

**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 10:29 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 V**

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## INDEX TO PETITIONERS' APPENDIX – VOLUME V

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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 V** 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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Concio, M.D And Vishal S. Shah, M.D.*

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



# EXHIBIT ‘I’

DEFENDANT VALLEY HEALTH  
SYSTEM LLC’S MOTION TO  
RECONSIDER MOTION FOR STAY  
PENDING PETITION FOR WRIT OF  
MANDAMUS



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

9  
10 DISTRICT COURT  
11 CLARK COUNTY, NEVADA

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

18 Plaintiffs,

19 vs.

20 VALLEY HEALTH SYSTEM, LLC (doing  
21 business as "Centennial Hills Hospital Medical  
22 Center"), a foreign limited liability company;  
23 UNIVERSAL HEALTH SERVICES, INC., a  
24 foreign corporation; DR. DIONICE S.  
25 JULIANO, M.D., an individual; DR.  
26 CONRADO C.D. CONCIO, M.D., an  
27 individual; DR. VISHAL S. SHAH, M.D., an  
28 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 TO  
RECONSIDER MOTION FOR STAY  
PENDING PETITION FOR WRIT OF  
MANDAMUS**

**HEARING REQUESTED**

25 COMES NOW, Defendant VALLEY HEALTH SYSTEM, LLC (doing business as  
26 "Centennial Hills Hospital Medical Center"), a foreign limited liability company ("CHH"), by and  
27 through its counsel of record S. Brent Vogel, Esq., and Adam Garth, Esq., of the Law Firm LEWIS  
28 BRISBOIS BISGAARD & SMITH, and hereby submits this MOTION TO RECONSIDER

1 MOTION FOR STAY PENDING PETITION FOR WRIT OF MANDAMUS ON ORDER  
2 SHORTENING TIME pursuant to EDCR 2.24.

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

6 DATED this 6<sup>th</sup> day of April, 2021

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*  
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1 Ms. Powell died on May 11, 2017. The incontrovertible evidence submitted by CHH  
2 demonstrated that Plaintiffs were on inquiry notice as early as the date of her death (May 11, 2017),  
3 and as late as June 11, 2017, the date Plaintiffs submitted a complaint alleging patient neglect and  
4 misconduct by CHH to the Nevada State Nursing Board, specifically requesting an investigation of  
5 CHH pertaining to Ms. Powell's death and medical treatment prior thereto. Plaintiffs commenced  
6 their lawsuit on February 3, 2019, 20 months after receiving inquiry notice and 8 months beyond  
7 the statute of limitations' expiration.

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

1           Nevertheless, in the absence of any admissible evidence in opposition to the motion and  
2 despite admissions of inquiry notice from the Plaintiffs’ themselves which were submitted to this  
3 Court, this Court denied CHH’s motion summary judgment. Moreover, the Court found that despite  
4 “suggestions” of inquiry notice in 2017, the inquiry notice was somehow cancelled by the receipt  
5 of a death certificate and autopsy report indicating the cause of death to have been suicide. This  
6 conclusion by the Court was predicated on no supportive legal authority and directly contradicted  
7 firmly established case law articulated on the Motion.

8           As required by NRAP 8, CHH moved this Court for a stay of all proceedings prior to filing  
9 its Petition for a Writ of Mandamus. Copies of the aforesaid motion, Plaintiffs’ opposition thereto  
10 and CHH’s reply are annexed hereto as **Exhibits H, I, & J** respectively.

11           On December 17, 2020, this Court issued an order denying CHH’s motion for a stay, notice  
12 of entry of which was filed the same day. A copy of said order with notice of entry is annexed  
13 hereto as **Exhibit K**. In denying said request, this Court determined in part that the rationale for  
14 denying the stay was the lack of likelihood that CHH would prevail on the merits, and that a writ  
15 petition had not been filed (despite the fact that such a petition could not be filed until such time as  
16 this Court decided the stay application).

17           Shortly thereafter this Court denied the stay motion by CHH, CHH filed its petition with the  
18 Nevada Supreme Court. In an order dated March 9, 2021, annexed hereto as **Exhibit L**, the Nevada  
19 Supreme Court issued an order directing an answer to CHH’s writ petition, setting a briefing  
20 schedule of Plaintiffs’ opposition by March 30, 2021 and CHH’s reply by April 13, 2021. In its  
21 order, the Court stated “Having reviewed the petition, it appears that an answer may assist this court  
22 in resolving this matter.”

23           CHH requested that Plaintiffs stipulate to stay the matter in light of the Nevada Supreme  
24 Court’s order directing an answer. **Exhibit M** hereto is an email from Plaintiffs’ counsel refusing  
25 to so stipulate.

26           Expert disclosures are due June 18, 2021. Clearly the Nevada Supreme Court finds credence  
27 in the arguments raised in CHH’s petition or it would not have directed an answer by Plaintiffs and  
28 reply by CHH. The petition for a writ is no longer a concept, but a reality. We have definitive

1 briefing dates and the Nevada Supreme Court will be issuing a decision on the same issues which  
2 were pending before this Court. This new evidence presents the very basis for CHH's request for  
3 the Court to reconsider its decision denying the stay and issue an order staying all proceedings in  
4 this matter until such time as the Supreme Court issues its decision on the pending writ petition.

5 **II. ARGUMENT**

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

7 This matter has been pending since February, 2019. It is currently set for trial on May 23,  
8 2022. Initial expert disclosures are to be made on or before June 18, 2021, rebuttal expert disclosures  
9 are due on August 27, 2021, and discovery is to be completed on or before October 28, 2021.

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

11 A party may move for a stay in District Court proceedings pending resolution of an appellate  
12 issue pursuant to the Nevada Rules of Appellate Procedure. NRAP 8(a)(1)(A). The party seeking  
13 a stay must first seek a stay from the District Court, as opposed to an appellate court. *Id.* This Court  
14 denied CHH's request for said stay, but now the Nevada Supreme Court has agreed to consider the  
15 writ petition and has ordered answers from all parties.

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

28 An analysis of these factors in this case shows that a stay is warranted pending resolution of

1 CHH's interlocutory appeal of the denial of their Motion for Summary Judgment Based Upon the  
2 Expiration of the Statute of Limitations.

3 Taking the fourth factor first, the likelihood of success on the merits, this Court found that  
4 CHH would not likely prevail thereon. Such a conclusion is belied by the Nevada Supreme Court's  
5 order directing an answer (**Exhibit L**) in which the Court stated that an answer would assist it in  
6 resolving the dispute. If the Nevada Supreme Court did not believe that CHH could prevail on the  
7 merits, it would not have ordered Plaintiffs to answer nor CHH to reply thereto.

8 CHH believes that its motion for summary judgment should have been granted in its entirety,  
9 rendering Plaintiffs' case completely void and subject to dismissal. This is underscored by the  
10 overwhelming and incontrovertible evidence that Plaintiffs possessed inquiry notice as late as June  
11 11, 2017, making their Complaint's filing on February 4, 2019 eight months late and beyond the  
12 statute of limitations. Neither Plaintiffs nor the Court provided any legal authority to demonstrate  
13 that once inquiry notice is obtained, that it is somehow cancelled and tolled by unproven allegations  
14 of other potential causes for the death of Plaintiffs' decedent. On the underlying motion, Plaintiffs  
15 failed to obtain or submit any affidavit, declaration, or testimonial evidence from anyone with  
16 personal knowledge which substantiate Plaintiffs' counsel's unsubstantiated allegations. As such,  
17 given the irrefutable evidence submitted by CHH in support of its motion, and Plaintiffs' lack of  
18 any competent contradictory evidence in opposition to CHH's motion, there is a good chance that  
19 CHH will prevail on appeal. Obviously, the Supreme Court believe so as well – hence the order  
20 directing an answer.

21 The first factor, namely whether the object of the writ petition will be defeated if the stay is  
22 denied, also weighs heavily in CHH's favor. While trial is not scheduled until May, 2022, expert  
23 disclosure is two months away. The Motion is completely case dispositive, so if CHH must  
24 participate in discovery and trial on this issue, the object of the forthcoming writ petition would be  
25 defeated and CHH's expenses would be increased.

26 The second factor for consideration pursuant to NRAP 8, whether the petitioner will suffer  
27 irreparable or serious injury if the stay is denied, also weighs in favor of granting the stay. For one,  
28 medical malpractice claims create specific ongoing injuries to medical professionals in the form of



1 insurance premiums, damage to professional reputations and reporting requirements. Forcing CHH  
2 to proceed to trial on both liability and damages when the issue presented on appeal will only  
3 prolongs these injuries and causes further damage to CHH, when it is not only possible that the case  
4 against it will be dismissed in its entirety, but highly likely, since the Nevada Supreme Court is  
5 going to rule on CHH's pending writ petition. Secondly, the potential expenses of proceeding to  
6 trial on all issues will require the unnecessary expenditure of CHH's resources in having to pursue  
7 the additional discovery and continuing the process of engaging experts to defend the allegations,  
8 when the irrefutable evidence submitted on the Motion required the dismissal of all claims against  
9 all defendants.

10       The third factor for consideration pursuant to NRAP 8, whether the real party in interest will  
11 suffer irreparable or serious injury if the stay is granted, also weighs in favor of granting the stay in  
12 proceedings. The real parties in interest, the Plaintiffs in the underlying matter, will not suffer  
13 irreparable or serious injury should this stay be granted. In fact, they will benefit from the stay. The  
14 stay will allow a determination of whether the case dispositive motion should have been granted and  
15 prevent the expenditure of financial and emotional resources pertaining to a claim which was dead  
16 on arrival for legal purposes at the time of its filing. The Nevada Supreme Court's decision to take  
17 up CHH's writ petition will definitively determine whether this Court's decision will be affirmed or  
18 reversed. The Supreme Court will be ruling either way. Plaintiffs will have suffered no risk or  
19 injury by waiting since they will have an answer as to whether discovery should proceed or if doing  
20 so will be mooted out by a dismissal due to a late filed action.

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

26       NRCP Rule 56 requires the very submission of affidavits, declarations and admissible  
27 evidence in opposition to a motion for summary judgment which itself is supported by same. The  
28 absence of the affidavits is not merely a failure to submit necessary documents in opposition, it is

1 the abject failure of a party to submit that which is statutorily required to defeat such a motion which  
2 necessitates this impending appeal.

3       Whether the Supreme Court will consider this Writ is no longer a concept, but a reality.  
4 Forcing CHH and the other parties to proceed in light of the Supreme Court's decision to take up  
5 this Writ would waste valuable resources for the parties and provide no benefit to any party. Up to  
6 now, Plaintiffs have been given every benefit by this Court - denial of motions to dismiss, denial  
7 of summary judgment and denial of a motion for stay pending an interlocutory appeal. The Supreme  
8 Court's impending intervention here demonstrates that a stay is the proper course, and CHH  
9 respectfully requests the Court reconsider its decision and stay these proceedings until such time as  
10 the Nevada Supreme Court rules on the Writ Petition and determines the propriety of the denial of  
11 CHH's motion for summary judgment.

12 **III. CONCLUSION**

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

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1 Nevada Supreme Court's decision to order an answer to the Writ Petition is clear evidence that  
2 CHH's likelihood of prevailing on the merits coupled with the remaining factors weighs totally in  
3 favor of the stay.

4  
5 DATED this 6<sup>th</sup> day of April, 2021

6 LEWIS BRISBOIS BISGAARD & SMITH LLP

7  
8 By /s/ Adam Garth  
9 S. BRENT VOGEL  
10 Nevada Bar No. 006858  
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17 *LLC dba Centennial Hills Hospital Medical*  
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**CERTIFICATE OF SERVICE**

I hereby certify that on this 6<sup>th</sup> day of April, 2021, a true and correct copy of **DEFENDANT VALLEY HEALTH SYSTEM LLC'S MOTION TO RECONSIDER MOTION FOR STAY PENDING PETITION FOR WRIT OF MANDAMUS** 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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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’



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

10 DISTRICT COURT  
11 CLARK COUNTY, NEVADA

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

16 Plaintiffs,

17 vs.

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

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  
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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.

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*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,

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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

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

1 **CSERV**

2  
3 DISTRICT COURT  
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: 10/29/2020

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
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24 Adam Garth	Adam.Garth@lewisbrisbois.com
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1	James Kelly	jpk@paulpaddalaw.com
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4	Paul Padda	civil@paulpaddalaw.com
5	Marlenne Casillas	marlennec@paulpaddalaw.com
6	Jennifer Greening	jennifer@paulpaddalaw.com

7  
8        If indicated below, a copy of the above mentioned filings were also served by mail  
9 via United States Postal Service, postage prepaid, to the parties listed below at their last  
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***  
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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 ‘C’





1 **MSJ**  
2 S. BRENT VOGEL  
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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  
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21 *Health System, LLC dba Centennial Hills Hospital*  
22 *Medical Center*  
23  
24  
25  
26  
27  
28

1 **MEMORANDUM OF POINTS AND AUTHORITIES**

2 **I. INTRODUCTION**

3 On February 4, 2019, the Estate of Rebecca Powell and individual heirs (collectively  
4 “Plaintiffs”) filed an untimely Complaint against CHH as well as other co-defendants (collectively  
5 “Defendants”), for alleged professional negligence/wrongful death arising out of the care and  
6 treatment Ms. Powell received at CHH.<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  
26 annexed hereto as Exhibit "M", specifically ¶ 6

27 <sup>26</sup> Exhibit "M", ¶ 7

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

(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]ecovery 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

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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

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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*



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**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

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.*

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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 ...  
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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), 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.  
22

23 ...  
24

25 ...  
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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.  
18

19  
20 **VII.**

21 **THIRD CAUSE OF ACTION**

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

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

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

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

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

11           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.

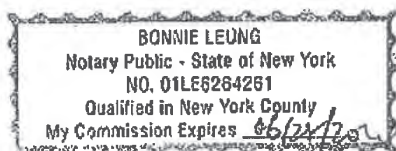
*Sami Hashim*  
Dr. Sami Hashim, M.D.

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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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 **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).

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

15 **DISTRICT COURT**

16 \* \* \*

17 **CLARK COUNTY, NEVADA**

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

24 Plaintiffs,

25 vs.

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

Defendants.

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

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 ‘D’





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

---

<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



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 ///

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]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  
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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:

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

# EXHIBIT ‘E’



1 **JOIN**

2 MICHAEL E. PRANGLE, ESQ.  
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4 ZACHARY J. THOMPSON, ESQ.  
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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 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  
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10 Nevada Bar No. 8619  
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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23  
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28

**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:

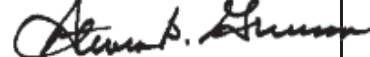
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/s/ Reina Claus  
An employee of HALL PRANGLE & SCHOONVELD, LLC



# EXHIBIT ‘F’



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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).  
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. 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 anv differential diagnosis.

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

specificity in Plaintiffs’ affidavit of merit fails. Further, in light of the Nevada Supreme Court’s directive to liberally construe NRS 41A.071’s requirements in a manner consistent with our 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’

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

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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; ISALAH 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  
27  
28



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

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

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

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

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

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

1 applicable under 11.190(4)(e).

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

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

16 **IV. Plaintiffs have not responded to these moving Defendants’ argument with respect to**

17 **the NIED claim and it should therefore be deemed unopposed pursuant to**

18 **EDCR 2.20.**

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

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



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

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

10 **V. Conclusion**

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

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

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

18   
19 \_\_\_\_\_  
20 JOHN H. COTTON, ESQ.  
BRAD SHIPLEY, ESQ.

21 *Attorneys for Defendants Dionice S. Juliano, M.D.,*  
22 *Vishal Shah, MD, and Conrado Concio, M.D.*  
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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*Attorneys for Defendant Valley Health System, LLC, dba Centennial hills Hospital Medical Center*

  
An Employee of John H. Cotton & Associates

# EXHIBIT ‘H’



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*Centennial Hills Hospital Medical Center*

DISTRICT COURT

CLARK COUNTY, NEVADA

ESTATE OF REBECCA POWELL, through  
BRIAN POWELL, as Special Administrator;  
DARCI CREECY, individually and as an Heir;  
TARYN CREECY, individually and as an Heir;  
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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12 1160 North Town Center Drive, Ste. 200  
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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.  
Nevada Bar No. 8619  
19 ZACHARY J. THOMPSON, ESQ.  
Nevada Bar No. 11001  
20 1160 N. Town Center Dr., Ste. 100  
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21 *Attorneys for Defendant*  
*Valley Health System, LLC, dba*  
*Centennial Hills Hospital Medical Center*  
22  
23  
24  
25  
26  
27  
28

**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:

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

# EXHIBIT ‘I’

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

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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

By: /s/: Zachary Thompson, Esq  
MICHAEL E. PRANGLE, ESQ.  
Nevada Bar No. 8619  
ZACHARY J. THOMPSON, ESQ.  
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*Attorneys for Defendant*  
*Valley Health System, LLC, dba*  
*Centennial Hills Hospital Medical Center*  
*and Universal Health Services, Inc.*

## MEMORANDUM OF POINTS AND AUTHORITIES

### I.

#### INTRODUCTION

This matter arises out of the death of Rebecca Powell at Centennial Hills Hospital on May 11, 2017. On February 4, 2019, Plaintiffs filed an untimely Complaint against Centennial Hills Hospital, Dionice Juliano, MD, Conrado Concio, MD, Vishal Shah, MD, and Universal Health Services, Inc. (collectively “Defendants”).<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

---

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

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

10 **IV.**

11 **CONCLUSION**

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

18 DATED this 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

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

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

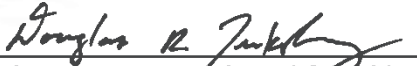
3 11. Everything stated within this affidavit is true and correct to the best of affiant's  
4 knowledge, information and belief.

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

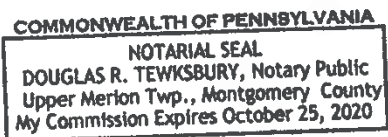


Michelle K. Carson

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.

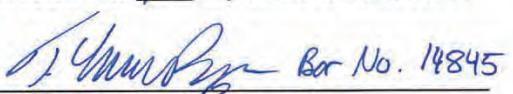
5 UNIVERSAL HEALTH SERVICE, INC., reserves all other defenses, including, but not  
6 limited to the defenses previously asserted in Universal Health Services, Inc.'s Motion to  
7 Dismiss, or, Alternatively, Motion for Summary Judgment for Lack of Jurisdiction and  
8 Universal Health Services, Inc.'s 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. PADDA, ESQ.  
Nevada Bar No. 10417  
16 PAUL PADDA 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.*

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.

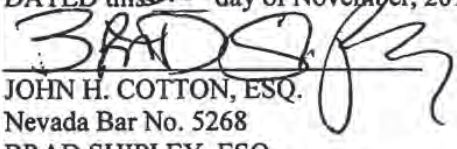
12 **IT IS SO STIPULATED.**

13 DATED this \_\_\_\_ day of November, 2019. DATED this \_\_\_\_ day of November, 2019.  
14

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

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

19  
20  
21 DATED this <sup>26<sup>th</sup></sup> 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.*



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]

[Illegible body text]

[Illegible body text]

[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**

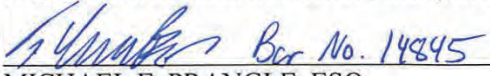
IT IS HEREBY ORDERED that Defendant UNIVERSAL HEALTH SERVICE, INC. shall be dismissed, without prejudice, from the instant litigation in case A-19-788787-C, with each party to bear their own attorneys' fees and costs.

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*

# 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.*

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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 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

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

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



1 provides its answer to Plaintiffs' Complaint as follows:

2 I.

3 **ARBITRATION EXEMPTION**

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

10 II.

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

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

18 III.

19 **THE PARTIES**

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

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



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

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

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

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

#### 17 IV.

#### 18 FACTUAL BACKGROUND

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

23  
24 9. In answering paragraph 18 of Plaintiffs' Complaint, this answering Defendant  
25 states it is without sufficient information to form a belief as to the truth of the allegations  
26 contained in said paragraph and therefore denies the same.

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

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

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

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

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

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

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



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

5  
6 **V.**

7 **FIRST CAUSE OF ACTION**

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

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

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

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

17 **VI.**

18 **SECOND CAUSE OF ACTION**

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

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

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

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

28 **VII.**

**THIRD CAUSE OF ACTION**

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

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

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

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

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

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

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

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

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



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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28                    ///

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.

24  
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28    ///



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**

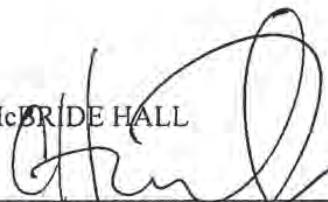
20 Defendant hereby incorporates by reference those affirmative defenses enumerated in  
21 Rule 8 of the Nevada Rules of Civil Procedure as if fully set forth herein. In the event further  
22 investigation or discovery reveals the applicability of any such defenses, Defendant reserves the  
23 right 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 PADDALAW, PLLC  
16 4560 South Decatur Boulevard, Suite 300  
Las Vegas, Nevada 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.*

17  
18  
19  
20 /s/Stephanie Lazo  
21 An Employee of McBRIDE HALL  
22  
23  
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25  
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27  
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 VI**

---

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 VI

<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 VI** 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 ‘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; ISAIAH KHOSROF, individually and as  
an Heir; LLOYD CREECY, individually,;

15 Plaintiffs,

16 vs.

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

22 Defendants.  
23

Case No. A-19-788787-C

Dept. No.: 30

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

24  
25 STATE OF NEVADA }

26 COUNTY OF CLARK }

27 I, GINA ARROYO, declare as follows:

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

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

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

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

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

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

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



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’

\* Put Records on CD

# AUTHORIZATION TO USE AND DISCLOSE PROTECTED HEALTH INFORMATION

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

Initial here if requesting access to review original medical records.

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

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

Patient Name at Time of Treatment: REBECCA ANN POWELL Date of Birth: 5/30/1975 Social Security Number: 275-80-9124  
 Street Address: P.O. Box 750131 Home Phone Number: 275-71-9522  
 City: LAS VEGAS State: NV Zip Code: 89136-0131 Work Phone Number: \_\_\_\_\_

Email \_\_\_\_\_

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

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

## NOTICE OF RIGHTS AND OTHER INFORMATION

- I understand that I have the right to revoke this authorization at any time. Such requests must be submitted in writing to the attention of Centennial Hills Hospital Medical Center, Health Information Management Department at 6900 North Durango Boulevard, Las Vegas, Nevada, 89149. Phone: (702) 629-1300 Fax: (702) 629-1645. Cancellation of my authorization will be effective when Centennial Hills Hospital Medical Center receives my signed request, but it will not apply to the information that was used or disclosed prior to that date.
- I understand that refusal to sign this authorization will have no effect on my enrollment, eligibility for benefits, or the amount a third party payor pays for the health services I receive.
- I understand that the person or entity that receives this information may not be covered by the federal privacy regulations, in which case the information above may be redisclosed and no longer protected by these regulations. I also understand that the person I am authorizing to use and/or disclose the information may receive compensation for the use and/or disclosure.
- I have a right to receive a copy of this authorization. I may inspect or obtain a copy of the protected health information that I am being asked to use or disclose.

Signature of Patient: \_\_\_\_\_ Date: \_\_\_\_\_  
 Signature of Legal Representative: \_\_\_\_\_ Print Name: Taryn Creevy Date: 15/25/17 Relationship to Patient: Daughter

Witness: \_\_\_\_\_

- Date: \_\_\_\_\_
- ☐ I Will Pick Up PHI  
☐ Mail PHI  
☐ Please Fax PHI To Physician Indicated

Reason Patient Unable to Sign \_\_\_\_\_

☐ Patient received copy of authorization

Staff Initials: \_\_\_\_\_



RI1001

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

PATIENT IDENTIFICATION

RECEIVED

CASSADY LAW OFFICES, P.C.

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

MAY 25 2017

CLERK OF THE COURT

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

ORDR

CASSADY LAW OFFICES, P.C.

Jasen E. Cassady, Esq.

Nevada Bar No. 8018

[jasen@cassadylawoffices.com](mailto:jasen@cassadylawoffices.com)

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Brendan M. McGraw, Esq.

Nevada Bar No. 11653

[brendan@cassadylawoffices.com](mailto:brendan@cassadylawoffices.com)

10799 West Twain Avenue

Las Vegas, Nevada 89135

Phone: (702) 650-4480

Fax: (702) 650-5561

Attorneys for the Estate

Electronically Filed

05/25/2017

*Heather L. Shuman*

CLERK OF THE COURT

DISTRICT COURT  
CLARK COUNTY, NEVADA

In the Matter of the Estate of

REBECCA ANN POWELL a/k/a

REBECCA A. POWELL a/k/a

REBECCA POWELL,

Deceased.

CASE NO.: P-17-091793-E

DEPT NO.: PC-1

Probate

**ORDER TO RELEASE MEDICAL RECORDS**

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

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

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

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

DATED this 24 day of May, 2017.

Submitted by:

CASSADY LAW OFFICES, P.C.

By: *Brendan M. McGraw*

Brendan M. McGraw, Esq.

Nevada Bar No. 11653

*Heather L. Shuman*  
DISTRICT COURT JUDGE

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

*Heather L. Shuman*  
CLERK OF THE COURT

MAY 25 2017

RECEIVED

CASSADY LAW OFFICES, P.C.

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

MAY 25 2017

CLERK OF THE COURT

Electronically Filed  
05/25/2017

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

Patient Name at Time of Treatment: REBECCA ANN POWELL Date of Birth: 5/30/1975 Social Security Number: 275-80-9124  
 Street Address: P.O. Box 750131 Home Phone Number: 216 571 9522  
 City: LAS VEGAS State: NV Zip Code: 89136-0131 Work Phone Number: \_\_\_\_\_

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

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

2. Purpose of Requested Use or Disclosure: \_\_\_\_\_

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

- |   |   |   |
|---|---|---|
| <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                  | <u>ALL RECORDS, IMAGES AND</u>                              |
| <input checked="" type="checkbox"/> Discharge Summary                               | <input checked="" type="checkbox"/> Lab Reports/Pathology Reports | <u>BOTH SOFT AND</u>  |

4. By signing my initials next to the specific category of highly confidential information, I am authorizing Centennial Hills Hospital Medical Center to release the indicated type of information next to my initials pursuant to this Authorization from the treatment date(s) listed above.

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

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

**NOTICE OF RIGHTS AND OTHER INFORMATION:**

- I understand that I have the right to revoke this authorization at any time. Such requests must be submitted in writing to the attention of Centennial Hills Hospital Medical Center, Health Information Management Department at 6900 North Durango Boulevard, Las Vegas, Nevada, 89149. Phone: (702) 629-1300 Fax: (702) 629-1645. Cancellation of my authorization will be effective when Centennial Hills Hospital Medical Center receives my signed request, but it will not apply to the information that was used or disclosed prior to that date.
- I understand that refusal to sign this authorization will have no effect on my enrollment, eligibility for benefits, or the amount a third party payor pays for the health services I receive.
- I understand that the person or entity that receives this information may not be covered by the federal privacy regulations, in which case the information above may be redisclosed and no longer protected by these regulations. I also understand that the person I am authorizing to use and/or disclose the information may receive compensation for the use and/or disclosure.
- I have a right to receive a copy of this authorization. I may inspect or obtain a copy of the protected health information that I am being asked to use or disclose.

Signature of Patient: \_\_\_\_\_ Date: \_\_\_\_\_  
 Signature of Legal Representative: \_\_\_\_\_ Print Name: Taryn Creevy Date: 5/25/17 Relationship To Patient: Daughter

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

Reason Patient Unable to Sign

☐ Patient received copy of authorization Staff Initials: \_\_\_\_\_



RI1001

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

PATIENT IDENTIFICATION



# 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



ZIP 19403 \$0  
02 4W  
0000346608 JUN

*Handwritten signature*

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



NIXIE 851 7E 1 0106/23/17  
RETURN TO SENDER  
ATTEMPTED - NOT KNOWN  
UNABLE TO FORWARD  
SC: 19403242623 2104N174110-00332



# 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; ISAAH KHOSROF, individually and as  
an Heir; LLOYD CREECY, individually;,  
15

16 Plaintiffs,

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

23 Defendants.  
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

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**



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 of 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

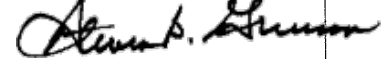
9 No Notary Required per NRS 53.045  
10  
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13  
14

15 By  
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28

# EXHIBIT ‘D’

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

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9/3/2020 1:27 PM  
Steven D. Grierson  
CLERK OF THE COURT



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

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

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

15 Plaintiffs,

16 vs.

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

22 Defendants.

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

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

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



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

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

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

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

20 Dated this 3<sup>rd</sup> day of September 2020.  
21

22 **JOHN H. COTTON & ASSOCIATES, LTD.**  
23 7900 West Sahara Avenue, Suite 200  
24 Las Vegas, Nevada 89117

25   
26 JOHN H. COTTON, ESQ.  
27 BRAD SHIPLEY, ESQ.

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

**CERTIFICATE OF ELECTRONIC SERVICE**

I hereby certify that on the 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:

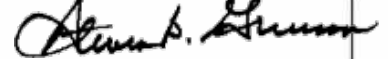
Paul S. Padda, Esq.  
PAUL PADDA LAW, PLLC  
4560 South Decatur Boulevard, Ste. 300  
Las Vegas, NV 89103  
*Attorneys for Plaintiffs*

  
An Employee of John H. Cotton & Associates

# EXHIBIT ‘E’

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

Electronically Filed  
9/16/2020 8:58 PM  
Steven D. Grierson  
CLERK OF THE COURT



**OPP**

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

Email: psp@paulpaddalaw.com

**PAUL PADDA LAW, PLLC**

4560 South Decatur Boulevard, Suite 300

Las Vegas, Nevada 89103

Tele: (702) 366-1888

Fax: (702) 366-1940

*Attorney for Plaintiffs*

**DISTRICT COURT  
CLARK COUNTY, NEVADA**

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

Plaintiffs,

vs.

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

Defendants.

CASE NO. A-19-788787-C

DEPT. NO. XXX (30)

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

Pursuant to Nevada Rule of Civil Procedure 56 and Eighth Judicial District Court Rule

2.20, Plaintiffs hereby respond to Defendants Valley Health Systems, LLC ("VHS") and

1

Estate of Rebecca Powell, et. al. v. Valley Health System, LLC et. al.

Eighth Judicial District Court, Case No. A-19-788787-C

*Plaintiffs' Opposition to Valley Health System, LLC's Motion for Summary Judgment*

Universal Health Services, Inc.'s ("UHS")<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.

18 On September 2, 2020 Defendant VHS filed a motion for summary judgment alleging  
19 this lawsuit should be dismissed on the grounds that the Complaint was not filed within the  
20 appropriate statute of limitations period. In support of its argument, VHS relies primarily upon  
21 the allegations in the Complaint, the medical affidavit that was prepared by Dr. Sami Hashim,  
22 M.D. at the time the Complaint was filed on February 4, 2019 and the declaration of Gina  
23 Arroyo (attached to VHS MSJ as Exhibit M). Ms. Arroyo, an employee of a medical records  
24  
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  
23  
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  
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 INFLICTION**  
12 **OF EMOTIONAL DISTRESS DOES NOT MEAN THEY WERE ON**  
13 **INQUIRY NOTICE WHEN THEY SUFFERED SENSORY SHOCK**

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

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

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

16 . . .

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24 . . .

25 . . .

III.

**CONCLUSION**

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

Respectfully submitted,

*/s/ Paul S. Padda*

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

Dated: September 16, 2020

**CERTIFICATE OF SERVICE**

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

*/s/ Jennifer Greening*

\_\_\_\_\_  
Jennifer Greening, Paralegal  
PAUL PADDA LAW, PLLC

DECLARATION OF PAUL S. PADDA, ESQ.

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

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

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



Paul S. Padda, Esq.

Dated: September 16, 2020



# STATE OF NEVADA

## CERTIFICATION OF VITAL RECORD

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

CASE FILE NO. 3956121

### CERTIFICATE OF DEATH

2017011740

STATE FILE NUMBER

TYPE OR  
PRINT IN  
PERMANENT  
BLACK INK

DECEDENT

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

PARENTS

DISPOSITION

TRADE CALL

CERTIFIER

REGISTRAR

CAUSE OF  
DEATH

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

1a. DECEASED-NAME (FIRST,MIDDLE,LAST,SUFFIX) <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 county) <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>	
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>			
21d. NAME OF ATTENDING PHYSICIAN IF OTHER THAN CERTIFIER (Type or Print)				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>			
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 <input type="checkbox"/> NO <input checked="" type="checkbox"/></b>	
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, OR PENDING INVEST. (Specify) <b>Suicide</b>				26b. DATE OF INJURY (Mo/Day/Yr)		26c. HOUR OF INJURY	
26d. DESCRIBE HOW INJURY OCCURRED <b>Administration Of Excess Duloxetine (Cymbalta)</b>				26e. 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-20120523b



426091

Registrar of Vital Statistics

DATE ISSUED:

**JUN 28 2017**

By:

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

PROBATE 000094





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 of the report is enclosed.

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

Sincerely,

DPBH Complaint Coordinator

PRINTED: 02/05/2018  
FORM APPROVED

Division of Public and Behavioral Health

STATEMENT OF DEFICIENCIES AND PLAN OF CORRECTION	(X1) PROVIDER/SUPPLIER/CLIA IDENTIFICATION NUMBER:  <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

STATE FORM

6889

QEU211

If continuation sheet 1 of 12

PLTF 54

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

QEU211

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			

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

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If continuation sheet 4 of 12

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Division of Public and Behavioral Health

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

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

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Division of Public and Behavioral Health

STATEMENT OF DEFICIENCIES AND PLAN OF CORRECTION		(X1) PROVIDER/SUPPLIER/CLIA IDENTIFICATION NUMBER:  NVS5086HOS	(X2) MULTIPLE CONSTRUCTION A. BUILDING: _____  B. WING: _____		(X3) DATE SURVEY COMPLETED  09/21/2017
NAME OF PROVIDER OR SUPPLIER  CENTENNIAL HILLS HOSPITAL MEDICAL CEN			STREET ADDRESS, CITY, STATE, ZIP CODE 6900 N DURANGO DR LAS VEGAS, NV 89149		
(X4) ID PREFIX TAG	SUMMARY STATEMENT OF DEFICIENCIES (EACH DEFICIENCY MUST BE PRECEDED BY FULL REGULATORY OR LSC IDENTIFYING INFORMATION)	ID PREFIX TAG	PROVIDER'S PLAN OF CORRECTION (EACH CORRECTIVE ACTION SHOULD BE CROSS-REFERENCED TO THE APPROPRIATE DEFICIENCY)	(X5) COMPLETE DATE	
S 300	<p>Continued From page 6</p> <p>The patient's vital signs were documented as follows: pulse 130 bpm and respiratory rate at 30 br/m.</p> <p>The post respiratory treatment evaluation performed on 5/11/17 at 4:47 AM, revealed unchanged breath sounds (diminished) in all pulmonary lobes. The patient was receiving Oxygen via non-rebreather mask with Oxygen at 15 lpm, SPO2 of 90% and unchanged breath sounds. There was no evidence the attending physician was notified about the change in the patient's condition.</p> <p>The Nursing progress note dated 5/11/17 at 8:57 AM, documented at approximately 6:10 AM the patient was found unresponsive with the Oxygen mask in her feet and Cardio-Pulmonary Resuscitation (CPR) was initiated.</p> <p>The Respiratory therapy progress note dated 5/11/17 at 10:20 AM, indicated therapist entered the room during a Code Blue and CPR was initiated. The note documented a physician pronounced the patient at 6:50 AM and CPR ended.</p> <p>The Legal 2000 (Legal hold) Patient Frequency Observation Record date 5/11/17, revealed the patient was monitored in room 701 via camera every 15 minutes from 5/10/17 at 7:00 PM though 5/11/17 at 5:00 AM. The record documented the patient was awake/alert all the time, except on 5/10/17 at 11:00 PM and on 5/11/17 from 5:00 AM to 6:00 AM when it was documented the patient was sleeping. The record indicated a nurse called the sitter at 4:20 AM, the patient removed the intravenous (IV) lines, but they could not see the incident on monitor and suggested to change the patient to room 832. The record revealed at 6:10</p>	S 300			

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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>		
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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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If continuation sheet 8 of 12

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Division of Public and Behavioral Health

STATEMENT OF DEFICIENCIES AND PLAN OF CORRECTION		(X1) PROVIDER/SUPPLIER/CLIA IDENTIFICATION NUMBER:  <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 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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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 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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If continuation sheet 10 of 12

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

STATEMENT OF DEFICIENCIES AND PLAN OF CORRECTION		(X1) PROVIDER/SUPPLIER/CLIA IDENTIFICATION NUMBER:  <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 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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If continuation sheet 11 of 12

PLTF 64



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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>
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>		
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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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If continuation sheet 12 of 12

PLTF 65

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Steven D. Grierson  
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*Attorneys for Plaintiffs*

**CLARK COUNTY DISTRICT COURT**  
**CLARK COUNTY, NEVADA**

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

Plaintiffs,

vs.

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

Defendants.

A-19-788787-C

Case No. \_\_\_\_\_

Department 14

Dept No. \_\_\_\_\_

**COMPLAINT**  
**JURY TRIAL DEMANDED**

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

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

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

5 I.

6 ARBITRATION EXEMPTION

7  
8 1. Nevada Revised Statute ("N.R.S.") 38.250 requires that "[a]ll civil actions filed in  
9 district court for damages, if the cause of action arises in the State of Nevada and the amount in  
10 issue does not exceed \$50,000 per plaintiff, exclusive of attorney's fees, interest and court costs,  
11 must be submitted to nonbinding arbitration . . ."

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

16 II.

17 JURISDICTION, VENUE AND LEGAL BASIS FOR THIS ACTION

18  
19 3. This civil action is brought by Plaintiffs pursuant to the statutory and common law  
20 of the State of Nevada. Venue is appropriate in this Court because all events giving rise to the  
21 present cause of action occurred in Clark County, Nevada. The amount in controversy in this  
22 case is well in excess of the statutorily required amount of \$15,000.00.

23  
24 ...

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

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

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

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

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

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

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

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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), 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

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

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

4 VIII.

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

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

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

15  
16 51. In this case, Defendants (physicians and medical services corporations operating  
17 a for-profit hospital) owed Rebecca a duty of care to provide reasonable and safe services. They  
18 breached this duty of care towards Rebecca by providing her with medical service that fell below  
19 the acceptable standards of practice and care. See Exhibit A (fully incorporated by reference  
20 herein). Specifically, Defendants acted below the standard of care when, among other things  
21 detailed in Exhibit A, they failed to recognize and consider the differential diagnosis of drug-  
22 induced respiratory distress, inappropriately administering and/or allowing the administration of  
23 additional Ativan via IV Push which further depressed Rebecca's respiration, contributing to her  
24 additional Ativan via IV Push which further depressed Rebecca's respiration, contributing to her  
25

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.  
8

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.  
13

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.  
20

21 54. This Plaintiff has suffered damages as a result of Defendants' actions in excess of  
22 \$15,000.00.  
23

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  
26

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

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

14 **RELIEF REQUESTED**

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

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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 ...

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

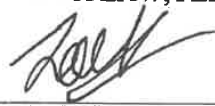
- 1 e. Punitive/Exemplary Damages for each cause of action; and  
2  
3 f. Award all other just and proper relief.

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,

17 Plaintiffs,

18 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

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

20 **HEARING REQUESTED**

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

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



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

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

4 **I. Introduction**

5 This matter concerns the death of Rebecca Powell on May 11, 2017. No party takes the  
6 death of a 42-year old woman lightly. Plaintiffs, the estate and heirs of Ms. Powell, allege  
7 negligent infliction of emotional distress in addition to professional negligence. While  
8 Defendants contend that all of the care and treatment rendered was within the standard of care,  
9 they need not argue the underlying merits of this case because Plaintiffs fail to overcome  
10 important threshold procedural requirements that are necessary to protect Defendants'  
11 fundamental rights to due process.  
12

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 ///

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* NRC  
5 12(b); *See also Hampe v. Foote*, 118 Nev. 405, 408, 47 P. 3d 438, 439 (2002) (although factual  
6 allegations in the complaint are regarded as true for the purposes of a motion to dismiss, a  
7 [d]ismissal is proper where the allegations are insufficient to establish the elements of a claim for  
8 relief).

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

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

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

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

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

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

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

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

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 ///  
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.  
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



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. Julianio.

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

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/s/ Brad Shipley  
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Las Vegas, NV 89117

**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

**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

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

---

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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 VII** 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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Nevada Department of Justice  
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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  
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13 *Valley Health System, LLC, dba*  
14 *Centennial Hills Hospital Medical Center*

15 **DISTRICT COURT**

16 **CLARK COUNTY, NEVADA**

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

23 Plaintiffs,

24 vs.

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

Defendants.

CASE NO. A-19-788787-C

DEPT NO. XIV

**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  
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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  
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*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).

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III.

STANDARD OF REVIEW

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

IV.

ARGUMENT

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

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

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

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

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

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

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

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

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

25 *Id.* (emphasis added).

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

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

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

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

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1 negligence may have cause[d] the injury.” *Id.*<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)).

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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.  
15 Nevada Bar No. 8619  
16 ZACHARY J. THOMPSON, ESQ.  
17 Nevada Bar No. 11001  
18 1160 N. Town Center Dr., Ste. 100  
19 Las Vegas, NV 89144  
20 Attorneys for Defendant  
21 Valley Health System, LLC, dba  
22 Centennial Hills Hospital Medical Center

23 **AFFIRMATION**

24 Pursuant to NRS 239B.030

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

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

28 HALL PRANGLE & SCHOONVELD, LLC

By: /s/: Zachary Thompson, Esq.  
MICHAEL E. PRANGLE, ESQ.  
Nevada Bar No. 8619  
ZACHARY J. THOMPSON, ESQ.  
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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.  
Joshua Y, Ang, Esq.  
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Brad Shipley, Esq.  
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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;  
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.: 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 NRC P 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 NRC P 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).

23  
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26  
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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. 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 NRCPC 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 NRCPC 12(b)(5), Defendants' conclude that "it is impossible that Plaintiffs could have exercised reasonable diligence and yet not have discovered the claim until almost eight months later." (*Id.* at 6:22.)

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

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

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

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

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

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

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

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

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

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

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

1  
2 **III. CONCLUSION**

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

5  
6 DATED this 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  
                 Padda, Paul S.      Attorney  
                 Shipley, Brad J      Attorney  
                 Thompson, Zachary J.      Attorney

**JOURNAL ENTRIES**

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

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

PRINT DATE: 11/01/2019

Page 1 of 1

Minutes Date: September 25, 2019





1 NEO  
2 MICHAEL E. PRANGLE, ESQ.  
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4 ZACHARY J. THOMPSON, ESQ.  
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12 *Attorneys for Defendant*  
13 *Valley Health System, LLC, dba*  
14 *Centennial Hills Hospital Medical Center*

DISTRICT COURT  
CLARK COUNTY, NEVADA

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

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

...

...

HALL PRANGLE & SCHOONVELD, LLC  
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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.  
9 Nevada Bar No. 8619  
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15 *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 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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*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



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

8 DISTRICT COURT

9 CLARK COUNTY, NEVADA

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

14 Plaintiffs,

15 vs.

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

21 Defendants.

CASE NO. A-19-788787-C

DEPT NO. XIV

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

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

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

HALL PRANGLE & SCHOONVELD, LLC  
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LAS VEGAS, NEVADA 89144  
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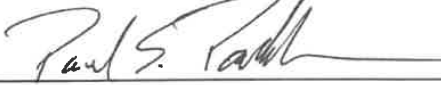
1 claims asserted in the Complaint, if Plaintiffs move for relief to amend their Complaint to add  
2 UNIVERSAL HEALTH SERVICE, INC. only, and only if the Court holds that amendment is  
3 appropriate, the amendment shall relate back to the date of the filing of the Complaint, February  
4 2, 2019, in 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. PADMA, ESQ.  
16 Nevada Bar No. 10417  
17 PAUL PADMA LAW, PLLC  
18 4560 South Decatur Blvd., Suite 300  
19 Las Vegas, NV 89103  
20 *Attorneys for Plaintiffs*

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Nevada Bar No. 8619  
ZACHARY J. THOMPSON, ESQ.  
Nevada Bar No. 11001  
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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 \_\_\_\_ day of November, 2019.

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

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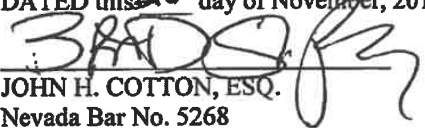
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Nevada Bar No. 10417  
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18 *Attorneys for Plaintiffs*

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

19  
20  
21 DATED this <sup>26<sup>th</sup></sup> day of November, 2019.

22   
23 JOHN H. COTTON, ESQ.  
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28 Shah, M.D.*

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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.

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dba Centennial Hills Hospital Medical Center*



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**RESP**

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 JAMES P. KELLY, ESQ.  
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 Las Vegas, Nevada 89103  
 Tele: (702) 366-1888  
 Fax: (702) 366-1940  
*Attorneys for Plaintiffs*

**DISTRICT COURT**  
**CLARK COUNTY, NEVADA**

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

Plaintiffs,

vs.

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

Defendants.

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

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

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

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

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

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

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

8  
9 **INTERROGATORY NO. 10:**

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

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

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

19 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

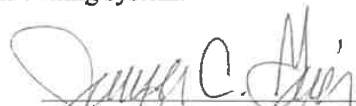


Paul S. Padda, Esq.  
James P. Kelly, Esq.  
4560 South Decatur Boulevard, Suite 300  
Las Vegas, Nevada 89103  
*Attorneys for Plaintiffs*

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.

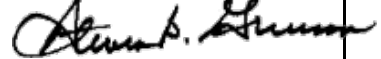
2. I have read the foregoing **RESPONSES TO DEFENDANT JULIANO, CONCIO AND SHAH'S FIRST SET OF INTERROGATORIES TO PLAINTIFF BRIAN POWELL AS SPECIAL ADMINISTRATOR** and know the contents thereof; that the same is true of my own knowledge, except for those matters therein stated upon information and belief, 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’



**ROPP**  
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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  
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Plaintiffs,

vs.

VALLEY HEALTH SYSTEM, LLC (doing  
business as "Centennial Hills Hospital Medical  
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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 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**

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

COMES NOW, Defendants VALLEY HEALTH SYSTEM, LLC (doing business as  
"Centennial Hills Hospital Medical Center"), a foreign limited liability company; UNIVERSAL  
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 BRISBOIS  
2 BISGAARD & SMITH, LLP, hereby submit their reply to Plaintiffs' opposition to CHH's motion  
3 for an order granting summary judgment due to the expiration of the statute of limitations as  
4 contained in NRS 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 21<sup>st</sup> day of October, 2020

9  
10 LEWIS BRISBOIS BISGAARD & SMITH LLP

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



1 **MEMORANDUM OF POINTS AND AUTHORITIES**

2 **I. INTRODUCTION**

3 Plaintiffs **fail to cite one legal authority or contradict** any authority CHH advances to  
4 dispute CHH's basis for its Motion. Plaintiffs' lead argument in opposition is predicated on both a  
5 false assumption and claim that the instant motion is a rehearing of CHH's prior motion to dismiss  
6 in violation of EDCR 2.24. Plaintiffs' counsel also uses his lead opposition argument to complain  
7 about having to respond to legitimate written discovery propounded upon the respective Plaintiffs.  
8 **Plaintiffs' counsel misrepresents facts and purposefully excludes material evidence that**  
9 **Plaintiffs' themselves just recently disclosed which categorically refute Plaintiffs' assertions**  
10 **they make in opposition to the instant motion.** This lack of candor by Plaintiffs' counsel is  
11 disturbing to say the least, and the evidence, which will be discussed herein below, demonstrates  
12 that Plaintiffs were actually on inquiry notice as early as the date of Ms. Powell's death on May 11,  
13 2017, and as late as June 11, 2017, when Special Administrator and Ms. Powell's ex-husband, Brian  
14 Powell, filed a complaint with the Nevada Nursing Board wherein he specifically requested an  
15 investigation of Ms. Powell's death. His complaint to the Nursing Board asserted that there was "a  
16 lack of sufficient care from those assigned to her ensure her well being [at CHH] . . . Now I ask that  
17 you advocate for her, investigate and ensure this doesn't happen again."<sup>1</sup> This acknowledgement  
18 by the lead plaintiff in this case could not be more clear that Plaintiffs not only suspected potential  
19 malpractice, but affirmatively accused CHH of same and requested intervention by a State agency.<sup>2</sup>  
20 There could be no clearer evidence of inquiry notice.

21  
22  
23  
24 <sup>1</sup> See, Excerpts from Plaintiffs' First Supplement to Initial Designation of Experts and Pre-Trial List  
25 of Witnesses and Documents Pursuant to NRCP 16.1(A)(3), annexed hereto as **Exhibit "O"**,  
specifically Special Administrator Brian Powell's Complaint against CHH Nurse Michael Pawlak  
dated June 11, 2017 designated as PLTF 48-49.

26 <sup>2</sup> All other Plaintiffs in the instant case are charged with the same inquiry notice since they all have  
27 an identity of interest. *See, Costello v Casler*, 127 Nev. 436, 441-442, 254 P.3d 631, 634-635 (2011);  
28 *Murphy v. City of Portland*, 2007 U.S. Dist. LEXIS 105222 at 8-10 (DC Oregon, May 2, 2007).

(footnote continued)

1 Furthermore, Plaintiffs' counsel failed to acknowledge the completely different standards,  
2 evidentiary requirements, and court responsibilities on a motion for summary judgment versus the  
3 limitations posed by motions to dismiss.

4 Finally, Plaintiffs' reference to the negligent infliction of emotional distress (NIED) claim  
5 has little if anything to do with the instant motion before the Court. CHH referred only the NIED  
6 claim to demonstrate that it stems from the malpractice claims and is subject to the same statute of  
7 limitations as the professional negligence claims.<sup>3</sup> Co-defendants separately moved for summary  
8 judgment on the limited issue of the NIED claim to which CHH joined.

## 9 **II. LEGAL ARGUMENT**

### 10 **A. Motion to Dismiss Standard vs. Summary Judgment Standard**

11 For dismissal under NRCP 12(b)(5), the court is to construe the pleading liberally and draw  
12 every fair inference in favor of the non-moving party. *Vacation Village v. Hitachi America*, 110  
13 Nev. 481, 484, 874 P.2d 744, 746 (1994). In a motion to dismiss, all factual allegations in the  
14 complaint must be regarded as true and all inferences must be drawn in favor of the non-moving  
15 party. *Buzz Stew, LLC v. City of North Las Vegas*, 181 P.3d 670, 672 (Nev 2008). A complaint  
16 should only be dismissed if it appears beyond a doubt that the plaintiff could prove no set of facts,  
17 which, if true, would entitle him to relief. *Id.* "When the defense of statute of limitations appears  
18 from the complaint itself, a motion to dismiss is proper." *Kellar v. Snowden*, 87 Nev. 488, 489 P.2d  
19 90 (1971). NRS 41A.097 (2)(a) and (c) requires that an action based upon professional negligence  
20 of a provider of health be commenced the earlier of one year from discovery of the alleged  
21 negligence, but no more than three years after alleged negligence. On motions to dismiss, a court  
22 is limited to evaluating the four corners of the complaint itself, without regard to any extraneous  
23 evidence.

24 Summary judgment, on the other hand, is appropriate "if the pleadings, depositions, answers  
25 to interrogatories, and admissions on file, together with the affidavits, if any, show that there is no  
26

27 <sup>3</sup> See, *Mendoza v. Johnson*, 2016 Nev. Dist. LEXIS 3521, Case No. A-14-708740-C (March, 2016)  
28 in which the District Court acknowledged that NIED claims tied to medical malpractice lawsuits are  
subject to the medical malpractice statute of limitations.

1 genuine issue as to any disputed material fact and that the moving party is entitled to a judgment as  
2 a matter of law.” N.R.C.P. 56(c). In other words, a motion for summary judgment shall be denied  
3 only when the evidence, taken together, shows a genuine issue as to any material fact. In the  
4 milestone case *Wood v. Safeway, Inc.*, 121 Nev. 724, 731 (2005), the Supreme Court of Nevada held  
5 that “[t]he substantive law controls which factual disputes are material” to preclude summary  
6 judgment, and that “[a] factual dispute is genuine when the evidence is such that a rational trier of  
7 fact could return a verdict for the nonmoving party.” *Id.* Summary judgment is proper “where the  
8 record before the Court on the motion reveals the absence of any material facts and [where] the  
9 moving party is entitled to prevail as a matter of law.” *Zoslaw v. MCA Distribution Corp.*, 693 F.2d  
10 870, 883 (9th Cir. 1982), *cert. denied*, 460 U.S. 1085 (1983); Fed. R. Civ. Proc. 56. “A material  
11 issue of fact is one that affects the outcome of the litigation and requires a trial to resolve the parties  
12 differing versions of the truth.” *Sec. and Exch. Comm. v. Seaboard Corp.*, 677 F.2d 1289, 1293 (9th  
13 Cir. 1982).

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

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

1 material issue.” *Zoslaw*, 693 F.2d at 883. The moving party is entitled to summary judgment if the  
2 non-moving party, who bears the burden of persuasion, fails to designate “specific facts showing  
3 that there is a genuine issue for trial.” *Celotex Corp. v. Catrett*, 477 U.S. 317, 324, 106 S.Ct. 2548,  
4 91 L. Ed. 2d 265 (1986) (internal quotation omitted).

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

6 [T]he motion may, and should, be granted so long as whatever is  
7 before the district court demonstrates that the standard for the entry  
8 of summary judgment, as set forth in Rule 56(c), is satisfied. One of  
9 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.

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

13 In other words, when CHH made its motion to dismiss, the Court was obligated to take the  
14 allegations made on the face of the Complaint as true. CHH’s prior motion to dismiss was limited  
15 solely to the Complaint. On the instant motion, Plaintiffs do not receive that preference, and the  
16 Court is now obligated to review admissible evidence. CHH came forth with evidence in the first  
17 instance to demonstrate that Plaintiffs’ received all materials necessary to investigate and suspect  
18 alleged malpractice merely a couple of weeks after Ms. Powell’s death in May, 2017 and that the  
19 case was filed more than one year from the discovery date. The burden then shifted to Plaintiffs to  
20 demonstrate otherwise. This they failed to do.

21 **B. Fraudulent Concealment Must Be Pled With Particularity**

22 In opposition to the instant Motion, Plaintiffs effectively claim that they were misled as to  
23 Ms. Powell’s cause of death and lacked sufficient information to suspect alleged malpractice.  
24 Plaintiffs state that they were misled by Ms. Powell’s death certificate’s cause of death, and only  
25 after receiving the HHS Report dated February 5, 2018 were they made aware of alleged specific  
26 deviations from the standard of care. Plaintiffs are, in essence, making a claim of fraudulent  
27 concealment. As the evidence submitted herewith and on the motion in chief, Plaintiffs assertions  
28 are entirely false.

1 In the first instance, a claim for fraudulent concealment needs to be alleged with  
2 particularity, demonstrating “ . . . the means by which the previously unknown information was  
3 acquired within the statutory period which led to the discovery of the concealment and underlying  
4 breach of fiduciary duty.” *Golden Nugget v. Ham*, 98 Nev. 311, 314-315 (1982). A review of the  
5 face of Plaintiffs Complaint<sup>4</sup> demonstrates that there is no allegation of fraudulent concealment with  
6 particularity. Plaintiff’s failure to so allege with particularity necessitates the granting of summary  
7 judgment.

8 **C. Fraudulent Concealment Requires Proof of Fraudulent Means to Conceal**  
9 **Plaintiff’s Cause of Action as Well as Plaintiff’s Actual Lack of Awareness**  
10 **Thereof Caused by the Concealment**

11 In *Garcia v. Eighth Judicial Dist. Court of Nev.*, 2011 Nev. Unpub. LEXIS 1288, 2011 WL  
12 5903792, subsequently published without opinion at 127 Nev. 1136 (November 22, 2011), the  
13 Supreme Court held that fraudulent concealment in a medical malpractice context requires a  
14 showing by Plaintiff that the doctor (1) used fraudulent means to keep the plaintiff unaware of her  
15 cause of action, and (2) Plaintiff was actually ignorant of her cause of action. *See, Id.* 2011 Nev.  
16 Unpub. LEXIS at 5. In this case, Plaintiffs failed to demonstrate either prong of this test. There is  
17 a complete absence of any evidence in support of Plaintiffs’ Complaint or in opposition to the instant  
18 motion demonstrating either that there was fraud involved or that Plaintiffs were unaware of their  
19 cause of action against CHH resulting therefrom. Plaintiffs failed to plead fraudulent concealment  
20 with specificity, as they were required to do, rendering Plaintiffs’ Complaint facially and fatally  
21 deficient. Second, Plaintiffs failed to interpose any evidence of what materials they allegedly sought  
22 from CHH prior to instituting their original Complaint which they now claim they were missing in  
23 determining the potential for a medical malpractice lawsuit. In fact, the affidavit of Plaintiffs’  
24 expert, Dr. Sami Hashim, states in clear terms the following:

25 **Based upon the medical records**, the patient did not and with high  
26 **probability could not have died from the cause of death stated in the**  
27 **Death Certificate. The patient died as a direct consequence of**  
28 **respiratory failure directly due to below standard of care violations**  
**as indicated by her medical records and reinforced by the**

<sup>4</sup> **Exhibit “A”** to CHH’s Motion in chief.

(footnote continued)

(Emphasis supplied).

**Dr. Hashim noted that he primarily relied upon the very medical records which Plaintiffs obtained in May/June, 2017. The report of the Department of Health and Human Services is referred to by Dr. Hashim as only a “reinforcement” of what was contained in the medical records.** Plaintiffs attempt to paint the picture that they lacked sufficient information to be on notice of potential malpractice, when their own expert indicated that the medical records themselves (which Plaintiffs long had in their possession) were sufficient from which to form a claim of malpractice.

“[T]he party alleging fraud bears the burden of proving it with clear, precise, and unequivocal evidence.’ (Internal quotation marks omitted.) [*Falls Church Group, Ltd. v. Tyler, Cooper & Alcorn, LLP*, 281 Conn. 84, 105,] 110, [912 A.2d 1019 (2007)].”

“To establish that the defendants had fraudulently concealed the existence of their cause of action and so had tolled the statute of limitations, **the plaintiffs had the burden of proving** that the defendants were aware of the facts necessary to establish this cause of action . . . and that they had intentionally concealed those facts from the plaintiffs . . . The defendants' actions must have been directed to the very point of obtaining the delay [in filing the action] of which [they] afterward [seek] to take advantage by pleading the statute . . . **To meet this burden, it was not sufficient for the plaintiffs to prove merely that it was more likely than not that the defendants had concealed the cause of action. Instead, the plaintiffs had to prove fraudulent concealment by the more exacting standard of clear, precise, and unequivocal evidence . . .**” (Citations omitted; footnote omitted; internal quotation marks omitted.) *Bound Brook Associates v. Norwalk*, 198 Conn. 660, 665-66, 504 A.2d 1047 (1986).

*Richardson v. Hierholzer*, No. CV176072031S, 2018 Conn. Super. LEXIS 979, at \*12-13 (Super. Ct. May 17, 2018) (emphasis supplied).

Furthermore, as the Nevada Court of Appeals held in *Callahan v. Johnson*, 2018 Nev. App. Unpub. LEXIS 950, 3-5

Under Nevada law, the one-year statute of limitations begins to run

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<sup>5</sup> See, Affidavit of Sami Hashim, M.D. attached as Exhibit A to Plaintiffs’ Complaint, which itself is attached to Plaintiffs’ Motion in chief as **Exhibit “A”**, para. 6(B).

1 when the plaintiff “knows or, through the use of reasonable diligence,  
2 should have known of facts that would put a reasonable person on  
3 inquiry notice of his cause of action.” *Massey v. Litton*, 99 Nev. 723,  
4 728, 669 P.2d 248, 252 (1983). Our supreme court has clarified that  
5 the plaintiff need not know the “precise legal theories” underlying her  
6 claim, so long as the plaintiff has a “general belief that someone's  
7 negligence may have caused his or her injury.” *Winn*, 128 Nev. at  
8 252-53; 277 P.3d at 462. Thus, at its core the one-year statute of  
9 limitation requires the “plaintiff to be aware of the cause of his or her  
10 injury.” *Libby*, 130 Nev. at 365, 325 P.3d at 1279 (addressing the rule  
11 from *Massey* and *Winn*). The district court may determine the accrual  
12 date as a matter of law if the evidence irrefutably demonstrates that  
13 date. *Winn*, 128 Nev. at 253, 277 P.3d at 463.

8 We conclude the uncontroverted facts show that Callahan was on  
9 inquiry notice more than a year in advance of the date she filed her  
10 complaint. Critically, Callahan knew that her nerve had been cut  
11 during the February 10 surgery and that this injury caused her  
12 complained-of symptoms. Callahan testified that her symptoms began  
13 immediately following the February 10 surgery and that Dr. Johnson  
14 and Dr. Glyman both opined that her symptoms stemmed from nerve  
15 damage sustained during that surgery. On April 22, 2014, when  
16 Callahan first presented to Dr. Glyman, she listed “lingual nerve  
17 injury” as the reason for her visit. Moreover, Callahan testified that  
18 Dr. Glyman confirmed during the May 5 surgery that Callahan's nerve  
19 had been cut in half and that he told her of the injury no later than  
20 May 12. Dr. Johnson's medical records also show that Callahan called  
21 Dr. Johnson shortly after her May 5 surgery to tell him that the nerve  
22 had been cut, but repaired in surgery.

16 Although Callahan may have misunderstood which nerve was  
17 actually injured and why, she was still aware of the cause of her  
18 injury—that her nerve had been cut in half during the February 10  
19 surgery—by no later than May 12, 2014. *See Libby*, 130 Nev. at 365,  
20 325 P.3d at 1279 (holding that the one-year statute of limitation  
21 requires the “plaintiff to be aware of the cause of his or her injury”).  
22 We conclude this knowledge “would put a reasonable person on  
23 inquiry notice” of her cause of action, and that the record therefore  
24 irrefutably demonstrates Callahan was on inquiry notice more than a  
25 year before she filed her complaint. *See Massey*, 99 Nev. at 728, 669  
26 P.2d at 252.

22 This case is predicated on Plaintiffs’ claim of improper patient monitoring. CHH’s motion  
23 in chief clearly demonstrates Plaintiffs’ received the complete copy of Ms. Powell’s medical records  
24 in June, 2017.<sup>6</sup> They went to Probate Court to obtain a Court order to obtain them in May, 2017.<sup>7</sup>

26 <sup>6</sup> Exhibits “M” and “N” to CHH’s motion in chief and the exhibits annexed thereto.

27 <sup>7</sup> Exhibit A to Exhibit “M” to CHH’s motion in chief

28 (footnote continued)

1 Brian Powell specifically wrote a complaint to the Nevada Nursing Board accusing CHH personnel  
2 of malpractice and requesting an investigation on June 11, 2017.<sup>8</sup> The Nevada Department of Health  
3 and Human Services specifically acknowledged Mr. Powell's separate complaint of patient neglect  
4 on May 23, 2017 with a promise to investigate same.<sup>9</sup> Plaintiffs failed to provide any evidence of  
5 the materials they claim to have missed to prevent them from determining they had a potential  
6 malpractice claim. In fact, all of the evidence (which Plaintiffs specifically want to hide from this  
7 Court), demonstrates that they indeed possessed everything they needed. Plaintiffs had more than  
8 inquiry notice of their potential claim - they just failed to timely file their case.

9 Plaintiffs' argument that they were somehow misled by the death certificate and the  
10 coroner's report is specious at best. Specifically, the coroner's report made a particular finding as  
11 to cause of death.<sup>10</sup> CHH had nothing to do with the preparation of the coroner's report, and cannot  
12 be held as having fraudulently concealed anything pertaining to Ms. Powell's death when CHH had  
13 no hand in the preparation thereof.

14 "Only when the evidence irrefutably demonstrates that a plaintiff was put on inquiry notice  
15 of a cause of action should the district court determine this discovery date as a matter of law." *Winn*  
16 *v. Sunrise Hosp. & Med. Ctr.*, 128 Nev. 246, 258, 277 P.3d 458, 466 (2012). "[A] person is put on  
17 'inquiry notice' when he or she should have known of facts that 'would lead an ordinarily prudent  
18 person to investigate the matter further.' Black's Law Dictionary 1165 (9th ed. 2009). We reiterated  
19 in *Massey* that these facts need not pertain to precise legal theories the plaintiff may ultimately  
20 pursue, but merely to the plaintiff's general belief that someone's negligence may have caused his  
21 or her injury. 99 Nev. at 728, 669 P.2d at 252." *Winn, supra* at 252-53, 277 P.3d 458, 462 (2012).  
22 The evidence presented here in reply and in CHH's motion in chief irrefutably demonstrates that  
23 Plaintiffs' possessed inquiry notice as late as June 11, 2017, and as early as May, 2017. The one

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24 <sup>8</sup> **Exhibit "O"** hereto, specifically Special Administrator Brian Powell's Complaint against CHH  
25 Nurse Michael Pawlak dated June 11, 2017 designated as PLTF 48-49.

26 <sup>9</sup> **Exhibit "O"** hereto, PLTF 50

27 <sup>10</sup> **Exhibit "O"** hereto, PLTF 34-47

28 (footnote continued)



1 year statute of limitations began running from as late as June 11, 2017, and as early as Ms. Powell's  
2 date of death on May 11, 2017, making the instant Complaint untimely filed as a matter of law.

3 Here, Plaintiffs possessed the entirety of Ms. Powell's medical records just a few weeks after  
4 her death.<sup>11</sup> They initiated a complaint to the Nursing Board directly alleging issues with the care  
5 Ms. Powell received at CHH and requested an investigation of same as late as June, 2017.<sup>12</sup> Earlier  
6 than that, Plaintiffs initiated a complaint to the Nevada Department of Health and Human Services  
7 alleging patient neglect as it pertained to Ms. Powell, the acknowledgement of which HHS sent on  
8 May 23, 2017.<sup>13</sup> Plaintiffs did nothing until February 4, 2019 before filing their Complaint.  
9 Essentially, their position is that until the State rendered its findings on February 5, 2018, they had  
10 no knowledge of potential malpractice. Not only is that not the standard, Plaintiffs' position is  
11 untenable and their own evidence demonstrates a contrary position. Once inquiry notice was  
12 received, the clock started running. **Plaintiffs' own documents demonstrate they possessed that**  
13 **very notice as late as June 11, 2017, but other documents show they knew as early as either**  
14 **Mrs. Powell's date of death on May 11, 2017, or on May 23, 2017, when the state acknowledged**  
15 **their complaint of patient neglect.**<sup>14</sup> **At the latest, they had until June 11, 2018 to file their**  
16 **Complaint. However, it was not filed until almost eight months later.** Moreover,

17 [w]e have previously determined that NRS 41A.097(3)'s tolling  
18 provision applies only when there has been an *intentional act* that  
19 objectively hindered a reasonably diligent plaintiff from timely filing  
20 suit. *Winn*, 128 Nev. at , 277 P.3d at 464.

21 Ms. Hamilton does not point to any evidence that Dr. Libby concealed  
22 anything from her. She argues only that Dr. Libby "should have  
23 known" that he left the sutures in her knee, but does not allege that  
24 Dr. Libby performed any intentional act that hindered her from  
25 learning about the sutures. We therefore conclude that Ms. Hamilton  
26 has failed to satisfy *Winn's* requirement that a plaintiff must prove that  
27 there was an intentional act of concealment by the health care

28 <sup>11</sup> **Exhibits "M" and "N"** to CHH's motion in chief and the exhibits annexed thereto.

<sup>12</sup> **Exhibit "O"** hereto, PLTF 48-49.

<sup>13</sup> **Exhibit "O"** hereto, PLTF 50

<sup>14</sup> Interestingly, Plaintiffs' failed to disclose the date Mr. Powell filed his complaint with HHS  
alleging patient neglect and possible malpractice, but clearly it was sent earlier than HHS's May 23,  
2017 acknowledgement letter.

provider, and thus, has not shown that there are any genuine issues of material fact remaining as to whether NRS 41A.097(3)'s tolling provision applied to toll the statute of limitation for her claim.

*Libby v. Eighth Judicial Dist. Court of the State*, 130 Nev. Adv. Rep. 39, 325 P.3d 1276, 1281 (Nev. 2014) (emphasis in original). In this case, Plaintiffs failed to demonstrate any intentional act by the CHH to have objectively hindered Plaintiffs from timely filing suit against it. Their failure to demonstrate any intentional act by CHH, which they are obligated to do, necessitates the granting of the instant motion.

**D. Plaintiff's Lack of Diligence Precludes Tolling of the Statute of Limitations**

According to the Nevada Supreme Court:

In addition to establishing that a defendant “concealed” information under [NRS 41A.097] subsection 3, a plaintiff seeking to toll [NRS 41A.097] subsection 2's one-year discovery period must also establish that he or she satisfied [NRS 41A.097] subsection 2's standard of “reasonable diligence.” Thus, regardless of a plaintiff's subjective concern regarding the significance of withheld information, the plaintiff must show that this information would have objectively hindered a reasonably diligent plaintiff from timely filing suit. In other words, the plaintiff must show that the withheld information was “material.” *Cf. Basic Inc. v. Levinson*, 485 U.S. 224, 240, 108 S. Ct. 978, 99 L. Ed. 2d 194 (1988) (equating “materiality” of undisclosed information with the significance that a “reasonable investor” would ascribe to the information); Restatement (Second) of Torts § 538(2)(a) (1977) (indicating that a matter is “material” if “a reasonable man would attach importance to its existence or nonexistence in determining his choice of action”).

*Winn, supra* at 255, 277 P.3d 458, 464 (2012).

“[Plaintiff] Winn must satisfy a two-prong test: (1) that Sunrise [Defendant] intentionally withheld records after being presented with an unequivocal request for them, and (2) that this intentional withholding would have hindered a reasonably diligent plaintiff from procuring an expert affidavit.” *Winn, supra*. 128 Nev. at 256-57, 277 P.3d 458, 465 (2012).

Here, Plaintiffs fail to demonstrate either prong of the test. In the first place, Plaintiffs failed to submit any evidence of specifically what was requested from CHH prior to initiating their lawsuit in February, 2019, which they failed to receive. Second, Plaintiffs failed to establish that any records were not supplied to them, nor that they were intentionally withheld. Third, Plaintiffs failed to establish that even if they were intentionally withheld (which they were not), that any additional

1 records hindered a reasonably diligent plaintiff from procuring an expert affidavit. Plaintiffs' own  
2 expert rendered his opinion, by his own admission, based upon the medical records from CHH, with  
3 the Health and Human Services Report as only additional supporting material. In other words, the  
4 medical records themselves were more than sufficient for him to render his opinion.

5 In order “. . . to avoid the bar of limitations by claiming fraudulent concealment, a plaintiff  
6 must show that he used due diligence to detect the fraud.” *Brown v. Westinghouse Electric Corp.*,  
7 803 S.W.2d 610, 615 (Court of Appeals, Missouri, Eastern District, 1990).

8 As the Court of Appeals held in *Eamon v. Martin*, 2016 Nev. App. Unpub. LEXIS 137, \*8

9 . . . [C]oncealment only tolls the statute of limitations where the  
10 information would have objectively hindered a reasonably diligent  
11 plaintiff from filing suit. In this case the allegedly concealed  
12 information was available to Eamon through other means before the  
13 deadline expired; had he been diligent and undergone further medical  
14 examination when his physicians recommended it rather than wait  
15 while the pain worsened, he could have discovered the alleged  
16 malpractice within the statutory period.

17 In this case, Plaintiffs requested and received all information from CHH in May/June,  
18 2017.<sup>15</sup> They reported suspected patient neglect to the State (on a date earlier than May 23, 2017)  
19 and received acknowledgement of same on May 23, 2017.<sup>16</sup> They reported a CHH nurse for neglect  
20 to the Nursing Board on June 11, 2017, alleging a need for an investigation and claiming that it  
21 resulted from “a lack of sufficient care from those assigned to her ensure her well being.”<sup>17</sup> Now,  
22 Plaintiffs have the audacity to feign ignorance until after their receipt of the HSS Report. Such an  
23 argument is untenable. From all of the cited case law, the Courts toll a statute of limitations in the  
24 case of fraudulent concealment so that the alleged concealer derives no benefit from the time of  
25 concealment. In this case, not only was there no concealment, Plaintiffs possessed the very inquiry  
26 notice that commences the running of the statute of limitations only as late as June 11, 2017. Despite  
27 Ms. Powell's death on May 11, 2017 (which should have started the clock running), giving the  
28

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26 <sup>15</sup> Exhibits “M” & “N” to CHH's motion in chief and exhibits annexed thereto.

27 <sup>16</sup> Exhibit “O” hereto, PLTF 50

28 <sup>17</sup> Exhibit “O” hereto, PLTF 48-49

1 Plaintiffs every benefit of the doubt, they admittedly had inquiry notice on June 11, 2017, tolling  
2 the limitations period only for one month (**the aforementioned evidence demonstrates they possessed**  
3 **inquiry notice on or before May 23, 2017 with acknowledgement of an investigation by HHS**  
4 **resulting from Mr. Powell’s complaint of alleged patient neglect**). Plaintiffs do not get to claim  
5 a tolling of the statute of limitations for a period of 8 months beyond that when they admittedly had  
6 inquiry notice long before.

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

12 “This does not mean that the accrual period begins when the plaintiff discovers the precise  
13 facts pertaining to his legal theory, **but only to the general belief that someone’s negligence may**  
14 **have caused the injury.**” (citing *Massey*, 99 Nev. at 728, 669 P.2d at 252) (emphasis  
15 supplied). Thus, the plaintiff “discovers” the injury when ‘he had facts before him that would have  
16 led an ordinarily prudent person to investigate further into whether [the] injury may have been  
17 caused by someone’s negligence.’” *Eamon* at 4 (quoting *Winn v. Sunrise Hosp. & Med. Ctr.*, 128  
18 Nev 246, 252, 277 P.3d 458, 462). “The plaintiff need not be aware of the precise causes of action  
19 he or she may ultimately pursue. *Winn*, 128 Nev. at 252-53, 277 P.3d at 462. Rather, the statute  
20 begins to run once the plaintiff knows or should have known facts giving rise to a ‘general belief  
21 that someone’s negligence may have caused his or her injury.’ *Id.*” *Golden v. Forage*, 2017 Nev.  
22 App. Unpub. LEXIS 745 at 3 (Nev. App. October 13, 2017).

23 In *Green v. Frey*, 2014 Nev. Dist. LEXIS 1401 at 3 (CV12-01530, Washoe County), the  
24 decedent’s date of death was determined to be sufficient to place the plaintiff on inquiry notice. As  
25 applied to the facts of this case, the statute of limitations should have began to run from May 11,  
26 2017, Ms. Powell’s date of death. In *Barcelona v. Eighth Judicial Dist. Court*, 448 P.3d 544, the  
27 Supreme Court, in an unpublished decision, held that death following surgery would lead an  
28 ordinarily prudent person to investigate further into possible negligence, especially since their

1 Complaint included a medical affidavit demonstrating that the plaintiffs had sufficient information  
2 to make out a malpractice case.

3 In the instant case, Dr. Hashim’s own affidavit stated that he possessed sufficient information  
4 from the CHH medical records themselves, which Plaintiffs had in their possession in May/June,  
5 2017. The statute of limitations, therefore, should begin running from as late as when they received  
6 the CHH records in May/June, 2017. Moreover, Plaintiffs themselves initiated two state  
7 investigations concerning the care of Ms. Powell, and alleged in both requests that they suspected  
8 negligence. This definitively proves they possessed inquiry notice long before they claim in  
9 opposition to the instant motion.

10 The date on which the one-year statute of limitation begins to run may be decided as a matter  
11 of law where uncontroverted facts establish the accrual date. *See Golden, supra.* at \*2 (Nev. App.  
12 Oct. 13, 2017) (“The date on which the one-year statute of limitation began to run is ordinarily a  
13 question of fact for the jury, and may be decided as a matter of law only where the uncontroverted  
14 facts establish the accrual date.”) (citing *Winn v. Sunrise Hosp. & Med. Ctr.*, 128 Nev. 246, 251,  
15 277 P.3d 458, 462 (2012) (recognizing that the district court may determine the accrual date as a  
16 matter of law where the accrual date is properly demonstrated)); *see also Dignity Health v. Eighth*  
17 *Judicial Dist. Court of State, ex rel. Cty. of Clark*, No. 66084, 2014 WL 4804275, at \*2 (Nev. Sept.  
18 24, 2014).

19 If the Court finds that the plaintiff failed to commence an action against a provider of health  
20 care before the expiration of the statute of limitations under NRS 41A.097, the Court may properly  
21 dismiss the Complaint pursuant to NRCP 12(b)(5). *See, e.g., Egan v. Adashek*, 2015 Nev. App.  
22 Unpub. LEXIS 634, at \*2 (Nev. App. Dec. 16, 2015) (affirming district court’s dismissal of action  
23 under NRCP 12(b)(5) where the plaintiff failed to file within the statute of limitations set forth in  
24 NRS 41A.087); *Rodrigues v. Washinsky*, 127 Nev. 1171, 373 P.3d 956 (2011) (affirming district  
25 court’s decision granting motion to dismiss the plaintiffs’ claims for failure to comply with NRS  
26 41A.097); *Domnitz v. Reese*, 126 Nev. 706, 367 P.3d 764 (2010) (affirming district court’s decision  
27 dismissing plaintiff’s claim after finding that plaintiff had been placed on inquiry notice prior to one  
28

1 year before his complaint was filed and that the statute of limitations had expired pursuant to NRS  
2 41A.97(2)).

3 While this is a motion for summary judgment (unlike a motion to dismiss when the  
4 averments in the Complaint need to be taken as true), the standard is more favorable to the moving  
5 party since once a prima facie case that no genuine issue of material fact exists, the non-moving  
6 party is obligated to come forth with sufficient **and** admissible evidence demonstrating the presence  
7 of a material issue of fact. CHH has more than presented their prima facie case, and Plaintiffs  
8 opposition and further lack of candor with the Court (by failing to provide evidence they disclosed  
9 to the defendants), demonstrates an absence of any credibility on their part, and a lack of admissible  
10 evidence sufficient to overcome the burden now shifted to them for their failure to timely file their  
11 Complaint.

12 Under Nevada law, Plaintiffs did not have to know precise facts or legal theories for their  
13 claims; rather, they only needed to be placed on inquiry notice. Here, under the facts alleged in the  
14 Complaint and based upon the conclusive and incontrovertible evidence annexed hereto and CHH's  
15 motion in chief, Plaintiffs were placed on inquiry notice because they were aware of facts that would  
16 lead an ordinarily prudent person to investigate the matter further. Not only were they placed on  
17 inquiry notice, but they actually pursued the medical records upon which the Complaint is based  
18 and filed complaints with State agencies specifically alleging suspected malpractice. They sought  
19 and obtained all they needed to investigate the claims immediately after Ms. Powell's death and  
20 were in possession of all they needed and admittedly were on inquiry notice as late as June 11 2017.  
21 Plaintiffs did nothing for **20 months after being placed on inquiry notice**, and they failed to timely  
22 file their lawsuit.

23 Essentially, Plaintiffs argue that their time does not begin to run until someone or some entity  
24 tells them specifically either "I committed malpractice" or there is some deficiency which raises that  
25 issue. Plaintiffs had more than inquiry notice as late as June 11, 2017 but they failed to act. Now  
26 they want a pass on their lack of diligence. The law does not afford them that privilege.

27 ///

28 ///

1           **E.       Plaintiffs’ Negligent Infliction of Emotional Distress Claims Are Time Barred**

2                   **1.       Negligent Infliction of Emotional Distress Claims Require a Plaintiff’s**  
3                   **Contemporaneous Visualization of the Precipitating Event**

4           Under Nevada law, “the negligent infliction of emotional distress can be an element of the  
5 damage sustained by the negligent acts committed directly against the victim-plaintiff.” *Shoen v.*  
6 *Amerco, Inc.*, 111 Nev. 735, 748, 896 P.2d 469, 477 (1995). Thus, a cause of action for negligent  
7 infliction of emotional distress (“NIED”) has essentially the same elements as a cause of action for  
8 negligence: (1) duty owed by defendant to plaintiff, (2) breach of said duty by defendant, (3) said  
9 breach is the direct and proximate cause of plaintiff’s emotional distress, and (4) damages (i.e.,  
10 emotional distress). *See Id.* NIED is not a separate claim for relief but an element of a negligence  
11 claim in the victim-plaintiff context. *Id.* (“An examination of the case law indicates that Nevada  
12 has not expressly permitted damages to be recovered for the infliction of emotional distress in a  
13 negligence cause of action.”).

14           Traditionally, claimants could not recover damages for emotional distress absent some  
15 physical touching or “impact” as a result of the defendant’s negligent conduct. *State v. Eaton*, 101  
16 Nev. 705, 711, 710 P.2d 1370, 1374-75 (1985). Over time, Nevada courts recognized a cause of  
17 action for negligent infliction of emotional distress **where a bystander** suffers serious emotional  
18 distress which results in physical symptoms caused by apprehending the death or serious injury of  
19 a loved one due to the negligence of the defendant applying the general rules of tort law:

20           1.       **Proximate cause-** Plaintiff’s burden of proving causation in fact should not be  
21 minimized. The emotional injury must be directly attributable to the emotional impact of the  
22 plaintiff’s observation or contemporaneous sensory perception of the accident and immediate  
23 viewing of the accident victim.” *State v. Eaton*, 101 Nev. 705, 714, 710 P.2d 1370, 1376 (1985).

24           2.       **Primarily Liable** – The defendant must be primarily liable for the injury. *State v.*  
25 *Eaton*, 101 Nev. 705, 714-15, 710 P.2d 1370, 1377 (1985)

26           3.       **Harm to Plaintiff Must have been Foreseeable** - A further limit on liability requires  
27 that the harm occasioned by the defendant’s negligence must be foreseeable to be compensable. *Id.*

28           Here, it is undisputed that none of the Plaintiffs alleging a cause of action for NIED were

1 present for, or even witnessed Ms. Powell's death.<sup>18</sup> Thus, the bodily and emotional injuries for  
2 which Plaintiffs claim damages cannot be directly attributable to the emotional impact of their  
3 observation or contemporaneous sensory perception of Ms. Powell's death and immediate viewing  
4 of her at the time thereof, and Plaintiffs cannot successfully sustain an NIED claim against CHH or  
5 any other defendant.

6 Integral to this analysis is what has been deemed the "physical impact requirement." *See*,  
7 *e.g.*, *Olivero v. Lowe*, 116 Nev. 395, 399, 995 P.2d 1023, 1026 (2000). Nevada Courts have  
8 explained "general physical or emotional discomfort are insufficient to satisfy the physical impact  
9 requirement." *Chowdhry v. NLVH, Inc.*, 109 Nev. 478, 483, 851 P.2d 459, 462 (1993). Plaintiffs in  
10 this case have submitted **no evidence whatsoever** regarding this issue, and such evidence would be  
11 in their exclusive possession and control. They failed to submit an affidavit, declaration or any other  
12 form of admissible evidence to prove their claim. Based upon the evidence CHH has submitted,  
13 Plaintiffs lack any cause of action for NIED as admitted by Plaintiffs in their failure to respond to  
14 co-defendants' requests for admission.<sup>19</sup>

15 **2. NIED Claims Stemming From an Underlying Claim of Medical**  
16 **Malpractice Are Subject to the Same Statute of Limitations as the**  
**Medical Malpractice Claim Itself**

17 Plaintiffs' NIED claims, even if viable (which they are demonstrably not), are subject to the  
18 same statute of limitations requirements as the underlying professional negligence claims from  
19 which they stem. *See, Mendoza v. Johnson*, 2016 Nev. Dist. LEXIS 3521, Case No. A-14-708740-  
20 C (March, 2016); see also *Szymborski v. Spring Mt. Treatment Ctr.*, 403 P.3d 1280 (Nev. 2017).<sup>20</sup>

21  
22 <sup>18</sup> Exhibit "P" hereto

23 <sup>19</sup> Exhibit "P" hereto

24 <sup>20</sup> To determine whether the medical affidavit requirements of NRS 41A.071, apply, the courts must  
25 look to whether Plaintiff's underlying claims involve medical diagnosis, judgment, or treatment or  
26 are based on performance of nonmedical services. *See Szymborski*; see also *Gold v. Greenwich*  
27 *Hosp. Assn.*, 262 Conn. 248, 811 A.2d 1266, 1270 (Conn. 2002) (determining that the plaintiff's  
28 complaint was for medical malpractice because the "alleged negligence [was] substantially related  
to medical diagnosis and involved the exercise of medical judgment"); *Gunter v. Lab. Corp. of Am.*,  
121 S.W.3d 636, 640 (Tenn. 2003) ("When a plaintiff's claim is for injuries resulting from negligent  
medical treatment, the claim sounds in medical malpractice. When a plaintiff's claim is for injuries  
(footnote continued)



1 The key question is to determine the underlying basis of the lawsuit, i.e. the gravamen of a plaintiff's  
2 claims. If the claims stem directly from allegations of medical negligence, a plaintiff's remaining  
3 claims are subject to all of the requirements and limitations attributable to medical malpractice cases.

4 To make a determination of the applicability of the special rules for medical negligence  
5 cases, courts are to look at whether allegations of breach of duty involving medical judgment,  
6 diagnosis, or treatment indicate that a claim is for medical malpractice. See *Papa v. Brunswick Gen.*  
7 *Hosp.*, 132 A.D.2d 601, 517 N.Y.S.2d 762, 763 (App. Div. 1987) ("When the duty owing to the  
8 plaintiff by the defendant arises from the physician-patient relationship or is substantially related to  
9 medical treatment, the breach thereof gives rise to an action sounding in medical malpractice as  
10 opposed to simple negligence."); *Estate of French v. Stratford House*, 333 S.W.3d 546, 555 (Tenn.  
11 2011) ("If the alleged breach of duty of care set forth in the complaint is one that was based upon  
12 medical art or science, training, or expertise, then it is a claim for medical malpractice."), superseded  
13 by statute Tenn. Code. Ann. 29-26-101 et seq. (2011), as recognized in *Ellithorpe v. Weismark*, 479  
14 S.W.3d 818, 824-26 (Tenn. 2015). By extension, if the jury can only evaluate the plaintiff's claims  
15 after presentation of the standards of care by a medical expert, then it is a medical malpractice claim.  
16 See *Bryant*, 684 N.W.2d at 872; *Humboldt Gen. Hosp. v. Sixth Judicial Dist. Court*, 132 Nev., Adv.  
17 Op. 53, 376 P.3d 167, 172 (2016) (reasoning that a medical expert affidavit was required where the  
18 scope of a patient's informed consent was at issue, because medical expert testimony would be  
19 necessary to determine the reasonableness of the health care provider's actions). If, on the other  
20 hand, the reasonableness of the health care provider's actions can be evaluated by jurors on the basis  
21 of their common knowledge and experience, then the claim is likely based in ordinary negligence.  
22 See *Bryant*, 684 N.W.2d at 872. The *Szymborski* Court noted that "we must look to the gravamen  
23 or "substantial point or essence" of each claim rather than its form to see whether each individual  
24 claim is for medical malpractice or ordinary negligence." *Szymborski*, *supra* at 1285.

25  
26 \_\_\_\_\_  
27 resulting from negligent acts that did not affect the medical treatment of a patient, the claim sounds  
28 in ordinary negligence.") (Citation omitted)).

1 Like the statute of limitations requirement for medical malpractice cases, a medical affidavit  
2 is required for cases in which the gravamen of the claims assert a cause of action for medical  
3 malpractice. By deeming the primary thrust of a case as grounded in medical malpractice, all of the  
4 limitations and requirements attendant to such cases apply. In *Kinford v. Pincock*, 2019 Nev App.  
5 Unpub. LEXIS 318, 2019 WL 1388056, an unpublished opinion of the Nevada Court of Appeals,  
6 plaintiff sued for mental anguish from an alleged mishandled facial surgery. The Court held that  
7 plaintiff incorrectly asserted that his claim of mental anguish did not require a medical affidavit in  
8 support, since all of the alleged injuries stem from the purported mishandled surgery involving  
9 medical treatment and judgment. Thus, an expert medical affidavit to support the complaint was  
10 required. Its absence necessitated dismissal.

11 The Nevada Supreme Court in *Estate of Curtis v. South Las Vegas Med. Investor, LLC*, 2000  
12 Nev. LEXIS 2103 held that in cases involving negligent hiring claims which are inextricably linked  
13 to claims of professional negligence, such claims fall within the vicarious liability ambit rather than  
14 an independent tort, and such claims cannot be used to circumvent the requirement of a Chapter  
15 41A affidavit requirement. *See, Id.* at 7-8. In this case, Plaintiff alleges a negligent hiring, retention  
16 and supervision claim which stems directly from his allegation that Seven Hills prematurely  
17 discharged Mrs. Palmer. Plaintiff cannot seek to circumvent the affidavit requirement by alleging  
18 a separate cause of action which itself is wholly dependent upon a medical judgment determination,

19 In *Humboldt Gen. Hosp. v. Sixth Judicial Dist. Court of Nev.*, 132 Nev. 544, 376 P.3d 167  
20 (2016), the Nevada Supreme Court held that when a question requires an expert opinion regarding  
21 the standard of care, such a complaint requires a medical affidavit falling within the ambit of Chapter  
22 41A's requirements. *See, Id.* at 551, 376 P.3d at 172.

23 The Federal Courts in Nevada have also weighed in on when a medical affidavit is required.  
24 Most recently in *Stutts v. County of Lyon*, 2020 U.S. Dist. LEXIS 638394, the U.S.D.C for Nevada  
25 found that claims requiring expert testimony to determine the proper standard of care or which are  
26 substantially related to medical treatment require a Chapter 41A affidavit. *See, Id.* at 11. The Court  
27 determined that whether or not procedures are performed without a medical purpose involve issues  
28 of medical judgment, thus triggering the affidavit requirement. *See, Id.* at 12. Similarly, in *O'Neal*

1 *v. Las Vegas Metro. Police Dep't*, 2018 U.S. Dist. LEXIS 145237, 2018 WL 4088002 (2018), the  
2 U.S.D.C for Nevada found that defendant NaphCare's determination that the plaintiff's injuries  
3 required no further medical treatment or pain management required expert testimony to ascertain  
4 the reasonableness thereof on the issue of standard of care.

5 In *Szymborski*, the Nevada Supreme Court cited favorably to case law from other  
6 jurisdictions demonstrating scenarios involving medical decision making and treatment that should  
7 be considered professional negligence cases:

8 [W]e must determine whether Szymborski's claims involve medical  
9 diagnosis, judgment, or treatment or are based on Spring Mountain's  
10 performance of nonmedical services. See *id.*; see also *Gold v.*  
11 *Greenwich Hosp. Assn*, 262 Conn. 248, 811 A.2d 1266, 1270 (Conn.  
12 2002) (determining that **the plaintiff's complaint was for medical**  
13 **malpractice because the "alleged negligence [was] substantially**  
14 **related to medical diagnosis and involved the exercise of medical**  
**judgment"**); *Gunter v. Lab. Corp. of Am.*, 121 S.W.3d 636, 640  
(Tenn. 2003) ("**When a plaintiff's claim is for injuries resulting**  
**from negligent medical treatment, the claim sounds in medical**  
**malpractice.** When a plaintiff's claim is for injuries resulting from  
negligent acts that did not affect the medical treatment of a patient,  
the claim sounds in ordinary negligence.") (Citation omitted).

15 *Id.* at 1284 (emphasis added).

16 While the issue of whether a medical affidavit is required is not at issue here, the rationale  
17 for determining the applicability of the statute of limitations for NIED claims stemming therefrom  
18 carries the same logical requirements. Any causes of action which are inextricably linked to  
19 allegations of medical negligence are subject to the same statute of limitations requirements and the  
20 underlying medical malpractice claims from which they stem. The evidence submitted on CHH's  
21 motion in chief and annexed hereto, coupled with the legal authority cited in this Motion, taken  
22 together, demonstrate in no uncertain terms that Plaintiffs filed their Complaint late. Summary  
23 judgment granted in CHH's favor is the proper remedy and must be granted.

### 24 **III. CONCLUSION**

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

1 CHH be dismissed with prejudice along with all causes of action stemming directly from the alleged  
2 malpractice.

3 DATED this 21<sup>st</sup> day of October, 2020

4  
5 LEWIS BRISBOIS BISGAARD & SMITH LLP

6  
7 By /s/ Adam Garth  
8 S. BRENT VOGEL  
9 Nevada Bar No. 6858  
10 ADAM GARTH  
11 Nevada Bar No. 15045  
12 6385 S. Rainbow Boulevard, Suite 600  
13 Las Vegas, Nevada 89118  
14 Tel. 702.893.3383  
15 *Attorneys for Attorneys for Defendant Valley*  
16 *Health System, LLC dba Centennial Hills Hospital*  
17 *Medical Center*  
18  
19  
20  
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22  
23  
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1 **CERTIFICATE OF SERVICE**

2 I hereby certify that on this 21<sup>st</sup> day of October, 2020, a true and correct copy  
3 of **DEFENDANTS VALLEY HEALTH SYSTEM, LLC AND UNIVERSAL HEALTH**  
4 **SERVICES, INC.'S REPLY TO PLAINTIFFS' OPPOSITION TO DEFENDANTS'**  
5 **MOTION FOR SUMMARY JUDGMENT BASED UPON THE EXPIRATION OF THE**  
6 **STATUTE OF LIMITATIONS** was served by electronically filing with the Clerk of the Court  
7 using the Odyssey E-File & Serve system and serving all parties with an email-address on record,  
8 who have agreed to receive electronic service in this action.

9 Paul S. Padda, Esq.  
10 PAUL PADDA LAW, PLLC  
11 4560 S. Decatur Blvd., Suite 300  
12 Las Vegas, NV 89103  
13 Tel: 702.366.1888  
14 Fax: 702.366.1940  
15 [psp@paulpaddalaw.com](mailto:psp@paulpaddalaw.com)  
16 *Attorneys for Plaintiffs*

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

17  
18  
19 By /s/ Roya Rokni  
20 An Employee of  
21 LEWIS BRISBOIS BISGAARD & SMITH LLP  
22  
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24  
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27  
28

# EXHIBIT ‘O’

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

**LTWT**  
PAUL S. PADDA, ESQ. (NV Bar #10417)  
Email: *psp@paulpaddalaw.com*  
JAMES P. KELLY, ESQ. (NV Bar #8140)  
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Tele: (702) 366-1888  
Fax: (702) 366-1940  
*Attorneys for Plaintiff*

**DISTRICT COURT**  
**CLARK COUNTY, NEVADA**

\* \* \* \* \*

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

Plaintiffs,

vs.

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

Defendants.

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

**PLAINTIFFS' FIRST SUPPLEMENT  
TO INITIAL DESIGNATION OF  
EXPERTS AND PRE-TRIAL LIST OF  
WITNESSES AND DOCUMENTS  
PURSUANT TO NRCP 16.1(A)(3)**

**TO: ALL PARTIES AND THEIR RESPECTIVE COUNSEL HEREIN**

Pursuant to NRCP 16.1, Plaintiffs, ESTATE OF REBECCA POWELL, through Brian  
Powell as Special Administrator; DARCI CREECY, individually; TARYN CREECY,  
individually; ISIAAH KHOSROF, individually; LLOYD CREECY, individually, individually,

by and through their attorneys of record, PAUL S. PADDA, ESQ. and JAMES P. KELLY, ESQ. of PAUL PADDA LAW, PLLC, hereby submits the following supplemental Early Case Conference Disclosure Statement List of Documents and Witnesses and Pre-Trial Disclosures, as Plaintiff intends to introduce the following documents and witnesses at the trial of this matter with updated information in bold type:

**I. LIST OF DOCUMENTS AND EXHIBITS PLAINTIFFS EXPECT TO PRESENT AT TRIAL**

None at this time. Plaintiff reserves the right to supplement this list as discovery continues.

**II. LIST OF DOCUMENTS AND EXHIBITS PLAINTIFFS EXPECT TO PRESENT AT TRIAL IF THE NEED ARISES**

Pursuant to NRCP 16.1(a)(1)(B), Plaintiffs hereby discloses "a description by category and location" of the following documents. Regarding medical records, Plaintiffs will/has provided copies of most records and billing, but will execute HIPAA authorizations available to the defense upon request for any medical providers listed below in the event that any date of service or billing record is inadvertently overlooked in the list below or missing from the documents produced.

#	Description	Bates Number
<b><i>Plaintiffs' Initial Disclosures – March 20, 2020</i></b>		
1	Medical and Billing Records for decedent Rebecca Powell from Centennial Hills Hospital, previously disclosed by Defendant Centennial Hills Hospital [Records can be found from Defendant Centennial Hills Hospital Initial NRCP 16.1 Disclosures.]	CHH 0001 – CHH 0001166
<b><i>Plaintiffs' First Supplemental Disclosures – September 4, 2020</i></b>		
2	<b>Complaint</b>	<b>PLTF 1-29</b>
3	<b>Letters of Special Administration</b>	<b>PLTF 30</b>
4	<b>Death Certificate of Rebecca Powell</b>	<b>PLTF 31</b>
5	<b>Affidavit of Death</b>	<b>PLTF 32</b>



#	Description	Bates Number
6	Voicemail Transcription of Phone Call from "Mike" at Centennial Hospital – Produced by Plaintiff Taryn Creecy	PLTF 33
7	Clark County Coroner Report of Investigation	PLTF 34-47
8	Nevada State Board of Nursing Coworker Complaint Report dated June 11, 2017	PLTF 48-49
9	Letter from DHHS and Complaint Process Fact Sheet to Brian Powell dated May 23, 2017	PLTF 50-52
10	Letter and Report from DHHS to Brian Powell dated February 5, 2018	PLTF 53-65
11	Correspondence from Life Insurance Companies	PLTF 66-113
12	Receipts for Expenses	PLTF 114-122
13	Statements Showing Financial Support to Plaintiff Isaiah Khosrof	PLTF 123-126
14	Rebecca Powell's Diplomas, Certificates and Awards	PLTF 127-131
15	Photos of Rebecca Powell and Plaintiffs	PLTF 132-188
16	Sami Hashim, M.D.'s License Verification	PLTF 189
17	Miscellaneous Medical Records from Medical Care Now produced by Brian Powell	PLTF 190-202
18	Medical Records from Centennial Hills Hospital (Produced by Client)	PLTF 203-1376

Plaintiffs reserve the right to amend the above list of documents and to submit additional documents, if any exist, as such documents may become available to Plaintiff throughout the course of discovery.

Plaintiffs reserve the right to submit any and/or all of the above documents and any documents produced throughout the course of discovery as evidence at the time of trial.

Plaintiffs reserve the right to submit any and/or all evidence and other tangible things identified by other parties.

### **III. TANGIBLE ITEMS**

Pursuant to NRCP 16.1 (a)(1)(B), Plaintiffs hereby describes and identifies the tangible items or things in possession of the Plaintiffs which are relevant to this lawsuit and *are available*

for inspection and copying at Defendants' expense: All MRIs, X-rays, CT scans, and radiology films and studies associated with reports contained in the medical records.

Provider	Service Date	Type of Film
Desert Radiology Solutions, LLC	TBD	TBD

Plaintiffs also designate and incorporate herein all documents, witnesses, and tangible items disclosed by any other party in this action pursuant to NRCP 16.1, all documents produced by all parties in response to Requests for Production of Documents; and all exhibits to depositions taken in this action.

**IV. LIST OF WITNESSES PLAINTIFFS EXPECT TO PRESENT AT TRIAL**

None at this time. Plaintiff reserves the right to supplement this list as discovery continues. Plaintiff reserves the right to call any witness as designated by any other party to this litigation.

**V. LIST OF WITNESSES PLAINTIFF EXPECTS TO PRESENT AT TRIAL IF THE NEED ARISES**

#	Witness	Description
<b>Plaintiff's Initial Disclosures</b>		
1	Brian Powell, In his individual Capacity and As Special Administrator of Estate of Rebecca Powell, Plaintiff c/o Paul S. Padda, Esq. PAUL PADDA LAW, PLLC 4560 South Decatur Boulevard, Suite 300 Las Vegas, Nevada 89103	Plaintiff Brian Powell ("Plaintiff BRIAN") is expected to testify regarding the facts and circumstances giving rise to this civil action and as to any other matters relevant to this litigation which may be elicited by counsel at deposition and/or trial.
2	Darci Creecy, Plaintiff c/o Paul S. Padda, Esq. PAUL PADDA LAW, PLLC 4560 South Decatur Boulevard, Suite 300 Las Vegas, Nevada 89103	Plaintiff Darci Creecy ("Plaintiff DARCI") is expected to testify regarding the facts and circumstances giving rise to this civil action and as to any other matters relevant to this litigation which may be elicited by counsel at deposition and/or trial.
3	Taryn Creecy, Plaintiff c/o Paul S. Padda, Esq. PAUL PADDA LAW, PLLC 4560 South Decatur Boulevard, Suite 300 Las Vegas, Nevada 89103	Plaintiff Taryn Creecy ("Plaintiff TARYN") is expected to testify regarding the facts and circumstances giving rise to this civil action and as to any other matters relevant to this litigation which may be elicited by counsel at deposition and/or trial.

4	Isaiah Khosrof, Plaintiff c/o Paul S. Padda, Esq. PAUL PADDA LAW, PLLC 4560 South Decatur Boulevard, Suite 300 Las Vegas, Nevada 89103	Plaintiff Isaiah Khosrof ("Plaintiff ISIAAH") is expected to testify regarding the facts and circumstances giving rise to this civil action and as to any other matters relevant to this litigation which may be elicited by counsel at deposition and/or trial.
5	Lloyd Creecy, Plaintiff c/o Paul S. Padda, Esq. PAUL PADDA LAW, PLLC 4560 South Decatur Boulevard, Suite 300 Las Vegas, Nevada 89103	Plaintiff Lloyd Creecy ("Plaintiff LLOYD") is expected to testify regarding the facts and circumstances giving rise to this civil action and as to any other matters relevant to this litigation which may be elicited by counsel at deposition and/or trial.
6	Dionice S. Juliano, M.D., Defendant c/o John H. Cotton and Associates, Ltd. 7900 West Sahara Ave., Suite #200 Las Vegas, Nevada 89117 Ph: (702) 832-5909	Defendant Dionice S. Juliano, M.D. ("Defendant JULIANO") is expected to testify regarding the facts and circumstances giving rise to this civil action and as to any other matters relevant to this litigation (including damages) which may be elicited by counsel at deposition and/or trial.
7	Conrado Concio, M.D., Defendant c/o John H. Cotton and Associates, Ltd. 7900 West Sahara Ave., Suite #200 Las Vegas, Nevada 89117 Ph: (702) 832-5909	Defendant Conrado Concio, M.D. ("Defendant CONRADO") is expected to testify regarding the facts and circumstances giving rise to this civil action and as to any other matters relevant to this litigation (including damages) which may be elicited by counsel at deposition and/or trial.
8	Person(s) Most Knowledgeable and/or Custodian of Records and/or <b>NRCP 30(b)(6) Representative for</b> Valley Health System, LLC c/o Hall, Prangle and Schoonveld, LLC 1160 North Town Center Drive, Suite 200 Las Vegas, Nevada 89144 Ph: (702) 889-6400	<b>These witnesses</b> for Defendant Valley Health System, LLC ("Defendant Valley Health System") are expected to testify regarding the facts and circumstances giving rise to this civil action and as to any other matters relevant to this litigation which may be elicited by counsel at deposition and/or trial.
9	Person(s) Most Knowledgeable and/or Custodian of Records and/or <b>NRCP 30(b)(6) Representative for</b> Universal Health Services, Inc. c/o Hall, Prangle and Schoonveld, LLC 1160 North Town Center Drive, Suite 200 Las Vegas, Nevada 89144 Ph: (702) 889-6400	Person(s) Most Knowledgeable and/or Custodian of Records for Defendant Universal Health Services ("Defendant Universal Health Services") are expected to testify regarding the facts and circumstances giving rise to this civil action and as to any other matters relevant to this litigation which may be elicited by counsel at deposition and/or trial.

**Plaintiff's Healthcare Providers as follows:**

#	Witness	
7	Conrado Concio, M.D. Dionice S. Juliano, M.D. Vishal Shah, M.D. Michael Pawlak, R.N. Nicholas Muir, R.N. Karen Valdez, R.N. Vanessa Mower, R.T. Tanya Coppola, R.T. Richard Champman, CNA Sami Hashim, M.D. Treating Physicians and/or Treating Nurses and/or <b>NRCP 30(B)(6) Representative and/or</b> Custodian of Records and/or Person Most Knowledgeable for: Centennial Hills Hospital, Defendant c/o Hall, Prangle and Schoonveld, LLC 1160 North Town Center Drive, Suite 200 Las Vegas, Nevada 89144 Ph: (702) 889-6400	These witnesses and/or Person(s) Most Knowledgeable and/or Custodian of Records for Defendant Centennial Hills Hospital ("Centennial") are expected to testify regarding the facts and circumstances giving rise to this civil action and as to any other matters relevant to this litigation which may be elicited by counsel at deposition and/or trial. In particular, they will testify as to the medical care, negligently rendered, received by Decedent Rebecca Powell ("Decedent") at this healthcare facility. They will also testify as to the custom and practice, policies and procedures, provider-defined standard of care relevant to said medical care, and the application of these standards to Decedent's treatment, or lack thereof. They will also discuss all opinions set forth in their medical records, reports and depositions.
7	Perry Horwich, M.D. Treating Physicians and/or Treating Nurses and/or <b>NRCP 30(B)(6) Representative and/or</b> Custodian of Records and/or Person Most Knowledgeable for: Desert Radiology Solutions, LLC 2020 Palomino Lane, Ste., 100 Las Vegas, NV 89106	These witnesses and/or Person(s) Most Knowledgeable and/or Custodian of Records for Desert Radiology are expected to testify regarding the facts and circumstances giving rise to this civil action and as to any other matters relevant to this litigation which may be elicited by counsel at deposition and/or trial. In particular, they will testify as to the medical care, negligently rendered, received by Decedent Rebecca Powell ("Decedent") at this healthcare facility. They will also testify as to the custom and practice, policies and procedures, provider-defined standard of care relevant to said medical care, and the application of these standards to Decedent's treatment, or lack thereof. They will also discuss all opinions set forth in their medical records, reports and depositions.
8	<b>NRCP 30(B)(6) Representative and/or</b> Custodian of Records and/or Person Most Knowledgeable for: Shadow Emergency Physicians P.O. Box 13917 Philadelphia, PA 19101 (800) 355-2470	These witnesses and/or Person(s) Most Knowledgeable and/or Custodian of Records for Desert Radiology are expected to testify regarding the facts and circumstances giving rise to this civil action and as to any other matters relevant to this litigation which may be elicited by counsel at deposition and/or trial. In



		particular, they will testify as to the medical care, negligently rendered, received by Decedent Rebecca Powell ("Decedent") at this healthcare facility. They will also testify as to the custom and practice, policies and procedures, provider-defined standard of care relevant to said medical care, and the application of these standards to Decedent's treatment, or lack thereof. They will also discuss all opinions set forth in their medical records, reports and depositions.
9	<b>NRCP 30(B)(6) Representative and/or Custodian of Records and/or Person Most Knowledgeable for: American Medical Response 50 South Main Street, Suite 401 Akron, OH 44308 (800) 913-9106</b>	<b>These witnesses and/or Person(s) Most Knowledgeable and/or Custodian of Records for Desert Radiology are expected to testify regarding the facts and circumstances giving rise to this civil action and as to any other matters relevant to this litigation which may be elicited by counsel at deposition and/or trial.</b>

Plaintiff's healthcare providers are expected to testify in expert and rebuttal expert capacity as treating physicians. They are expected to provide testimony regarding, but not necessarily limited to, their review of Plaintiff's medical records; their examination of Plaintiff; their opinion that Plaintiff's past medical care and/or treatment was reasonable and necessary; and their opinion that Plaintiff's need for future care and/or treatment is reasonable and necessary, including the reasonableness and necessity of treatment as is expected to be provided to Plaintiff by other medical providers. Plaintiff's healthcare providers are also expected to provide opinions regarding the causation of Plaintiff's injuries; and they are also expected to opine that the need for Plaintiff's past and future medical treatment was caused by the incident as is at issue in this matter. They are further expected to provide opinions that the costs of Plaintiff's past, and expected future medical treatment are reasonable and customary for Clark County Nevada. Plaintiff's healthcare providers will rely upon the medical records and bills produced by either

1 party, incident reports, discovery, pleadings and other materials and exhibits produced, disclosed  
2 and/or obtained by either party. The bases for their opinions are expected to include, but are not  
3 necessarily expected to be limited to, their knowledge, education, skill, training, and experience,  
4 the nature of the trauma Plaintiff was subjected to because of Defendant's negligence; Plaintiff's  
5 medical history; Plaintiff's symptomology; and diagnostic and other such tests as have been  
6 performed on Plaintiff.  
7

8 If called, each Custodian of Records will testify as to the completeness and accuracy of  
9 records, medical records and bills generated in the normal course of business.  
10

11 Plaintiff reserves the right to call any and all treating physicians as expert witnesses at  
12 time of trial to testify in their expert and expert rebuttal capacities as to the injuries and treatment,  
13 past and future, and their relation to this incident, with periods of disability.  
14

15 Fee schedules for those persons not otherwise herein provided are estimated as \$1,000.00  
16 to \$1,500.00 hourly for medical doctors and doctors of osteopathic medicine, \$500.00 to  
17 \$1,000.00 hourly for other medical providers or experts, and \$5,000.00 to \$10,000.00 for half and  
18 full-day trial testimony, respectively.  
19

20 Plaintiff reserves the right to utilize any evidence as designated by any other party to this  
21 litigation, and any other documents or witnesses produced via NRCP Rule 16.1, via discovery  
22 responses, or via an Order of the Court by any party.  
23

24 Plaintiff further reserve the right to amend and/or supplement this list of witnesses as  
25 discovery continues and additional information becomes available.  
26

## 27 **VI. RETAINED EXPERTS**

28 **None designated at this time. Expert witnesses will be appropriately disclosed in  
accordance with the Nevada Rules of Civil Procedure.**

1 **VII. NON-RETAINED EXPERTS**

2 None designated at this time. Expert witnesses will be appropriately disclosed in  
3 accordance with the Nevada Rules of Civil Procedure.

4 **VIII. LIST OF WITNESSES WHO HAVE BEEN SUBPOENAED**

5 None at this time. Plaintiff reserves the right to supplement this list as discovery  
6 continues.

7 **IX. LIST OF WITNESSES PLAINTIFF EXPECTS TO PRESENT AT TRIAL VIA**  
8 **DEPOSITION TESTIMONY**

9 None at this time. Plaintiff reserves the right to supplement this list as discovery  
10 continues.

11 **X. DAMAGES**

12 Pursuant to NRCP 16.1(a)(1)(C), Plaintiffs provide the following computation of  
13 damages, which is not intended to be all-inclusive. Discovery is continuing, and Plaintiffs reserve  
14 the right to supplement any computation and damage amount.

15 *i. Estate of Rebecca Powell*

- 16 a. Compensatory Damages (General & Special) \$25,000,000.00  
17 b. Nominal Damages \$1.00

18 *ii. Darci Creecy*

- 19 a. Compensatory Damages (General & Special) \$20,000,000.00  
20 b. Nominal Damages \$1.00

21 *iii. Taryn Creecy*

- 22 a. Compensatory Damages (General & Special) \$20,000,000.00  
23 b. Nominal Damages \$1.00

24 *iv. Isaiah Khosrof*

- 25 a. Compensatory Damages (General & Special) \$20,000,000.00  
26 b. Nominal Damages \$1.00  
27  
28

*v. Lloyd Creecy*

a. Compensatory Damages (General & Special) \$20,000,000.00

b. Nominal Damages \$1.00

**A. MEDICAL:**

Estate of Rebecca Powell			
#	Providers	Dates	Charges
1	Shadow Emergency Physicians	Pending	Pending
2	Centennial Hills Hospital	Pending	Pending
3	Desert Radiology Solutions, LLC	Pending	Pending
TOTAL MEDICAL SPECIALS:			Pending

Isaiah Khosrof			
#	Providers	Dates	Charges
1	Psychological Care Associates / Christopher Welch, Psy. D.	Pending	Pending
TOTAL MEDICAL SPECIALS:			Pending

**B. FUTURE MEDICAL EXPENSES:**

Unknown at this time. Plaintiffs reserve the right to supplement this list as discovery continues.

**C. ECONOMIC LOSS (Past & Future):**

Unknown at this time. Plaintiffs reserve the right to supplement this list as discovery continues.

**D. LOSS OF HOUSEHOLD SERVICES:**

Unknown at this time. Plaintiffs reserve the right to supplement this list as discovery continues.

**E. PAIN AND SUFFERING**

Unknown at this time. Plaintiffs reserve the right to supplement this list as discovery continues.

Plaintiffs reserve the right to supplement this Calculation of Damages with any and all other relevant documents and records, which come into their possession during discovery.



Further, Plaintiffs reserve the right to seek other damages in an amount to be proven at trial, whereby a jury will decide upon a sum of money sufficient to reasonably and fairly compensate Plaintiffs for the following items:

1. The reasonable medical expenses Plaintiffs have necessarily incurred as a result of the subject medical malpractice incident and the medical expenses which the Jury believes the Plaintiffs is reasonably certain to incur in the future as a result of the subject medical malpractice incident, discounted to present value.
2. Plaintiffs' loss of earnings or earning capacity from the date of the subject medical malpractice incident to the present.
3. Plaintiffs' loss of earnings or earning capacity which the Jury believes the Plaintiffs is reasonably certain to experience in the future as a result of the subject medical malpractice incident, discounted to present value. Also, the Jury will include the reasonable value of services performed by another in doing things for the Plaintiffs, which, except for the injuries, Plaintiffs would ordinarily have performed.
4. The physical and mental pain, suffering, anguish, and disability endured by the Plaintiffs from the date of the subject medical practice incident to the present; and
5. The physical and mental pain, suffering, anguish, and disability which the Jury believes the Plaintiffs are reasonably certain to experience in the future as a result of the subject medical malpractice incident, discounted to present value.

#### MISCELLANEOUS

Plaintiffs reserve the right to have a consulting expert review records and/or documents and provide opinions to counsel, but not testify at the time of trial, pursuant to NRCP 26(b)(5).

Plaintiffs reserve the right to call any witness named by Defendants. Plaintiffs reserve the right to call any witness as may be necessary for the purpose of impeachment. Plaintiffs may call any and all witnesses called in rebuttal to testimony given by Defendants' witnesses. Plaintiffs reserve the right to object to any of Defendants' witnesses at the time of trial. Plaintiffs

1 reserve the right to supplement this exhibit list with any and all other relevant documents and  
2 records, which come into their possession during discovery.

3 Plaintiffs reserve the right to have a medical expert review the medical records and  
4 provide an opinion to counsel, but not testify at the time of trial and/or arbitration.

5 Plaintiffs further reserve the right to use any and all of any other parties' exhibits at the  
6 time of trial of this matter.

7  
8 **XI. PLAINTIFF'S DEMONSTRATIVE EXHIBITS**

9 Plaintiffs may offer at trial certain exhibits for demonstrative purposes including, but not  
10 limited to, the following:

- 11 a. Actual surgical hardware, plates, screws, surgical tools, and surgical equipment  
12 as used in Plaintiff's medical treatment and anticipated to be used in future  
13 treatment;
- 14 b. Demonstrative and actual photographs and videos of surgical procedures and  
15 other diagnostic tests Plaintiffs has undergone and will undergo in the future;
- 16 c. Actual diagnostic studies performed on Plaintiffs, including post discography CT  
17 scans (if any) and computer digitized diagnostic studies;
- 18 d. Samples of tools used in surgical procedures;
- 19 e. Diagrams, drawings, pictures, photos, film, video, DVD and CD ROM of  
20 various parts of the human body, diagnostic tests and surgical procedures;
- 21 f. Computer simulation, finite element analysis, mabymo and similar forms of  
22 computer visualization;
- 23 g. Power point images/drawings/diagrams/animations/story boards, of the related  
24 vehicles involved, the parties involved, the location of the motor vehicle accident  
25 and what occurred in the motor vehicle accident.
- 26 h. Pictures of Plaintiffs Prior and Subsequent to the Subject accident;
- 27 i. Surgical Timeline;
- 28 j. Medical treatment timeline;

- k. Future Medical Timeline;
- l. Charts depicting Plaintiff's Loss of Earning Capacity;
- m. Charts depicting Plaintiff's Life Care Plans;
- n. Charts depicting Plaintiff's Loss of Hedonic Damages;
- o. Charts depicting Plaintiff's Loss of Household Services;
- p. Photographs of Plaintiff's Witnesses;
- q. Charts depicting Plaintiff's Life Expectancy;
- r. Story boards and computer digitized power point images;
- s. Blow-ups/transparencies/digitized images of medical records, medical bills, photographs and other exhibits;
- t. Diagrams/story boards/computer programs of the subject medical malpractice incident;
- u. Diagrams of various parts of the human body related to Plaintiff's injuries;
- v. Photographs of various parts of the human body related to Plaintiff's injuries;
- w. Models of the human body related to Plaintiff's injuries;
- x. Samples of a spinal cord stimulator and leads;
- y. Sample of an intrathecal drug delivery system and leads;
- z. Samples of the needles and surgical tools used in Plaintiff's various diagnostic and therapeutic pain management procedures.

**XII. PLAINTIFF'S OBJECTIONS TO DEFENDANT'S WITNESSES/EXHIBITS PURSUANT TO NRCP 16.1 (a)(3)(C)**

1. General Objections Applicable to All Witnesses Disclosed by Defendants.

Plaintiffs object to any witness identified by Defendants which should be excluded on the basis that the witnesses are not relevant, or unfairly prejudicial, or not identified with particularity, or lack foundation, or would potentially violate the collateral source rule, or violate a stipulation

1 of the parties and/or Orders of this Court. Additionally, Plaintiffs reserve the right to object to  
2 any witness identified by any party in the instant matter. Furthermore, Plaintiffs reserve the right  
3 to object to or exclude any witness testimony, of any basis, at the time of trial.

4       2. General Objections Applicable to all Documents Disclosed by Defendants

5       Plaintiffs object to any documents that Defendants intend to use as exhibits at the trial of  
6 this matter, if any information violates the collateral source rule, hearsay rule, lacks foundation,  
7 is not relevant or which relevancy is outweighed by its prejudicial effect, or contains information  
8 that was/will be excluded by the court or by stipulation of the parties. Plaintiffs also object to  
9 these documents inasmuch as they have not been properly redacted according to the laws of  
10 privacy, and the previous stated objections.

11       By disclosing witnesses and/or documents, Plaintiffs does not waive the right to challenge  
12 and/or exclude any such witness or document or portions thereof on any basis.

13       Plaintiffs reserve the right to object to any document identified by any party in the instant  
14 matter.

15       **Plaintiffs have no objections to Defendant's Witnesses at this time. Plaintiffs reserve**  
16 **any objections as discovery is continuing.**

17       **Plaintiffs reserve the right to object to the authenticity and/or genuineness of any**  
18 **and all exhibits produced by other parties at trial, to introduce as evidence any documents**  
19 **produced by other parties to this litigation and to supplement their own document list at a**  
20 **later date. Discovery is ongoing.**

21 ...

22 ...

23 ...

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

**Plaintiffs hereby reserve the right to amend this list of documents and witnesses and Pre-Trial Disclosures should, during the course of the discovery of this matter, additional documentation become known to Plaintiffs or Plaintiffs' counsel.**

Dated this 4th day of September, 2020.

PAUL PADDA LAW, PLLC

By: /s/ *Paul S. Padda*

PAUL S. PADDA, ESQ.

JAMES P. KELLY, ESQ.

4560 South Decatur Boulevard, Suite 300  
Las Vegas, Nevada 89103

*Attorney for Plaintiff*

## 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 23rd day of July 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

**Clark County Coroner/Medical Examiner**

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



**REPORT OF INVESTIGATION**  
**Coroner Case**

CALL INFO	NAME OF DECEASED (LAST, FIRST MIDDLE) <b>Powell, Rebecca</b>		AKA		CASE NUMBER <b>17-04997</b>	
	INVESTIGATOR <b>Echo Delargy</b>	REPORTED BY <b>Ronna Bautista RN</b>	REPORTING AGENCY <b>Centennial Hills Hospital</b>		REFERENCE NUMBER <b>7262052</b>	
	CALL DATE AND TIME <b>5/11/2017 1:16:00 PM</b>	DISPATCH DATE AND TIME <b>5/11/2017 2:20:00 PM</b>	ARRIVAL DATE AND TIME <b>5/11/2017 2:45:00 PM</b>		RETURN DATE AND TIME <b>5/11/2017 4:20:00 PM</b>	
DECEDENT	DATE AND TIME OF DEATH <b>5/11/2017 6:57:00 AM</b>	AGE <b>41 Yrs</b>	GENDER <b>Female</b>	RACE <b>Caucasian</b>	VET? <input type="checkbox"/>	
	RESIDENT COUNTY <b>Clark</b>	TELEPHONE NO. <b>(702) 334-3172</b>	DATE OF BIRTH <b>5/30/1975</b>			
	SOCIAL SECURITY NO. <b>275-80-9124</b>	DRIVER'S LIC. NO. AND STATE	OCCUPATION		EMPLOYER	
	MARITAL STATUS <b>Divorced</b>	HEIGHT <b>62</b>	WEIGHT <b>159</b>	EYE COLOR <b>Brown</b>	HAIR COLOR <b>Brown</b>	
	CLOTHING <b>Yellow hospital gown, yellow socks</b>			SCARS/TATTOOS/MARKS <b>//</b>		
DEATH	LOCATION OF DEATH <b>Room 701</b> AT RESIDENCE <input type="checkbox"/>					
	ADDRESS (STREET, CITY, STATE, ZIP) <b>6900 North Durango Drive Las Vegas, NV 89149</b> COUNTY <b>Clark</b>					
	<input checked="" type="checkbox"/> PRONOUNCED BY <b>Dr. Concio</b>		AGENCY <b>Centennial Hills Hospital</b>			
INCIDENT	LOCATION OF INCIDENT <b>Bedroom</b> AT WORK <input type="checkbox"/>					
	ADDRESS (STREET, CITY, STATE, ZIP) <b>7589 Splashing Rock Drive Las Vegas, NV 89131</b> COUNTY <b>Clark</b>					
	DATE AND TIME OF INCIDENT <b>5/3/2017 6:00:00 AM</b>		INVESTIGATING AGENCY		OFFICERS	
NOTIFICATION	LEGAL NEXT OF KIN <b>Taryn Creecy</b>		RELATIONSHIP <b>Daughter</b>		TELEPHONE NO. <b>(702) 712-3400</b>	
	NOTIFIED BY <b>Brian Powell</b>		METHOD <b>In Person</b>		DATE AND TIME <b>5/11/2017 4:00:00 PM</b>	
	NAME OF PERSON NOTIFIED <b>Taryn Creecy</b>		RELATIONSHIP <b>Daughter</b>		TELEPHONE NO. <b>(702) 712-3400</b>	
	IDENTIFIED BY <b>Nick Muir</b>		METHOD <b>Personal Knowledge</b>		DATE AND TIME <b>5/11/2017 3:00:00 PM</b>	
DISP	TRANSPORTED TO MORGUE BY <b>Hites Funeral Services</b>		TRANSPORTED TO MORTUARY BY <b>Palm Mortuary</b>			
	FUNERAL HOME		CLOTHING RELEASED <input type="checkbox"/> Yes <input checked="" type="checkbox"/> No			
	TYPE OF EXAM <b>External exam</b>		EXAM BY <b>AbuBakr Marzouk M.D.</b>			
VEHICULAR	DECEDENT WAS <input type="checkbox"/> Pedestrian <input type="checkbox"/> Driver <input type="checkbox"/> Passenger <input type="checkbox"/> Bicyclist <input type="checkbox"/> Motorcyclist <input type="checkbox"/> Skateboard <input type="checkbox"/> Motorized Wheelchair					
	VEHICLE				LICENSE NUMBER	
	OCCURRED ON PRIVATE PROPERTY		DECEDENT WEARING SEATBELT?		SEAT POSITION	

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## REPORT OF INVESTIGATION

Case Number: 17-04997

**DECEDENT NAME:** Rebecca Powell  
**ALSO KNOWN AS:**  
**LOCATION OF DEATH:** Room 701  
**DATE OF DEATH:** 05/11/2017

**DATE OF BIRTH:** 05/30/1975  
**AGE:** 41  
**SSN:** 275-80-9124  
**TIME OF DEATH:** 6:57AM

### SUMMARY OF INVESTIGATION

#### Reason for Coroner Jurisdiction:

Possible Suicide by Prescription Medication Overdose/Not Suspicious/Referencing Centennial Hills Hospital Medical Records #7262052

#### Circumstances of Death:

On 5/2/17 at approximately 2000 hours, the decedent's daughter witnessed the decedent ingesting a large amount of Benadryl. The decedent then went to bed and her daughter checked on her through the night. At some point during the night, the decedent's breathing became labored and she became unresponsive. At approximately 0245 hours on 5/3/17, the decedent's daughter noticed vomit at the decedent's bedside and found empty bottles of Ambien and Cymbalta, both which had been recently filled. She called 911. Paramedics arrived to find the decedent unresponsive. The decedent was intubated and transported to Centennial Hills Hospital Emergency Room, where she was admitted. On 5/7/17, the decedent was extubated and transferred to the 7th floor medical unit. The decedent appeared to be improving, but started having difficulty breathing on 5/10/17. Testing was performed to determine the cause. On 5/11/17 at approximately 0615 hours, the decedent coded. Life saving measures were met with negative results. Dr. Concio pronounced death on 5/11/7 at 0657 hours.

#### Medical History:

Per decedent's ex-husband, the decedent had a history vitamin B deficiency. She also reportedly suffered from depression for approximately the last 8-10 years, and was taking Cymbalta to treat her depression. She did not use alcohol or illicit drugs. She used tobacco. She had no recent falls, surgeries, or hospitalizations. The decedent was going through a divorce which was just finalized a few days ago. She had recently expressed suicidal ideations to her ex-husband. She had a prior attempt using prescription medications approximately 5 years ago.

The decedent had been prescribed Cymbalta and Ambien, and was currently taking those medications.

#### Scene:

The incident occurred at the decedent's residence, located 7589 Splashing Rock Drive, Las Vegas, NV 89131.

The decedent expired at Centennial Hills Hospital, Room 701, located at 6900 North Durango Drive, Las Vegas, Nevada 89149.

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Signature: \_\_\_\_\_

Echo Delargy, Coroner Investigator

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## REPORT OF INVESTIGATION

Case Number: 17-04997

### Body:

I viewed the body of a 41 year-old Caucasian female lying supine on a standard hospital bed. The decedent was wearing a yellow hospital gown, yellow socks, and was covered with a white sheet. No crepitus was noted to her head upon palpation. Multiple medical interventions were observed. No signs of trauma were noted. Lividity was blanching to her posterior, and early rigor mortis was present

### Property:

Inventory of Personal Effects Form #176153 indicates that no property was impounded.

### Forensic Issues and Reasons for Seal:

- No obvious trauma noted
- Medical interventions present and left in place.
- Centennial Hospital medical records and radiology obtained. No admit blood available, obtained blood from 5/5/17-5/7/17.

### Witnesses and Information Sources:

Ronna Bautista, Centennial Hills Hospital RN  
Nick Muir, Centennial Hills Hospital RN  
Brian Powell, ex-husband

### Narrative:

On 5/11/17 at approximately 1316 hours, Ronna Bautista, a registered nurse at Centennial Hills Hospital advised this office of a death located at Centennial Hills Hospital, Room 701, 6900 North Durango Drive, Las Vegas, Nevada 89149.

Upon my arrival at approximately 1445 hours, I met with Nick Muir, RN, who provided me with the aforementioned circumstances as well as the decedent's medical records.

Hites Funeral Services was contacted, per rotation, and attendant C. Mosqueda arrived. The decedent was wrapped in a clean white sheet, placed in a body bag, and transported to Clark County Office of the Coroner/Medical Examiner (CCOCME), arriving at approximately 1625 hours.

### Special Requests:

None

### Tissue/Organ Donation:

Nevada Donor Network (NDN) protocol was followed.

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Signature: \_\_\_\_\_

*Echo Delargy*

Echo Delargy, Coroner Investigator



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## AUTOPSY REPORT

Case Number: 17-04997

May 12, 2017

### AUTOPSY REPORT

#### PATHOLOGICAL EXAMINATION ON THE BODY OF

REBECCA POWELL

#### PATHOLOGIC DIAGNOSES

- I. **Pneumonia:**
  - A. Acute and chronic pneumonia and foreign body giant cells.
  - B. Pulmonary edema and hyaline membrane formation.
- II. **Toxicology:**
  - A. Duloxetine (Cymbalta) 200 ng/mL / 0.2 mg/L  
(Higher than the reported Therapeutic levels 0.023-0.08 mg/L)
  - B. Not enough antemortem samples available for testing.
- III. **Other findings.**
  - A. Chronic cholecystitis and cholelithiasis.
  - B. Ovarian cyst.

#### OPINION

According to the Investigator's Report, on 5/2/2017 at approximately 2000 hours, this 41-year-old Caucasian female was witnessed by her daughter taking a large amount of Benadryl and went to bed. The daughter checked on her through the night, the decedent's breathing became labored and she became unresponsive. At approximately 0245 hours on 5/3/2017 the daughter noticed vomit at the decedents beside, found empty bottles of Ambien and Cymbalta, both were recently filled. 911 was called and she was intubated and transported to the hospital. The decedent seemed to be improving, but started having difficulty breathing on 5/10/2017. On 5/11/17 at approximately 0615 hours she was coded and lifesaving measures were met with negative results. She was pronounced at 0657 hours. The decedent's past medical history was significant for depression and was taking Cymbalta. She reportedly

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## AUTOPSY REPORT

Case Number: 17-04997

did not use ethanol or illicit drugs. It was reported that the decedent was going through a divorce which was finalized few days earlier. She had recently expressed suicidal ideation to her ex-husband. She had a prior attempt using pills approximately five years earlier.


Microscopic examination revealed extensive acute and chronic inflammation, foreign body giant cells, hyaline membrane formation, and extensive pulmonary edema. Polarizable foreign bodies noted. Changes are consistent with aspiration pneumonia.

Toxicological samples were retained during autopsy, but deemed of no clinical significance due to length of hospitalization. No admission blood was available, but blood collected on 5/5/2017 to 5/7/2017, days after admission, was obtained. Toxicology testing was positive for duloxetine (Cymbalta), 0.02 mg/L (200 ng/mL), above the reported therapeutic levels of 0.023-0.08 mg/L in a sample collected at least two days after the incident. There were not enough samples to test for other medications/drugs.

Based on the autopsy findings and the circumstances surrounding the death, as currently understood, the cause of death is acute and chronic pneumonia, with duloxetine overmedication as a contributing factor. The manner of death is suicide. If further information becomes available in the future, it will be evaluated and autopsy report will be amended accordingly.

**CAUSE OF DEATH:** This 41-year-old Caucasian female, Rebecca Powell, died of **COMPLICATIONS OF DULOXETINE (CYMBALTA) INTOXICATION.**

**MANNER OF DEATH:** SUICIDE.

  
AbuBakr Marzouk, M.D.  
Forensic Pathologist

Date signed: 6/23/2017

AM/rg/amu

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## AUTOPSY REPORT

Case Number: 17-04997

May 12, 2017

### POSTMORTEM EXAMINATION ON THE BODY OF

Rebecca Powell

Date of death: May 11, 2017 at 0657 hours

Date of examination: May 12, 2017 at 1115 hours.

IDENTIFICATION: The body is identified by a Coroner's identification tag on the right great toe bearing the decedent's name and case number.

WITNESSES: Assisting is Forensic Autopsy Specialist Amanda Senger. There are no outside observers.

CLOTHING: The body is clad in a yellow hospital gown.

#### EVIDENCE OF MEDICAL THERAPY:

1. Endotracheal tube.
2. Orogastric tube.
3. Multiple intravenous lines.
4. Defibrillation marks on the sternum.
5. Multiple needle marks are noted on the abdomen.

#### EXTERNAL EXAMINATION

The body is that of a normally developed and well-nourished Caucasian female appearing consistent with the listed age of 41 years. The length is 62 inches, and the weight is 159 pounds as received. The body is well preserved, cold, and has not been embalmed. Rigidity is fully developed in the jaw and extremities. Lividity is pink-purple, nonblanching, on back.

The head is normocephalic and the scalp is covered with brown-red hair measuring up to 5 inches on the top of the head. The ears are normally formed and without drainage. The earlobes are pierced. The irides are hazel, the corneas clear, and the bulbar and palpebral conjunctivae free of petechiae. The sclerae are white. The nose is intact, and the nares are unobstructed. The lips are normally formed. The teeth are natural and unremarkable.

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## AUTOPSY REPORT

Case Number: 17-04997

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The neck is without injuries or deformities.

The chest is normally formed, symmetrical, and without palpable masses or deformity. The breasts are symmetrical, and without palpable masses. The abdomen is flat and soft. No masses are palpable. The atraumatic external genitalia are those of an adult female. The back is straight and symmetrical with no trauma or defects. The anus is atraumatic.

The upper extremities are normally formed. No non-therapeutic needle punctures, track marks, or ventral wrist scars are noted. The fingernails are unremarkable, painted pink. The lower extremities are normally formed and have no edema, amputations, or deformity. The toenails are unremarkable and painted beige. The feet are noted with apparent deformity, short and stubby.

BODY MARKINGS (SCARS AND TATTOOS): No tattoos or major surgical scars are noted.

### EVIDENCE OF INJURY

No injuries are seen.

### INTERNAL EXAMINATION

INITIAL INCISION: The body cavities are entered through the standard coronal incision and the standard Y-shaped incision.

BODY CAVITIES: The abdominal fat layer measures up to 2 cm in thickness. The body cavities have no hemorrhage or abnormal fluid. The serosal surfaces are smooth, glistening, and without adhesions. The organs are normally located. The diaphragm is intact. The body cavities have no internal injuries.

CARDIOVASCULAR SYSTEM: The pericardium is thin and smooth. Within the pericardial sac, there is no blood or excess fluid. The heart weighs 370 grams and is not enlarged. It has a normal shape with a smooth, glistening epicardium. The coronary arteries

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## AUTOPSY REPORT

Case Number: 17-04997

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have a normal origin and distribution with right dominance. They have no atherosclerotic stenosis and are widely patent.

The chambers are normally developed and are without mural thrombosis. The myocardium is red-brown, firm, and uniform without focal fibrosis, softening, or hyperemia. The ventricles are not dilated or hypertrophied. The right ventricle, left ventricle, and interventricular septum measure 0.5 cm, 1.5 cm, and 1.5 cm, respectively.

The endocardium is intact, smooth, and glistening. The cardiac valve leaflets are of normal number, pliable, intact, and free of vegetations. The tricuspid, pulmonic, mitral and aortic valves measure 11 cm, 6.0 cm, 10 cm and 6.0 cm, respectively. The atrial and ventricular septa are free of defects. There is no abnormality of the apices of the papillary musculature.

The great vessels enter and leave in a normal fashion. The aorta follows its usual course and has mild atherosclerotic changes. There are no vascular anomalies or aneurysms. The vena cavae and pulmonary arteries are without thrombus or embolus.

RESPIRATORY SYSTEM: The right and left lungs weigh 1050 and 780 grams, respectively, and have the usual lobation. The pleura are smooth and glistening. The lungs are well expanded but non-crepitant. The parenchyma is dark red and exudes copious amounts of edema fluid. There is marked extensive consolidation of both lungs, more of the upper lobes than lower lobes. The lungs have no hemorrhage, infarct, tumor, gross fibrosis, or enlargement of airspaces. The bronchi contain no foreign material and have mucosa. The lower trachea and major bronchi reveal marked congestion and apparent infection. The hilar lymph nodes are not enlarged.

HEPATOBIILIARY SYSTEM: The liver weighs 1650 grams, is of average size. The intact capsule is smooth and glistening. The parenchyma is red-brown and uniform without mass, hemorrhage, yellow discoloration, or palpable fibrosis.

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## AUTOPSY REPORT

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The gallbladder contains dark green bile and one large black-green stone with rough granular surface measuring 3 x 1.5 x 1.5 cm. Its mucosa is uniform and the wall is not thickened.

The pancreas has a normal size, shape, and lobulated structure. The parenchyma is pink-tan, firm, and uniform. The pancreatic ducts are not ectatic, and there is no parenchymal calcification.

HEMOLYMPHATIC SYSTEM: The spleen weighs 200 grams. The capsule is smooth and intact. The parenchyma is maroon, firm, and uniform. The hilar lymph nodes are enlarged.

ENDOCRINE SYSTEM: The thyroid gland is not enlarged, and the lobes are symmetrical. The parenchyma is uniform, firm, and red-brown. The parathyroid glands are not identified. The adrenal glands have the usual size and shape. The cortices are thin, uniform, and yellow, and there is no hemorrhage or tumor. The pituitary gland is not enlarged and is unremarkable.

GASTROINTESTINAL SYSTEM: The esophagus and gastroesophageal junction are unremarkable. The stomach is not distended. The stomach contains approximately 20 ml of tan-pink fluid and no food, pills, or pill residue. The gastric and duodenal mucosae are intact and unremarkable. The small and large intestines are unremarkable to inspection and palpation and sectioning. The appendix is present and is unremarkable.

GENITOURINARY SYSTEM: The right and left kidneys weigh 200 and 200 grams, respectively, and have a normal shape and position. The cortical surfaces are smooth. The kidneys have the usual corticomedullary structure without tumors or cysts. The pelves and ureters are not dilated or thickened. The bladder contains no urine. The mucosa is intact, and the bladder wall is not hypertrophied.

The uterus, tubes, and ovaries are of expected size and have smooth serosal surfaces. The non-gravid uterus is symmetrical and the uterine cavity is unremarkable. The fallopian tubes are

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## AUTOPSY REPORT

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unremarkable. The cervix is patent with unremarkable os. The myometrium is uniform and the endometrium is unremarkable. The sectioned ovaries are unremarkable for age. The right ovary reveals an ovarian cyst measuring 3 x 2 x 2 cm. The vagina is unremarkable.

**NECK:** The tongue, strap muscles, and other anterior neck soft tissues have no hemorrhage. The hyoid bone and the cartilaginous structures of the larynx and trachea are normally formed and without fracture. The airway reveals signs of inflammation. The cervical vertebrae have no displacement, hypermobility, or crepitus.

**MUSCULOSKELETAL SYSTEM:** The musculoskeletal system is well developed and free of deformity. There are no fractures of the clavicles, sternum, ribs, vertebrae, or pelvis. The ribs are not brittle. The skeletal muscle is dark red and firm.

**CENTRAL NERVOUS SYSTEM:** The scalp is free of hemorrhage. The calvarium and base of the skull are normally configured and have no fractures. The dura is intact, and there is no epidural, subdural or subarachnoid hemorrhage.

The unfixed brain weighs 1450 grams. The leptomeninges are glistening, thin and transparent without underlying hemorrhage, exudate, or cortical contusions. The hemispheres are symmetrical and have a normal gyral pattern. There is no flattening of the gyri, narrowing of the sulci, midline shift, or evidence of herniation. The arteries at the base of brain have no atherosclerotic changes or aneurysms.

Sections through the cerebral hemispheres have a uniform, intact cortical ribbon and uniform white matter. Anatomic landmarks are preserved, symmetrical and without focal change. The ventricles are not enlarged without dilation or distortion, and the linings are smooth and glistening. The pons, medulla, and cerebellum are unremarkable, without focal lesions. There is no evidence of uncal or cerebral herniation.

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## AUTOPSY REPORT

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### SPECIMENS RETAINED

**TOXICOLOGY:** Samples of central and peripheral blood, vitreous humor, liver and gastric contents are retained for toxicology. Testing for Cymbalta and Ambien are requested. Duloxetine (Cymbalta) was detected, 200 ng/mL, above the reported therapeutic levels (no reported toxic or lethal levels).

**HISTOLOGY:** Representative sections from the major organs are preserved in one storage jar in 10% formalin. Representative sections of both lungs are submitted for histology are in 2 cassettes labelled:

Cassette summary:

Cassette A: Right lung

Cassette B: Left lung

**PHOTOGRAPHS:** Digital identification photographs are obtained. Selected photographs are obtained during autopsy for documentation.

**RADIOGRAPHS:** X-rays are obtained and reveal no skeletal fractures.

### MICROSCOPIC EXAMINATION

**LUNGS:** Extensive acute and chronic inflammation with foreign body giant cells, pulmonary edema, and hyaline membrane formation noted. Polarizable foreign bodies are noted.

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**NMS Labs**

3701 Welsh Road, PO Box 433A, Willow Grove, PA 19080-0437  
Phone: (215) 657-4900 Fax: (215) 657-2972

e-mail: nms@nmslabs.com

Robert A. Middleberg, PhD, F-ABFT, DABCC-TC, Laboratory Director

**CONFIDENTIAL****Toxicology Report****Report issued** 05/24/2017 14:10

**To: 10294**  
Clark County Coroner's Office  
Attn: Bill Gazza  
1704 Pinto Lane  
Las Vegas, NV 89106

**Patient Name** POWELL, REBECCA**Patient ID** 17-04997**Chain** 17149954**Age 41 Y** **DOB** Not Given**Gender** Female**Workorder** 17149954**Page 1 of 3****Positive Findings:**

<u>Compound</u>	<u>Result</u>	<u>Units</u>	<u>Matrix Source</u>
Duloxetine	200	ng/mL	001 - Blood

See Detailed Findings section for additional information

**Testing Requested:**

<u>Analysis Code</u>	<u>Description</u>
4666B	Duloxetine, Blood
2483B	Zolpidem, Blood

**Specimens Received:**

<u>ID</u>	<u>Tube/Container</u>	<u>Volume/ Mass</u>	<u>Collection Date/Time</u>	<u>Matrix Source</u>	<u>Miscellaneous Information</u>
001	Lavender Vial	2.75 mL	05/05/2017 04:00	Blood	
002	Green Vial	2.25 mL	05/05/2017 04:00	Serum	
003	Green Vial	2.5 mL	Not Given	Serum	
004	Green Vial	2.25 mL	Not Given	Serum	
005	Green Vial	1.65 mL	Not Given	Serum	
006	Gray Top Tube	9.65 mL	05/05/2017 11:30	Femoral Blood	
007	Gray Top Tube	9.65 mL	05/05/2017 11:30	Cardiac Blood	
008	Red Top Tube	3.25 mL	05/05/2017 11:30	Vitreous Fluid	
009	Red Top Tube	10 mL	05/05/2017 11:30	Bile	
010	White Plastic Container	9 mL	05/05/2017 11:30	Gastric Fluid	
011	White Plastic Container	48.98 g	05/05/2017 11:30	Liver Tissue	

All sample volumes/weights are approximations.

Specimens received on 05/15/2017.

NMS v.16.0

PLTF 45



CONFIDENTIAL

Workorder 17149954  
Chain 17149954  
Patient ID 17-04997

Page 2 of 3

**Detailed Findings:**

Analysis and Comments	Result	Units	Rpt. Limit	Specimen Source	Analysis By
Duloxetine	200	ng/mL	3.0	001 - Blood	LC-MS/MS

Other than the above findings, examination of the specimen(s) submitted did not reveal any positive findings of toxicological significance by procedures outlined in the accompanying Analysis Summary.

**Reference Comments:**

1. Duloxetine (Cymbalta®) - Blood:

Duloxetine is an antidepressant drug that is described as a 'balanced' inhibitor of both NE and 5-HT neuronal reuptake. In addition to its use in major depressive disorder (MDD), duloxetine is indicated for use in the management of neuropathic pain associated with diabetic peripheral neuropathy.

Duloxetine is well absorbed after oral administration; there is a median 2-hour lag until absorption begins. The drug is highly bound to plasma proteins (greater than 95%). Duloxetine appears to be extensively metabolized in humans to form multiple oxidative and conjugated metabolites; all of the metabolites identified are pharmacologically inactive.

The mean elimination half-life of the drug is approximately 12 hours (range, 8 to 19 hours). Steady-state plasma concentrations are commonly achieved after 3 days of dosing with the drug. Approximately 94% of a dose of duloxetine is excreted in the urine as metabolites within 72 hours. At therapeutic doses, less than 1% of the parent compound is present in urine.

Steady-state trough plasma concentrations were dose-related after 5 days of oral therapy and were reported as:

20 mg twice daily: 4 - 22 ng/mL

30 mg twice daily: 8 - 48 ng/mL

40 mg twice daily: 12 - 60 ng/mL

The more common adverse effects of the drug include dizziness, fatigue, sedation, insomnia, nausea, dry mouth, constipation, and decreased appetite. There is limited experience with duloxetine overdoses in humans. As of October 2003, only four non-fatal acute ingestions of duloxetine (300 to 1400 mg), alone or in combination with other drugs have been reported.

**Sample Comments:**

001 Physician/Pathologist Name: MARZOUK

Unless alternate arrangements are made by you, the remainder of the submitted specimens will be discarded thirteen (13) months from the date of this report; and generated data will be discarded five (5) years from the date the analyses were performed. Chain of custody documentation has been maintained for the analyses performed by NMS Labs.

Workorder 17149954 was electronically signed on 05/24/2017 13:03 by:

Sherri L. Kacinko, Ph.D., F-ABFT  
Forensic Toxicologist

NMS v.16.0

PLTF 46



CONFIDENTIAL

Workorder 17149954  
Chain 17149954  
Patient ID 17-04997

Page 3 of 3

**Analysis Summary and Reporting Limits:**

All of the following tests were performed for this case. For each test, the compounds listed were included in the scope. The Reporting Limit listed for each compound represents the lowest concentration of the compound that will be reported as being positive. If the compound is listed as None Detected, it is not present above the Reporting Limit. Please refer to the Positive Findings section of the report for those compounds that were identified as being present.

**Acode 2483B - Zolpidem, Blood**

-Analysis by High Performance Liquid Chromatography/  
TandemMass Spectrometry (LC-MS/MS) for:

<u>Compound</u>	<u>Rpt. Limit</u>	<u>Compound</u>	<u>Rpt. Limit</u>
Zolpidem	4.0 ng/mL		

**Acode 4666B - Duloxetine, Blood**

-Analysis by High Performance Liquid Chromatography/  
TandemMass Spectrometry (LC-MS/MS) for:

<u>Compound</u>	<u>Rpt. Limit</u>	<u>Compound</u>	<u>Rpt. Limit</u>
Duloxetine	3.0 ng/mL		

NMS v.16.0

PLTF 47

Nevada State Board of  
**NURSING**  
**Coworker Complaint Report**

Nurse/Nursing Assistant Against Whom Complaint Is Made:

Name: MICHAEL PAWLAK

License Type: CRNA ☐ APN ☐ RN ☒ LPN ☐ CNA ☐

License or Certificate Number: RN88368

Date(s) of Event or Incident: 5/11/2017

Approximate time or shift: NIGHT SHIFT

Location of Event or Incident: CENTENNIAL HILLS HOSPITAL ROOM 702

What specifically happened: RN PAWLAK WAS RESPONSIBLE FOR REBELCA ANN POWELL'S CARE ON THE NIGHT OF MAY 10, 2017 INTO THE MORNING OF MAY 11, 2017. THIS PATIENT WAS ON A PSYCHIATRIC HOLD AND IN A CAMERA ROOM. SHE WAS ON CONTINUOUS OXYGEN AND ON BREATHING TREATMENTS. MS. POWELL WAS FOUND NEAR SHIFT CHANGE, "DOWN" IN HER BED AND A CODE WAS CALLED, AND SHE WAS PRONOUNCED DEAD APPROXIMATELY 45 MINUTES LATER. MS. POWELL WAS 41 YEARS OLD WITH NO COMORBIDITIES ON FILE. SHE SHOULD HAVE BEEN SUPERVISED AT ALL TIMES AND MONITORED BY NURSING STAFF. IT IS CLEAR THAT IF MS. POWELL WENT INTO RESPIRATORY DISTRESS AS DESCRIBED BY PHYSICIAN SHAW, THAT A RAPID RESPONSE SHOULD HAVE BEEN CALLED IMMEDIATELY. SHE WAS NOT MONITORED APPROPRIATELY, AND IT APPEARS HER CARE ABANDONED BY NURSING STAFF. AS A RESULT OF THIS MS. POWELL PASSED AWAY FROM LACK OF SUFFICIENT CARE FROM THOSE ASSIGNED TO ENSURE HER WELLBEING. MS. POWELL WAS AN ICU NURSE WHO WORKED AT NELLIS AIR FORCE BASE. SHE WORKED WITH BOTH ACTIVE DUTY AND THEIR FAMILY MEMBERS. SHE WAS AN AMAZING PATIENT ADVOCATE WHO DESERVED BETTER. NOW I ASK THAT YOU ADVOCATE FOR HER. INVESTIGATE AND ENSURE THIS TRAGIC INCIDENT NEVER HAPPENS AGAIN.

PLTF 48

Who else was present or aware (names): DR. CON CISO (NIGHT INTENSIVIST)

RN NICK (DAYS)

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\_\_\_\_\_

\_\_\_\_\_

\_\_\_\_\_

\_\_\_\_\_

\_\_\_\_\_

Was a client involved (names): REBECCA ANN POWELL (DECEASED)

\_\_\_\_\_

\_\_\_\_\_

**Your Contact Information:**

Staff will need to contact you for additional information and/or clarification

Your full name: BRIAN M. POWELL

Address: 5630 N. CAMPBELL ROAD LAS VEGAS, NV 89149

Telephone: 216 571 9522

E-mail: POWELLB4@GMAIL.COM

  
Your Signature

6/11/2017  
Date

**Please submit this form, you may include additional pages as needed, along with any documentation to:**

Nevada State Board of Nursing  
5011 Meadowood Mall Way, Ste 300  
Reno, Nevada 89502-6547

OR

Fax to: (775) 687-7707

E-mail to: [nursingboard@nsbn.state.nv.us](mailto:nursingboard@nsbn.state.nv.us)

5011 Meadowood Mall Way, Suite 300, Reno, NV 89502-6567 (phone) 775-687-7700 (fax) 775-687-7707  
2500 W. Sahara Ave., Suite 207, Las Vegas, NV 89102-4392 (phone) 702-486-5800 (fax) 702-486-5803  
[www.nursingboard.state.nv.us](http://www.nursingboard.state.nv.us) • 888-590-6726 • [nursingboard@nsbn.state.nv.us](mailto:nursingboard@nsbn.state.nv.us)

STATE OF NEVADA

BRIAN SANDOVAL  
Governor

RICHARD WHITLEY, MS  
Director



CODY L. PHINNEY, MPH  
Administrator

JOHN DIMURO, D.O., MBA  
Chief Medical Officer

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

May 23, 2017

Brian Powell  
Po Box 750131  
Las Vegas, NV 89136

RE: Complaint #NV00049271

Dear Mr. Powell:

This letter is an acknowledgement that the Bureau of Health Care Quality and Compliance has received your complaint concerning Centennial Hills Hospital Medical Center.

Thank you for bringing to our attention your specific issues and concerns regarding this facility. Your concerns related to Patient Neglect will be investigated during an unannounced onsite visit at the facility by an investigator. You will be notified of the outcome of the Bureau's investigation.

Our team of investigators will review your specific concerns, and evaluate the facility's actions, to determine if the facility is in compliance with state and/or federal regulations. Please refer to the enclosed fact sheet that describes the investigation process.

If you have any questions or concerns about your complaint, please call our Northern office at 775-684-1030 or our Southern office at 702-486-6515 and refer to the complaint number stated above.

Sincerely,

A handwritten signature in black ink, appearing to read "Crystal Blackeye".

Blackeye, Crystal, AAI/Complaint Intake Coordinator

cc: Clark, Ellen, Health Facilities Inspector III

Encl: 1 Page Complaint Process Fact Sheet

Public Health: Working for a Safer and Healthier Nevada

PLTF 50

# EXHIBIT ‘P’

**AFFIDAVIT OF COUNSEL FOR DEFENDANTS**

STATE OF NEVADA            )  
  )ss:  
COUNTY OF CLARK         )

BRAD J. SHIPLEY, ESQ., being first duly sworn, deposes and says:

1. Your Affiant is counsel for the moving Defendants in the instant litigation, and is duly licensed to practice law in the State of Nevada.

2. On April 17, 2020, moving Defendants served written discovery on all Plaintiffs, including requests for admission. Copies of the requests for admission that were served on Plaintiffs are attached. To date, Plaintiffs have not served responses to any of Defendants' written discovery requests.

I declare under penalty of perjury that the foregoing is true and correct this 7<sup>th</sup> day of August 2020.

  
\_\_\_\_\_  
Brad J. Shipley, Esq.  
JOHN H. COTTON & ASSOCIATES, LTD.



1 **RFA**  
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 [BShipleyr@jhcottonlaw.com](mailto:BShipleyr@jhcottonlaw.com)  
8 **JOHN H. COTTON & ASSOCIATES, LTD.**  
9 7900 West Sahara Avenue, Suite 200  
10 Las Vegas, Nevada 89117  
11 Telephone: (702) 832-5909  
12 Facsimile: (702) 832-5910  
13 *Attorneys for Defendants Dionice S. Juliano, M.D.,*  
14 *Conrado Concio, M.D. and Vishal S. Shah, M.D.*

15 **DISTRICT COURT**  
16 \* \* \*  
17 **CLARK COUNTY, NEVADA**

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

24 Plaintiffs,

25 vs.

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

35 Defendants.

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

**DEFENDANTS JULIANO, CONCIO**  
**AND SHAH'S FIRST SET OF**  
**REQUESTS FOR ADMISSION TO**  
**PLAINTIFF ESTATE OF REBECCA**  
**POWELL, THROUGH BRIAN**  
**POWELL AS SPECIAL**  
**ADMINISTRATOR**

36 Pursuant to the provisions of Rule 36 of the Nevada Rules of Civil Procedure, Defendants  
37 DIONICE JULIANO, MD, VISHAL SHAH, MD, and CONRADO CONCIO, MD  
38 ("Defendants"), by and through their counsel of record, John H. Cotton, Esq. and Brad Shipley,  
39 Esq., of the law firm of John H. Cotton & Associates, hereby requests that Plaintiff, ESTATE OF  
40 REBECCA POWELL THROUGH BRIAN POWELL AS SPECIAL ADMINSTRATOR,

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

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

1 respond to the following requests for admission in writing and under oath within thirty (30) days  
2 from the receipt hereof:

3 **REQUEST FOR ADMISSION NO. 1:**

4 Admit that Defendant Dionice Juliano was not responsible for the care and treatment of  
5 the decedent after May 9, 2017.

6 **REQUEST FOR ADMISSION NO. 2:**

7 Admit that all actions allegedly forming the basis of your claims took place after May 9,  
8 2017.

9 Dated this 17<sup>th</sup> day of April 2020.

10  
11 **JOHN H. COTTON & ASSOCIATES, LTD.**  
12 7900 West Sahara Avenue, Suite 200  
13 Las Vegas, Nevada 89117

14   
15 \_\_\_\_\_  
16 JOHN H. COTTON, ESQ.  
17 BRAD SHIPLEY, ESQ.

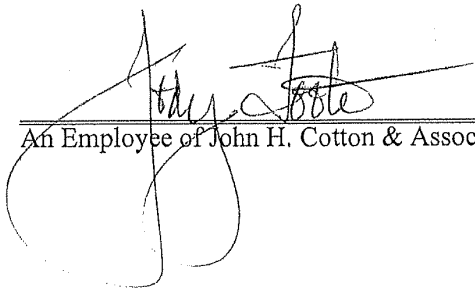
18 *Attorneys for Defendants Dionice S. Juliano, M.D.,*  
19 *Conrado Concio, M.D. and Vishal S. Shah, M.D*  
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John H. Cotton & Associates  
7900 W. Sahara, Suite 200  
Las Vegas, NV 89117

**CERTIFICATE OF ELECTRONIC SERVICE**

I hereby certify that on the 17<sup>th</sup> day of April 2020, I served a true and correct copy of the foregoing ***DEFENDANTS JULIANO, CONCIO AND SHAH'S FIRST SET OF REQUESTS FOR ADMISSION TO PLAINTIFF ESTATE OF REBECCA POWELL, THROUGH BRIAN POWELL AS SPECIAL ADMINISTRATOR*** by electronic means was submitted electronically for filing and/or service with the Eighth Judicial District Court, made in accordance with the E-Service List, to the following individuals:

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

  
An Employee of John H. Cotton & Associates

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

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

DISTRICT COURT  
\* \* \*  
CLARK COUNTY, NEVADA

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

18 Plaintiffs,

19 vs.

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

Defendants.

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

**DEFENDANTS JULIANO, CONCIO**  
**AND SHAH'S FIRST SET OF**  
**REQUESTS FOR ADMISSION TO**  
**PLAINTIFF DARCI CREECY**

Pursuant to the provisions of Rule 36 of the Nevada Rules of Civil Procedure, Defendants DIONICE JULIANO, MD, VISHAL SHAH, MD, and CONRADO CONCIO, MD ("Defendants"), by and through their counsel of record, John H. Cotton, Esq. and Brad Shipley, Esq., of the law firm of John H. Cotton & Associates, hereby requests that Plaintiff, DARCI

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

1 CREECY, respond to the following requests for admission in writing and under oath within  
2 thirty (30) days from the receipt hereof:

3 **REQUEST FOR ADMISSION NO. 1:**

4 Admit that you were not physically present at the time of the death of the decedent.

5 **REQUEST FOR ADMISSION NO. 2:**

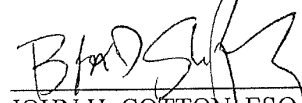
6 Admit that Defendant Dionice Juliano was not responsible for the care and treatment of  
7 the decedent after May 9, 2017.

8 **REQUEST FOR ADMISSION NO. 2:**

9 Admit that all actions allegedly forming the basis of your claims took place after May 9,  
10 2017.

11 Dated this 17<sup>th</sup> day of April 2020

12  
13 **JOHN H. COTTON & ASSOCIATES, LTD.**  
14 7900 West Sahara Avenue, Suite 200  
15 Las Vegas, Nevada 89117

16   
17 \_\_\_\_\_  
18 JOHN H. COTTON, ESQ.  
19 BRAD SHIPLEY, ESQ.

20 *Attorneys for Defendants Dionice S. Juliano, M.D.,*  
21 *Conrado Concio, M.D. and Vishal S. Shah, M.D*  
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John H. Cotton & Associates  
7900 W. Sahara, Suite 200  
Las Vegas, NV 89117

**CERTIFICATE OF ELECTRONIC SERVICE**

I hereby certify that on the 17<sup>th</sup> day of April 2020, I served a true and correct copy of the foregoing ***DEFENDANTS JULIANO, CONCIO AND SHAH'S FIRST SET OF REQUESTS FOR ADMISSION TO PLAINTIFF DARCI CREECY*** by electronic means was submitted electronically for filing and/or service with the Eighth Judicial District Court, made in accordance with the E-Service List, to the following individuals:

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

  
An Employee of John H. Cotton & Associates

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

1 **RFA**  
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 [BShipleyr@jhcottonlaw.com](mailto:BShipleyr@jhcottonlaw.com)  
8 **JOHN H. COTTON & ASSOCIATES, LTD.**  
9 7900 West Sahara Avenue, Suite 200  
10 Las Vegas, Nevada 89117  
11 Telephone: (702) 832-5909  
12 Facsimile: (702) 832-5910  
13 *Attorneys for Defendants Dionice S. Juliano, M.D.,*  
14 *Conrado Concio, M.D. and Vishal S. Shah, M.D.*  
15

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

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

18 Plaintiffs,

19 vs.

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

Defendants.

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

**DEFENDANTS JULIANO, CONCIO**  
**AND SHAH'S FIRST SET OF**  
**REQUESTS FOR ADMISSION TO**  
**PLAINTIFF TARYN CREECY**

25 Pursuant to the provisions of Rule 36 of the Nevada Rules of Civil Procedure, Defendants  
26 DIONICE JULIANO, MD, VISHAL SHAH, MD, and CONRADO CONCIO, MD  
27 ("Defendants"), by and through their counsel of record, John H. Cotton, Esq. and Brad Shipley,  
28 Esq., of the law firm of John H. Cotton & Associates, hereby requests that Plaintiff, TARYN

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

1 CREECY, respond to the following requests for admission in writing and under oath within  
2 thirty (30) days from the receipt hereof:

3 **REQUEST FOR ADMISSION NO. 1:**

4 Admit that you were not physically present at the time of the death of the decedent.

5 **REQUEST FOR ADMISSION NO. 2:**

6 Admit that Defendant Dionice Juliano was not responsible for the care and treatment of  
7 the decedent after May 9, 2017.

8 **REQUEST FOR ADMISSION NO. 2:**

9 Admit that all actions allegedly forming the basis of your claims took place after May 9,  
10 2017.

11 Dated this 17<sup>th</sup> day of April 2020.

12  
13 **JOHN H. COTTON & ASSOCIATES, LTD.**  
14 7900 West Sahara Avenue, Suite 200  
15 Las Vegas, Nevada 89117

16   
17 \_\_\_\_\_  
18 JOHN H. COTTON, ESQ.  
19 BRAD SHIPLEY, ESQ.

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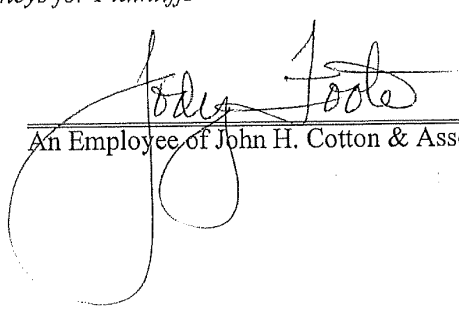


John H. Cotton & Associates  
7900 W. Sahara, Suite 200  
Las Vegas, NV 89117

**CERTIFICATE OF ELECTRONIC SERVICE**

I hereby certify that on the 17<sup>th</sup> day of April 2020, I served a true and correct copy of the foregoing ***DEFENDANTS JULIANO, CONCIO AND SHAH'S FIRST SET OF REQUESTS FOR PRODUCTION TO PLAINTIFF TARYN CREECY*** by electronic means was submitted electronically for filing and/or service with the Eighth Judicial District Court, made in accordance with the E-Service List, to the following individuals:

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

  
An Employee of John H. Cotton & Associates

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

1 **RFA**  
2 JOHN H. COTTON, ESQ.  
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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.*

DISTRICT COURT  
\* \* \*  
CLARK COUNTY, NEVADA

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

18 Plaintiffs,

19 vs.

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

Defendants.

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

**DEFENDANTS JULIANO, CONCIO**  
**AND SHAH'S FIRST SET OF**  
**REQUESTS FOR ADMISSION TO**  
**PLAINTIFF ISAIAH KHOSROF**

Pursuant to the provisions of Rule 36 of the Nevada Rules of Civil Procedure, Defendants DIONICE JULIANO, MD, VISHAL SHAH, MD, and CONRADO CONCIO, MD ("Defendants"), by and through their counsel of record, John H. Cotton, Esq. and Brad Shipley, Esq., of the law firm of John H. Cotton & Associates, hereby requests that Plaintiff, ISAIAH

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

1 KHOSROF, respond to the following requests for admission in writing and under oath within  
2 thirty (30) days from the receipt hereof:

3 **REQUEST FOR ADMISSION NO. 1:**

4 Admit that you were not physically present at the time of the death of the decedent.

5 **REQUEST FOR ADMISSION NO. 2:**

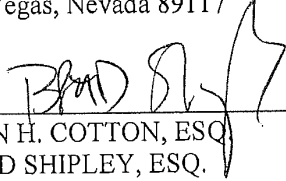
6 Admit that Defendant Dionice Juliano was not responsible for the care and treatment of  
7 the decedent after May 9, 2017.

8 **REQUEST FOR ADMISSION NO. 2:**

9 Admit that all actions allegedly forming the basis of your claims took place after May 9,  
10 2017.

11 Dated this 17<sup>th</sup> day of April 2020.

12  
13 **JOHN H. COTTON & ASSOCIATES, LTD.**  
14 7900 West Sahara Avenue, Suite 200  
15 Las Vegas, Nevada 89117

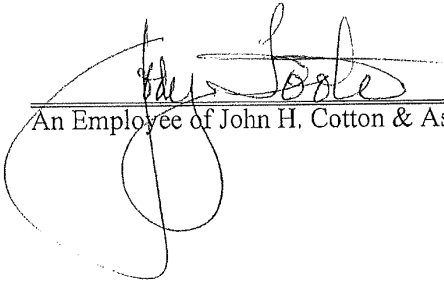
16   
17 \_\_\_\_\_  
18 JOHN H. COTTON, ESQ.  
19 BRAD SHIPLEY, ESQ.  
20 *Attorneys for Defendants Dionice S. Juliano, M.D.,*  
21 *Conrado Concio, M.D. and Vishal S. Shah, M.D*  
22  
23  
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28

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

**CERTIFICATE OF ELECTRONIC SERVICE**

I hereby certify that on the 17<sup>th</sup> day of April 2020, I served a true and correct copy of the foregoing ***DEFENDANTS JULIANO, CONCIO AND SHAH'S FIRST SET OF REQUESTS FOR ADMISSION TO PLAINTIFF ISALAH KHOSROF*** by electronic means was submitted electronically for filing and/or service with the Eighth Judicial District Court, made in accordance with the E-Service List, to the following individuals:

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

  
An Employee of John H. Cotton & Associates

John H. Cotton & Associates, Ltd.  
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6 Nevada Bar Number 12639  
7 [BShipleyr@jhcottonlaw.com](mailto:BShipleyr@jhcottonlaw.com)  
8 **JOHN H. COTTON & ASSOCIATES, LTD.**  
9 7900 West Sahara Avenue, Suite 200  
10 Las Vegas, Nevada 89117  
11 Telephone: (702) 832-5909  
12 Facsimile: (702) 832-5910  
13 *Attorneys for Defendants Dionice S. Juliano, M.D.,*  
14 *Conrado Concio, M.D. and Vishal S. Shah, M.D.*

DISTRICT COURT  
\* \* \*  
CLARK COUNTY, NEVADA

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

18 Plaintiffs,

19 vs.

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

Defendants.

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

**DEFENDANTS JULIANO, CONCIO**  
**AND SHAH'S FIRST SET OF**  
**REQUESTS FOR ADMISSION TO**  
**PLAINTIFF LLOYD CREECY**

Pursuant to the provisions of Rule 36 of the Nevada Rules of Civil Procedure, Defendants DIONICE JULIANO, MD, VISHAL SHAH, MD, and CONRADO CONCIO, MD ("Defendants"), by and through their counsel of record, John H. Cotton, Esq. and Brad Shipley, Esq., of the law firm of John H. Cotton & Associates, hereby requests that Plaintiff, LLOYD

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

1 CREECY, respond to the following requests for admission in writing and under oath within  
2 thirty (30) days from the receipt hereof:

3 **REQUEST FOR ADMISSION NO. 1:**

4 Admit that you were not physically present at the time of the death of the decedent.

5 **REQUEST FOR ADMISSION NO. 2:**

6 Admit that Defendant Dionice Juliano was not responsible for the care and treatment of  
7 the decedent after May 9, 2017.

8 **REQUEST FOR ADMISSION NO. 2:**

9 Admit that all actions allegedly forming the basis of your claims took place after May 9,  
10 2017.

11 Dated this 17<sup>th</sup> day of April 2020.

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

13 7900 West Sahara Avenue, Suite 200

14 Las Vegas, Nevada 89117

15 

16 JOHN H. COTTON, ESQ.

17 BRAD SHIPLEY, ESQ.

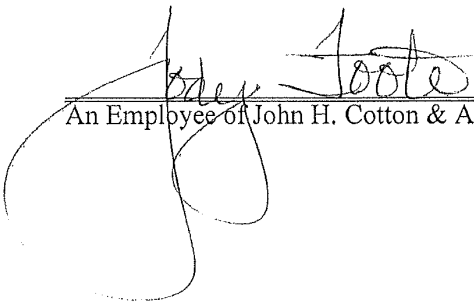
18 *Attorneys for Defendants Dionice S. Juliano, M.D.,*  
19 *Conrado Concio, M.D. and Vishal S. Shah, M.D*

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

**CERTIFICATE OF ELECTRONIC SERVICE**

I hereby certify that on the 17<sup>th</sup> day of April 2020, I served a true and correct copy of the foregoing ***DEFENDANTS JULIANO, CONCIO AND SHAH'S FIRST SET OF REQUESTS FOR ADMISSION TO PLAINTIFF LLOYD CREECY*** by electronic means was submitted electronically for filing and/or service with the Eighth Judicial District Court, made in accordance with the E-Service List, to the following individuals:

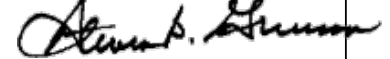
Paul S. Padda, Esq.  
Suneel J. Nelson, Esq,  
PAUL PADDA LAW, PLLC  
4560 South Decatur Boulevard, Ste. 300  
Las Vegas, NV 89103  
*Attorneys for Plaintiffs*

  
An Employee of John H. Cotton & Associates

# EXHIBIT ‘J’

PLAINTIFFS’ OPPOSITION TO  
DEFENDANT VALLEY HEALTH  
SYSTEM LLC’S MOTION TO  
RECONSIDER MOTION FOR STAY  
PENDING PETITION FOR WRIT OF  
MANDAMUS





**OPPS**

PAUL S. PADDA, ESQ.  
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SRILATA R. SHAH, ESQ.  
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**PAUL PADDA LAW, PLLC**  
4560 South Decatur Boulevard, Suite 300  
Las Vegas, Nevada 89103  
Tele: (702) 366-1888

*Attorneys for Plaintiffs*

**DISTRICT COURT  
CLARK COUNTY, NEVADA**

ESTATE OF REBECCA POWELL, through  
Brian Powell as Special Administrator;  
DARCI CREECY, individually; TARYN  
CREECY, individually; ISIAIAH 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 TO  
RECONSIDER MOTION FOR STAY  
PENDING PETITION FOR WRIT OF  
MANDAMUS**

Date of Hearing: April 21, 2021  
Time of Hearing: 9:00 AM

Plaintiffs ESTATE OF REBECCA POWELL, through Brian Powell as Special  
Administrator; DARCI CREECY, individually; TARYN CREECY, individually; ISIAIAH  
KHOSROF, individually; LLOYD CREECY, individually submit this opposition to Defendant,

*Estate of Rebecca Powell, et al. v. Valley Health System, LLC, et al., Case No. A-19-788787-C, Dept. 30  
Plaintiffs' Opposition to Defendant Valley Health System LLC's Motion to Reconsider Motion for Stay Pending  
Petition for Writ of Mandamus*

1 VALLEY HEALTH SYSTEM, LLC’s (doing business as “Centennial Hills Hospital Medical  
2 Center”) (“VHS”) Motion To Reconsider Motion To Stay denied by this Court on December  
3 17, 2020.

4 Defendant, VHS’s Motion to Reconsider Order denying VHS’s Motion for Stay is  
5 severely time barred as VHS failed to file the instant Motion for Reconsideration within the  
6 requisite 14 days of the December 17, 2020 Notice of Order (a notice that Defendant itself filed).  
7 Indeed, as the Court is well aware, Eighth District Court Rule (“EDCR”) 2.24(b) clearly and  
8 plainly provides that a party seeking reconsideration must file its motion within 14-days after  
9 receiving notice of the order for which reconsideration is sought. It is ironic that in a case in  
10 which Defendant seeks dismissal of the entirety of Plaintiff’s case based upon statute of  
11 limitations grounds, Defendant seeks to have this Court look past its failure to adhere to a clear  
12 and unambiguous procedural deadline which Defendant has not sought to extend or otherwise  
13 justify its failure to meet.

14 For the reasons set forth below, this Court should categorically deny VHS’s Motion To  
15 Reconsider Motion To Stay denied by this Court on December 17, 2020 as the Motion to  
16 Reconsider is procedurally untimely by nearly 4 months. Unfortunately, it is beyond transparent  
17 that the instant motion is another attempt by VHS to delay proceedings in this wrongful death  
18 case and force Plaintiffs’ counsel to divert time and attention away from the merits of this case to  
19 respond to another frivolous and desperate legal maneuver. In support of this opposition,  
20 Plaintiffs rely upon the memorandum of points and authorities below, all papers on file in this  
21 litigation and any additional argument the Court may permit.

22 . . .

23 . . .

24 *Estate of Rebecca Powell, et al. v. Valley Health System, LLC, et al., Case No. A-19-788787-C, Dept. 30*  
25 *Plaintiffs’ Opposition to Defendant Valley Health System LLC’s Motion to Reconsider Motion for Stay Pending*  
26 *Petition for Writ of Mandamus*

## MEMORANDUM OF POINTS AND AUTHORITIES

### IV. SUMMARY OF FACTS

This is a medical malpractice/wrongful death case where it is alleged that Ms. Rebecca Powell, age 42, died while in the care of Centennial Hills on account of negligence by the hospital and its medical personnel.

On May 3, 2017, Ms. Powell was found by EMS at her home. Ms. Powell was unconscious, labored in her breathing, and had vomit on her face. EMS provided emergency care and transported her to Centennial Hills where she was admitted. Ms. Powell continued to improve during her admission. However, on May 10, 2017, Ms. Powell complained of shortness of breath, weakness, and a “drowning” feeling. In response to these complaints, Ms. Powell was administered several doses of Ativan on May 11, 2017. Shortly thereafter, Ms. Powell suffered acute respiratory failure, resulting in her death on May 11, 2017.

On June 28, 2017, Plaintiffs received the Certificate of Death, issued by the State of Nevada Department of Health and Human Services [“HHS”] listing Ms. Powell’s cause of death as “suicide.”

By letter dated February 5, 2018, HHS notified Mr. Powell that it conducted an “investigation” of the facility and concluded that VHS committed “**violation(s) with rules and/or regulations.**”

Within one year of the HHS investigative report dated February 5, 2018, Plaintiffs timely filed a Complaint in the Eighth Judicial District Court on February 4, 2019 in compliance with NRS 41 A.097(2)(a) and (c).

This matter is currently set for jury 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.

**V. PROCEDURAL HISTORY**

On February 4, 2019 Plaintiffs filed suit alleging negligence/medical malpractice, wrongful death pursuant to NRS 41.085, and negligent infliction of emotional distress against Defendants, VHS, Universal Health Services, Inc., Dr. Dionice S. Juliano, M.D., Dr. Conrado C.D. and Dr. Vishal S. Shah M.D. In compliance with NRS 41A.071, the Complaint included a notarized affidavit from Dr. Sami Hashim in support of their first cause of action alleging negligence/medical malpractice.

On June 12, 2019, Defendants Dr. Concio and Dr. Juliano, filed a motion to dismiss pursuant to Nevada Rules of Civil Procedure [“NRC”] 12(b)(5) alleging that Plaintiffs failed to timely file their Complaint within the statute of limitations pursuant to NRS 41A.097(2) and failed to meet the threshold requirements of NRS 41A.071 for the claims of negligent infliction of emotional distress and professional negligence. Joinders to the motion to dismiss were filed by all remaining defendants.

On June 19, 2019, Defendant VHS filed a separate motion to dismiss pursuant to NRC 12(b)(5) alleging Plaintiffs failed to timely file their Complaint within the statute of limitations time of one year pursuant to NRS 41A.097(2) and requested dismissal of Plaintiffs’ Complaint.

On August 13, 2019, Plaintiffs filed their opposition to the motion to dismiss filed by Defendants.

On September 25, 2019, counsel for VHS presented oral arguments to the District Court on their motion to dismiss.

*Estate of Rebecca Powell, et al. v. Valley Health System, LLC, et al., Case No. A-19-788787-C, Dept. 30  
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1 In an Order dated February 6, 2020, the Court denied Defendants Dr. Concio and Dr.  
2 Juliano's motion to dismiss Plaintiffs' Complaint, and subsequent joinders. In a companion Order  
3 dated February 6, 2021, the Court also denied Centennial Hills' motion to dismiss Plaintiffs'  
4 Complaint, and subsequent joinders to that motion.

5 On September 2, 2020, VHS filed a Motion for Summary Judgment based upon the  
6 expiration of the Statute of Limitations contained in NRS 41A.097. On September 3, 2020, co-  
7 defendants Dr. Concio, Dr. Shah, and Dr. Juliano joined VHS' Motion for Summary Judgment.

8 On September 16, 2020 Plaintiffs filed their opposition to VHS' Motion for Summary  
9 Judgment.  
10

11 On October 21, 2020, VHS filed its reply to Plaintiffs opposition. On October 21, 2020,  
12 co-defendants Dr. Concio, Dr. Shah, and Dr. Juliano filed a joinder to VHS' reply.

13 In an Order dated October 29, 2020, this Court denied several motions and joinders  
14 including VHS's Motion for Summary Judgment. A Notice of Entry of the Order was filed on  
15 November 2, 2020.  
16

17 On November 5, 2020, VHS filed a motion seeking a stay of the lower court proceedings  
18 pending a resolution of an appellate issue pursuant to NRAP 8(a)(1)(A).<sup>1</sup>  
19

20 On November 19, 2020, Plaintiffs filed an opposition to VHS's motion requesting a stay.<sup>2</sup>

21 **By a Notice of Entry of Order dated and filed on December 17, 2020 by VHS this**  
22 **Court denied VHS's Motion for Stay pending resolution of an appellate issue.** In denying  
23 the stay this Court again reiterated its reasoning for denying VHS's Motion for Summary  
24

25  
26  
27 <sup>1</sup> A copy of the VHS's Motion to Stay is attached hereto as **Exhibit 1** (excluding exhibits).

28 <sup>2</sup> A copy of the Plaintiff's Opposition to Defendant's November 5, 2020 Motion to Stay is attached hereto as **Exhibit 2**.

Judgment by stating that “the Court cannot find that the Defendants are likely to prevail on the merits, as this Court previously found, and continues to believe, that the Death Certificate identifying Ms. Powell's cause of death as a "suicide," may have tolled the statute of limitations, in that such a conclusion or determination by the Medical Examiner, would clearly not suggest "negligence" on the part of any medical care provider. Although the Defendants suggest that the Plaintiffs possessed inquiry notice much earlier, the Court could not find that the families questioning of the cause of death equated with inquiry notice of negligence. Consequently, this Court concluded that when the Plaintiffs knew or should have known, of the alleged negligence of the Defendants, was an issue of fact which overcame the Defendants' Motion for Summary Judgment. Consequently, the Court cannot find that there is a likelihood of success on the merits.”<sup>3</sup>

A period of **110 days** has passed since December 17, 2020 and VHS now requests this Court to reconsider its decision denying the Motion for Stay pending its Petition for Writ of Mandamus.

**I. APPLICABLE LAW**

**EDCR 2.24. Rehearing of motions.**

(a) No 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.

(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

<sup>3</sup> A copy of the December 17, 2020 Notice of Entry of Order denying VHS’s Motion for Stay is attached hereto as **Exhibit 3**.

*Estate of Rebecca Powell, et al. v. Valley Health System, LLC, et al., Case No. A-19-788787-C, Dept. 30  
Plaintiffs’ Opposition to Defendant Valley Health System LLC’s Motion to Reconsider Motion for Stay Pending  
Petition for Writ of Mandamus*

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. [Emphasis added].

[Amended; effective January 1, 2020.]

II. **THIS COURT SHOULD DENY VHS' MOTION FOR RECONSIDERATION AS VHS FAILED TO FILE THEIR MOTION WITHIN 14 DAYS OF THE DECEMBER 17, 2020 ORDER DENYING THEIR REQUEST FOR STAY IN COMPLIANCE WITH EDCR 2.24(b)**

Pursuant to EDCR 2.24(b), a Motion for Reconsideration **must be filed within 14 days** after written notice of the Order unless the time is shortened or enlarged by order. VHS seeks reconsideration of the Order dated December 17, 2020 which denied their motion for a stay pending the resolution of an appellate issue pursuant to NRAP 8 (a)(1)(A).<sup>4</sup> VHS failed to timely file their Motion for Reconsideration within 14 days of the December 17, 2020 Order in compliance with EDCR 2.24 (b). Therefore, this Court should not hear this motion and deny the relief requested by VHS.

There is no ambiguity in the time requirements set forth in EDCR 2.24(b) regarding the deadlines for filing of a Motion for Reconsideration. A party seeking a reconsideration of an order **must** file the motion within 14 days. There is also no ambiguity as to when the court denied defendant, VHS' motion for stay. The notice of entry of order (filed by VHS itself) denying the motion for stay is dated and filed on December 17, 2020. VHS is seeking a reconsideration of the order dated December 17, 2020 which denied their request for a stay pending resolution of an appellate issue. EDCR 2.24(b) states that a party seeking reconsideration of the ruling of the court, other than any order that may be addressed by motion pursuant to NRCP 50(b), 50(2)(b),

<sup>4</sup> See Notice of Entry and accompanying Order denying VHS's Motion for Stay, attached hereto as **Exhibit 3**.

*Estate of Rebecca Powell, et al. v. Valley Health System, LLC, et al.*, Case No. A-19-788787-C, Dept. 30  
*Plaintiffs' Opposition to Defendant Valley Health System LLC's Motion to Reconsider Motion for Stay Pending  
Petition for Writ of Mandamus*

1 59 or 60, **must file a motion for such relief within 14 days after service of written notice of**  
2 **the order** of judgment unless the time is shortened or enlarged by order. Defendant, VHS had 14  
3 days from December 17, 2020 to file the instant Motion to Reconsider the denial of the request  
4 for a stay pending resolution of their writ petition.

5 In Ibeabuchi v. Chesnoff, 127 Nev. 1143, 373 P.3d 924 (2011), the Nevada Supreme Court  
6 denied appellant's motion as untimely under both NRCP 60(b) and EDCR 2.24. The Court in  
7 Ibeabuchi stated that "Under EDCR 2.24, motions seeking reconsideration of an order must be  
8 filed no later than ten days after the order's notice of entry is served." *Id.* In Shivak v. Houston,  
9 133 Nev. 1073, 397 P. 3d 20, WL 2815141 (June 2017), the Nevada Supreme Court dismissed  
10 the pro se appeal from an order denying a motion for reconsideration of an order of dismissal. On  
11 review of the documents, the Supreme Court found the Appellant filed his motion for  
12 reconsideration on March 3, 2017, well after the 10 days allowed for filing such a motion under  
13 the prior version of EDCR 2.24(b). In Dimick v. The Eighth Judicial District Court of The State  
14 of Nevada, 129 Nev. 1110 (2013) the Nevada Supreme Court decided that the Petitioner was not  
15 entitled to a writ of mandamus as the district court lacked jurisdiction to consider petitioner's  
16 motion for rehearing because it was filed after the 10-day period for filing such motions had  
17 passed, citing EDCR 2.24 (b). Simply put, this motion is procedurally untimely, and this Court  
18 should not consider the instant motion.

19 VHS can present no set of facts to demonstrate that they filed the instant Motion for  
20 Reconsideration within 14 days of the December 17, 2020 Order. The time to file the Motion for  
21 Reconsideration was not shortened or enlarged by an order, nor did VHS even attempt to extend  
22 the deadline. The instant motion is also not made under NRCP 50(b), 50(2)(b), 59 or 60. VHS  
23 missed the deadline set forth in EDCR 2.24(b) by a long shot.

24 *Estate of Rebecca Powell, et al. v. Valley Health System, LLC, et al., Case No. A-19-788787-C, Dept. 30*  
25 *Plaintiffs' Opposition to Defendant Valley Health System LLC's Motion to Reconsider Motion for Stay Pending*  
26 *Petition for Writ of Mandamus*



1 Filing a Writ of Petition for Mandamus does not cure the failure of VHS to timely file the  
2 instant motion.

3 VHS is time barred from bringing the instant Motion for Reconsideration as a period of  
4 110 days have passed since the Order dated December 17, 2020. This Court should deny the  
5 instant motion as it is procedurally defective.

6  
7 **III. THIS COURT SHOULD DENY THE INSTANT MOTION FOR**  
8 **RECONSIDERATION AS VHS MAKES THE IDENTICAL ARGUMENTS**  
9 **AS THEIR PRIOR MOTION FOR STAY WITHOUT SEEKING LEAVE**  
10 **OF COURT PURSUANT TO EDCR 2.24 (a)**

11 **EDCR 2.24. Rehearing of motions.**

12 **(a) No motions once heard and disposed of may be renewed in**  
13 **the same cause, nor may the same matters therein embraced be**  
14 **reheard, unless by leave of the court granted upon motion**  
15 **therefor, after notice of such motion to the adverse parties.**

16 As is clear from the record, Defendant VHS did not seek leave to make the instant motion.  
17 This Court should not entertain this motion as no leave was sought to file the instant motion in  
18 contravention of EDCR 2.24 (a). VHS states on page 2 of their motion that this motion is filed  
19 pursuant to EDCR 2.24. However, VHS has failed to follow any of the requirements of EDCR  
20 2.24.

21 VHS filed the identical motion requesting a stay on November 5, 2020.<sup>5</sup> VHS attempts  
22 to incorrectly argue their Motion for Summary Judgment in this untimely Motion for  
23 Reconsideration. VHS presents nothing new in this motion except a Writ for Petition of  
24 Mandamus was filed by VHS on December 20, 2020.

25  
26  
27  
28 <sup>5</sup> See VHS's Motion to Stay is attached hereto as **Exhibit 1**.

1 In the event, this Court considers VHS's untimely motion, all this Court needs to do is  
2 review its December 17, 2020 Order which set forth the arguments made by VHS and Plaintiffs  
3 in support and opposition of the request for the stay.<sup>6</sup>

4 This Court denied VHS's request for a stay after evaluating each of the four (4) factors  
5 set forth under NRAP 8. This Court found and concluded as follows: "1) Trial is currently not  
6 scheduled until May of 2022, and consequently, even if a stay is denied, it is likely that the  
7 Supreme Court would rule on the "potential" Writ of Mandamus, prior to the parties going to  
8 Trial. Consequently, the Court does not find that the purpose of the writ petition would be  
9 defeated if the stay were denied. 2) The only injury or damage that the Petitioner would suffer if  
10 the stay were denied, would be continued litigations and the costs associated therewith. The Court  
11 has consistently held that ongoing litigation and the expenses associated therewith do not cause  
12 "irreparable harm." Consequently, the Court does not find that the Petitioner would suffer  
13 irreparable harm or serious injury if the stay were denied. 3) Although the Plaintiffs are correct  
14 that memories dim as time passes, such a fact applies to all witnesses equally Plaintiff's witnesses  
15 as well as Defendants' witnesses. Consequently, the Court does not find that the Plaintiffs would  
16 suffer irreparable or serious injury if the stay were granted. 4) The Court cannot find that the  
17 Petitioners are likely to prevail on the merits, as this Court previously found, and continues to  
18 believe, that the Death Certificate identifying Ms. Powell's cause of death as a "suicide," may  
19 have tolled the statute of limitations, in that such a conclusion or determination by the Medical  
20 Examiner, would clearly not suggest "negligence" on the part of any medical care provider.  
21 Although the Defendants suggest that the Plaintiffs possessed inquiry notice much earlier, the  
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28 <sup>6</sup> See Notice of Entry of Order denying VHS's Motion for Stay, attached hereto as **Exhibit 3**.

*Estate of Rebecca Powell, et al. v. Valley Health System, LLC, et al., Case No. A-19-788787-C, Dept. 30  
Plaintiffs' Opposition to Defendant Valley Health System LLC's Motion to Reconsider Motion for Stay Pending  
Petition for Writ of Mandamus*

1 Court could not find that the families questioning of the cause of death equated with inquiry notice  
2 of negligence. Consequently, this Court concluded that when the Plaintiffs knew or should have  
3 known, of the alleged negligence of the Defendants, was an issue of fact which overcame the  
4 Defendants' Motion for Summary Judgment. Consequently, the Court cannot find that there is a  
5 likelihood of success on the merits.”<sup>7</sup>  
6

7 The only change in the facts since the December 17, 2020 Order is that VHS has filed a  
8 Writ of Petition for Mandamus with the Nevada Supreme Court. An answer to the writ has been  
9 filed by Plaintiffs on March 30, 2021 and a reply has been filed by VHS on April 13, 2021.  
10

### 11 CONCLUSION

12 Plaintiffs respectfully request that this Court deny VHS’s untimely Motion To Reconsider  
13 Motion For Stay pursuant to EDCR 2.24 (a) and (b) and such other and further relief as this Court  
14 may deem just and proper including attorneys’ fees and costs.  
15

16 Dated this 15<sup>h</sup> day of April 2021.

PAUL PADDA LAW, PLLC

17 /s/ Srilata R. Shah

18 Paul S. Padda, Esq.

Nevada Bar No. 10417

19 Srilata R. Shah, Esq.

Nevada Bar No. 6820

20 4560 South Decatur Boulevard, Suite 300

21 Las Vegas, Nevada 89103

22 Attorneys for Plaintiffs  
23  
24  
25  
26  
27

28 <sup>7</sup> See Notice of Entry and accompanying Order denying VHS’s Motion for Stay, attached hereto as **Exhibit 3**.

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

**CERTIFICATE OF SERVICE**

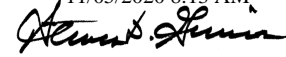
Pursuant to Rule 5(b) of the Nevada Rules of Civil Procedure, I certify that I am an employee of Paul Padda Law, PLLC and that on this 15<sup>th</sup> day of April 2021, I served a true and correct copy of the above and foregoing document on all parties/counsel of record in the above-entitled matter through hand service and/or efileNV eservice.

/s/ Jennifer C. Greening  
An Employee of Paul Padda Law, PLLC

Estate of Rebecca Powell, et al. v. Valley Health System, LLC, et al., Case No. A-19-788787-C, Dept. 30  
Plaintiffs' Opposition to Defendant Valley Health System LLC's Motion to Reconsider Motion for Stay Pending  
Petition for Writ of Mandamus

## **EXHIBIT 1**

## **EXHIBIT 1**

  
CLERK OF THE COURT

1 **MSTY**  
2 S. BRENT VOGEL  
3 Nevada Bar No. 6858  
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5 ADAM GARTH  
6 Nevada Bar No. 15045  
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9 6385 S. Rainbow Boulevard, Suite 600  
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11 Telephone: 702.893.3383  
12 Facsimile: 702.893.3789  
13 *Attorneys for Defendant Valley Health System,*  
14 *LLC dba Centennial Hills Hospital Medical*  
15 *Center*

DISTRICT COURT  
CLARK COUNTY, NEVADA

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

Plaintiffs,

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,;

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**

25 COMES NOW, Defendant VALLEY HEALTH SYSTEM, LLC (doing business as  
26 "Centennial Hills Hospital Medical Center"), a foreign limited liability company ("CHH"), by and  
27 through its counsel of record S. Brent Vogel, Esq., and Adam Garth, Esq., of the Law Firm LEWIS  
28 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  
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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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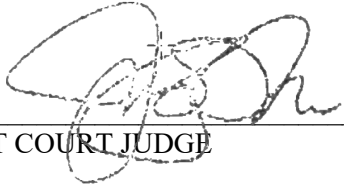
**ORDER SHORTENING TIME**

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 20, at the hour of 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  
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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  
ADAM GARTH

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13 No notarization required pursuant to NRS 53.045

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1                                    **MEMORANDUM OF POINTS AND AUTHORITIES**

2    **I. INTRODUCTION**

3            CHH moved this Court for summary judgment based upon the expiration of the statute of  
4 limitations to which co-defendants joined and which Plaintiffs opposed. The hearing for said motion  
5 was scheduled for November 4, 2020, but without a hearing, the Court issued an order deciding  
6 CHH's motion on October 29, 2020. **Exhibits A** is a copy of this Court's order denying CHH's  
7 motion along with notice of entry thereof. **Exhibits C, D, E, F & G** respectively are (1) CHH's  
8 motion, (2) co-defendants' joinder to CHH's motion, (3) Plaintiffs' opposition to CHH's motion,  
9 (4) CHH's reply to Plaintiffs' opposition, and (5) co-defendants' joinder to CHH's reply to  
10 Plaintiffs' opposition.

11           CHH's motion was predicated on proof that Plaintiffs' sought and received Ms. Powell's  
12 complete medical records from CHH just weeks after her death demonstrating their suspicion of  
13 alleged malpractice. Moreover, Plaintiffs supplied incontrovertible evidence in the form of two  
14 complaints to State agencies initiated by Plaintiffs themselves within a couple of weeks of Ms.  
15 Powell's death, specifically alleging that she had been subject to neglect by CHH and requesting  
16 investigations by both agencies into CHH's suspected neglect and the alleged malpractice.  
17 Additionally, CHH demonstrated that Plaintiffs' expert affidavit attached to their Complaint  
18 contained confirmation that the medical records which Plaintiffs sought and received prior to  
19 initiating their lawsuit were reviewed by this physician, and that he primarily based his opinions on  
20 the alleged departures he gleaned from the CHH medical records. Therefore, it confirmed that  
21 Plaintiffs were on inquiry notice when they received the medical records in June, 2017 since their  
22 own expert testified that he had sufficient evidence therein to allege malpractice.

23           Ms. Powell died on May 11, 2017. The incontrovertible evidence submitted by CHH  
24 demonstrated that Plaintiffs were on inquiry notice as early as the date of her death (May 11, 2017),  
25 and as late as June 11, 2017, the date Plaintiffs submitted a complaint alleging patient neglect and  
26 misconduct by CHH to the Nevada State Nursing Board, specifically requesting an investigation of  
27 CHH pertaining to Ms. Powell's death and medical treatment prior thereto. Plaintiffs commenced  
28 their lawsuit on February 3, 2019, 20 months after receiving inquiry notice and 8 months beyond

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  
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15 6385 S. Rainbow Boulevard, Suite 600  
16 Las Vegas, Nevada 89118  
17 Tel. 702.893.3383  
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19 *LLC dba Centennial Hills Hospital Medical*  
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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.

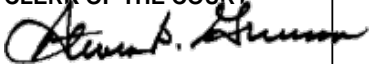
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M.D., Conrado Concio, M.D And Vishal S.  
Shah, M.D.*

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

## **EXHIBIT 2**

## **EXHIBIT 2**



**OPP**

PAUL S. PADDA, ESQ.  
Nevada Bar No. 10417  
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Attorney for Plaintiffs

**DISTRICT COURT**  
**CLARK COUNTY, NEVADA**

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

Plaintiffs,

vs.

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

Defendants.

CASE NO. A-19-788787-C

DEPT. 30

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

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

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

(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>

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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  
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200 written discovery requests; all of which have been responded to by Plaintiffs. Relatedly, VHS's argument is hollow because it presumes that there is irrefutable evidence showing Plaintiffs were on inquiry notice. All that VHS presented in support of its motion for summary judgment were two declarations from individuals claiming to have mailed records to Plaintiffs. Neither one of these witnesses could even testify as to whether Plaintiffs actually received the documents. Without having deposed a single witness in this case, VHS's counsel is simply engaging in conjecture and speculation. Since the evidence in this case on the inquiry notice issue is far from irrefutable, this is an issue of fact that a jury must decide – and not a court of law.

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

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

Estate of Rebecca Powell, et al. v. Valley Health System, LLC, et al.

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*Plaintiffs' Opposition to Defendant Valley Health System LLC's Motion For A Stay*

**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*

---

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Attorneys for Plaintiffs

November 19, 2020

**CERTIFICATE OF SERVICE**

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

*/s/ Jennifer C. Greening*

---

An Employee of Paul Padda Law, PLLC

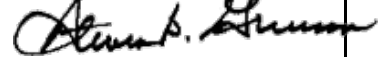
Estate of Rebecca Powell, et al. v. Valley Health System, LLC, et al.

District Court Case No. A-19-788787-C, Dept. 30

*Plaintiffs' Opposition to Defendant Valley Health System LLC's Motion For A Stay*

## **EXHIBIT 3**

## **EXHIBIT 3**



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

10 DISTRICT COURT

11 CLARK COUNTY, NEVADA

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

19 Plaintiffs,

20 vs.

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

Defendants.

Case No. A-19-788787-C

Dept. No.: 30

**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 17<sup>th</sup> day of December 2020, a copy of which is attached hereto.  
28

1 DATED this 17<sup>th</sup> day of December, 2020

2  
3 LEWIS BRISBOIS BISGAARD & SMITH LLP

4  
5 By /s/ Adam Garth  
6 S. BRENT VOGEL  
7 Nevada Bar No. 6858  
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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 17<sup>th</sup> day of December, 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.

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24 *Attorneys for Defendants Dionice S. Juliano,*  
25 *M.D., Conrado Concio, M.D And Vishal S.*  
*Shah, M.D.*

26  
27 By /s/ Roya Rokni  
28 An Employee of  
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*Attorneys for Plaintiffs*

**DISTRICT COURT  
CLARK COUNTY, NEVADA**

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

Plaintiffs,

vs.

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

Defendants.

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

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

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

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



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

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

17       Plaintiffs ordered Decedent's medical records on May 25, 2017; however, there were  
18 issues with delivery, and it is unclear exactly when Plaintiffs received them. Decedent's husband,  
19 a named Plaintiff, filed a complaint with the State of Nevada Department of Health and Human  
20 Services ("HHS") sometime before May 23, 2017. Approximately six weeks after the death of  
21 Decedent, Plaintiffs received the death certificate which listed the cause of death as a suicide from  
22 Cymbalta Intoxication. On February 5, 2018 HHS responded to Plaintiff's complaint. The letter  
23 said that after an investigation, HHS concluded that the facility had committed violations by not  
24

1 following rules and/or regulations as well as finding there were deficiencies in the medical care  
2 provided to Decedent.

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

9 Defendants Valley Health System, LLC and Universal Health Services, Inc. then filed a  
10 'Motion for Summary Judgment Based Upon the Expiration of the Statute of Limitations.'  
11 Defendants Dionice Juliano, M.D., Conrado Concio, M.D., and Vishal Shah, M.D. joined the  
12 Motion for Summary Judgment. Additionally, Defendant Juliano filed a Motion for Summary  
13 Judgment, and Defendants Concio and Shaw filed a Motion for Partial Summary Judgment on  
14 Emotional Distress Claims. Plaintiffs filed a Counter-Motion to Amend or Withdraw Plaintiffs  
15 Responses to Defendants Requests for Admissions. All of these items were on the November 04,  
16 2020 calendar. An Order deciding these motions was filed on October 29, 2020. The Order denied  
17 Defendants, Valley Health System and Universal's Motion for Summary Judgment and related  
18 Joinders; granted Defendant Juliano's Motion for Summary Judgment, and dismissed Dr. Juliano  
19 from the case without prejudice; and denied Defendants Concio and Shah's Motion for Partial  
20 Summary Judgment on the Emotional Distress Claims.  
21  
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23  
24 Now, Defendant Valley Health System, LLC (VHS) seeks an order staying the case  
25 pending an appeal of the October 29, 2020, Order denying its Motion for Summary Judgment  
26 Based Upon the Expiration of the Statute of Limitations. Defendant VHS alleges that it may be  
27 irreparably prejudiced by having to continue defending this action and potentially being forced  
28

1 to try all issues when the matter raised by the aforesaid Motion is case dispositive.

2 This matter has been pending since February, 2019. It is currently set for trial on May 23,

3 2022. Initial expert disclosures are to be made on or before June 18, 2021, rebuttal expert

4 disclosures are due on August 27, 2021, and discovery is to be completed on or before October

5 28, 2021. Valley argues that it is currently preparing a Petition for Writ of Mandamus, and is first

6 seeking a stay with the district Court pursuant to NRAP 8(a)(1)(A). The decision whether to grant

7 a motion for a stay in proceedings is left to the sound discretion of the Court. Nevada Tax

8 Commission v. Brent Mackie, 74 Nev. 273, 276 (1958). The factors to be considered by the Court

9 when considering whether to issue a stay in the proceedings when an appellate issue is pending

10 before the Nevada Supreme Court are (1) whether the object of the writ petition will be defeated

11 if the stay is denied; (2) whether the petitioner will suffer irreparable or serious injury if the stay

12 is denied; (3) whether the real party in interest will suffer irreparable or serious injury if the stay

13 is granted; and (4) whether petitioner is likely to prevail on the merits in the writ petition. NRAP

14 8(c); Fritz Hansen A/S v. Eighth Judicial District Court, 116 Nev. 650, 657 (2000).

15

16 Defendant, VHS argues that each of the 4 factors weigh in favor of granting a stay. The

17

18 Plaintiffs, on the other hand, argue that none of the factors weigh in favor of the Defendant. This

19 Court finds and concludes as follows: 1) Trial is currently not scheduled until May of 2022, and

20 consequently, even if a stay is denied, it is likely that the Supreme Court would rule on the

21 "potential" Writ of Mandamus, prior to the parties going to Trial. Consequently, the Court does

22 not find that the purpose of the writ petition would be defeated if the stay were denied. 2) The

23 only injury or damage that the Petitioner would suffer if the stay were denied, would be continued

24 litigations and the costs associated therewith. The Court has consistently held that ongoing

25 litigation and the expenses associated therewith do not cause "irreparable harm." Consequently,

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1 the Court does not find that the Petitioner would suffer irreparable harm or serious injury if the  
2 stay were denied. 3) Although the Plaintiffs are correct that memories dim as time passes, such a  
3 fact applies to all witnesses equally Plaintiff's witnesses as well as Defendants' witnesses.  
4 Consequently, the Court does not find that the Plaintiffs would suffer irreparable or serious injury  
5 if the stay were granted. 4) The Court cannot find that the Petitioners are likely to prevail on the  
6 merits, as this Court previously found, and continues to believe, that the Death Certificate  
7 identifying Ms. Powell's cause of death as a "suicide," may have tolled the statute of limitations,  
8 in that such a conclusion or determination by the Medical Examiner, would clearly not suggest  
9 "negligence" on the part of any medical care provider. Although the Defendants suggest that the  
10 Plaintiffs possessed inquiry notice much earlier, the Court could not find that the families  
11 questioning of the cause of death equated with inquiry notice of negligence. Consequently, this  
12 Court concluded that when the Plaintiffs knew or should have known, of the alleged negligence  
13 of the Defendants, was an issue of fact which overcame the Defendants' Motion for Summary  
14 Judgment. Consequently, the Court cannot find that there is a likelihood of success on the merits.

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

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

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

Dated this \_\_\_\_\_ day of December, 2020.

Dated this 17th day of December, 2020



JERRY A. WIESE, II  
DISTRICT COURT JUDGE  
EIGHTH JUDICIAL DISTRICT COURT  
DEPARTMENT 30  
APR 22 3 36 PM '20  
APR 22 3 36 PM '20

Jerry A. Wiese  
District Court Judge

*Respectfully submitted by:*

**PAUL PADDALAW**

/s/ Paul S. Padda

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1 **CSERV**

2  
3 DISTRICT COURT  
4 CLARK COUNTY, NEVADA

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6 Estate of Rebecca Powell,  
7 Plaintiff(s)

CASE NO: A-19-788787-C

8 vs.

DEPT. NO. Department 30

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

11 **AUTOMATED CERTIFICATE OF SERVICE**

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

15 Service Date: 12/17/2020

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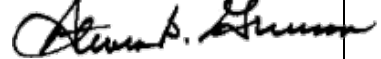
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# EXHIBIT ‘K’

DEFENDANT VALLEY HEALTH SYSTEM  
LLC’S REPLY IN FURTHER SUPPORT OF  
ITS MOTION TO RECONSIDER MOTION  
FOR STAY PENDING PETITION FOR WRIT  
OF MANDAMUS AND IN REPLY TO  
PLAINTIFFS’ OPPOSITION





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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 IN FURTHER  
SUPPORT OF ITS MOTION TO  
RECONSIDER MOTION FOR STAY  
PENDING PETITION FOR WRIT OF  
MANDAMUS AND IN REPLY TO  
PLAINTIFFS' OPPOSITION**

**Hearing Date: April 21, 2021  
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 IN FURTHER SUPPORT OF

1 MOTION TO RECONSIDER MOTION FOR STAY PENDING PETITION FOR WRIT OF  
2 MANDAMUS ON ORDER SHORTENING TIME.

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

6 DATED this 16<sup>th</sup> day of April, 2021

7  
8 LEWIS BRISBOIS BISGAARD & SMITH LLP

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1 763982-C, June 26, 2020), a court of companion jurisdiction acknowledged that EDCR 2.24(a)  
2 contemplates motions for reconsideration when substantially different evidence is subsequently  
3 introduced.

4 Additionally, NRCR Rule 54(b) states in pertinent part:

5 . . . any order or other decision, however designated, that  
6 adjudicates fewer than all the claims or the rights and liabilities of  
7 fewer than all the parties does not end the action as to any of the  
8 claims or parties and **may be revised at any time before the entry  
of a judgment adjudicating all the claims and all the parties'  
rights and liabilities.**

9 (Emphasis supplied).

10 As noted by the Nevada Supreme Court, in referring to its decision in *Masonry, supra*, it is  
11 the obligation of a party to explain why additional evidence was previously unavailable or why it  
12 was not brought to the Court's attention prior to the order which granted the motion. *See, Coleman*  
13 *v. Romano*, 2014 Nev. Unpub. LEXIS 199 at 11, 130 Nev. 1165, 2014 WL 549489 (2014).<sup>1</sup> CHH  
14 completely explained why the evidence was unavailable at the time of the original motion, i.e. the  
15 Supreme Court had not decided to take up the writ petition until March 9, 2021, three months after  
16 this Court issued its decision denying the stay.

17 The Nevada Court of Appeals recently reaffirmed the concept that newly discovered  
18 evidence is a basis upon which a motion for reconsideration may be made, and that NRCR Rule  
19 54(b) gives the district court the inherent power to revise orders which adjudicate less than all of the  
20 claims, rights and liabilities in an action. *See, Bank of N.Y. Mellon v. Holm Int'l Props.*, 2021 Nev.  
21 App. Unpub. LEXIS 124, at 7-8, 2021 WL 977698 (Nev. Ct. App., March 12, 2021).

22 It is plainly evident from EDCR 2.24's own language that a court retains the power to enlarge  
23 or shorten the time within which to make such a motion. To hold otherwise would require that a  
24 party be limited to a 14 day window within which to adduce new evidence which was otherwise  
25 unavailable to the moving party at the time of the original motion and which could not have ever

26  
27 <sup>1</sup> Per N.R.A.P. 36(c)(2), on or after January 1, 2016, an unpublished decision may be cited for its  
28 persuasive value, if any. Supreme Court Rule 123 prohibiting citation to unpublished decisions  
was repealed on November 12, 2015.

1 been available to that party within said window. Such an interpretation is not only narrow, it makes  
2 no sense. The discovery rules of the NRCP require response windows far beyond the 14 day period  
3 in EDCR 2.24, let alone the Supreme Court's unlimited time frame within which it has to decide  
4 whether to take up a writ petition. Plaintiffs had notice of the instant motion and an opportunity to  
5 interpose opposition thereto, which they did.

6 In this case, the new evidence is the Nevada Supreme Court's order directing an answer to  
7 CHH's writ petition (**Exhibit L** to CHH's moving papers). Said order was dated March 9, 2021. In  
8 less than one month from the issuance of said order, CHH made the instant motion. As previously  
9 noted in CHH's motion in chief, this Court's original order denying the stay was based on the  
10 conclusion that CHH had little likelihood of success on the merits of any writ petition. The Supreme  
11 Court's order directing an answer and reply to the writ petition completely changes that picture.  
12 Obviously, it was impossible for CHH to know on December 17, 2020 when this Court issued its  
13 original order denying the stay (**Exhibit K** to CHH's moving papers), that the Supreme Court would  
14 take up this case. That is the new evidence which Plaintiffs fail to even address save one sentence  
15 at the end of their opposition to this Motion. The Supreme Court will be deciding whether to affirm  
16 or reverse this Court's order denying CHH's motion for summary judgment in this case. That is for  
17 certain. The only question which remains is why expend any resources of the parties now when  
18 chances are at least 50%, if not greater, that a decision on the writ petition will be entirely case  
19 dispositive. The answer and reply ordered by the Nevada Supreme Court have been filed and the  
20 matter has been fully submitted to that Court for its final determination. All that is left is for the  
21 Supreme Court to make its final ruling pertaining to this Court's denial of summary judgment to  
22 CHH in this case.

23 If this Court grants CHH's motion for reconsideration, and the Supreme Court affirms this  
24 Court's decision, the parties may stipulate and this Court may order an appropriate extension of all  
25 remaining discovery deadlines, with the case proceeding as before, and no harm will be suffered by  
26 any party. However, if the Supreme Court reverses and ultimately grants CHH's summary judgment  
27 motion, the case is over, period. There is no harm in waiting because all parties know that a decision  
28 from the Supreme Court will answer the open question on whether this case proceeds or ends.

1 Proceeding in light of the definitive and forthcoming ruling of the Supreme Court does nothing more  
2 than cost the parties money. Thus, there is no valid reason to force the parties to move forward in  
3 discovery when there is every chance that no discovery will ever be necessary. Plaintiffs fail to  
4 even acknowledge the impact of the Supreme Court's order to direct an answer and willingness to  
5 take up and decide this matter, and for good reason – there would be no point in taking up the matter  
6 if the Supreme Court agreed with the underlying ruling. Thus, the chances of receiving a case  
7 dispositive decision has grown exponentially.

8 As we previously noted, expert disclosures are due June 18, 2021, approximately 2 months  
9 from the scheduled hearing on this Motion. Clearly the Nevada Supreme Court finds credence in  
10 the arguments raised in CHH's petition or it would not have directed an answer by Plaintiffs and  
11 reply by CHH. This new evidence, i.e. the Supreme Court order directing an answer, presents the  
12 very basis for CHH's request for the Court to reconsider its decision denying the stay and now issue  
13 an order staying all proceedings in this matter until such time as the Supreme Court issues its  
14 decision on the pending writ petition.

15 This Court has the inherent power under EDCR 2.24 to expand the 14 day window, and  
16 NRCP Rule 54(b) to revise any non-case dispositive order upon the presentation of new evidence  
17 which was unavailable at the time of the original motion. This case presents just such a scenario.  
18 The new evidence was obtained on March 9, 2021. This motion for reconsideration was filed on an  
19 order shortening time on April 6, 2021. CHH did not sit idly by and decide at some random point  
20 when to make the instant motion. It was made shortly after the Supreme Court's order and in the  
21 midst of the briefing schedule thereunder. There is not only good cause, but "Supremely" good  
22 reason for this Court to reconsider its prior order denying the stay, and issue an order staying all  
23 proceeding here until we have a final ruling from the Supreme Court we all know is coming. Denial  
24 of the instant motion means the parties expend likely unnecessary resources. Justice and judicial  
25 economy lend themselves to the reconsideration of the denial of the stay and call for the granting of  
26 a stay until a final decision of the Supreme Court issues.

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1 **II. 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, and the  
7 Nevada Supreme Court's decision to order an answer to the Writ Petition is clear evidence that  
8 CHH's likelihood of prevailing on the merits coupled with the remaining factors weighs totally in  
9 favor of the stay.

10  
11 DATED this 16<sup>th</sup> day of April, 2021

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1 **CERTIFICATE OF SERVICE**

2 I hereby certify that on this 16<sup>th</sup> day of April, 2021, a true and correct copy of **DEFENDANT**  
3 **VALLEY HEALTH SYSTEM LLC'S REPLY IN FURTHER SUPPORT OF MOTION TO**  
4 **RECONSIDER MOTION FOR STAY PENDING PETITION FOR WRIT OF MANDAMUS**  
5 **AND IN REPLY TO PLAINTIFFS' OPPOSITION** was served by electronically filing with the  
6 Clerk of the Court using the Odyssey E-File & Serve system and serving all parties with an email-  
7 address on record, who have agreed to receive electronic service in this action.

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