICT COURT JUDGE

Respectfully Submitted by:

5BA E20 6B44 CF80  
Jerry A. Wiese  
District Court Judge

LEWIS BRISBOIS BISGAARD & SMITH LLP

By: /s/ Adam Garth  
S. BRENT VOGEL  
Nevada Bar No. 006858  
ADAM GARTH  
Nevada Bar No. 15045  
6385 S. Rainbow Boulevard, Suite 600  
Las Vegas, Nevada 89118  
*Attorneys for Defendant Valley Health System,  
LLC dba Centennial Hills Hospital Medical  
Center*

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DECLARATION OF ADAM GARTH, ESQ.

STATE OF NEVADA            )  
  ) ss.  
COUNTY OF CLARK         )

I, Adam Garth, being first duly sworn, declare as follows:

1. I am a partner at Lewis Brisbois Bisgaard & Smith LLP, and am duly licensed to practice law in the State of Nevada. I am competent to testify to the matters set forth herein, and will do so if called upon.

2. I am an attorney of record representing CHH in the above-entitled action, currently pending in Department 30 of the Eighth Judicial District Court for the State of Nevada, Case No. A-19-788787-C.

3. I make this Declaration on behalf of DEFENDANT VALLEY HEALTH SYSTEM LLC’S MOTION FOR STAY ON ORDER SHORTENING TIME.

4. CHH filed a Motion for Summary Judgment Based Upon The Expiration Of The Statute Of Limitations. The Court denied the Motion in an Order dated October 29, 2020 with Notice of Entry for said order served and filed on November 2, 2020. Order attached as **Exhibit A**.

5. Based upon this Court’s scheduling order and order setting firm civil jury trial dated May 6, 2020, initial expert disclosures are to be made on or before June 18, 2021, rebuttal expert disclosures are due on August 27, 2021, and discovery is to be completed on or before October 28, 2021. The case is set for a firm 5 week jury trial commencing May 23, 2022. A copy of the Court’s scheduling order is attached hereto as **Exhibit B**.

6. This Motion needs to be heard on a shortened basis so that this Court can decide whether to stay this matter pending CHH’s appeal of the denial of their Motion for Summary Judgment Based Upon the Expiration of the Statute of Limitations given the limited time frame within which a party may petition for a writ in the Supreme Court for a matter to be heard, and CHH may be irreparably prejudiced by having to continue defending this action and potentially being forced to try all issues when the matter raised by the aforesaid Motion is case dispositive. There is no clearer case demonstrating irrefutable evidence of inquiry notice as this matter. Plaintiffs’ own complaints to two State agencies alleging breaches in the standard of care on the part of CHH which

1 occurred within just weeks after Ms. Powell's death demonstrate irrefutable evidence of the inquiry  
2 notice courts require to grant motions for summary judgment on this issue. Moreover, despite a  
3 mountain of admissible evidence submitted by CHH of the irrefutable evidence of inquiry notice,  
4 Plaintiffs submitted **no admissible evidence whatsoever** in opposition.

5 7. The Exhibits attached to this Motion are true and correct copies of what they are  
6 represented to be in the Motion.

7 8. I declare under penalty of perjury that the foregoing is true and correct.

8 FURTHER YOUR DECLARANT SAYETH NAUGHT.

9  
10 /s/ Adam Garth  
11 ADAM GARTH  
12

13 No notarization required pursuant to NRS 53.045

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1 the statute of limitations' expiration.

2 In opposition to the aforesaid motion, **Plaintiffs failed to submit any admissible evidence**  
3 **whatsoever**. Plaintiffs submitted no affidavit, declaration or any sworn statement from anyone with  
4 personal knowledge of the facts to oppose this incontrovertible evidence that Plaintiffs themselves  
5 supplied to CHH. Instead, Plaintiffs' counsel engaged in obfuscation of the issue and attempted to  
6 trick the Court into believing there was an issue of fact pertaining to the commencement of  
7 Plaintiffs' inquiry notice. Plaintiffs submitted the report from Nevada HHS dated February 5, 2018  
8 in which HHS made findings concerning CHH. The findings contained in the report, however, did  
9 not commence the Plaintiffs' date for inquiry notice based upon the standards articulated by the  
10 Nevada Supreme Court in determining when such notice is obtained. Plaintiffs' counsel  
11 conveniently omitted his clients' reports to the State agencies in which their accusation  
12 demonstrating irrefutably that they possessed inquiry notice of alleged malpractice much earlier  
13 than they advanced in opposition to the motion. Moreover, without any proof or other sworn  
14 testimony, Plaintiffs' counsel asserted that CHH provided no proof that the complete set of medical  
15 records provided by CHH to Plaintiffs were actually received. CHH provided declarations from  
16 two individuals documenting the medical records collection and mailing procedures in this case with  
17 proof that the records were mailed. Nevada law presumes that items mailed are received unless  
18 proof to the contrary is presented. No such proof was offered by Plaintiffs, just an unsubstantiated  
19 allegation by Plaintiffs' counsel which is rebutted by his own expert's affidavit attached to the  
20 Complaint in which he states that he reviewed the very CHH records Plaintiffs' questioned to have  
21 received, but which could be provided no other way since there was no lawsuit or discovery  
22 mechanism through which the records could have been otherwise provided.

23 Nevertheless, in the absence of any admissible evidence in opposition to the motion and  
24 despite admissions of inquiry notice from the Plaintiffs' themselves which were submitted to this  
25 Court, this Court denied CHH's motion summary judgment. Moreover, the Court found that despite  
26 "suggestions" of inquiry notice in 2017, the inquiry notice was somehow cancelled by the receipt  
27 of a death certificate and autopsy report indicating the cause of death to have been suicide. This  
28 conclusion by the Court was predicated on no supportive legal authority and directly contradicted

1 firmly established case law articulated on the Motion.

2 **II. ARGUMENT**

3 **A. Procedural Posture of the Case**

4 This matter has been pending since February, 2019. It is currently set for trial on May 23,  
5 2022. Initial expert disclosures are to be made on or before June 18, 2021, rebuttal expert disclosures  
6 are due on August 27, 2021, and discovery is to be completed on or before October 28, 2021.

7 **B. A Stay is Appropriate at this Time**

8 A party may move for a stay in District Court proceedings pending resolution of an appellate  
9 issue pursuant to the Nevada Rules of Appellate Procedure. NRAP 8(a)(1)(A). The party seeking  
10 a stay must first seek a stay from the District Court, as opposed to an appellate court. *Id.* As CHH  
11 is currently preparing a Petition for Writ of Mandamus, CHH is first seeking a stay with the District  
12 Court pursuant to NRAP 8(a)(1)(A) and this Motion for Stay is procedurally proper and is properly  
13 before this Court.

14 The factors to be considered by the Court when considering whether to issue a stay in the  
15 proceedings when an appellate issue is pending before the Nevada Supreme Court are (1) whether  
16 the object of the writ petition will be defeated if the stay is denied; (2) whether the petitioner will  
17 suffer irreparable or serious injury if the stay is denied; (3) whether the real party in interest will  
18 suffer irreparable or serious injury if the stay is granted; and (4) whether petitioner is likely to prevail  
19 on the merits in the writ petition. NRAP 8(c); *Fritz Hansen A/S v. Eighth Judicial District Court*,  
20 116 Nev. 650, 657 (2000). The Supreme Court has not held that any one of these factors carries  
21 more weight than any of the others, but in a particular situation, if one or two factors are especially  
22 strong, they are able to counterbalance any weaker factors. *Mikohn Gaming Corporation v.*  
23 *McCrea, Jr.*, 120 Nev. 248, 251 (2004)(“We have not indicated that any one factor carries more  
24 weight than the others, although . . . if one or two factors are especially strong, they may  
25 counterbalance other weak factors.”).

26 An analysis of these factors in this case shows that a stay is warranted pending resolution of  
27 CHH’s interlocutory appeal of the denial of their Motion for Summary Judgment Based Upon the  
28 Expiration of the Statute of Limitations. While trial is not scheduled until May, 2022, expert

1 disclosure is seven months away. The Motion is completely case dispositive, so if CHH must  
2 participate in discovery and trial on this issue, the object of the forthcoming writ petition would be  
3 defeated and CHH's expenses would be increased.

4 The second factor for consideration pursuant to NRAP 8, whether the petitioner will suffer  
5 irreparable or serious injury if the stay is denied, also weighs in favor of granting the stay. For one,  
6 medical malpractice claims create specific ongoing injuries to medical professionals in the form of  
7 insurance premiums, damage to professional reputations and reporting requirements. Forcing CHH  
8 to proceed to trial on both liability and damages when the issue presented on appeal will only  
9 prolongs these injuries and causes further damage to CHH, when it is possible that the case against  
10 it will be dismissed in its entirety should the Nevada Supreme Court rule in CHH's favor. Secondly,  
11 the potential expenses of proceeding to trial on all issues will require the unnecessary expenditure  
12 of CHH's resources in having to pursue the additional discovery and continuing the process of  
13 engaging experts to defend the allegations, when the irrefutable evidence submitted on the Motion  
14 required the dismissal of all claims against all defendants.

15 The third factor for consideration pursuant to NRAP 8, whether the real party in interest will  
16 suffer irreparable or serious injury if the stay is granted, also weighs in favor of granting the stay in  
17 proceedings. The real parties in interest, the Plaintiffs in the underlying matter, will not suffer  
18 irreparable or serious injury should this stay be granted. In fact, they will benefit from the stay. The  
19 stay will allow a determination of whether the case dispositive motion should have been granted and  
20 prevent the expenditure of financial and emotional resources pertaining to a claim which was dead  
21 on arrival for legal purposes at the time of its filing. Should the Nevada Supreme Court either deny  
22 the Writ or ultimately affirm this Court's decision, Plaintiffs will have suffered no risk or injury.

23 The final factor for consideration pursuant to NRAP 8, whether petitioner is likely to prevail  
24 on the merits in the writ petition, also weighs heavily in favor of granting the stay requested by  
25 CHH. With respect to this Court, CHH believes that its motion for summary judgment should have  
26 been granted in its entirety, rendering Plaintiffs' case completely void and subject to dismissal. This  
27 is underscored by the overwhelming and incontrovertible evidence that Plaintiffs possessed inquiry  
28 notice as late as June 11, 2017, making their Complaint's filing on February 4, 2019 eight months



1 late and beyond the statute of limitations. Neither Plaintiffs nor the Court provided any legal  
2 authority to demonstrate that once inquiry notice is obtained, that it is somehow cancelled and tolled  
3 by unproven allegations of other potential causes for the death of Plaintiffs' decedent. On the  
4 underlying motion, Plaintiffs failed to obtain or submit any affidavit, declaration, or testimonial  
5 evidence from anyone with personal knowledge which substantiate Plaintiffs' counsel's  
6 unsubstantiated allegations. As such, given the irrefutable evidence submitted by CHH in support  
7 of its motion, and Plaintiffs' lack of any competent contradictory evidence in opposition to CHH's  
8 motion, there is a good chance that CHH will prevail on appeal.

9 The decision whether to grant a motion for a stay in proceedings is left to the sound discretion  
10 of the Court. *Nevada Tax Commission v. Brent Mackie*, 74 Nev. 273, 276 (1958) ("the granting or  
11 denial of the present motion [for stay] lies within the sound discretion of the court."). An analysis  
12 of the above factors shows that the Court should exercise its discretion to grant the stay sought by  
13 CHH.

14 NRCP Rule 56 requires the very submission of affidavits, declarations and admissible  
15 evidence in opposition to a motion for summary judgment which itself is supported by same. The  
16 absence of the affidavits is not merely a failure to submit necessary documents in opposition, it is  
17 the abject failure of a party to submit that which is statutorily required to defeat such a motion which  
18 necessitates this impending appeal.

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1 **III. CONCLUSION**

2 CHH respectfully requests that this matter be stayed while it appeals the denial of its Motion  
3 for Summary Judgment Based Upon Expiration of the Statute of Limitations. The procedural  
4 posture of this case makes a stay the only way that the issue can be resolved sufficiently in advance  
5 of trial and to allow CHH to limit its expenses in preparing and trying a case which should have  
6 been dismissed in its entirety had this Court granted CHH's motion for summary judgment.

7 DATED this 3<sup>rd</sup> day of November, 2020

8 LEWIS BRISBOIS BISGAARD & SMITH LLP

9  
10 By /s/ Adam Garth  
11 S. BRENT VOGEL  
12 Nevada Bar No. 006858  
13 ADAM GARTH  
14 Nevada Bar No. 15045  
15 6385 S. Rainbow Boulevard, Suite 600  
16 Las Vegas, Nevada 89118  
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18 *Attorneys for Defendant Valley Health System,*  
19 *LLC dba Centennial Hills Hospital Medical*  
20 *Center*  
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**CERTIFICATE OF SERVICE**

I hereby certify that on this 3<sup>rd</sup> day of November, 2020, a true and correct copy of **DEFENDANT VALLEY HEALTH SYSTEM LLC’S MOTION FOR STAY ON ORDER SHORTENING TIME** was served by electronically filing with the Clerk of the Court using the Odyssey E-File & Serve system and serving all parties with an email-address on record, who have agreed to receive electronic service in this action.

Paul S. Padda, Esq.  
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*Attorneys for Defendants Dionice S. Juliano,  
M.D., Conrado Concio, M.D And Vishal S.  
Shah, M.D.*

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

# EXHIBIT ‘A’



1 **NEOJ**  
2 S. BRENT VOGEL  
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4 Brent.Vogel@lewisbrisbois.com  
5 ADAM GARTH  
6 Nevada Bar No. 15045  
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12 Facsimile: 702.893.3789  
13 *Attorneys for Defendant Valley Health System,*  
14 *LLC dba Centennial Hills Hospital Medical*  
15 *Center*

10 DISTRICT COURT  
11 CLARK COUNTY, NEVADA

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

16 Plaintiffs,

17 vs.

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

24 Defendants.

Case No. A-19-788787-C

Dept. No.: 30

**NOTICE OF ENTRY OF ORDER**

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

1 DATED this 2<sup>nd</sup> ay of November, 2020

2  
3 LEWIS BRISBOIS BISGAARD & SMITH LLP

4  
5 By /s/ Adam Garth  
6 S. BRENT VOGEL  
7 Nevada Bar No. 6858  
8 ADAM GARTH  
9 Nevada Bar No. 15045  
6385 S. Rainbow Boulevard, Suite 600  
Las Vegas, Nevada 89118  
Tel. 702.893.3383  
10 *Attorneys for Attorneys for Defendant Valley*  
11 *Health System, LLC dba Centennial Hills Hospital*  
12 *Medical Center*

13 **CERTIFICATE OF SERVICE**

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

18 Paul S. Padda, Esq.  
19 PAUL PADDA LAW, PLLC  
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*Attorneys for Defendants Dionice S. Juliano,*  
*M.D., Conrado Concio, M.D And Vishal S.*  
*Shah, M.D.*

24  
25  
26 By /s/ Roya Rokni  
27 An Employee of  
28 LEWIS BRISBOIS BISGAARD & SMITH LLP

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

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

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

ORDER

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

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

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

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

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

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



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

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

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

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

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

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

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

Although the Complaints filed by Brian Powell, suggest that Plaintiff may have at  
least been on inquiry notice in 2017, 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.

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

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

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

21 Defendant, Doctor Dionice Juliano, argues that based on the discovery which  
22 has taken place, the medical records, and specifically his own affidavit, there are no  
23 material facts suggesting he was responsible for the care and treatment of Rebecca  
24 Powell after May 9, 2017.<sup>1</sup> Further, Defendant argues that for a claim for Negligent  
25 Infliction of Emotional to survive, the plaintiff must be physically present for the act  
26 which is alleged to have inflicted that emotional distress.

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

---

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

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

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

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

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

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

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

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

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

7 Based upon the foregoing, and good cause appearing,

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

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

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

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

17 Dated this 28<sup>th</sup> day of October, 2020.

Dated this 29<sup>th</sup> day of October, 2020

18  
19  
20 

21 JERRY A. WIESE II  
22 DISTRICT COURT JUDGE  
23 EIGHTH JUDICIAL DISTRICT COURT  
24 DENVER, CO  
25 Jerry A. Wiese  
26 District Court Judge  
27  
28

1 **CSERV**

2  
3 DISTRICT COURT  
CLARK COUNTY, NEVADA

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

CASE NO: A-19-788787-C

7 vs.

DEPT. NO. Department 30

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

10  
11 **AUTOMATED CERTIFICATE OF SERVICE**

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

15 Service Date: 10/29/2020

16 Paul Padda	psp@paulpaddalaw.com
17 S. Vogel	brent.vogel@lewisbrisbois.com
18 Jody Foote	jfoote@jhcottonlaw.com
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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  
known addresses on 11/2/2020

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



# EXHIBIT ‘B’



1 SCHTO

2 DISTRICT COURT  
3 CLARK COUNTY, NEVADA

4 **Estate of Rebecca Powell**  
5 **vs.**  
6 **Valley Health System, LLC**

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

7 **SCHEDULING ORDER AND**  
8 **ORDER SETTING FIRM CIVIL JURY TRIAL**

9 **NATURE OF ACTION: MALPRACTICE - MED/DENTAL**

10 **TIME REQUIRED FOR TRIAL: 5 WEEKS**

11 **TRIAL READY DATE: JANUARY 31, 2022**

12 **DATES FOR SETTLEMENT CONFERENCE: PARTIES AGREE TO CONDUCT**  
13 **A PRIVATE MEDIATION TO BE**  
14 **SCHEDULED BY COUNSEL**

15 The parties herein appeared before the Honorable Jerry A. Wiese II, in Department 30  
16 of the Eighth Judicial District Court for a Mandatory Rule 16 Discovery Conference wherein  
17 all discovery deadlines were agreed upon and ordered by the Court. This order may only be  
18 amended or modified by further order of the court upon good cause shown,

19 **IT IS HEREBY ORDERED** that the parties will comply with the following  
20 deadlines:

21 A private mediation shall be conducted in July, 2021.

22 A status check regarding settlement/trial setting shall be conducted on **JUNE 2,**  
23 **2021, at 9:00 AM in Department 30, Courtroom 14A located in the Regional Justice**  
24 **Center, 200 Lewis Avenue, Las Vegas, Nevada 89155.**

25 All parties shall file motions to amend pleadings or add parties on or before  
26 **6/18/2021.**  
27  
28

1 All parties shall make initial expert disclosures pursuant to N.R.C.P. 16.1(a)(2) on or  
2 before **6/18/2021**.

3 All parties shall make rebuttal expert disclosures pursuant to N.R.C.P. 16.1(a)(2) on  
4 or before **8/27/2021**.

5 All parties shall complete discovery on or before **10/28/2021**.

6 All parties shall file dispositive motions on or before **11/30/2021**.

7 Unless otherwise directed by the court, all pretrial disclosures pursuant to N.R.C.P.  
8 16.1(a)(3) must be made at least 30 days before trial.

9 Motions for extensions of discovery shall be made in accordance with E.D.C.R. 2.35.  
10 The deadline for responding to discovery requests must fall on or before the date discovery  
11 closes. A deposition must be completed on or before the date discovery closes.

12 Unless otherwise ordered, discovery disputes (except disputes presented at a pre-trial  
13 conference or at trial) must first be heard by the Discovery Commissioner.

14 **IT IS HEREBY FURTHER ORDERED:**

15 A. The above entitled Medical Malpractice case is set for a **FIRM 5-week Jury**  
16 **Trial** commencing on **MAY 23, 2022, at 10:30 AM**. The trial will be held in Department  
17 30, Courtroom 14A located in the Regional Justice Center, 200 Lewis Avenue, Las Vegas,  
18 Nevada 89155.

19 B. A Pre-Trial Conference with the designated attorney and/or parties in proper  
20 person will be held on **APRIL 25, 2022, at 9:00 AM**. Trial counsel should be prepared to  
21 advise the court of any potential conflicts they or their witnesses have in the five (5) week  
22 stack.

1 C. A Calendar Call will be held on **MAY 16, 2022, at 9:00AM**. Trial Counsel  
2 (and any party in proper person) must appear. Parties must have the following ready for  
3 trial at the time of Calendar Call:  
4

- 5 (1) Typed exhibit lists;  
6 (2) List of depositions;  
7 (3) List of equipment needed for trial, including audiovisual equipment; and  
8 (4) Courtesy copies of any legal briefs on trial issues.

9 If counsel anticipates the need for audio visual equipment during trial, a request must be  
10 submitted to the District Court AV Department following the Calendar Call by contacting the  
11 AV Dept at 671-3300 or via E-Mail at [courthelpdesk@clarkcountycourts.us](mailto:courthelpdesk@clarkcountycourts.us).

12 D. The Joint Pre-trial Memorandum must be filed no later than **4:00 PM** on  
13 **Friday, MAY 13, 2022**, with a courtesy copy delivered to chambers. EDCR 2.67 must be  
14 fully complied with.

15 E. Stipulations to continue trial and discovery deadlines must comply with EDCR  
16 2.35. All Stipulations resulting in the continuance of a trial must include an Order and be  
17 submitted to Department 30 for signature by the District Court Judge. The Court generally  
18 is not inclined to grant continuances of the trial, absent a showing of good cause. A request  
19 for continuance of trial will result in the scheduling of an EDCR 1.90 conference.  
20

21 F. All motions in limine shall be filed at least **45** days prior to trial. Counsel are  
22 required to confer, **pursuant to EDCR 2.47**, at least **two weeks prior** to filing any motion in  
23 limine.

24 G. Orders shortening time will not be signed except in extreme emergencies.

25 ***AN UPCOMING TRIAL DATE IS NOT AN EXTREME EMERGENCY***  
26  
27  
28

1 H. All original depositions anticipated to be used in any manner during the trial must be  
2 delivered to the clerk on a date and time to be determined at the time of the Pretrial Conference. If  
3 deposition testimony is anticipated to be used in lieu of live testimony, a designation (by page/line  
4 citation) of the portions of the testimony to be offered must be filed and served by facsimile or hand,  
5 two (2) judicial days prior to the Calendar Call. Any objections or counterdesignations (by page/line  
6 citation) of testimony must be filed and served by facsimile or hand, one (1) judicial day prior to the  
7 commencement of trial. Counsel shall advise the clerk prior to publication.  
8

9 I. In accordance with EDCR 2.67, counsel shall meet, review, and discuss exhibits. All  
10 exhibits must comply with EDCR 2.27. Two (2) sets must be three hole punched placed in three  
11 ring binders along with the exhibit list. The sets must be delivered to the Courtroom Clerk on a date  
12 and time to be determined at the time of the Pretrial Conference. Any demonstrative exhibits  
13 including exemplars anticipated to be used must be disclosed prior to the calendar call. Pursuant to  
14 EDCR 2.68, at the Calendar Call, counsel shall be prepared to stipulate or make specific objections  
15 to individual proposed exhibits. Unless otherwise agreed to by the parties, demonstrative exhibits  
16 are marked for identification but not admitted into evidence.

17 J. In accordance with EDCR 2.67, counsel shall meet and discuss jury instructions,  
18 special interrogatories, if requested, and verdict forms. Each side shall provide the Court, at the  
19 Calendar Call, an agreed set of jury instructions and proposed form of verdict along with any  
20 additional proposed jury instructions with an electronic copy in Word format.


21 Failure of the designated trial attorney or any party appearing in proper person to  
22 appear for any court appearances or to fully comply with EDCR 2.67 or this trial Order shall  
23 result in any of the following: (1) dismissal of the action (2) default judgment; (3) monetary  
24 sanctions; (4) vacation of trial date; and/or any other appropriate remedy or sanction.  
25

26 Counsel must advise the Court immediately when the case settles or is otherwise  
27 resolved prior to trial. A stipulation which terminates a case by dismissal shall indicate  
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whether a Scheduling Order has been filed and, if a trial date has been set, the date of that trial.

DATED: May 6, 2020

  
\_\_\_\_\_  
JERRY A. WIESE II, District Judge

I hereby certify that on or about the date signed, a copy of this Order was electronically served, pursuant to NEFCR 9, to all registered parties, via eFileNV, and/or served via US Mail, at any address listed below.

/s/ Angela McBride  
ANGELA MCBRIDE, Judicial Executive Assistant

# EXHIBIT ‘C’



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

10 DISTRICT COURT  
11 CLARK COUNTY, NEVADA

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

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

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

**HEARING REQUESTED**

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



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

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

8 DATED this 2<sup>nd</sup> day of September, 2020

9  
10 LEWIS BRISBOIS BISGAARD & SMITH LLP

11  
12 By /s/ Adam Garth  
13 S. BRENT VOGEL  
14 Nevada Bar No. 6858  
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19 Tel. 702.893.3383  
20 *Attorneys for Attorneys for Defendant Valley*  
21 *Health System, LLC dba Centennial Hills Hospital*  
22 *Medical Center*  
23  
24  
25  
26  
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1 **MEMORANDUM OF POINTS AND AUTHORITIES**

2 **I. INTRODUCTION**

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

17 **II. STATEMENT OF UNDISPUTED FACTS**

18 **A. Procedural History**

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

23 \_\_\_\_\_  
24 <sup>1</sup> See Complaint annexed hereto as Exhibit “A”

25 <sup>2</sup> Exhibit “A”, ¶ 28

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

27 <sup>4</sup> Exhibit “A”

28 (footnote continued)

1 of the statute of limitations.<sup>5</sup>

2 3. Defendant Shah, MD joined Defendants' Concio's and Juliano MDs' Motion to  
3 Dismiss on June 13, 2019.<sup>6</sup>

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

6 5. CHH joined Defendants Concio and Juliano's Motion to Dismiss on June 26, 2019.<sup>8</sup>

7 6. Plaintiffs' opposed Concio and Juliano's Motion to Dismiss on August 13, 2019.<sup>9</sup>

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

10 8. Defendant Universal Health Services Inc. filed its own motion to dismiss on  
11 September 23, 2019.<sup>11</sup>

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

15  
16 \_\_\_\_\_  
17 <sup>5</sup> See Defendants Concio's and Juliano, MD's Motion to Dismiss Plaintiffs' Complaint annexed  
hereto as Exhibit "B"

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

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

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

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

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

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

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

27 <sup>13</sup> See Stipulation of Dismissal Without Prejudice annexed hereto as Exhibit "K"

28 (footnote continued)

10. On April 15, 2020, CHH filed its Answer to Plaintiffs' Complaint.<sup>14</sup>

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

11. Based upon the Complaint and the accompanying affidavit, Rebecca Powell overdosed on Benadryl, Cymbalta, and Ambien on May 3, 2017.<sup>15</sup>

12. Plaintiffs' further allege that EMS was called and came to Ms. Powell's aid, discovering her with labored breathing and vomit on her face.<sup>16</sup> Plaintiffs further allege that Ms. Powell was transported to CHH where she was admitted.<sup>17</sup>

13. Plaintiffs claim that one week into her admission, on May 10, 2017, Ms. Powell complained of shortness of breath, weakness, and a drowning feeling, and Defendant Vishal Shah, MD, ordered Ativan to be administered via IV push.<sup>18</sup>

14. Plaintiffs assert that on May 11, 2017, Defendant Conrado Concio, MD, ordered two doses of Ativan via IV push.<sup>19</sup>

15. To assess her complaints, Plaintiffs alleged that a chest CT was ordered, but the providers were unable to obtain the chest CT due to Ms. Powell's anxiety, and she was returned to her room.<sup>20</sup>

16. Plaintiffs further alleged that Ms. Powell was placed in a room with a camera monitor.<sup>21</sup>

<sup>14</sup> See CHH's Answer annexed hereto as Exhibit "L"

<sup>15</sup> Exhibit “A”, ¶ 18

<sup>16</sup> Exhibit “A”, ¶ 18

<sup>17</sup> Exhibit “A”, ¶ 18

<sup>18</sup> Exhibit “A”, ¶ 21

<sup>19</sup> Exhibit “A”, ¶ 22

<sup>20</sup> Exhibit “A”, ¶ 22; see also Exhibit A (Affidavit of Dr. Sami Hashim, M.D.) to the Complaint (Exhibit “A” hereto) at p. 3

<sup>21</sup> Exhibit “A”, ¶ 22

(footnote continued)

1           17.     Plaintiffs' expert stated in his affidavit used to support the Complaint that pursuant  
2 to the doctor's orders, a dose of Ativan was administered at 03:27.<sup>22</sup>

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

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

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

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

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

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

21 \_\_\_\_\_  
22 <sup>22</sup> Exhibit A (Affidavit of Dr. Sami Hashim, M.D.) to the Complaint (Exhibit "A" hereto) at p. 3

23 <sup>23</sup> Exhibit "A", ¶ 22

24 <sup>24</sup> Exhibit "A", ¶¶ 44-45, 52-53

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

26 <sup>26</sup> Exhibit "M", ¶ 7

27 <sup>27</sup> Exhibit "M", ¶ 8 as well as Exhibit "A" thereto

28 (footnote continued)

1 represented the entirety of medical records for Mrs. Powell with no exclusions.<sup>28 29</sup>

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

5 25. MRO received the package back from the United States Postal Service due to  
6 undeliverability to the addressee on June 23, 2017.<sup>31</sup>

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

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

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

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

19 <sup>28</sup> Exhibit "M", ¶ 9 as well as Exhibit "B" thereto

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

22 <sup>30</sup> Exhibit "M", ¶ 10 as well as Exhibit "C" thereto

23 <sup>31</sup> Exhibit "M", ¶ 11 as well as Exhibit "D" thereto

24 <sup>32</sup> Exhibit "M", ¶ 12

25 <sup>33</sup> Exhibit "M", ¶ 13

26 <sup>34</sup> Exhibit "M", ¶ 14

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

(footnote continued)

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

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

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

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

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

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

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

### 21 **III. LEGAL ARGUMENT**

#### 22 **A. Summary Judgment Standard**

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

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

27 <sup>37</sup> Exhibit "A"

28 <sup>38</sup> Exhibit A to the Complaint (Exhibit "A" hereto)

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

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

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



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

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

[T]he motion may, and should, be granted so long as whatever is before the district court demonstrates that the standard for the entry of summary judgment, as set forth in Rule 56(c), is satisfied. One of the principal purposes of the summary judgment rule is to isolate and dispose of factually unsupported claims or defenses, and we think it should be interpreted in a way that allows it to accomplish this purpose.

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

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

NRS 41A.097 states in pertinent part:

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

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

\* \* \*

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

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

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

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

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

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

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

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

27 *Id.* (emphasis added).

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

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

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

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

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

25 \_\_\_\_\_  
26 <sup>39</sup> Exhibit "A" hereto, ¶¶ 26-33 and Dr. Hashim's Aff. annexed thereto as Exhibit A

27 <sup>40</sup> Exhibit "A" hereto, ¶¶ 34-40

28 <sup>41</sup> Exhibit "A", ¶¶ 41-48; 49-56

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

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

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

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

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

5 In this case, NRS 41A.097(2)'s one-year statute of limitations began to run on the date of  
6 Ms. Powell's death (May 11, 2017). Per the Complaint, the individually named Plaintiffs, including  
7 Darci Creecy, Taryn Creecy, Isaiah Creecy, and Lloyd Creecy, contemporaneously observed the  
8 alleged negligence and Ms. Powell's rapid deterioration leading up to her death on May 11, 2017.<sup>42</sup>

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

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

---

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

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

(footnote continued)

1 facts that would put a reasonably person on inquiry notice by May 11, 2017. Plaintiffs were aware  
2 of facts that would lead an ordinarily prudent person to investigate the matter further at that time.  
3 In fact, the evidence submitted herewith demonstrates that Taryn Creecy, one of the plaintiffs herein,  
4 specifically requested copies of Ms. Powell's complete medical records from CHH on May 25,  
5 2017, a mere two weeks after Ms. Powell's death.<sup>44</sup> Ms. Creecy even went to the trouble of going  
6 to Probate Court to obtain a court order directing the production of Ms. Powell's records from CHH,  
7 and actually obtained that very order.<sup>45</sup> It is abundantly clear that Plaintiffs sought and obtained all  
8 of Ms. Powell's medical records as late as June, 2017. The declarations of both Gina Arroyo and  
9 Melanie Thompson<sup>46</sup> conclusively establish that Plaintiffs received a complete copy of Ms. Powell's  
10 medical records from CHH in June, 2017 and Plaintiffs sought them in May, 2017.

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

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

---

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

27 <sup>45</sup> Exhibit A to Exhibit "M" hereto.

28 <sup>46</sup> Exhibits "M" and "N" respectively hereto



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

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

#### IV. CONCLUSION

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

DATED this 2<sup>nd</sup> day of September, 2020

LEWIS BRISBOIS BISGAARD &amp; SMITH LLP

By /s/ Adam Garth  
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Medical Center*





**CERTIFICATE OF SERVICE**

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

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By /s/ Roya Rokni  
An Employee of  
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# EXHIBIT ‘A’



**COMP**

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**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*

**PAUL PADDA LAW, PLLC**  
4560 South Decatur Blvd., Suite 300  
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1 This is a civil action seeking monetary damages for the death of Rebecca Powell. In  
2 support of this Complaint, Plaintiffs rely upon the Affidavit of Dr. Sami Hashim, M.D.  
3 (incorporated by reference herein and attached to this Complaint as **Exhibit A**) and allege as  
4 follows:

5  
6 **I.**

7 **ARBITRATION EXEMPTION**

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

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

16  
17 **II.**

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

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

23  
24 ...

25 ...

III.

THE PARTIES

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

16  
17  
18  
19 IV.

20 **FACTUAL BACKGROUND**

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

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

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

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



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

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

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

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

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.*

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

23 *Id.*

24 ...  
25  
26  
27  
28

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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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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not described herein are realleged and incorporated by reference herein, as set forth in **Exhibit A** and paragraphs 1 to 36 above.

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

39. 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 38 above. That these Plaintiffs are entitled to punitive/exemplary damages due to said acts or omissions.

40. 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.

## VII.

### THIRD CAUSE OF ACTION

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

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

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

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

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

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

13 47. That the conduct of Defendants rose to the level of oppression, fraud or malice,  
14 express or implied. That Defendants consciously disregarded the welfare and safety of Rebecca  
15 and these Plaintiffs in providing substandard care to Rebecca, leading to her death. Further,  
16 Defendants committed fraud where notes and records by RN(s) and/or CNAs were contradicted  
17 by a note indicating that Rebecca was not checked on for an hour on May 11, 2017 while she was  
18 in critical condition. *See Exhibit A*, (Affidavit of Dr. Sami Hashim, M.D. ¶ 8). These Plaintiffs  
19 further reallege and incorporate any further applicable acts or omissions of Defendants while  
20 treating Rebecca not described herein, as set forth in Exhibit A and paragraphs 1 to 46 above.  
21 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.  
12

13 **IX.**

14 **RELIEF REQUESTED**

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

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

24 ...

25 ...

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

4 DATED this 4<sup>th</sup> 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. Julianio Dionice, M.D., Dr. C. Concio, M.D., Dr. Vishal Shah* - presumed employees)—fell below the appropriate standards of care that were owed to Rebecca Powell. The medical records and additional medical related information I have reviewed reveal the following:

- A. On May 3, 2017 at 3:27PDT, Rebecca Powell, a 41-year old adult female, was found by EMS at home, unconscious with labored breathing and vomitus on her face. It was believed she ingested an over-amount of Benadryl, Cymbalta and Ambien. EMS intubated Ms. Powell and transported her to Centennial Hills Hospital—Emergency Department (ED). At ED, patient was evaluated and diagnosed with:
- Respiratory Failure and low BP
  - “Overdose on unknown amount of Benadryl, Cymbalta and ETOH”
  - Review of Systems: “Within Normal Limits” (WNL)
  - Sinus Tachycardia – no ectopy
  - Lab results consistent with respiratory failure and over-dosage of suspected medications
  - Acidosis
- B. Notwithstanding clear evidence of intentional over-dosing of the substances mentioned, the Death Certificate noted the *only* cause of death was due to: “Complications of Cymbalta Intoxication.” Based on medical records, the patient did not and with high probability could not have died from the cause of death stated in the Death Certificate. The patient died as a direct consequence of respiratory failure directly due to below standard of care violations as indicated by her medical records and reinforced by the Department of Health and Human Services—Division of Health Quality and Compliance Investigative Report. Furthermore:
- After being admitted to Centennial Hills Hospital on 05/03/17, the patient's health status steadily improved over the course of almost a week.
  - Patient was extubated in the ICU and moved to a medical floor.
  - Patient's lab results improved daily.
  - Pulmonologist consultation stated that the patient felt well enough and wanted to go home. The specialist made no note to delay discharge.
  - Healthcare providers told family members from out-of-town that the patient was doing much better and “would be discharged soon.” Family returned to their homes out-of-state based on the information they received.

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

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

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

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



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

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

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

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

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

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

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

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

Sami Hashim  
Dr. Sami Hashim, M.D.

Dated: 1/23/2019

Sworn to me before this 23<sup>rd</sup> day

of January, 2019.

Bonnie Leung  
Notary Public



# EXHIBIT ‘B’



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

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6/12/2019 11:19 AM  
Steven D. Grierson  
CLERK OF THE COURT



1 **MTD**  
2 JOHN H. COTTON, ESQ.  
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8 **JOHN H. COTTON & ASSOCIATES, LTD.**  
9 7900 West Sahara Avenue, Suite 200  
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12 Facsimile: (702) 832-5910  
13 *Attorneys for Defendants Conrado Concio, M.D.,*  
14 *and Dionice Juliano, M.D.*

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

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

15 Plaintiffs,

16 vs.

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

22 Defendants.

**HEARING REQUESTED**

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

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

**HEARING REQUESTED**

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

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  
28

///



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

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

8 3. An affidavit in support of the Complaint was attached, and executed by Dr. Sami  
9 Hashim, M.D. Dr. Hashim levels specific criticisms of the fact that the decedent received Ativan  
10 on May 10 and 11, which he alleges contributed to her death. Dr. Hashim mentions specifically  
11 that Dr. Shah and Dr. Concio administered Ativan to the decedent. Dr. Hashim states that "in my  
12 opinion, stated to a reasonable degree of medical probability, the conduct of Centennial Hills  
13 Hospital & Medical Center (including its hospitalists/nurses and other healthcare providers  
14 including Dr. Juliano Dionice, (*sic*) M.D., Dr. C. Concio, MD, Dr. Vishal Shah – presumed  
15 employees)—fell below the appropriate standards of care that were owed to Rebecca Powell."  
16 Dr. Hasim further states that "Dr. Dionice, Dr. Concio and Dr. Shah, in my expert opinion, each  
17 one breached their duty." While the affidavit does state, in conclusory fashion, that Defendant  
18 Juliano breached his duty, it does not describe any specific acts that he did which support that  
19 conclusion.  
20  
21

### 22 **III. Legal Argument**

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

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 ///

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 ///  
28



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.

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.

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.

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 ///

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

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

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

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

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

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



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

#### **IV. Conclusion**

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

Dated this 12<sup>th</sup> day of June, 2019.

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

7900 West Sahara Avenue, Suite 200

Las Vegas, Nevada 89117

/s/ Brad Shipley

JOHN H. COTTON, ESQ.

BRAD SHIPLEY, ESQ.

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

**CERTIFICATE OF ELECTRONIC SERVICE**

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

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

  
An Employee of John H. Cotton & Associates

# EXHIBIT ‘C’



1 **JOIN**  
2 JOHN H. COTTON, ESQ.  
3 Nevada Bar Number 5268  
4 [JHCotton@jhcottonlaw.com](mailto:JHCotton@jhcottonlaw.com)  
5 BRAD SHIPLEY, ESQ.  
6 Nevada Bar Number 12639  
7 [BShipley@jhcottonlaw.com](mailto:BShipley@jhcottonlaw.com)

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

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

15 **DISTRICT COURT**

16 \* \* \*

17 **CLARK COUNTY, NEVADA**

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

24 Plaintiffs,

25 vs.

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

Defendants.

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

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

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

///

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



*Memorandum of Points and Authorities*

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

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

Dated this 13<sup>th</sup> day of June.

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

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

**CERTIFICATE OF ELECTRONIC SERVICE**

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

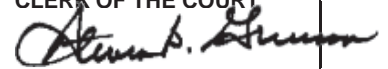
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PAUL PADDA LAW, PLLC  
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*Attorneys for Plaintiffs*

  
An Employee of John H. Cotton & Associates

# EXHIBIT ‘D’

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

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

9 **DISTRICT COURT**

10 **CLARK COUNTY, NEVADA**

11 ESTATE OF REBECCA POWELL, through  
12 BRIAN POWELL, as Special Administrator;  
13 DARCI CREECY, individually and as an Heir;  
14 TARYN CREECY, individually and as an Heir;  
15 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 19<sup>th</sup> 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 19<sup>th</sup> day of June, 2019.

22 HALL PRANGLE & SCHOONVELD, LLC

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

**MEMORANDUM OF POINTS AND AUTHORITIES**

**I.**

**INTRODUCTION**

On February 4, 2019, the Estate of Rebecca Powell and individual heirs (collectively “Plaintiffs”) filed an untimely Complaint against Centennial Hills Hospital, Dionice Juliano, MD, Conrado Concio, MD, and Vishal Shah, MD (collectively “Defendants”), for alleged professional negligence/wrongful death arising out of the care and treatment Ms. Powell received at Centennial Hills Hospital.<sup>1</sup> 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.<sup>2</sup> See Complaint at ¶ 18. Emergency

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<sup>1</sup> 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.

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

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

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

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III.

**STANDARD OF REVIEW**

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

IV.

**ARGUMENT**

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

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

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

3 To determine whether a plaintiff’s claim sounds in “professional negligence,” the Court  
4 should look to the gravamen of the claim to determine the character of the action, not the form  
5 of the pleadings. See *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.*<sup>3</sup> “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 <sup>3</sup> 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]ecovery may not be had under this cause of action, for the 'grief  
16 that may follow from the [injury] of the related accident victim.'" *Eaton*, at 714, 710 P.2d at  
17 1376. In fact, in cases where emotional distress damages are not secondary to physical injuries,  
18 "proof of 'serious emotional distress' causing physical injury or illness must be presented."  
19 *Olivero v. Lowe*, 116 Nev. 395, 399-405 (Nev. 2000).

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

28 ///

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

V.

**CONCLUSION**

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

DATED this 19<sup>th</sup> day of June, 2019.

HALL PRANGLE & SCHOONVELD, LLC

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

**AFFIRMATION**

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

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

DATED this 19<sup>th</sup> day of June, 2019.

HALL PRANGLE & SCHOONVELD, LLC

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

**CERTIFICATE OF SERVICE**

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

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

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

       Receipt of Copy at their last known address:

Paul Padda, Esq.  
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/s/ Reina Claus  
An employee of HALL PRANGLE & SCHOONVELD, LLC

# EXHIBIT ‘E’



1 **JOIN**

2 MICHAEL E. PRANGLE, ESQ.  
3 Nevada Bar No. 8619  
4 ZACHARY J. THOMPSON, ESQ.  
5 Nevada Bar No. 11001  
6 HALL PRANGLE & SCHOONVELD, LLC  
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11 [efile@hpslaw.com](mailto:efile@hpslaw.com)  
12 *Attorneys for Defendant*  
13 *Valley Health System, LLC, dba*  
14 *Centennial Hills Hospital Medical Center*

9 **DISTRICT COURT**

10 **CLARK COUNTY, NEVADA**

11 ESTATE OF REBECCA POWELL, through  
12 BRIAN POWELL, as Special Administrator;  
13 DARCI CREECY, individually and as an Heir;  
14 TARYN CREECY, individually and as an Heir;  
15 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 JOINDER TO  
DEFENDANTS CONRADO  
CONCIO, MD, AND DIONICE  
JULIANO, MD'S MOTION TO  
DISMISS**

**Hearing Date: July 30, 2019  
Hearing Time: 9:30 am**

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

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

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

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

6 DATED this 26<sup>th</sup> day of June, 2019.

HALL PRANGLE & SCHOONVELD, LLC

7  
8 By: /s/: Zachary Thompson, Esq  
9 MICHAEL E. PRANGLE, ESQ.  
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11 ZACHARY J. THOMPSON, ESQ.  
12 Nevada Bar No. 11001  
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15 *Attorneys for Defendant*  
16 *Valley Health System, LLC, dba*  
17 *Centennial Hills Hospital Medical Center*  
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**CERTIFICATE OF SERVICE**

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

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

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

       Receipt of Copy at their last known address:

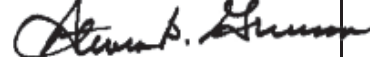
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/s/ Reina Claus  
An employee of HALL PRANGLE & SCHOONVELD, LLC

# EXHIBIT ‘F’





**OPPS**

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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.*<sup>1</sup> 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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24  
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28 <sup>1</sup> Emphasis supplied.

Under the very high standard required for dismissal under NRCPC 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 10<sup>th</sup> to May 11<sup>th</sup>, 2017, when they were responsible for Rebecca Powell’s care as her condition worsened and she ultimately died. (See Dr. Hashim’s Supporting Affidavit, ¶7.) As but one example of the several breaches described in that section, Dr. Hashim describes that:

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

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

specificity in Plaintiffs’ affidavit of merit fails. Further, in light of the Nevada Supreme Court’s directive to liberally construe NRS 41A.071’s requirements in a manner consistent with our NRCP 12 jurisprudence, any ambiguity or uncertainty (though Plaintiffs maintain that there is none) must be resolved in favor of Plaintiffs. *See Borger*, 120 Nev. at 1028 and *See Buzz Stew, LLC*, 124 Nev. at 227-8. To the extent that Dr. Hashim’s attribution of malpractice to Dr. 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 NRCP 12(b)(5), Defendants’ conclude that “it is impossible that Plaintiffs could have exercised reasonable diligence and yet not have discovered the claim until almost eight months later.” (*Id.* at 6:22.)

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

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

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

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

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

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

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

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



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

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

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

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

DATED this 13<sup>th</sup> day of August, 2019.

Respectfully submitted by:

PAUL PADDALAW, PLLC

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

*Attorneys for Plaintiffs*

**CERTIFICATE OF SERVICE**

The undersigned hereby certifies that copies of the foregoing document were served on this 13<sup>th</sup> day of April 2019, via the Court’s electronic service and filing system (“Odyssey”) upon all parties and their counsel.

/S/  
An Employee of Paul Padda Law, PLLC

# EXHIBIT ‘G’

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9/17/2019 2:53 PM  
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14 *Vishal Shah, M.D., and Dionice Juliano, M.D.*

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

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

15 Plaintiffs,

16 vs.

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

22 Defendants.

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

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

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



*Memorandum of Points and Authorities*

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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



1 applicable under 11.190(4)(e).

2 The moving Defendants are confused as to how this argument applies to the wrongful  
3 death claims. The allegations of wrongful death set forth in the Complaint are based entirely on  
4 the allegations of professional negligence. NRS 41A.097(2) clearly provides that “an action may  
5 not be commenced more than...1 year after the plaintiff discovers...the injury...for [i]njury *or*  
6 *wrongful death* of a person...based upon alleged professional negligence of the provider of  
7 health care.” NRS 41A.097(2)(a) (emphasis added).  
8

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

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

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

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

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

10 **V. Conclusion**

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

15 Dated this 17<sup>th</sup> day of September 2019.

16 **JOHN H. COTTON & ASSOCIATES, LTD.**  
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Las Vegas, Nevada 89117

18  
19   
20 JOHN H. COTTON, ESQ.  
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22 *Vishal Shah, MD, and Conrado Concio, M.D.*  
23  
24  
25  
26  
27  
28



**CERTIFICATE OF ELECTRONIC SERVICE**


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

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Centennial hills Hospital Medical Center*

  
An Employee of John H. Cotton & Associates

# EXHIBIT ‘H’



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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;  
ISAIAH KHOSROF, individually and as an Heir;  
LLOYD CRRECY, individually;

Plaintiffs,

vs.

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

Defendants.

CASE NO. A-19-788787-C

DEPT NO. XIV

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

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

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

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

4 DATED this 18<sup>th</sup> day of September, 2019.

5 HALL PRANGLE & SCHOONVELD, LLC

6  
7 By: /s/: Zachary Thompson, Esq  
8 MICHAEL E. PRANGLE, ESQ.  
9 Nevada Bar No. 8619  
10 ZACHARY J. THOMPSON, ESQ.  
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14 *Attorneys for Defendant*  
15 *Valley Health System, LLC, dba*  
16 *Centennial Hills Hospital Medical Center*  
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**MEMORANDUM OF POINTS AND AUTHORITIES**

**I.**

**INTRODUCTION**

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

**II.**

**ARGUMENT**

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

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



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

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

13  
14  
15 In light of the foregoing and in accordance with the case law and authority discussed in  
16 its Motion to Dismiss, Centennial Hills Hospital respectfully requests that this Court find that  
17 Plaintiffs' wrongful death and negligent infliction of emotional distress causes of action sound in  
18 professional negligence and are subject to NRS 41A.097(2)'s one-year statute of limitations.  
19 The application of NRS 41A.097(2) under these circumstances is necessary to preclude  
20 Plaintiffs' from evading through artful pleading the statutory protections afforded to providers of  
21 health care.  
22

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

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

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

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

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

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

3 See generally Opposition at p. 7.

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

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

5 Plaintiff mistakenly argues that purported inconsistencies with the Death Certificate and  
6 an investigative report from the Department of Health and Human Services support an inference  
7 of concealment, which warrant tolling of the statute of limitations. See Opposition at p. 7. In  
8 order to establish that the one-year discovery period should be tolled, Plaintiffs are required to  
9 show the following (1) that defendant intentionally withheld information, and (2) that this  
10 withholding would have hindered a reasonably diligent plaintiff from procuring an expert  
11 affidavit. See *Libby v. Eighth Jud. Dist. Ct.*, 130 Nev. 359, 367, 325 P.3d 1276, 1281 (2014)  
12 ("We have previously determined that NRS 41A.097(3)'s tolling provision applies only when  
13 there has been an intentional act that objectively hindered a reasonably diligent plaintiff from  
14 timely filing suit.") (citing *Winn v. Sunrise Hosp. & Med. Ctr.*, 128 Nev. 246, 255, 277 P.3d  
15 458, 464 (2012)). However, Plaintiffs have not alleged, let alone established, that Centennial  
16 Hills Hospital intentionally withheld information, and, just as significantly, Plaintiffs have not  
17 alleged or shown that any information withheld would have hindered a reasonably diligent  
18 plaintiff from procuring an expert affidavit.  
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22 Instead, Plaintiffs argue that the Death Certificate somehow supports an inference of  
23 concealment because Dr. Hashim believes that the finding was incorrect. See Opposition at p.  
24 7. Specifically, Plaintiffs contend that the Death Certificate incorrectly found the cause of death  
25 to be "Complications of Cymbalta Intoxication," which Dr. Hashim asserts could not have been  
26

27  
28 <sup>2</sup> Plaintiffs have not argued or alleged that they received the medical records outside of the one-year statute of limitations period. The court does not have to resolve when the records were sent/received because Plaintiffs have not alleged that the records were received outside of the one-year period following Ms. Powell's death.

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

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

8 **III.**

9 **CONCLUSION**

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

14 DATED this 18<sup>th</sup> day of September, 2019.  
15

16 HALL PRANGLE & SCHOONVELD, LLC

17 By: /s/: Zachary Thompson, Esq  
18 MICHAEL E. PRANGLE, ESQ.  
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**CERTIFICATE OF SERVICE**

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

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

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

       Receipt of Copy at their last known address:

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/s/ Reina Claus

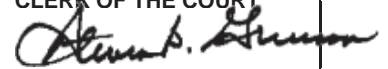
An employee of HALL PRANGLE & SCHOONVELD, LLC



# EXHIBIT ‘I’

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LAS VEGAS, NEVADA 89144  
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13 *Valley Health System, LLC, dba*  
14 *Centennial Hills Hospital Medical Center*  
15 *and Universal Health Services, Inc.*

16 **DISTRICT COURT**

17 **CLARK COUNTY, NEVADA**

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

24 Plaintiffs,

25 vs.

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

Defendants.

CASE NO. A-19-788787-C

DEPT NO. XIV

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

**HEARING REQUESTED**

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

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

DATED this 23<sup>rd</sup> day of September, 2019.

HALL PRANGLE & SCHOONVELD, LLC

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*Centennial Hills Hospital Medical Center*  
*and Universal Health Services, Inc.*

## MEMORANDUM OF POINTS AND AUTHORITIES

### I.

#### INTRODUCTION

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

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

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

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

16  
17 **II.**

18 **STATEMENT OF FACTS**

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

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

3 **III.**

4 **ARGUMENT**

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

17 In order to meet this burden, the plaintiff cannot rely upon the allegations in the  
18 complaint; rather, the plaintiff must produce evidence in support of all facts necessary for a  
19 finding of personal jurisdiction. See *Trump*, 109 Nev. at 692-93, 857 P.2d at 744 (“[T]he burden  
20 of proof never shifts to the party challenging jurisdiction.”). If the plaintiff fails to meet the  
21 burden to produce evidence in support of all facts necessary to find personal jurisdiction, the  
22 complaint should be dismissed. See *Viega GmbH*, 130 Nev. at 328 P.3d at 1156; see also Nev.  
23 R. Civ. Pro. 12(b)(2).  
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1 In order to avoid dismissal, the plaintiff would have to show that jurisdiction is proper  
2 over the parties challenging jurisdiction. "Jurisdiction over a nonresident defendant is proper  
3 only if the plaintiff shows that the exercise of jurisdiction satisfies the requirements of Nevada's  
4 long-arm statute and does not offend principles of due process." *Viega GmbH*, 130 Nev. 368,  
5 328 P.3d at 1156 (citing *Arbella Mut. Ins. Co. v. Eighth Judicial Dist. Court*, 122 Nev. 509, 512,  
6 134 P.3d 710, 712 (2006); *Consipio Holding, BV v. Carlberg*, 128 Nev. 454, 458, 282 P.3d 751,  
7 754 (2012) ("Nevada's long-arm statute permits personal jurisdiction over a nonresident  
8 defendant unless the exercise of jurisdiction would violate due process.")). "Nevada's long-arm  
9 statute, NRS 14.065, reaches the constitutional limits of due process under the Fourteenth  
10 Amendment, which requires that the defendant have such minimum contacts with the state that  
11 the defendant could reasonably anticipate being haled into court here, thereby complying with  
12 'traditional notions of fair play and substantial justice.'" *Id.* (quoting *Arbella*, 122 Nev. at 512,  
13 134 P.3d at 712 (internal quotation marks omitted) (citing *Int'l Shoe Co. v. Washington*, 326  
14 U.S. 310, 316, 66 S.Ct. 154, 90 L.Ed. 95 (1945))).

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

21 To obtain general jurisdiction, the foreign company's contacts with the forum state must  
22 be so continuous and systematic as to render it essentially at home in the forum state. *See id.* at  
23 368, 328 P.3d 1152, 1156-57 ("A court may exercise general jurisdiction over a foreign  
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1 company when its contacts with the forum state are so continuous and systematic' as to render  
2 [it] essentially at home in the forum State.”); *see also Arbella*, 122 Nev. at 513, 134 P.3d at 712  
3 (“[G]eneral personal jurisdiction exists when the defendant's forum state activities are so  
4 substantial or continuous and systematic that it is considered present in that forum and thus  
5 subject to suit there, even though the suit's claims are unrelated to that forum.”) (internal  
6 quotation marks omitted)). Typically, a corporation is “at home” only where it is incorporated  
7 or has its principle place of business. *See id.* at 368, 328 P.3d at 1158. If the corporation was  
8 not incorporated in the forum state, the foreign corporation will not be subject to broad, general  
9 jurisdiction in the forum state even if its subsidiary conducts substantial business there. *See id.*  
10 Thus, a plaintiff cannot meet its burden to show general jurisdiction by simply showing that a  
11 foreign corporation’s subsidiary conducts business in the forum state.  
12

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

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

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

*Id.* (emphasis added).

...

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

8 Plaintiffs also cannot meet their burden to show that UHS is subject to specific personal  
9 jurisdiction. UHS is a separate and distinct corporation, which maintains separate corporate  
10 existence from Centennial Hills Hospital. *See Carson Aff.*, ¶¶ 3-9. UHS does not operate or  
11 manage services at Centennial Hills Hospital. *See Carson Aff.*, ¶ 8 (UHS does not provide  
12 operational management services to its subsidiary facilities). UHS is simply a holding company  
13 with no employees in the State of Nevada. *See Carson Aff.*, ¶¶ 5-6. Additionally, UHS did not  
14 provide any services or patient care at issue. *See Carson Aff.*, ¶ 10. As a result, Plaintiffs  
15 cannot show that UHS purposefully availed itself of the forum's market or established contacts  
16 in the forum and affirmatively directed conduct there. Further, Plaintiffs cannot establish that  
17 their claims arise from that any alleged purposeful contact or conduct targeting the forum.  
18 Therefore, Plaintiffs cannot meet their burden to show that the UHS entity is subject to specific  
19 personal jurisdiction.  
20  
21

22 In light of the foregoing, Plaintiffs cannot meet their burden to establish general  
23 jurisdiction, specific personal jurisdiction, and/or that it is reasonable to subject them to suit in  
24 Nevada. As a result, exercising jurisdiction over UHS would not satisfy due process under the  
25 Fourteenth Amendment. Since it would not satisfy due process under the Fourteenth  
26 Amendment, Nevada's long-arm statute, NRS 14.065, does not permit personal jurisdiction over  
27  
28

1 these foreign entities. Therefore, jurisdiction over UHS is not permitted and is not proper in this  
2 case.

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

10 **IV.**

11 **CONCLUSION**

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

18 DATED this 23<sup>rd</sup> day of September, 2019.  
19

20 HALL PRANGLE & SCHOONVELD, LLC  
21

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

**CERTIFICATE OF SERVICE**

I HEREBY CERTIFY that I am an employee of HALL PRANGLE & SCHOONVELD, LLC; that on the 23<sup>rd</sup> day of September, 2019, I served a true and correct copy of the foregoing **DEFENDANT UNIVERSAL HEALTH SERVICES, INC.'S MOTION TO DISMISS PLAINTIFFS' COMPLAINT** as follows:

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

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

       Receipt of Copy at their last known address:

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

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

/s/ Reina Claus  
An employee of HALL PRANGLE & SCHOONVELD, LLC

# Exhibit A

# Exhibit A

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

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

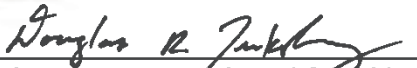
3 11. Everything stated within this affidavit is true and correct to the best of affiant's  
4 knowledge, information and belief.

5 DATED this 15<sup>th</sup> day of August, 2019.

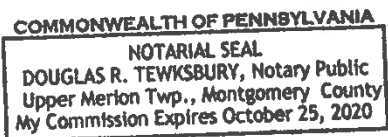


Michelle K. Carson

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



10 NOTARY PUBLIC in and for said  
11 County and State





# EXHIBIT ‘J’

**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.

# EXHIBIT ‘K’



1 MICHAEL E. PRANGLE, ESQ.  
Nevada Bar No. 8619  
2 ZACHARY J. THOMPSON, ESQ.  
Nevada Bar No. 11001  
3 HALL PRANGLE & SCHOONVELD, LLC  
1140 North Town Center Drive, Ste. 350  
4 Las Vegas, Nevada 89144  
Phone: 702-889-6400  
5 Facsimile: 702-384-6025  
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**

22  
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




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.

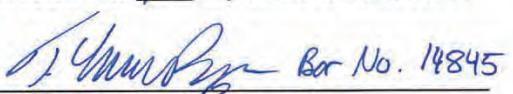
5 UNIVERSAL HEALTH SERVICE, INC., reserves all other defenses, including, but not  
6 limited to the defenses previously asserted in Universal Health Services, Inc.'s Motion to  
7 Dismiss, or, Alternatively, Motion for Summary Judgment for Lack of Jurisdiction and  
8 Universal Health Services, Inc.'s 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 27<sup>th</sup> day of November, 2019.

DATED this 27<sup>th</sup> day of November, 2019.

14   
15 PAUL S. PADMA, ESQ.  
Nevada Bar No. 10417  
16 PAUL PADMA LAW, PLLC  
17 4560 South Decatur Blvd., Suite 300  
Las Vegas, NV 89103  
18 *Attorneys for Plaintiffs*

 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*

19  
20  
21 DATED this \_\_\_\_ 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.*

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

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

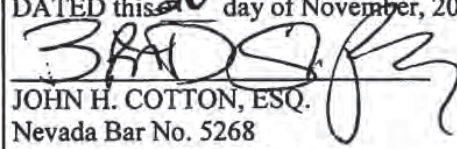
**IT IS SO STIPULATED.**

DATED this \_\_\_\_ day of November, 2019. DATED this \_\_\_\_ day of November, 2019.

PAUL S. PADDA, ESQ.  
Nevada Bar No. 10417  
PAUL PADDA LAW, PLLC  
4560 South Decatur Blvd., Suite 300  
Las Vegas, NV 89103  
*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*

DATED this <sup>26<sup>th</sup></sup> day of November, 2019.

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



THE UNITED STATES OF AMERICA  
DEPARTMENT OF JUSTICE  
FEDERAL BUREAU OF INVESTIGATION  
WASHINGTON, D. C. 20535

*[Handwritten signature]*  
Special Agent in Charge

TO : DIRECTOR, FBI  
FROM : SAC, NEW YORK  
SUBJECT: [Illegible]

RE: [Illegible]

[Illegible body text]

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[Illegible body text]



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

**ORDER**

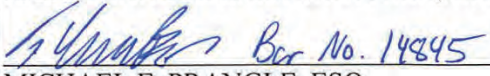
IT IS HEREBY ORDERED that Defendant UNIVERSAL HEALTH SERVICE, INC. shall be dismissed, without prejudice, from the instant litigation in case A-19-788787-C, with each party to bear their own attorneys' fees and costs.

DATED this 3rd day of December, 2019.

  
DISTRICT COURT JUDGE

*Respectfully Submitted by:*

HALL PRANGLE & SCHOONVELD, LLC

  
MICHAEL E. PRANGLE, ESQ.

Nevada Bar No. 8619

ZACHARY J. THOMPSON, ESQ.

Nevada Bar No. 11001

1140 North Town Center Drive, Ste. 350

Las Vegas, Nevada 89144

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

**IN THE SUPREME COURT OF THE STATE OF NEVADA**

VALLEY HEALTH SYSTEM, LLC (doing business as  
“Centennial Hills Hospital Medical Center”), a foreign limited  
liability company,

Petitioner,

v.

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

Respondent,

and

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

Real Parties In Interest,

and

DR. DIONICE S. JULIANO, M.D., an individual; DR. CONRADO  
C.D. CONCIO, M.D., an individual; DR. VISHAL S. SHAH,  
M.D., an individual,

Additional Parties In Interest.

Supreme Court  
No.: 82250

District Court  
No.: A-19-  
788787-C

---

**PETITIONER’S APPENDIX TO MOTION FOR STAY PENDING  
DECISION ON WRIT OF MANDAMUS – VOLUME II**

---

S. BRENT VOGEL

Nevada Bar No. 6858

ADAM GARTH

Nevada Bar No. 15045

Lewis Brisbois Bisgaard & Smith LLP

6385 South Rainbow Boulevard, Suite 600

Las Vegas, Nevada 89118

Telephone: 702-893-3383

Facsimile: 702-893-3789

*Attorneys for Petitioner*

## INDEX TO PETITIONERS' APPENDIX – VOLUME II

<b>Exhibit</b>	<b>Document</b>	<b>Date</b>	<b>Vol.</b>	<b>Page Nos.</b>
A.	Minute Order Re Denial of Motion to Stay All Proceedings	04/20/2021	I	2-4
B.	Order Denying Motion for Summary Judgment	10/29/2020	I	6-13
C.	Order Directing Answer	03/09/2021	I	15-16
D.	Scheduling Order and Order Setting Firm Civil Jury Trial	05/06/2020	I	18-22
E.	Defendant Valley Health System LLC's Motion for Stay on Order Shortening Time	11/05/2020	I	24-186
E. (continued)	Defendant Valley Health System LLC's Motion for Stay on Order Shortening Time	11/05/2020	II	188-237
E. (continued)	Defendant Valley Health System LLC's Motion for Stay on Order Shortening Time	11/05/2020	III	239-263
E. (continued)	Defendant Valley Health System LLC's Motion for Stay on Order Shortening Time	11/05/2020	IV	264-365
F.	Plaintiffs' Opposition to Defendant Valley Health System LLC's Motion for Stay of Proceedings	11/19/2020	IV	367-376
G.	Defendant Valley Health System LLC's Reply to Motion for Stay on Order Shortening Time	11/20/2020	IV	378-390

H.	Request to Plaintiffs to Stipulate to Stay the Matter and Respond from Plaintiffs	04/02/2021 04/05/2021	IV	392-393
I.	Defendant Valley Health System LLC's Motion to Reconsider Motion for Stay Pending Petition for Writ of Mandamus	04/06/2021	V	395-568
I. (Continued)	Defendant Valley Health System LLC's Motion to Reconsider Motion for Stay Pending Petition for Writ of Mandamus	04/06/2021	VI	570-661
I. (Continued)	Defendant Valley Health System LLC's Motion to Reconsider Motion for Stay Pending Petition for Writ of Mandamus	04/06/2021	VII	662-768
J.	Plaintiffs' Opposition to Valley Health System LLC's Motion to Reconsider Motion for Stay Pending Petition for Writ of Mandamus	04/15/2021	VII	770-816
K.	Valley Health System LLC's Reply in Further Support of its Motion to Reconsider Motion for Stay Pending Petition for Writ of Mandamus	04/16/2021	VII	818-825

**CERTIFICATE OF SERVICE**

I hereby certify that on this 22<sup>nd</sup> day of April, 2021, a true and correct copy of **PETITIONER’S APPENDIX TO MOTION FOR STAY PENDING DECISION ON WRIT OF MANDAMUS – VOLUME II** was served upon the following parties by electronic service through this Court’s electronic service system and also by placing a true and correct copy thereof in the United States Mail in Las Vegas, Nevada with first class postage fully prepaid:.

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

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

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

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

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

# EXHIBIT ‘L’



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

12 DISTRICT COURT  
13 CLARK COUNTY, NEVADA

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

20 Plaintiffs,

21 vs.

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

Defendants.

CASE NO. A-19-788787-C

DEPT NO. XIV

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

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



1 provides its answer to Plaintiffs' Complaint as follows:

2 I.

3 **ARBITRATION EXEMPTION**

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

10 II.

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

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

18 III.

19 **THE PARTIES**

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

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

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

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

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

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

## IV.

## FACTUAL BACKGROUND

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

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

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



1 the standard of care cause Plaintiff's death. As to the remaining allegations, this answering  
2 Defendant states that the allegations therein call for an expert opinion and, as such, do not  
3 require a response. To the extent a response is required, the answering Defendant states it is  
4 without sufficient information to form a belief as to the truth of the allegations contained in said  
5 paragraph and therefore denies the same.  
6

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

12 12. In answering paragraph 21 of Plaintiffs' Complaint, this answering Defendant  
13 states it is without sufficient information to form a belief as to the truth of the allegations  
14 contained in said paragraph and therefore denies the same.  
15

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

23 14. In answering paragraph 23 and 24 of Plaintiffs' Complaint, this answering  
24 Defendant states that the allegations therein call for an expert opinion and, as such, do not  
25 require a response. To the extent a response is required, the answering Defendant states it is  
26 without sufficient information to form a belief as to the truth of the allegations contained in said  
27 paragraph and therefore denies the same.  
28

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

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

5  
6 **V.**

7 **FIRST CAUSE OF ACTION**

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

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

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

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

17 **VI.**

18 **SECOND CAUSE OF ACTION**

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

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

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

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

28 **VII.**

**THIRD CAUSE OF ACTION**

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



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

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

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

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

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

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

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

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

1                                    **PRAYER FOR RELIEF**

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

4                                    **GENERAL DENIAL**

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

7                                    **FIRST AFFIRMATIVE DEFENSE**

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

10                                  **SECOND AFFIRMATIVE DEFENSE**

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

13                                  **THIRD AFFIRMATIVE DEFENSE**

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

17                                  **FOURTH AFFIRMATIVE DEFENSE**

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

20                                  **FIFTH AFFIRMATIVE DEFENSE**

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

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1                                    **SIXTH AFFIRMATIVE DEFENSE**

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

4                                    **SEVENTH AFFIRMATIVE DEFENSE**

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

8                                    **EIGHTH AFFIRMATIVE DEFENSE**

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

12                                   **NINTH AFFIRMATIVE DEFENSE**

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

16                                   **TENTH AFFIRMATIVE DEFENSE**

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

20                                   **ELEVENTH AFFIRMATIVE DEFENSE**

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

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1                                   **TWELFTH AFFIRMATIVE DEFENSE**

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

4                                   **THIRTEENTH AFFIRMATIVE DEFENSE**

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

9                                   **FOURTEENTH AFFIRMATIVE DEFENSE**

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

12                                   **FIFTEENTH AFFIRMATIVE DEFENSE**

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

16                                   **SIXTEENTH AFFIRMATIVE DEFENSE**

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

19                                   **SEVENTEENTH AFFIRMATIVE DEFENSE**


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

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

DATED this 15<sup>th</sup> day of April, 2020.

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



1 **CERTIFICATE OF SERVICE**

2 I HEREBY CERTIFY that on the 15<sup>th</sup> day of April 2020, I served a true and correct copy  
3 of the foregoing **DEFENDANT VALLEY HEALTH SYSTEM, LLC, dba CENTENNIAL**  
4 **HILLS HOSPITAL MEDICAL CENTER'S ANSWER TO PLAINTIFF'S COMPLAINT**  
5 addressed to the following counsel of record at the following address(es):

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

13 Paul S. Padda, Esq.  
14 Brandon C. Verde, Esq.  
15 PAUL PADDA LAW, PLLC  
16 4560 South Decatur Boulevard, Suite 300  
17 Las Vegas, Nevada 89103  
18 *Attorneys for Plaintiffs*

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

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

# EXHIBIT ‘M’

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

8  
9 DISTRICT COURT  
10 CLARK COUNTY, NEVADA  
11

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

15 Plaintiffs,

16 vs.

17 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  
24

25 STATE OF NEVADA }

26 COUNTY OF CLARK }

27 I, GINA ARROYO, declare as follows:

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

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 1<sup>st</sup> day of September, 2020.

  
GINA ARROYO

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11 No Notary Required per NRS 53.045  
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# 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

Electronically Filed  
05/25/2017

*Heather S. Linn*  
CLERK OF THE COURT

1 **ORDER**  
2 CASSADY LAW OFFICES, P.C.  
3 Jasen E. Cassady, Esq.  
4 Nevada Bar No. 8018  
5 [jasen@cassadylawoffices.com](mailto:jasen@cassadylawoffices.com)  
6 Brandi K. Cassady, Esq.  
7 Nevada Bar No. 12714  
8 [brandi@cassadylawoffices.com](mailto:brandi@cassadylawoffices.com)  
9 Brendan M. McGraw, Esq.  
10 Nevada Bar No. 11653  
11 [brendan@cassadylawoffices.com](mailto: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

**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

*[Signature]*  
DISTRICT COURT JUDGE

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

*Heather S. Linn*  
CLERK OF THE COURT

MAY 25 2017

- 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

\* Put Records on CD

# AUTHORIZATION TO USE AND DISCLOSE PROTECTED HEALTH INFORMATION

<input type="checkbox"/>	Initial here if requesting information from Centennial Hills Hospital Medical Center. Note: There will be a charge of \$.14 per page if source document is electronic or a charge of \$.16 per page if source document is paper for releases of PHI for all reasons other than continued patient care.
<input type="checkbox"/>	Initial here if requesting access to review original medical records.
<input type="checkbox"/>	Initial here if requesting patient record to be provided in electronic format (CD) or secure e-mail.
<input type="checkbox"/>	Patients are entitled to one (1) free Compact Disc (CD) containing radiology images/films/recordings. Any requests for additional copies will be subject to a \$10 fee per CD.

Patient Name at Time of Treatment: REBECCA ANN POWELL Date of Birth: 5/30/1975 Social Security Number: 216 571 9522  
Street Address: P.O. Box 750131 Home Phone Number: 89/36-0131  
City: LAS VEGAS State: NV Zip Code: 89/36-0131 Work Phone Number:

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 BOTH SOFT AND HARD COPY  
☒ Radiology Images CD ☒ X-Ray Report  
☒ Discharge Summary ☒ Lab Reports/Pathology Reports
4. By signing my initials next to the specific category of highly confidential information, I am authorizing Centennial Hills Hospital Medical Center to release the indicated type of information next to my initials pursuant to this Authorization from the treatment date(s) listed above.  

<input type="checkbox"/> HIV/AIDS	<input type="checkbox"/> Drug and Alcohol Information	<input type="checkbox"/> Genetic Information
<input type="checkbox"/> Mental Health Information	<input type="checkbox"/> Sexually Transmitted Disease Information	<input type="checkbox"/> 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: Taryn Creecy Date: 5/25/17 Relationship to Patient: Daughter  
Signature of Legal Representative:  Print Name:  Date:

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:

BAR CODE



R11001

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

Electronically Filed  
05/25/2017

*Heather L. Smith*  
CLERK OF THE COURT

1 **ORDR**  
2 **CASSADY LAW OFFICES, P.C.**  
3 **Jasen E. Cassady, Esq.**  
4 **Nevada Bar No. 8018**  
5 **jasen@cassadylawoffices.com**  
6 **Brandi K. Cassady, Esq.**  
7 **Nevada Bar No. 12714**  
8 **brandi@cassadylawoffices.com**  
9 **Brendan M. McGraw, Esq.**  
10 **Nevada Bar No. 11653**  
11 **brendan@cassadylawoffices.com**  
12 **10799 West Twain Avenue**  
13 **Las Vegas, Nevada 89135**  
14 **Phone: (702) 650-4480**  
15 **Fax: (702) 650-5561**  
16 **Attorneys for the Estate**

**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.

*[Signature]*  
DISTRICT COURT JUDGE

Submitted by:

CASSADY LAW OFFICES, P.C.

By: *[Signature]*

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

- 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





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

# Ohio

USA

## IDENTIFICATION CARD

1820UL1926900000



Under 21 until 06-20-2018

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

06-20-1995

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



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

9 CLASS 1b EXPIRES  
REG 06-20-2018

### NONDRIVER

*Taryn Crecy*





\* Put Records on CD

# AUTHORIZATION TO USE AND DISCLOSE PROTECTED HEALTH INFORMATION

<input checked="" type="checkbox"/>	Initial here if requesting information from Centennial Hills Hospital Medical Center. Note: There will be a charge of \$.14 per page if source document is electronic or a charge of \$.16 per page if source document is paper for releases of PHI for all reasons other than continued patient care.
<input type="checkbox"/>	Initial here if requesting access to review original medical records.
<input type="checkbox"/>	Initial here if requesting patient record to be provided in electronic format (CD) or secure e-mail.
<input type="checkbox"/>	Patients are entitled to one (1) free Compact Disc (CD) containing radiology images/films/recordings. Any requests for additional copies will be subject to a \$10 fee per CD.

REBECCA ANN POWELL  
 Patient Name at Time of Treatment  
 P.O. Box 750131  
 Street Address  
 LAS VEGAS NV 89136-0131  
 City State Zip Code  
 Email  
 Social Security Number  
 216 571 9522  
 Home Phone Number  
 Work Phone Number

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

<input checked="" type="checkbox"/> Billing Record	<input checked="" type="checkbox"/> History and Physical	<input checked="" type="checkbox"/> Emergency Department
<input checked="" type="checkbox"/> All PHI in Medical Record (Complete Chart Copy)	<input checked="" type="checkbox"/> Operative Report	<input checked="" type="checkbox"/> Other (please specify):
<input checked="" type="checkbox"/> Radiology Images CD	<input checked="" type="checkbox"/> X-Ray Report	ALL RECORDS, IMAGES AND TRANSCRIPTS
<input checked="" type="checkbox"/> Discharge Summary	<input checked="" type="checkbox"/> Lab Reports/Pathology Reports	BOTH HARD AND SOFT 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: 5/25/17  
 Signature of Legal Representative: [Signature] Print Name: Taryn Creecy 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: \_\_\_\_\_

BAR CODE



RI1001

Centennial Hills Hospital  
MEDICAL CENTER

AUTHORIZATION TO USE AND DISCLOSE  
PROTECTED HEALTH INFORMATION

(PMM# 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)
<b>BALANCE DUE:</b>	<b>\$102.08</b>

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

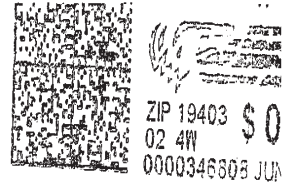
# EXHIBIT ‘D’



MRO  
1000 Mac  
Suite 100  
Norristown, PA 19403

RETURN SERVICE  
REQUESTED

FIRST CLASS



*Handwritten signature*

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



NIXIE 851 7E 1 0106/23/17  
RETURN TO SENDER  
ATTEMPTED - NOT KNOWN  
UNABLE TO FORWARD  
SC: 1940324262S 2104N174110-0033E

# EXHIBIT ‘N’

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

9 DISTRICT COURT  
10 CLARK COUNTY, NEVADA  
11

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

15 Plaintiffs,  
16

17 vs.

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

22 Defendants.  
23

Case No. A-19-788787-C

Dept. No.: 30

**DECLARATION OF 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  
10  
11  
12  
13  
14

15 By  
16  
17  
18  
19  
20  
21  
22  
23  
24  
25  
26  
27  
28

# EXHIBIT ‘D’





**JOIN**

JOHN H. COTTON, ESQ.  
Nevada Bar Number 5268  
[JHCotton@jhcottonlaw.com](mailto:JHCotton@jhcottonlaw.com)

BRAD SHIPLEY, ESQ.  
Nevada Bar Number 12639  
[BShiple@jhcottonlaw.com](mailto:BShiple@jhcottonlaw.com)

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

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

**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.: **30**

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

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

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

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

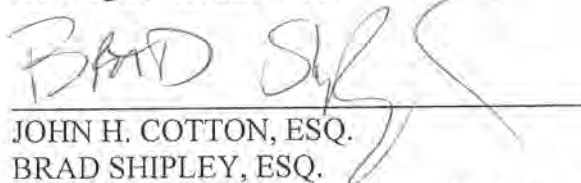
***Memorandum of Points and Authorities***

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

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

Dated this 3<sup>rd</sup> day of September 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*

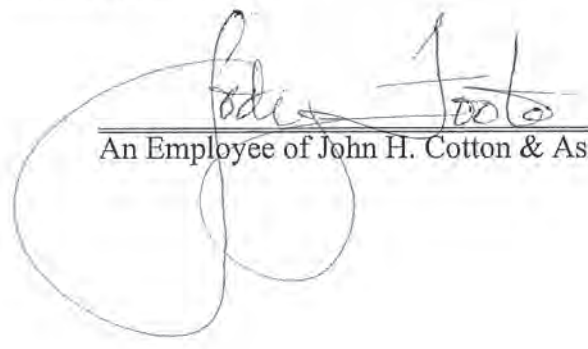


John H. Cotton & Associates  
7900 W. Sahara, Suite 200  
Las Vegas, NV 89117

CERTIFICATE OF ELECTRONIC SERVICE

I hereby certify that on the 3<sup>rd</sup> 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’



1 **OPP**  
2 PAUL S. PADDA, ESQ. (NV Bar #10417)  
3 Email: psp@paulpaddalaw.com  
4 **PAUL PADDA LAW, PLLC**  
5 4560 South Decatur Boulevard, Suite 300  
6 Las Vegas, Nevada 89103  
7 Tele: (702) 366-1888  
8 Fax: (702) 366-1940

9 *Attorney for Plaintiffs*

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

12 ESTATE OF REBECCAL POWELL, through  
13 Brian Powell as Special Administrator;  
14 DARCI CREECY, individually; TARYN  
15 CREECY, individually; ISIAH KHOSROF,  
16 individually; LLOYD CREECY, individually;

CASE NO. A-19-788787-C

17 Plaintiffs,

DEPT. NO. XXX (30)

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; ROES A-Z;

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

Defendants.

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”)<sup>1</sup> 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.*”<sup>2</sup> 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

---

<sup>1</sup> 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.

<sup>2</sup> 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.<sup>3</sup> 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.

---

<sup>3</sup> "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 (9<sup>th</sup> 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  
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24 . . .

25 . . .

**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.”<sup>4</sup> 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

---

<sup>4</sup> 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,”<sup>5</sup> 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.<sup>6</sup> The letter notified them, for the first time, that what  
22  
23  
24

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25 <sup>5</sup> See App. 4.

26 <sup>6</sup> 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 affidavit<sup>7</sup>  
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,<sup>8</sup> 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  
24 <sup>7</sup> See App. 39-45.

25 <sup>8</sup> VHS MSJ, Exhibit M.

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.

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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

---

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James P. Kelly, Esq.  
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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

**IN THE SUPREME COURT OF THE STATE OF NEVADA**

VALLEY HEALTH SYSTEM, LLC (doing business as  
“Centennial Hills Hospital Medical Center”), a foreign limited  
liability company,  
Petitioner,

v.

THE EIGHTH JUDICIAL DISTRICT COURT OF THE STATE  
OF NEVADA ex rel. THE COUNTY OF CLARK, AND THE  
HONORABLE JUDGE JERRY A. WIESE II,  
Respondent,  
and

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

Real Parties In Interest,  
and

DR. DIONICE S. JULIANO, M.D., an individual; DR. CONRADO  
C.D. CONCIO, M.D., an individual; DR. VISHAL S. SHAH,  
M.D., an individual,  
Additional Parties In Interest.

Supreme Court  
No.: 82250

District Court  
No.: A-19-  
788787-C

---

**PETITIONER’S APPENDIX TO MOTION FOR STAY PENDING  
DECISION ON WRIT OF MANDAMUS – VOLUME III**

---

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## INDEX TO PETITIONERS' APPENDIX – VOLUME III

<b>Exhibit</b>	<b>Document</b>	<b>Date</b>	<b>Vol.</b>	<b>Page Nos.</b>
A.	Minute Order Re Denial of Motion to Stay All Proceedings	04/20/2021	I	2-4
B.	Order Denying Motion for Summary Judgment	10/29/2020	I	6-13
C.	Order Directing Answer	03/09/2021	I	15-16
D.	Scheduling Order and Order Setting Firm Civil Jury Trial	05/06/2020	I	18-22
E.	Defendant Valley Health System LLC's Motion for Stay on Order Shortening Time	11/05/2020	I	24-186
E. (continued)	Defendant Valley Health System LLC's Motion for Stay on Order Shortening Time	11/05/2020	II	188-237
E. (continued)	Defendant Valley Health System LLC's Motion for Stay on Order Shortening Time	11/05/2020	III	239-263
E. (continued)	Defendant Valley Health System LLC's Motion for Stay on Order Shortening Time	11/05/2020	IV	264-365
F.	Plaintiffs' Opposition to Defendant Valley Health System LLC's Motion for Stay of Proceedings	11/19/2020	IV	367-376
G.	Defendant Valley Health System LLC's Reply to Motion for Stay on Order Shortening Time	11/20/2020	IV	378-390

H.	Request to Plaintiffs to Stipulate to Stay the Matter and Respond from Plaintiffs	04/02/2021 04/05/2021	IV	392-393
I.	Defendant Valley Health System LLC's Motion to Reconsider Motion for Stay Pending Petition for Writ of Mandamus	04/06/2021	V	395-568
I. (Continued)	Defendant Valley Health System LLC's Motion to Reconsider Motion for Stay Pending Petition for Writ of Mandamus	04/06/2021	VI	570-661
I. (Continued)	Defendant Valley Health System LLC's Motion to Reconsider Motion for Stay Pending Petition for Writ of Mandamus	04/06/2021	VII	662-768
J.	Plaintiffs' Opposition to Valley Health System LLC's Motion to Reconsider Motion for Stay Pending Petition for Writ of Mandamus	04/15/2021	VII	770-816
K.	Valley Health System LLC's Reply in Further Support of its Motion to Reconsider Motion for Stay Pending Petition for Writ of Mandamus	04/16/2021	VII	818-825

## **CERTIFICATE OF SERVICE**

I hereby certify that on this 22<sup>nd</sup> day of April, 2021, a true and correct copy of **PETITIONER’S APPENDIX TO MOTION FOR STAY PENDING DECISION ON WRIT OF MANDAMUS – VOLUME III** was served upon the following parties by electronic service through this Court’s electronic service system and also by placing a true and correct copy thereof in the United States Mail in Las Vegas, Nevada with first class postage fully prepaid:.

The Honorable Jerry A. Wiese II  
The Eighth Judicial District Court  
Regional Justice Center  
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Concio, M.D And Vishal S. Shah, M.D.*

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

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

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## Garth, Adam

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

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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 9:45 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	
<b>Case Number</b>	A-19-788787-C
<b>Case Style</b>	Estate of Rebecca Powell, Plaintiff(s)vs.Valley Health System, LLC, Defendant(s)
<b>Date/Time Submitted</b>	4/17/2020 9:39 AM PST
<b>Filing Type</b>	Service Only
<b>Filing Description</b>	Defendants Juliano, Concio and Shah's First Set of Requests for Admission to Plaintiff Isaiah Khosrof
<b>Filed By</b>	Jody Foote
<b>Service Contacts</b>	Estate of Rebecca Powell: James Kelly ( <a href="mailto:jpk@paulpaddalaw.com">jpk@paulpaddalaw.com</a> )

Fay Diab ([fay@paulpaddalaw.com](mailto:fay@paulpaddalaw.com))

Brandon Verde ([BCV@paulpaddalaw.com](mailto:BCV@paulpaddalaw.com))

Paul Padda ([civil@paulpaddalaw.com](mailto:civil@paulpaddalaw.com))

Paul Padda ([psp@paulpaddalaw.com](mailto:psp@paulpaddalaw.com))

Tony Abbatangelo ([tony@paulpaddalaw.com](mailto:tony@paulpaddalaw.com))

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Chelsea Hueth ([crhueth@mcbridehall.com](mailto:crhueth@mcbridehall.com))

Robert McBride ([rcmcbride@mcbridehall.com](mailto:rcmcbride@mcbridehall.com))

Cynthia Crizaldo ([ccrizaldo@mcbridehall.com](mailto:ccrizaldo@mcbridehall.com))

Michelle Newquist ([mnewquist@mcbridehall.com](mailto:mnewquist@mcbridehall.com))

Candace Cullina ([ccullina@mcbridehall.com](mailto:ccullina@mcbridehall.com))

Tiffane Safar ([tsafar@mcbridehall.com](mailto:tsafar@mcbridehall.com))

Stephanie Lazo ([slazo@mcbridehall.com](mailto:slazo@mcbridehall.com))

Richard Carroll ([rdcarroll@cktfmlaw.com](mailto:rdcarroll@cktfmlaw.com))

Theresa Lopez ([tmlopez@cktfmlaw.com](mailto:tmlopez@cktfmlaw.com))

Kellie Piet ([kpiet@mcbridehall.com](mailto:kpiet@mcbridehall.com))

Conrado C.D. Concio MD:

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Jody Foote ([jfoote@jhcottonlaw.com](mailto:jfoote@jhcottonlaw.com))

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**Garth, Adam**

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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

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

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

Brad Shipley ([bshipley@jhcottonlaw.com](mailto:bshipley@jhcottonlaw.com))

Jessica Pincombe ([jpcombe@jhcottonlaw.com](mailto:jpcombe@jhcottonlaw.com))

Jody Foote ([jfoote@jhcottonlaw.com](mailto:jfoote@jhcottonlaw.com))

Estate of Rebecca Powell:

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Tony Abbatangelo ([tony@paulpaddalaw.com](mailto:tony@paulpaddalaw.com))

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Theresa Lopez ([tmlopez@cktfmlaw.com](mailto:tmlopez@cktfmlaw.com))

Chelsea Hueth ([crhueth@mcbriehall.com](mailto:crhueth@mcbriehall.com))

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**Garth, Adam**

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

	<p>Jessica Pincombe (<a href="mailto:jpincombe@jhcottonlaw.com">jpincombe@jhcottonlaw.com</a>)</p> <p>John Cotton (<a href="mailto:jhcotton@jhcottonlaw.com">jhcotton@jhcottonlaw.com</a>)</p> <p>Brad Shipley (<a href="mailto:bshipley@jhcottonlaw.com">bshipley@jhcottonlaw.com</a>)</p> <p>Estate of Rebecca Powell:</p> <p>Tony Abbatangelo (<a href="mailto:tony@paulpaddalaw.com">tony@paulpaddalaw.com</a>)</p> <p>James Kelly (<a href="mailto:jpk@paulpaddalaw.com">jpk@paulpaddalaw.com</a>)</p> <p>Fay Diab (<a href="mailto:fay@paulpaddalaw.com">fay@paulpaddalaw.com</a>)</p> <p>Brandon Verde (<a href="mailto:BCV@paulpaddalaw.com">BCV@paulpaddalaw.com</a>)</p> <p>Paul Padda (<a href="mailto:civil@paulpaddalaw.com">civil@paulpaddalaw.com</a>)</p> <p>Paul Padda (<a href="mailto:psp@paulpaddalaw.com">psp@paulpaddalaw.com</a>)</p> <p>Valley Health System, LLC:</p> <p>Chelsea Hueth (<a href="mailto:crhueth@mcbridehall.com">crhueth@mcbridehall.com</a>)</p> <p>Robert McBride (<a href="mailto:rmcbride@mcbridehall.com">rmcbride@mcbridehall.com</a>)</p> <p>Cynthia Crizaldo (<a href="mailto:ccrizaldo@mcbridehall.com">ccrizaldo@mcbridehall.com</a>)</p> <p>Michelle Newquist (<a href="mailto:mnewquist@mcbridehall.com">mnewquist@mcbridehall.com</a>)</p> <p>Candace Cullina (<a href="mailto:ccullina@mcbridehall.com">ccullina@mcbridehall.com</a>)</p> <p>Tiffane Safar (<a href="mailto:tsafar@mcbridehall.com">tsafar@mcbridehall.com</a>)</p> <p>Stephanie Lazo (<a href="mailto:slazo@mcbridehall.com">slazo@mcbridehall.com</a>)</p> <p>Richard Carroll (<a href="mailto:rdcarroll@cktfmlaw.com">rdcarroll@cktfmlaw.com</a>)</p> <p>Theresa Lopez (<a href="mailto:tmlopez@cktfmlaw.com">tmlopez@cktfmlaw.com</a>)</p> <p>Kellie Piet (<a href="mailto:kpiet@mcbridehall.com">kpiet@mcbridehall.com</a>)</p>
--	---

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# EXHIBIT ‘B’



*Heather L. Smith*  
CLERK OF THE COURT

PAUL PADDA LAW, PLLC  
4560 South Decatur Boulevard, Suite 300  
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SAO

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

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JAMES P. KELLY, ESQ. (NV Bar #8140)

Email: [jpk@paulpaddalaw.com](mailto:jpk@paulpaddalaw.com)

PAUL PADDA LAW, PLLC

4560 South Decatur Boulevard, Suite 300

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 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.

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, ISAAH 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

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

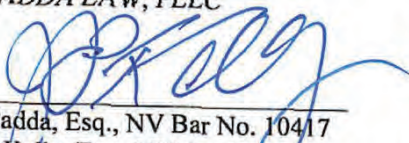
5  
6 The parties stipulate and agree that there is good cause for entering into the  
7 aforementioned stipulations. These stipulations shall function to allow time for Plaintiffs to  
8 confirm whether there is a factual basis for their NIED claims, and specifically, to discuss with  
9 an appropriate expert whether or not there are any alleged errors or omissions against Dr. Juliano  
10 in this case with regard to Defendants' dispositive motions and joinders.


11  
12 Dated this 21 day of August 2020.

Dated this 21<sup>st</sup> day of August 2020.

13 PAUL PADDA LAW, PLLC

JOHN H. COTTON AND ASSOCIATES

14  
15   
16 Paul S. Padda, Esq., NV Bar No. 10417  
17 James P. Kelly, Esq., NV Bar No. 8140  
18 4560 South Decatur Boulevard, Suite 300  
19 Las Vegas, Nevada 89103  
20 Attorneys for Plaintiffs

15   
16 John H. Cotton, Esq., NV Bar No. 5268  
17 Brad J. Shipley, Esq., NV Bar No. 12639  
18 7900 W. Sahara Avenue, Suite 200  
19 Las Vegas, NV 89117  
20 Attorneys for Defendants Dionice S. Juliano,  
21 MD, Conrado Concio, MD and Vishal S. Shah,  
22 MD

23 Dated this 21st day of August 2020.

24 LEWIS BRISBOIS BISGAARD & SMITH, LLP

25 /s/ Adam Garth

26 S. Brent Vogel, Esq., NV Bar No. 6858  
27 Adam Garth, Esq., NV Bar No. 15405  
28 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.



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Las Vegas, Nevada 89103  
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*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: \_\_\_\_\_

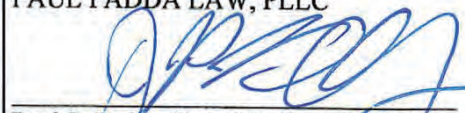
Dated this 24th day of August, 2020



District Court Judge

Respectfully submitted by:

PAUL PADDA LAW, PLLC



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*

C7A DB8 8018 F3DC  
Jerry A. Wiese  
District Court Judge

## 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](mailto:Adam.Garth@lewisbrisbois.com)

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On Aug 21, 2020, at 3:16 PM, Jennifer Greening <[Jennifer@paulpaddalaw.com](mailto: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 PADDALAW, PLLC**  
[Jennifer@paulpaddalaw.com](mailto:Jennifer@paulpaddalaw.com)  
[www.paulpaddalaw.com](http://www.paulpaddalaw.com)

1 **CSERV**

2  
3 DISTRICT COURT  
CLARK COUNTY, NEVADA

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

CASE NO: A-19-788787-C

7 vs.

DEPT. NO. Department 30

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

10  
11 **AUTOMATED CERTIFICATE OF SERVICE**

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

15 Service Date: 8/24/2020

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# EXHIBIT ‘G’





1 **JOIN**

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3 Nevada Bar Number 5268  
4 [JHCotton@jhcottonlaw.com](mailto:JHCotton@jhcottonlaw.com)

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  
10 Las Vegas, Nevada 89117  
11 Telephone: (702) 832-5909  
12 Facsimile: (702) 832-5910

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

15 **DISTRICT COURT**

16 \* \* \*

17 **CLARK COUNTY, NEVADA**

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

24 Plaintiffs,

25 vs.

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

Defendants.

**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**

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

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

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

5  
6 **Memorandum of Points and Authorities**

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

8 **Defendants**

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

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

24  
25 **II. CONCLUSION**

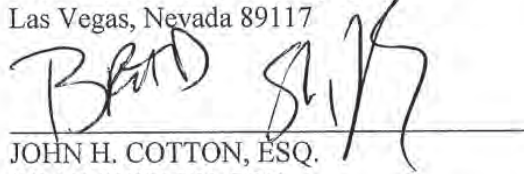
26 Based on the foregoing, summary judgment is appropriately granted in favor of  
27 Defendants Concio, Shah and Juliano based upon the statute of limitations.  
28



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

Dated this 21<sup>st</sup> 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.*

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

**CERTIFICATE OF ELECTRONIC SERVICE**

I hereby certify that on the 21<sup>st</sup> 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  
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: 11/5/2020

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
20 John Cotton	jhcotton@jhcottonlaw.com
21 Johana Whitbeck	johana.whitbeck@lewisbrisbois.com
22 Brad Shipley	bshipley@jhcottonlaw.com
23 Tony Abbatangelo	Tony@thevegaslawyers.com
24 Adam Garth	Adam.Garth@lewisbrisbois.com
25 Roy Rokni	roya.rokni@lewisbrisbois.com



1	James Kelly	jpk@paulpaddalaw.com
2		
3	Arielle Atkinson	arielle.atkinson@lewisbrisbois.com
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  
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
		Las Vegas, NV, 89117
13	Paul Padda	Paul Padda Law, PLLC
14		c/o: Paul Padda
15		4560 S. Decature Blvd, Suite 300
		Las Vegas, NV, 89103

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28

**IN THE SUPREME COURT OF THE STATE OF NEVADA**

VALLEY HEALTH SYSTEM, LLC (doing business as  
“Centennial Hills Hospital Medical Center”), a foreign limited  
liability company,  
Petitioner,

v.

THE EIGHTH JUDICIAL DISTRICT COURT OF THE STATE  
OF NEVADA ex rel. THE COUNTY OF CLARK, AND THE  
HONORABLE JUDGE JERRY A. WIESE II,  
Respondent,  
and

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

Real Parties In Interest,  
and

DR. DIONICE S. JULIANO, M.D., an individual; DR. CONRADO  
C.D. CONCIO, M.D., an individual; DR. VISHAL S. SHAH,  
M.D., an individual,  
Additional Parties In Interest.

Supreme Court  
No.: 82250

District Court  
No.: A-19-  
788787-C

---

**PETITIONER’S APPENDIX TO MOTION FOR STAY PENDING  
DECISION ON WRIT OF MANDAMUS – VOLUME IV**

---

S. BRENT VOGEL  
Nevada Bar No. 6858  
ADAM GARTH  
Nevada Bar No. 15045  
Lewis Brisbois Bisgaard & Smith LLP  
6385 South Rainbow Boulevard, Suite 600  
Las Vegas, Nevada 89118  
Telephone: 702-893-3383  
Facsimile: 702-893-3789  
*Attorneys for Petitioner*

## INDEX TO PETITIONERS' APPENDIX – VOLUME IV

<b>Exhibit</b>	<b>Document</b>	<b>Date</b>	<b>Vol.</b>	<b>Page Nos.</b>
A.	Minute Order Re Denial of Motion to Stay All Proceedings	04/20/2021	I	2-4
B.	Order Denying Motion for Summary Judgment	10/29/2020	I	6-13
C.	Order Directing Answer	03/09/2021	I	15-16
D.	Scheduling Order and Order Setting Firm Civil Jury Trial	05/06/2020	I	18-22
E.	Defendant Valley Health System LLC's Motion for Stay on Order Shortening Time	11/05/2020	I	24-186
E. (continued)	Defendant Valley Health System LLC's Motion for Stay on Order Shortening Time	11/05/2020	II	188-237
E. (continued)	Defendant Valley Health System LLC's Motion for Stay on Order Shortening Time	11/05/2020	III	239-263
E. (continued)	Defendant Valley Health System LLC's Motion for Stay on Order Shortening Time	11/05/2020	IV	264-365
F.	Plaintiffs' Opposition to Defendant Valley Health System LLC's Motion for Stay of Proceedings	11/19/2020	IV	367-376
G.	Defendant Valley Health System LLC's Reply to Motion for Stay on Order Shortening Time	11/20/2020	IV	378-390

H.	Request to Plaintiffs to Stipulate to Stay the Matter and Respond from Plaintiffs	04/02/2021 04/05/2021	IV	392-393
I.	Defendant Valley Health System LLC's Motion to Reconsider Motion for Stay Pending Petition for Writ of Mandamus	04/06/2021	V	395-568
I. (Continued)	Defendant Valley Health System LLC's Motion to Reconsider Motion for Stay Pending Petition for Writ of Mandamus	04/06/2021	VI	570-661
I. (Continued)	Defendant Valley Health System LLC's Motion to Reconsider Motion for Stay Pending Petition for Writ of Mandamus	04/06/2021	VII	662-768
J.	Plaintiffs' Opposition to Valley Health System LLC's Motion to Reconsider Motion for Stay Pending Petition for Writ of Mandamus	04/15/2021	VII	770-816
K.	Valley Health System LLC's Reply in Further Support of its Motion to Reconsider Motion for Stay Pending Petition for Writ of Mandamus	04/16/2021	VII	818-825

## **CERTIFICATE OF SERVICE**

I hereby certify that on this 22<sup>nd</sup> day of April, 2021, a true and correct copy of **PETITIONER’S APPENDIX TO MOTION FOR STAY PENDING DECISION ON WRIT OF MANDAMUS – VOLUME IV** was served upon the following parties by electronic service through this Court’s electronic service system and also by placing a true and correct copy thereof in the United States Mail in Las Vegas, Nevada with first class postage fully prepaid:.

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

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

Paul S. Padda, Esq.  
PAUL PADDA LAW, PLLC  
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*Attorneys for Plaintiffs/Real Parties  
in Interest*

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Brad Shipley, Esq.  
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Las Vegas, NV 89117  
Tel: 702.832.5909  
Fax: 702.832.5910  
jhcotton@jhcottonlaw.com  
bshipleyr@jhcottonlaw.com  
*Attorneys for Additional Parties in Interest*  
*Dionice S. Juliano, M.D., Conrado  
Concio, M.D And Vishal S. Shah, M.D.*

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





# STATE OF NEVADA

## CERTIFICATION OF VITAL RECORD

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

#### CERTIFICATE OF DEATH

CASE FILE NO. 3956121

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

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

Registrar of Vital Statistics

DATE ISSUED:

JUN 28 2017

By:

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

PROBATE 000014



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  
dphh.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



Division of Public and Behavioral Health

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

NAME OF PROVIDER OR SUPPLIER  <b>CENTENNIAL HILLS HOSPITAL MEDICAL CEN</b>	STREET ADDRESS, CITY, STATE, ZIP CODE <b>6900 N DURANGO DR LAS VEGAS, NV 89149</b>
--	---

(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><b>Initial Comments</b></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

Division of Public and Behavioral Health

STATEMENT OF DEFICIENCIES AND PLAN OF CORRECTION		(X1) PROVIDER/SUPPLIER/CLIA IDENTIFICATION NUMBER:  <b>NVS5086HOS</b>	(X2) MULTIPLE CONSTRUCTION A. BUILDING: _____  B. WING: _____	(X3) DATE SURVEY COMPLETED  <b>09/21/2017</b>
NAME OF PROVIDER OR SUPPLIER  <b>CENTENNIAL HILLS HOSPITAL MEDICAL CEN</b>		STREET ADDRESS, CITY, STATE, ZIP CODE <b>6900 N DURANGO DR LAS VEGAS, NV 89149</b>		
(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.

STATE FORM

0000

QEU211

If continuation sheet 2 of 12

PLTF 55



Division of Public and Behavioral Health

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

NAME OF PROVIDER OR SUPPLIER  <b>CENTENNIAL HILLS HOSPITAL MEDICAL CEN</b>	STREET ADDRESS, CITY, STATE, ZIP CODE <b>6900 N DURANGO DR LAS VEGAS, NV 89149</b>
--	---

(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.

STATE FORM

6899

GEU211

If continuation sheet 3 of 12

PLTF 56

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:  <b>NVS5086HOS</b>	(X2) MULTIPLE CONSTRUCTION A. BUILDING: _____  B. WING: _____		(X3) DATE SURVEY COMPLETED  <b>09/21/2017</b>
NAME OF PROVIDER OR SUPPLIER  <b>CENTENNIAL HILLS HOSPITAL MEDICAL CEN</b>		STREET ADDRESS, CITY, STATE, ZIP CODE <b>6900 N DURANGO DR LAS VEGAS, NV 89149</b>			
(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			

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

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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		

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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			

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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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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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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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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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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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**COMP**

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Tele: (702) 366-1888

Fax: (702) 366-1940

*Attorneys for Plaintiffs*

**CLARK COUNTY DISTRICT COURT**

**CLARK COUNTY, NEVADA**

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

Plaintiffs,

vs.

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

Defendants.

A-19-788787-C

Case No. \_\_\_\_\_

Department 14

Dept No. \_\_\_\_\_

**COMPLAINT**

**JURY TRIAL DEMANDED**

**SUBJECT TO AUTOMATIC  
ARBITRATION EXEMPTION -**

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

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

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  
6 16. Plaintiffs are informed and believe, and thereupon allege, that each of the  
7 Defendants designated as Roes A through Z, inclusive, is responsible in some manner for the  
8 events and happenings herein referred to and negligently and/or intentionally caused injuries and  
9 damages to Plaintiffs. Plaintiffs are further informed and believe that each of the Roes is either a  
10 corporation, related subsidiary, parent entity, group, partnership, holding company, owner,  
11 predecessor entity, successor entity, joint venture, related association, insurer or business entity,  
12 the true names of which are currently unknown to Plaintiffs at this time. Additionally, Plaintiffs  
13 allege that they cannot currently ascertain the identity of each of the Roe Defendants and Plaintiffs  
14 will therefore seek leave of Court to amend this Complaint to insert the true names and capacities  
15 of Roe Defendants when they have been ascertained, together with appropriate charging  
16 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  
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1 operator of CHHMC, in or around April 2018, was reported to have set aside approximately \$35  
2 million for the potential settlement of alleged False Claims Act violations.

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

11  
12 19. Notwithstanding the Death Certificate stating that the only cause of death was  
13 “Complications of Cymbalta Intoxication,” Rebecca did not, and with high probability could not  
14 have died from this. *See Exhibit A*, (Affidavit of Dr. Sami Hashim, M.D. ¶ 6B). Instead, Rebecca  
15 died as a direct consequence of respiratory failure directly due to below standard of care violations  
16 as indicated by her medical records and reinforced by the Department of Health and Human  
17 Services—Division of Health Quality and Compliance’s (“DHHS”) Investigative Report. *Id.*  
18 After being admitted to Centennial Hills Hospital on March 3, 2017, Rebecca’s health status  
19 steadily improved over the course of almost a week to a point where a pulmonologist consultation  
20 stated that Rebecca felt well and wanted to go home, while making no note to delay discharge.  
21 *Id.* Plaintiffs were also told by healthcare providers that Rebecca was doing much better and  
22 “would be discharged soon.” *Id.* Metabolically, Cymbalta has a half-shelf life of approximately  
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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

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

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

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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.*

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V.

**FIRST CAUSE OF ACTION**

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

26. Plaintiffs The Estate Of Rebecca Powell (through Special Administrator Brian), Darci, 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.

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

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22 ...

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

4 32. That the conduct of Defendants rose to the level of oppression, fraud or malice,  
5 express or implied. That Defendants consciously disregarded the welfare and safety of Rebecca  
6 and these Plaintiffs in providing substandard care to Rebecca, leading to her death. Further,  
7 Defendants committed fraud where notes and records by RN(s) and/or CNAs were contradicted  
8 by a note indicating that Rebecca was not checked on for an hour on May 11, 2017 while she was  
9 in critical condition. See Exhibit A, (Affidavit of Dr. Sami Hashim, M.D. ¶ 8). These Plaintiffs  
10 further reallege and incorporate any further applicable acts or omissions of Defendants while  
11 treating Rebecca not described herein, as set forth in Exhibit A and paragraphs 1 to 31 above.  
12 That these Plaintiffs are entitled to punitive/exemplary damages due to said acts or omissions.  
13

14 33. The Estate of Rebecca Powell is also entitled to, and does hereby maintain this  
15 action, pursuant to NRS 41.100 and seeks all damages permitted under that statute.  
16

17 VI.  
18

19 **SECOND CAUSE OF ACTION**

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

23 34. These Plaintiffs reallege and incorporate by reference the allegations set forth in  
24 paragraphs 1 through 33 above.  
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1           35. Under NRS 41.085, the heirs and personal representative of a decedent's estate  
2 may respectively maintain independent causes of action against another where that person/party  
3 has caused the decedent's death by wrongful act or neglect.

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

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

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

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

15 40. As a result of Defendants' negligence, these Plaintiffs have been required to obtain  
16 the services of an attorney to prosecute this action. These Plaintiffs are entitled to an award of  
17 attorney's fees and costs of suit incurred herein.  
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19  
20 **VII.**

21 **THIRD CAUSE OF ACTION**

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

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



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

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

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

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

13 47. That the conduct of Defendants rose to the level of oppression, fraud or malice,  
14 express or implied. That Defendants consciously disregarded the welfare and safety of Rebecca  
15 and these Plaintiffs in providing substandard care to Rebecca, leading to her death. Further,  
16 Defendants committed fraud where notes and records by RN(s) and/or CNAs were contradicted  
17 by a note indicating that Rebecca was not checked on for an hour on May 11, 2017 while she was  
18 in critical condition. See Exhibit A, (Affidavit of Dr. Sami Hashim, M.D. ¶ 8). These Plaintiffs  
19 further reallege and incorporate any further applicable acts or omissions of Defendants while  
20 treating Rebecca not described herein, as set forth in Exhibit A and paragraphs 1 to 46 above.  
21 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.  
12

13 **IX.**

14 **RELIEF REQUESTED**

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

26 ...



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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 4<sup>th</sup> day of February 2019.

5 Respectfully submitted by:

6 PAUL PADDA LAW, PLLC

7  
8  
9 By:

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

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12 Attorneys for Plaintiffs  
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# EXHIBIT A

# EXHIBIT A

**AFFIDAVIT OF DR. SAMI HASHIM, M.D.**

**STATE OF NEW YORK**

**COUNTY OF WESTCHESTER**

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

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

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

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

- A. On May 3, 2017 at 3:27PDT, Rebecca Powell, a 41-year old adult female, was found by EMS at home, unconscious with labored breathing and vomitus on her face. It was believed she ingested an over-amount of Benadryl, Cymbalta and Ambien. EMS intubated Ms. Powell and transported her to Centennial Hills Hospital—Emergency Department (ED). At ED, patient was evaluated and diagnosed with:
- Respiratory Failure and low BP
  - “Overdose on unknown amount of Benadryl, Cymbalta and ETOH”
  - Review of Systems: “Within Normal Limits” (WNL)
  - Sinus Tachycardia – no ectopy
  - Lab results consistent with respiratory failure and over-dosage of suspected medications
  - Acidosis
- B. Notwithstanding clear evidence of intentional over-dosing of the substances mentioned, the Death Certificate noted the *only* cause of death was due to: “Complications of Cymbalta Intoxication.” Based on medical records, the patient did not and with high probability could not have died from the cause of death stated in the Death Certificate. The patient died as a direct consequence of respiratory failure directly due to below standard of care violations as indicated by her medical records and reinforced by the Department of Health and Human Services—Division of Health Quality and Compliance Investigative Report. Furthermore:
- After being admitted to Centennial Hills Hospital on 05/03/17, the patient's health status steadily improved over the course of almost a week.
  - Patient was extubated in the ICU and moved to a medical floor.
  - Patient's lab results improved daily.
  - Pulmonologist consultation stated that the patient felt well enough and wanted to go home. The specialist made no note to delay discharge.
  - Healthcare providers told family members from out-of-town that the patient was doing much better and “would be discharged soon.” Family returned to their homes out-of-state based on the information they received.

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



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

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

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

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

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

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

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

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

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

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

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

*Sami Hashim*  
Dr. Sami Hashim, M.D.

Dated: 1/23/2019

Sworn to me before this 23<sup>rd</sup> day  
of January, 2019.

*Bonnie Leung*  
Notary Public







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14 *and Dionice Juliano, M.D.*

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

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

15 Plaintiffs,

16 vs.

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

26 Defendants.

11 **HEARING REQUESTED**

12 CASE NO.: A-19-788787-C  
13 DEPT. NO.: XIV

16 **DEFENDANT CONRADO CONCIO,**  
17 **MD, AND DIONICE JULIANO, MD'S**  
18 **MOTION TO DISMISS**

19 **HEARING REQUESTED**

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

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



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

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

4 **I. Introduction**

5 This matter concerns the death of Rebecca Powell on May 11, 2017. No party takes the  
6 death of a 42-year old woman lightly. Plaintiffs, the estate and heirs of Ms. Powell, allege  
7 negligent infliction of emotional distress in addition to professional negligence. While  
8 Defendants contend that all of the care and treatment rendered was within the standard of care,  
9 they need not argue the underlying merits of this case because Plaintiffs fail to overcome  
10 important threshold procedural requirements that are necessary to protect Defendants'  
11 fundamental rights to due process.  
12

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

28 ///

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

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

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

### 21 III. Legal Argument

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

1 plaintiff could prove no set of facts which, if true, would entitle him to relief. *Buzz Stew, LLC v.*  
2 *City of Las Vegas*, 124 Nev. Adv. Op. 21, 181 P. 3d. 670, 672 (2008). To survive a motion to  
3 dismiss for failure to state a claim, the complaint must set forth factual allegations sufficient to  
4 establish each element necessary to recover under some actionable legal theory. *See* NRCP  
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

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

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

28 ///

1 The Supreme Court of Nevada has clarified the “discovery rule” and what constitutes  
2 discovery of an injury in professional negligence cases. Notably, while the Supreme Court held  
3 unambiguously in *Massey v. Litton*, 99 Nev. 723 (1983) that a Plaintiff does not discover the  
4 injury merely by virtue of the injury having happened, the Court further held in *Pope v. Gray*,  
5 104 Nev. 358 (1988) that in cases of wrongful death, a Plaintiff has, as a matter of law,  
6 “discovered” the injury just over four months after the death when Plaintiff had retained an  
7 attorney and received medical records and the death certificate. Thus the Court was clear that  
8 while the death of a decedent alone does not automatically trigger the start of the discovery rule,  
9 the unambiguous requirement that Plaintiff exercise reasonable diligence set forth in NRS  
10 41A.097 cannot be rendered meaningless by a Plaintiff failure to seek or analyze relevant  
11 records.  
12

13 Here, the record is clear that Plaintiff cannot meet both burdens of exercising reasonable  
14 diligence in discovering the existence of the claim, and filing the complaint within a year of that  
15 discovery. Even taking all of the allegations set forth in the Complaint as true, one of those  
16 requirements must be false. The decedent died on May 11, 2017. The Complaint was not filed  
17 until February 4, 2019. Based on the date of the Complaint, in order for Plaintiffs’ claims to  
18 survive the statute of limitations, Plaintiffs must not have discovered their claim until after  
19 February 4, 2018. Based on the almost eight months between the death of the decedent and the  
20 last possible date of date of discovery, it is impossible that Plaintiffs could have exercised  
21 reasonable diligence and yet not have discovered the claim until almost eight months later.  
22 Plaintiffs have not alleged that they exercised reasonable diligence in discovering the claim, and  
23 they have clearly not done so because it is absolutely implausible for Plaintiffs to allege that they  
24 have, given the amount of time that has passed.  
25

26  
27 ///  
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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  
14 Plaintiffs have attempted to artfully plead their untimely professional negligence as any  
15 other tort in order to avoid the unfortunate reality that the statute of limitations bars all of their  
16 claims. Because these claims are premised on exactly the same negligence that they will be  
17 unable to prove, as a matter of law, in the professional negligence claims, the negligent infliction  
18 of emotional distress claims are barred along with the professional negligence claims.

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

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

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

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

  
An Employee of John H. Cotton & Associates



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

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

11 ESTATE OF REBECCA POWELL, through  
12 BRIAN POWELL, as Special Administrator;  
13 DARCI CREECY, individually and as an Heir;  
14 TARYN CREECY, individually and as an Heir;  
15 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 19<sup>th</sup> 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*

12 **NOTICE OF MOTION**

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

18 DATED this 19<sup>th</sup> day of June, 2019.

19 HALL PRANGLE & SCHOONVELD, LLC

20 By: /s/: Zachary Thompson, Esq  
21 MICHAEL E. PRANGLE, ESQ.  
22 Nevada Bar No. 8619  
23 ZACHARY J. THOMPSON, ESQ.  
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28 *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.<sup>1</sup> 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.<sup>2</sup> See Complaint at ¶ 18. Emergency

<sup>1</sup> 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.

<sup>2</sup> 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).

26 ///

27 ///

28 ///

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

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

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

13 Pursuant to NRS 41A.097(2), an action for injury or death against a provider of health  
14 care may not be commenced more than one year after the plaintiff discovers or through the use  
15 of reasonable diligence should have discovered the injury of a person based upon alleged  
16 professional negligence and/or from an error or omission by a provider of health care. See NRS  
17 41A.097(2). "A plaintiff 'discovers' his injury when 'he knows or, through the use of  
18 reasonable diligence, should have known of facts that would put a reasonable person on inquiry  
19 notice of his cause of action.'" *Eamon v. Martin*, No. 67815, 2016 WL 917795, at \*1 (Nev. App.  
20 Mar. 4, 2016) (quoting *Massey v. Litton*, 99 Nev. 723, 728, 669 P.2d 248, 252 (1983)). "A  
21 person is placed on 'inquiry notice' when he or she 'should have known of facts that would lead  
22 an ordinarily prudent person to investigate the matter further.'" *Id.* (quoting *Winn v. Sunrise*  
23 *Hosp. & Med. Ctr.*, 128 Nev. 246, 252, 277 P.3d 458, 462 (2012) (internal quotations marks  
24 omitted)). "This does not mean that the accrual period begins when the plaintiff discovers the  
25 precise facts pertaining to his legal theory, but only to the general belief that someone's

26 ///

27 ///

28 ///

1 negligence may have cause[d] the injury.” *Id.*<sup>3</sup> “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 ///

26  
27  
28 <sup>3</sup> 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 19<sup>th</sup> 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.  
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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**

*Pursuant to NRS 239B.030*

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

22 DATED this 19<sup>th</sup> day of June, 2019.

23 HALL PRANGLE & SCHOONVELD, LLC

24 By: /s/: Zachary Thompson, Esq.  
25 MICHAEL E. PRANGLE, ESQ.  
Nevada Bar No. 8619  
26 ZACHARY J. THOMPSON, ESQ.  
Nevada Bar No. 11001  
27 1160 N. Town Center Dr., Ste. 100  
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28 *Attorneys for Defendant*  
*Valley Health System, LLC, dba*  
*Centennial Hills Hospital Medical Center*



**CERTIFICATE OF SERVICE**

I HEREBY CERTIFY that I am an employee of HALL PRANGLE & SCHOONVELD, LLC; that on the 19<sup>th</sup> 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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/s/ Reina Claus  
An employee of HALL PRANGLE & SCHOONVELD, LLC



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*Attorneys for Plaintiffs*

**IN THE EIGHTH JUDICIAL DISTRICT COURT**

**CLARK COUNTY, NEVADA**

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

Plaintiffs,

vs.

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

Defendants.

CASE NO.: A-19-788787-C

DEPT. NO.: XIV

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

1 I. INTRODUCTION

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

8 Specifically, Defendants argue that dismissal of Plaintiffs’ claims is necessary because:  
9  
10 (a) as to Dr. Juliano, the Plaintiffs’ affidavit of merit does not satisfy the “threshold pleading  
11 requirements” of NRS 41A.071 because, in violation of subsection (4) of the statute, the affidavit  
12 contains “absolutely no reference whatsoever to what Defendant Juliano actually undertook that  
13 [fell below the appropriate standard of care]” (Dr. Juliano’s Mot. 5:12-14); (b) as to each and all  
14 of the Defendants, Plaintiffs’ claims based upon professional negligence are time-barred under  
15 the one-year limitations period provided by NRS 41A.097; and, (c) Plaintiffs’ wrongful death  
16 claims are also time-barred because they should be “subsumed within their professional  
17 negligence claims” and therefore also subject to NRS 41A.097’s one-year limitations period  
18 rather than NRS 11.190(4)(e)’s two-year limitations period for actions for wrongful death.  
19  
20

21 As Plaintiffs demonstrate below, none of Defendants’ foregoing arguments provides  
22 grounds for dismissal under NRCP 12(b)(5), either in whole or in any part, because: (1) as to Dr.  
23 Juliano, Plaintiff’s “affidavit of merit” specifically identifies acts deviating from the standard of  
24 care as required under NRS 41A.071(4); (2) Plaintiffs allege sufficient facts concerning when  
25 they had “inquiry notice” of their professional negligence claims, and Defendants’ concealment  
26 of relevant facts, such that the Court cannot find as a matter of law, based upon “uncontroverted  
27  
28

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. Julianio’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.*<sup>1</sup> 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).

23  
24  
25  
26  
27  
28 <sup>1</sup> 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. Julianano’s Professional Negligence.**

Dr. Julianano 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. Julianano] in simple, concise and direct terms.” *See* NRS 41A.071(4). Examination of Dr. Hashim’s affidavit reveals, however, that Dr. Julianano’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. Julianano during a two-day period from May 10<sup>th</sup> to May 11<sup>th</sup>, 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. Julianano, Dr. Concio and Dr. Shah] ignored even the possibility that her medications might be the cause of her symptoms & declining health status. Consequently, not one of the three physicians aforementioned even placed drug(s) side effects/adverse reactions on any differential diagnosis.

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



specificity in Plaintiffs’ affidavit of merit fails. Further, in light of the Nevada Supreme Court’s directive to liberally construe NRS 41A.071’s requirements in a manner consistent with our NRCP 12 jurisprudence, any ambiguity or uncertainty (though Plaintiffs maintain that there is none) must be resolved in favor of Plaintiffs. *See Borger*, 120 Nev. at 1028 and *See Buzz Stew, LLC*, 124 Nev. at 227-8. To the extent that Dr. Hashim’s attribution of malpractice to Dr. 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 NRCP 12(b)(5), Defendants’ conclude that “it is impossible that Plaintiffs could have exercised reasonable diligence and yet not have discovered the claim until almost eight months later.” (*Id.* at 6:22.)

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

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

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

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

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

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

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

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

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

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

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

1  
2 **III. CONCLUSION**

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

5  
6 DATED this 13<sup>th</sup> 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 13<sup>th</sup> day of April 2019, via the Court's electronic service and filing system ("Odyssey") upon  
18 all parties and their counsel.  
19

20  
21 /S/

22 An Employee of Paul Padda Law, PLLC  
23  
24  
25  
26  
27  
28



**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  
                    Padma, 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

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Electronically Filed  
12/5/2019 10:40 AM  
Steven D. Grierson  
CLERK OF THE COURT



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13 *Valley Health System, LLC, dba*  
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DISTRICT COURT  
CLARK COUNTY, NEVADA

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

21 Plaintiffs,

22 vs.

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

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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 3<sup>rd</sup> day of  
3 December, 2019, a copy of which is attached hereto.

4  
5 DATED this 5<sup>th</sup> day of December, 2019.

6 HALL PRANGLE & SCHOONVELD, LLC

7 By: /s/: Zachary Thompson, Esq  
8 MICHAEL E. PRANGLE, ESQ.  
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15 *Centennial Hills Hospital Medical Center*  
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19  
20  
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28

**CERTIFICATE OF SERVICE**

I HEREBY CERTIFY that I am an employee of HALL PRANGLE & SCHOONVELD, LLC; that on the 5<sup>th</sup> 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:

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/s/ Reina Claus

An employee of HALL PRANGLE & SCHOONVELD, LLC



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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;  
12 DARCI CREECY, individually and as an Heir;  
13 TARYN CREECY, individually and as an Heir;  
ISAIAH KHOSROF, individually and as an Heir;  
LLOYD CREECY, individually;

14 **Plaintiffs,**

15 **vs.**

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

21 **Defendants.**

CASE NO. A-19-788787-C

DEPT NO. XIV

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

22  
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



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 27<sup>th</sup> day of November, 2019.

DATED this 27<sup>th</sup> day of November, 2019.

14 

 Bar No. 14845

15 PAUL S. PADDA, ESQ.  
16 Nevada Bar No. 10417  
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*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  
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26 Nevada Bar No. 12639  
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M.D., Conrado Concio, M.D. and Vishal S.  
Shah, M.D.*

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

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

12 **IT IS SO STIPULATED.**

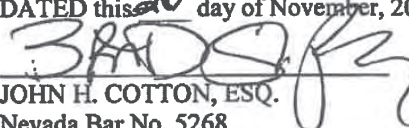
13 DATED this \_\_\_\_ day of November, 2019.

DATED this \_\_\_\_ day of November, 2019.

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

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ZACHARY J. THOMPSON, ESQ.  
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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 <sup>20<sup>th</sup></sup> day of November, 2019.

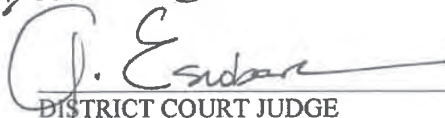
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ORDER

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

 Bar No. 14845

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Nevada Bar No. 8619

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**RESP**

**PAUL S. PADDALAW, ESQ.**

Nevada Bar No. 10417

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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; 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

**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. PADDALAW, 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 NRC 16.1 document disclosures  
18 and witness lists.

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

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



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PAUL PADDA LAW, PLLC

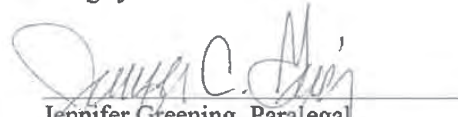


Paul S. Padda, Esq.  
James P. Kelly, Esq.  
4560 South Decatur Boulevard, Suite 300  
Las Vegas, Nevada 89103  
*Attorneys for Plaintiffs*

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 27<sup>th</sup> day of AUGUST, 2020.

  
BRIAN POWELL

# EXHIBIT ‘F’



**RIS/OPPS**  
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*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; 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.

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 NRCP 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, NRCP 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 NRCP 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."<sup>1</sup> 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  
20 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 <sup>1</sup> 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' countermotion is  
20 granted. First, Defendants will have to employ experts, engage in substantial discovery of multiple  
21 Plaintiffs' medical records (those of Darci Creecy, Taryn Creecy, Lloyd Creecy 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’ countermotion 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 ...  
27 Under this reasoning, it is not the precise position of plaintiff or what the plaintiff  
28 saw that must be examined. The overall circumstances must be examined to  
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 21<sup>st</sup> day of October, 2020.

7  
8 LEWIS BRISBOIS BISGAARD & SMITH LLP

9  
10 By /s/ Adam Garth  
11 S. BRENT VOGEL  
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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

**CERTIFICATE OF SERVICE**

I hereby certify that on this 21<sup>st</sup> day of October, 2020, a true and correct copy of **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** was served by electronically filing with the Clerk of the Court using the Odyssey E-File & Serve system and serving all parties with an email-address on record, who have agreed to receive electronic service in this action.

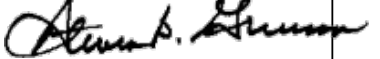
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By /s/ Roya Rokni  
Roya Rokni, an Employee of  
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# EXHIBIT ‘F’

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



**OPP**

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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. 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."<sup>1</sup>

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

1 Respectfully, counsel for VHS is demonstrably ill-informed (as shall be demonstrated below)  
2 and the motion filed on behalf of his client lacks any factual or legal support that would justify  
3 the “extraordinary relief”<sup>2</sup> requested. The Court’s Order filed on October 29, 2020<sup>3</sup> denying  
4 VHS’s motion for summary judgment on the statute of limitations issue reached the correct  
5 result; namely that “there remains a genuine issue of material fact as to when the Plaintiffs were  
6 actually put on inquiry notice” given that the State of Nevada determined Rebecca Powell’s  
7 death a suicide. Although the physician Defendants in this case had 7-days to file a joinder to  
8 VHS’s motion pursuant to Eighth Judicial District Rule 2.20(d), the record in this case reflects  
9 they declined to do so. Accordingly, VHS stands alone in seeking a complete stay of all  
10 proceedings.

11  
12 For the reasons set forth below, VHS’s motion for a stay should be denied. There is no  
13 factual or legal basis that supports the relief requested. Instead, the motion is little more than an  
14 attempt to delay proceedings and force Plaintiffs’ counsel to divert time and attention away  
15 from the merits of this case to responding to a frivolous and desperate legal maneuver. In  
16 support of this opposition, Plaintiffs rely upon the memorandum of points and authorities  
17 below, all papers on file in this litigation (especially Plaintiffs’ Opposition to VHS Motion for  
18 Summary Judgment which is fully incorporated by reference herein) and any additional  
19 argument the Court may permit.  
20  
21  
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23

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

<sup>3</sup> 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:

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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”<sup>4</sup> 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,<sup>5</sup> listing Ms. Powell’s cause of death as a “suicide.”<sup>6</sup> The document bears an attestation as to its authenticity and is signed by both

<sup>4</sup> See Motion for Stay, p. 7.

<sup>5</sup> See NRS 52.165.

<sup>6</sup> 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

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

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

19  
20  
21 herein.

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

24 <sup>8</sup> See Exhibits M and N to Defendant VHS’s Motion for Summary Judgment.

25 <sup>9</sup> If this were the standard, following the death or injury of a loved one by a health care  
26 provider, an aggrieved family member should never request medical records lest the 1-year  
27 statutory time period be triggered. No court in Nevada has adopted such an absurd standard  
28 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.

7  
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.

15  
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  
27

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.

1 “Irrefutable” means that which is impossible to disprove.<sup>10</sup> VHS wants this Court to  
2 find that it is impossible (e.g. irrefutable) for Plaintiffs to disclaim any knowledge or suspicion  
3 of negligence with respect to Rebecca Powell’s death. What would the Court base such a  
4 finding upon? Would it rely upon the declarations of Mss. Arroyo and Thompson and Mr.  
5 Garth? Would it rely upon unauthenticated documents such as the Complaint to the Nevada  
6 State Nursing Board<sup>11</sup> and Mr. Garth’s personal interpretation of the words in that document?  
7 The simple fact is VHS did an exceedingly poor job drafting a motion for summary judgment  
8 and now seeks to oddly shift the burden to Plaintiffs to disprove its claims/defenses. This is  
9 both legally improper and ill-informed. It is not Plaintiffs burden to present irrefutable evidence  
10 of inquiry notice. That burden belongs to VHS and it has failed to meet its burden. There is no  
11 reasonable probability, let alone even possibility, that VHS is likely to prevail on the merits of  
12 its appeal. Not with the scant evidence it relies upon.  
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27 <sup>10</sup> See <https://www.dictionary.com/browse/irrefutable>

28 <sup>11</sup> 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.  
4560 South Decatur Boulevard, Suite 300  
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

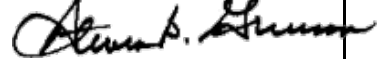
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District Court Case No. A-19-788787-C, Dept. 30

*Plaintiffs' Opposition to Defendant Valley Health System LLC's Motion For A Stay*

# EXHIBIT ‘G’

DEFENDANT VALLEY HEALTH SYSTEM  
LLC’S REPLY TO PLAINTIFF’S  
OPPOSITION TO MOTION FOR STAY ON  
ORDER SHORTENING TIME



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

DISTRICT COURT  
CLARK COUNTY, NEVADA

ESTATE OF REBECCA POWELL, through  
BRIAN POWELL, as Special Administrator;  
DARCI CREECY, individually and as 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.: 30

**DEFENDANT VALLEY HEALTH  
SYSTEM LLC'S REPLY TO  
PLAINTIFF'S OPPOSITION TO  
MOTION FOR STAY ON ORDER  
SHORTENING TIME**

Hearing Date: November 25, 2020

Hearing Time: 9:00 a.m.

COMES NOW, Defendant VALLEY HEALTH SYSTEM, LLC (doing business as  
"Centennial Hills Hospital Medical Center"), a foreign limited liability company ("CHH"), by and  
through its counsel of record S. Brent Vogel, Esq., and Adam Garth, Esq., of the Law Firm LEWIS  
BRISBOIS BISGAARD & SMITH, and hereby submits this Reply to Plaintiff's Opposition to

1 Motion to Stay on Order Shortening Time.

2 This Motion is based upon the CHH's Motion in Chief, as well as the following  
3 Memorandum of Points and Authorities, the pleadings and papers on file herein, the attached  
4 exhibits, and any oral argument allowed and offered at the hearing of this matter.

5 DATED this 20<sup>th</sup> day of November, 2020

6  
7 LEWIS BRISBOIS BISGAARD & SMITH LLP

8  
9 By /s/ Adam Garth  
10 S. BRENT VOGEL  
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20  
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1 **MEMORANDUM OF POINTS AND AUTHORITIES**

2 **I. ARGUMENT**

3 **A. Plaintiffs' Opposition is Late and Should Be Disregarded**

4 Plaintiffs' opposition to the instant motion was filed late and should be disregarded. EDCR  
5 Rule 2.20 obligates an opposing party to file its opposition within 14 days after service of the motion.  
6 While this matter was placed on shortened time, the hearing on this matter is scheduled for  
7 November 25, 2020. Plaintiffs' counsel was served with the motion on November 3, 2020 by the  
8 Court's own electronic service.<sup>1</sup> Due to a technological error on the part of the filing system, the  
9 date for the hearing was left off the original order and our office specifically wrote to Plaintiffs'  
10 counsel on November 4, 2020 advising of the November 25<sup>th</sup> hearing date.<sup>2</sup> Thus, 14 days from  
11 service of the order and motion was November 17, 2020 and 14 days from the date of our notification  
12 letter was November 18, 2020. In defiance of the Rules of this Court, Plaintiffs waited until 6:02  
13 p.m. on November 19, 2020, two days late, to file their opposition. Despite the fact that the motion  
14 was to be heard on shortened time, the timeframe within which Plaintiffs had to oppose the instant  
15 motion was not affected. Plaintiffs received the 14 days they would have otherwise received had  
16 the motion been heard through the normal course. However, in keeping with their counsel's  
17 standard of ignoring that which he is not inclined to obey, he filed his opposition two days late.  
18 Therefore, Plaintiffs' opposition should not be considered.

19 **B. CHH's Made Out a More Than Sufficient Case for A Stay**

20 In the event this Court considers Plaintiffs' untimely opposition, it is important to note that  
21 Plaintiffs' counsel makes a material misrepresentation to the Court in opposing the instant Motion,  
22 and specifically fails to address "the smoking guns" demonstrating irrefutable evidence of inquiry  
23 notice. Plaintiffs' counsel stated that "All that VHS presented in support of its motion for summary  
24 judgment were two declarations from individuals claiming to have mailed records to Plaintiffs."

25  
26 <sup>1</sup> Exhibit "H" hereto

27 <sup>2</sup> Exhibit "I" hereto

28 (footnote continued)

1 That is an outright lie. CHH presented evidence provided by Plaintiffs' themselves that they  
2 initiated two State agency investigations<sup>3</sup> in which Plaintiffs specifically acknowledged possessing  
3 the very inquiry notice required to commence the running of the statute of limitations. They  
4 specifically alleged malpractice and not only had sufficient information trigger their obligation to  
5 investigate further, they actually asked the State to conduct investigations alleging malpractice to  
6 have occurred. Miraculously absent from Plaintiffs' opposition is any reference to this information  
7 whatsoever, nor is there any attempt to provide contradictory evidence. Plaintiffs' counsel's entire  
8 argument focuses on his personal supposition of confusion, a factor not considered by any Court in  
9 this State when determining this issue once there is proof that a Plaintiff possessed inquiry notice in  
10 the first place.

11 Furthermore, Plaintiffs' counsel advances some nonsensical theory that Plaintiffs may never  
12 have received the medical records from CHH (a fact belied by the evidence) which the caselaw cited  
13 in CHH's summary judgment motion ordinarily commences the running of the statute of limitations.  
14 Again, Plaintiffs' counsel ignored NRS 47.250(13) which states that there is a rebuttable  
15 presumption that "[t]hat a letter duly directed and mailed was received in the regular course of the  
16 mail." In this case, Plaintiffs' counsel failed to include any declaration or sworn statement from his  
17 clients that they did not receive the medical records. Second, it was obvious they received the medical  
18 records since their expert, in his affidavit supporting the Complaint, specifically refers to the very  
19 medical records which Plaintiffs could have had no other way of receiving since discovery had not  
20 even commenced. CHH is not looking to relitigate the issues made out on its Motion for Summary  
21 Judgment with respect to this the instant Motion. That is a job for the Nevada Supreme Court. The  
22 important issue to be determined here is whether CHH should be forced to go through the expenses  
23 of litigating a case for which evidence adduced from Plaintiffs themselves clearly indicates that they  
24 were on inquiry notice long before they assert in their opposition, and that this lawsuit was untimely  
25

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26 <sup>3</sup> **Exhibit "O"** PLTF 48-50 to CHH's Reply to Plaintiff's Opposition to CHH's Motion for  
27 Summary Judgment.  
28

1 filed. CHH is not looking to delay these proceedings. In fact, the majority of the writ application  
2 to the Supreme Court is already composed. The remaining component is this Court's decision on  
3 staying the proceedings. Regardless of the decision, the writ application will be submitted. CHH  
4 has no interest whatsoever in delaying the resolution of this matter. CHH intends to promptly file  
5 its writ application to the Nevada Supreme Court shortly after the hearing on the instant Motion.

6 Finally, Plaintiffs failed to submit any contradictory case authority in opposition to the  
7 instant motion. Plaintiffs' sole opposition is based upon the musings of their counsel, and the  
8 misrepresentations of CHH's trial strategy as well as the evidence presented to this Court on the  
9 underlying Motion for Summary Judgment.

10 The only issue before this Court is whether the parties need to engage in substantial expense  
11 of discovery before the Supreme Court determines whether to accept this matter for its  
12 consideration, and then a final decision thereon. No one will be hurt by staying the proceedings,  
13 and since every possible courtesy and consideration has been extended by this Court to the Plaintiffs  
14 in denial of both a motion to dismiss and motion for summary judgment, where the evidence lies  
15 bare that Plaintiffs filed this case too late, CHH should at least be permitted its opportunity to obtain  
16 a decision on the underlying summary judgment motion from the Supreme Court, which may very  
17 well dispose of the entire case and need for any party to incur additional costs.

18 CHH clearly articulated the basis for requesting a stay, incorporating all four factors which  
19 would be considered by the Nevada Supreme Court in determining whether to take this matter on  
20 an interlocutory appeal basis. Plaintiffs' counsel would have this Court believe that there is no  
21 mechanism for obtaining a writ of mandamus from the Nevada Supreme Court when an important  
22 issue to Nevada law is at stake, and for good reason – Plaintiffs' counsel completely failed to oppose  
23 a motion for summary judgment with any evidentiary support that addresses the very issue raised  
24 by the case law, failed to obtain an affidavit or declaration from any Plaintiff from anyone to  
25 contradict that supplied by CHH, and failed to demonstrate the presence of any material issue of  
26 fact pertaining to the motion which had been before this Court. For Plaintiffs' counsel to  
27 acknowledge the writ of mandamus mechanism and its applicability to this case would be to admit  
28 that there was either no proof Plaintiffs could possibly offer to contradict what is uncontroverted

1 evidentiary proof of inquiry notice written in the hand of Plaintiffs' themselves, or else to admit his  
2 own practice failure to submit admissible evidence to oppose the motion.

3 In fact, Nevada law provides the "escape hatch" of an interlocutory appeal with a writ  
4 petition when an issue is so critical which requires clarification. At that point, a party may seek  
5 appellate review prior to final judgment.

6 In *D.R. Horton, Inc. v. Eighth Judicial Dist. Court of Nev.*, 125 Nev. 449, 215 P.3d 697  
7 (2009), *rev'd in part* on other grounds in *Beazer Homes Holding Corp. v. Eighth Judicial Dist. Court*  
8 *of Nev.*, 128 Nev. 723, 291 P.3d 128 (2012) the Supreme Court held:

9 This court has original jurisdiction to issue writs of prohibition and  
10 mandamus. Nev. Const, art. 6, § 4. A writ of mandamus serves "to  
11 compel the performance of an act that the law requires as a duty  
12 resulting from an office, trust, or station, or to control a manifest  
13 abuse of discretion." *We the People Nevada v. Secretary of State*, 124  
14 Nev. 874, 192 P.3d 1166, 1170 (2008). A writ of prohibition serves  
15 to stop a district court from carrying on its judicial functions when it  
16 is acting outside its jurisdiction. *Harvey L. Lerer, Inc. v. District*  
17 *Court*, 111 Nev. 1165, 1168, 901 P.2d 643, 645 (1995). Ordinarily,  
this court will not consider petitions for extraordinary writ relief  
where the petitioner challenges a district court order denying a motion  
for summary judgment, **"unless summary judgment is clearly  
required by a statute or rule, or an important issue of law  
requires clarification."** *ANSE, Inc. v. Dist. Ct.*, 124 Nev. , , 192  
P.3d 738, 742 (2008). In addition, **these extraordinary remedies  
may only be issued in cases "where there is not a plain, speedy  
and adequate remedy" at law.** NRS 34.170; NRS 34.330.

18 *Id.* at 453-54, 215 P3d at 700. (emphasis supplied). In the instant case, this Court's denial of  
19 summary judgment, based upon the complete absence of any contradictory, competent and  
20 admissible evidence by Plaintiffs, was erroneous. There was no articulation of any genuine issue of  
21 material fact either by Plaintiffs or this Court on the underlying motion to justify denial of that  
22 motion for summary judgment. Given the case and statutory obligations imposed upon parties both  
23 in support and in opposition to motions for summary judgment, summary judgment was required to  
24 have been granted to CHH. It is critical that any litigant know the obligations imposed upon the  
25 respective parties when moving and opposing motions for summary judgment. More importantly,  
26 when Plaintiffs themselves disclosed evidence that they possessed inquiry notice of alleged  
27 malpractice, they were obligated to present admissible evidence in contradiction in opposition to  
28 CHH's summary judgment motion. Plaintiffs abjectly failed to do just that, since there is no case

1 or statutory authority to even suggest that once inquiry notice is received and the statute of  
2 limitations begins running, the statute of limitations can be tolled for any reason other than  
3 fraudulent concealment, which this Court already acknowledged in its order that Plaintiffs did not  
4 put forth, nor did the Court so find.

5 By granting this stay, this Court would not be usurping the province of the Supreme Court.  
6 Rather, granting the stay would permit CHH to make its writ application to the Supreme Court to  
7 determine whether the issues raised by the denial of summary judgment under the circumstances  
8 herein were proper. If the writ is denied by the Supreme Court, this case would proceed on.  
9 However, denying this stay would require that a further stay application be sought in the Supreme  
10 Court as well as the requisite petition articulating the legal issues at hand. Granting the stay here  
11 would actually support judicial economy since it would limit the application before the Supreme  
12 Court to merely a writ application, not both a motion for a stay and writ application. It would further  
13 support judicial economy since a favorable decision for CHH by the Nevada Supreme Court would  
14 be completely case dispositive.

15 Plaintiffs articulated no harm if a stay would be granted here by this Court. CHH, however,  
16 demonstrated that not only would there be an expense of pursuing extensive discovery, expert  
17 engagement and reporting, but there would be the expenses of trial on an issue which should be  
18 resolved by motion.

19 The decision whether to grant a motion for a stay in proceedings is left to the sound discretion  
20 of the Court. *Nevada Tax Commission v. Brent Mackie*, 74 Nev. 273, 276 (1958) (“the granting or  
21 denial of the present motion [for stay] lies within the sound discretion of the court.”). An analysis  
22 of the factors contained in CHH’s motion and in this reply shows that the Court should exercise its  
23 discretion to grant the stay sought by CHH.

## 24 **II. CONCLUSION**

25 CHH respectfully requests that this matter be stayed while it appeals the denial of its Motion  
26 for Summary Judgment Based Upon Expiration of the Statute of Limitations. The procedural  
27 posture of this case makes a stay the only way that the issue can be resolved sufficiently in advance  
28 of trial and to allow CHH to limit its expenses in preparing and trying a case which should have

1 been dismissed in its entirety had this Court granted CHH's motion for summary judgment.

2 DATED this 20<sup>th</sup> day of November, 2020

3 LEWIS BRISBOIS BISGAARD & SMITH LLP

4 By /s/ Adam Garth

5 S. BRENT VOGEL

6 Nevada Bar No. 6858

7 ADAM GARTH

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11 Tel. 702.893.3383

12 *Attorneys for Defendant Valley Health System,*

13 *LLC dba Centennial Hills Hospital Medical*

14 *Center*

15 **CERTIFICATE OF SERVICE**

16 I hereby certify that on this 20<sup>th</sup> day of November, 2020, a true and correct copy  
17 of **DEFENDANT VALLEY HEALTH SYSTEM LLC'S REPLY TO PLAINTIFF'S**  
18 **OPPOSITION TO MOTION FOR STAY ON ORDER SHORTENING TIME** was served by  
19 electronically filing with the Clerk of the Court using the Odyssey E-File & Serve system and serving  
20 all parties with an email-address on record, who have agreed to receive electronic service in this  
21 action.

22 Paul S. Padda, Esq.  
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*M.D., Conrado Concio, M.D. And Vishal S.*  
*Shah, M.D.*

By /s/ Roya Rokni

Roya Rokni, an Employee of

LEWIS BRISBOIS BISGAARD & SMITH LLP



# EXHIBIT ‘H’

**Rokni, Roya**

---

**From:** efilingmail@tylerhost.net  
**Sent:** Tuesday, November 3, 2020 3:36 PM  
**To:** Rokni, Roya  
**Subject:** [EXT] 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: 6880410

External Email

## 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: 6880410

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	11/3/2020 3:35 PM PST
Filing Type	Service Only
Filing Description	Order Shortening Time
Filed By	DC EFile Service
Service Contacts	Estate of Rebecca Powell:  Paul Padda (psp@paulpaddalaw.com)  Tony Abbatangelo (Tony@thevegaslawyers.com)  James Kelly (jpk@paulpaddalaw.com)  Paul Padda (civil@paulpaddalaw.com)  Marlenne Casillas (marlennec@paulpaddalaw.com)  Jennifer Greening (jennifer@paulpaddalaw.com)

	<p>Valley Health System, LLC:</p> <p>S. Vogel (brent.vogel@lewisbrisbois.com)</p> <p>Johana Whitbeck (johana.whitbeck@lewisbrisbois.com)</p> <p>Adam Garth (Adam.Garth@lewisbrisbois.com)</p> <p>Roya Rokni (roya.rokni@lewisbrisbois.com)</p> <p>Arielle Atkinson (arielle.atkinson@lewisbrisbois.com)</p> <p>Conrado C.D. Concio MD:</p> <p>Jody Foote (jfoote@jhcottonlaw.com)</p> <p>Jessica Pincombe (jpincombe@jhcottonlaw.com)</p> <p>John Cotton (jhcotton@jhcottonlaw.com)</p> <p>Brad Shipley (bshipley@jhcottonlaw.com)</p>
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# EXHIBIT ‘I’



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November 4, 2020

File No. 28094.190

**VIA ELECTRONIC SERVICE ONLY**

Paul S. Padda, Esq.  
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4560 S. Decatur Blvd., Suite 300  
Las Vegas, NV 89103

Re: **Powell v. Centennial Hills Hospital**  
**Case No.: A-19-788787-C**

Dear Mr. Padda:

Please be advised the hearing date on our motion to stay on order shortening time has been set for November 25, 2020 at 9 a.m.

The Court filed and served the signed order without the hearing date and when we contacted the JEA, we were told that it was due to a technical error. The date for the hearing is contained on the Court's docket sheet for your reference.

Thank you for your attention to this matter.

Very truly yours,

*/s/ Adam Garth*

S. Brent Vogel & Adam Garth of  
LEWIS BRISBOIS BISGAARD & SMITH LLP

AG:rr

cc: Brad Shipley, Esq.

# EXHIBIT ‘H’

PETITIONER REQUEST TO PLAINTIFFS  
TO STIPULATE TO STAY THE MATTER



---

**From:** Srilata Shah <sri@paulpaddalaw.com>  
**Sent:** Monday, April 5, 2021 1:30 PM  
**To:** Garth, Adam  
**Cc:** Vogel, Brent; Rokni, Roya; Armantrout, Heather; Atkinson, Arielle; Brad Shipley; Paul Padda; Amoroso, Elsa; Jennifer Greening  
**Subject:** [EXT] RE: Powell v. CHH ,et al. - Depositions of Plaintiffs

Dear Mr. Garth:

We understand your position but cannot agree to stipulate to stay the matter until we get a final decision from the Supreme Court. We respectfully disagree that your writ petition for mandamus has merit. We would like to keep the case moving and conduct discovery per the JCCR. Please let us know if the dates provided for the available dates for depositions work for you. I can be reached at 702-366-1888 should you wish to discuss this further. Thank you. Sri

**Srilata Shah, Esq.**  
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---

**From:** Garth, Adam <Adam.Garth@lewisbrisbois.com>  
**Sent:** Friday, April 2, 2021 10:25 AM  
**To:** Jennifer Greening <Jennifer@paulpaddalaw.com>  
**Cc:** Vogel, Brent <Brent.Vogel@lewisbrisbois.com>; Rokni, Roya <Roya.Rokni@lewisbrisbois.com>; Armantrout, Heather <Heather.Armantrout@lewisbrisbois.com>; Atkinson, Arielle <Arielle.Atkinson@lewisbrisbois.com>; Brad Shipley <bshipley@jhcottonlaw.com>; Paul Padda <psp@paulpaddalaw.com>; Srilata Shah <sri@paulpaddalaw.com>; Amoroso, Elsa <Elsa.Amoroso@lewisbrisbois.com>  
**Subject:** RE: Powell v. CHH ,et al. - Depositions of Plaintiffs

Given the fact that the Supreme Court has established a briefing schedule on the writ petition, I recommend that all parties agree to stipulate to stay the matter until we get a final decision from the court. That way, expenses will be lessened for everyone in the event the Supreme Court reverses Judge Wiese's decision and dismisses the entire case. Let me know your position on the matter. Many thanks.

Adam Garth

---

**From:** Jennifer Greening <[Jennifer@paulpaddalaw.com](mailto:Jennifer@paulpaddalaw.com)>

**Sent:** Friday, April 2, 2021 9:43 AM

**To:** Garth, Adam <[Adam.Garth@lewisbrisbois.com](mailto:Adam.Garth@lewisbrisbois.com)>

**Cc:** Vogel, Brent <[Brent.Vogel@lewisbrisbois.com](mailto:Brent.Vogel@lewisbrisbois.com)>; Rokni, Roya <[Roya.Rokni@lewisbrisbois.com](mailto:Roya.Rokni@lewisbrisbois.com)>; Whitbeck, Johana <[Johana.Whitbeck@lewisbrisbois.com](mailto:Johana.Whitbeck@lewisbrisbois.com)>; Armantrout, Heather <[Heather.Armantrout@lewisbrisbois.com](mailto:Heather.Armantrout@lewisbrisbois.com)>; Atkinson, Arielle <[Arielle.Atkinson@lewisbrisbois.com](mailto:Arielle.Atkinson@lewisbrisbois.com)>; Brad Shipley <[bshipley@jhcottonlaw.com](mailto:bshipley@jhcottonlaw.com)>; Paul Padda <[psp@paulpaddalaw.com](mailto:psp@paulpaddalaw.com)>; Srilata Shah <[sri@paulpaddalaw.com](mailto:sri@paulpaddalaw.com)>

**Subject:** [EXT] RE: Powell v. CHH ,et al. - Depositions of Plaintiffs

**Importance:** High

**Caution:** This email originated from outside of the organization. Do not click links or open attachments unless you recognize the sender and know the content is safe.

Hello Mr. Garth-

I am following up on deposition scheduling for Plaintiffs. Below are Plaintiffs' available dates. Please advise which dates work for your office so we can block our calendar.

Lloyd Creecy – Available any time on 4/26/21-4/28/21, 4/30/21, and after 1:00 pm PST on 4/29/21

Isaiah Khosrof – Available after 1:00 pm PST on 4/26/21-4/30/21

Taryn Creecy – Available any time on 4/30/21

Darci Creecy – Available after 4/26/21-4/30/21

Brian Powell – 4/19/21

Thank you.

**Jennifer C. Greening**

Paralegal

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