

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
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Clerk of Supreme Court
District Court
No.: A-19-
788787-C

**PETITIONER’S MOTION TO REISSUE ORDER AS A PUBLISHED
OPINION PURSUANT TO NRAP 36(f)**

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MEMORANDUM OF POINTS AND AUTHORITIES

I. INTRODUCTION

Petitioner in this matter, by and through its counsel, and pursuant to NRAP 36(f), hereby files this motion to reissue the unpublished Order Granting Petition for Writ of Mandamus, issued by this Court on October 18, 2021, as an opinion to be published in the Nevada Reports as follows:

II. CRITERIA FOR PUBLICATION

NRAP 36(c) states that “[a]n unpublished disposition, while publicly available, may not be cited as precedent except in very limited circumstances”

Whereas, “[a] published disposition is an opinion designated for publication in the Nevada Reports and **may be cited as precedent.**” NRAP 36(c) [emphasis added].

This Court decides whether to publish a disposition if it:

- (1) Presents an issue of first impression;
- (2) Alters, modifies, or significantly clarifies a rule of law previously announced by the court; or
- (3) Involves an issue of public importance that has application beyond the parties.

NRAP 36(c).

For the reasons set forth below, Petitioners believe that this case is appropriate for publication because the reasoning set forth in the unpublished disposition has

precedential value to medical malpractice cases and, therefore, should be published as an opinion in the Nevada Reports to be cited as such.

III. THIS CASE IS APPROPRIATE FOR PUBLICATION

This case is appropriate for publication in the Nevada Reports because it significantly clarifies the concept of when inquiry notice is received for statute of limitations purposes in NRS 41A.097(2) and involves an issue of public importance that has application beyond the parties.

This case clarifies the holdings in *Winn v. Sunrise Hospital and Medical Center*, 128 Nev. 246, 277 P.3d 458 (2012) and *Kushnir v. Eighth Judicial Dist. Court*, 2021 Nev. App. LEXIS 3, 2021 WL 3464145 (Court of Appeals, August 5, 2021), *review denied* Supreme Court Case No. 81779 (August 31, 2021) and the time when a party obtains inquiry notice of his cause of action in professional negligence cases. In brief, this case concludes that irrefutable evidence of inquiry notice accrues the earlier of (1) when a party receives all of the medical records sufficient to have an expert opine thereon for purposes of NRS 41A.071, or (2) when a plaintiff, suspecting professional negligence, affirmatively requests further investigation of the incident after alleging medical malpractice. As is made clear in this case, plaintiff obtained the decedent's medical records sufficiently in advance of the expiration of the statute of limitation to have an expert opine for NRS 41A.071. Specifically, plaintiffs received the records a few weeks after the

decedent's death. Additionally, one of the plaintiffs personally initiated complaints to multiple State agencies alleging the very professional negligence upon which the case was predicated, both within days of decedent's death. Plaintiffs waited 20 months from decedent's death to file a lawsuit. Plaintiffs possessed inquiry notice through two independent mechanisms, either of which commenced the running of the statute of limitations, terminating one year later. Filing a case more than one year after the latest possession of inquiry notice violated NRS 41A.097(2)'s limitations period.

Additionally, this case involves an issue of public importance with application beyond the parties. In the context of medical malpractice actions, allegations pertaining to inquiry notice are often raised in response to a Motion arguing that the statute of limitations expired prior to the action being filed. All present and future litigants need to know the precedential value of this case when addressing NRS 41A.097. Publication would assist the district courts in Nevada with making determinations pursuant to NRS 41A.097 on whether an action is untimely.

A. The Order Clarifies Nevada Law

This Court's October 18, 2021 Order significantly clarifies a rule of law previously announced by the Court. There are no published opinions specifically holding that the statute of limitations contained in NRS 41A.097(2) for inquiry notice purposes accrues at the earlier of the receipt of medical records sufficient to

obtain a medical affidavit necessary to comport with NRS 41A.071 or if a plaintiff demonstrates or expresses sufficient knowledge of alleged malpractice to warrant the accrual of the statute of limitations. While *Winn* did hold that possession of medical records containing all the information necessary to discover alleged medical malpractice begins the one-year statute of limitations, this unpublished Order clarifies that the one-year statute of limitations begins to run when an expert has all that is necessary to provide an NRS 41A.071 compliant affidavit, or plaintiff otherwise demonstrates the possession of sufficient knowledge of potential malpractice to warrant the commencement of the statute of limitations time clock. See Order, pages 3-5 as well as note 4 to said Order. A published opinion in the present case will clarify the rule of law set forth in *Winn*, as well as NRS 41A.097.

B. The Order Involves an Issue of Public Importance Beyond the Parties

Medical malpractice cases are commonplace in Nevada, as are motions challenging the timeliness of a filing alleging medical malpractice. A party cannot look to avoid the accrual of the statute of limitations until he/she receives a purported confirmation of a belief that malpractice occurred, but must conduct a responsible inquiry. A potential plaintiff must obtain the requisite medical records for review by an expert sufficient for the expert to opine thereon, or possess sufficient knowledge of the alleged malpractice from other means. A party cannot avoid

application of the statute of limitations once there is clear evidence of receipt of the complete medical records, or otherwise obtain and demonstrate access to facts which would have led an ordinarily prudent person to investigate further into whether [the death] may have been caused by someone's negligence." *Winn*, 128 Nev. at 253, 277 P.3d at 463.

In the present case, the district court erroneously interpreted NRS 41A.097(2) such that an attorney's alleged theory of plaintiff's confusion as to cause of death, lacking any factual substantiation, was sufficient to defeat inquiry notice. Moreover, the district court erroneously overlooked the fact that plaintiffs received the medical records well within the one year limitations period to obtain an expert opinion sufficient to satisfy NRS 41A.071, and indeed received that very expert opinion. The receipt of the records commenced the accrual of the statute of limitations for NRS 41A.097(2) purposes. Further demonstrating inquiry notice was an admission by the plaintiffs themselves, that they filed complaints with multiple State agencies alleging suspected malpractice. This articulated suspicion provided a further point of accrual of the same statute of limitations.

More recently in *Kushnir, supra*, the Court of Appeals found even when concealment of records was alleged, the statute of limitations accrued when the plaintiffs received a complete set of medical records. This Court refused plaintiff's rehearing of the Court of Appeals' decision in that matter underscoring that plaintiffs

are charged with a responsibility to be diligent in prosecuting their claims. The district court judge's refusal to apply that standard to the plaintiffs in this case is not unique to this case. This issue goes beyond the parties in the present case and will likely arise in future medical malpractice actions without a published opinion concretely stating that inquiry notice is obtained upon the earlier of receipt of the complete set of medical records, or a plaintiff's demonstration of receipt of sufficient information which would prompt an ordinary person to further investigate the alleged malpractice. Here, plaintiffs themselves admitted to possessing that very information which the district court judge ignored. A published opinion will provide guidance to plaintiffs and their counsel when deciding whether to pursue a claim for medical malpractice and timing for same. A published opinion will also provide guidance to district court judges who must review the timeliness of medical malpractice claims and apply NRS 41A.097.

C. No Substantial Revisions of the Unpublished Order Will be Necessary.

NRAP 36(g)(4) states that the granting of a motion to reissue an order as a published opinion is in the sound discretion of this Court. Publication is disfavored, however, "if revisions to the text of the unpublished disposition will result in discussion of additional issues not included in the original decision." NRAP 36(g)(4).

In this case, the Order issued by this Court on October 18, 2021, does not require revisions to the text for publication. The Order succinctly sets forth the background facts and procedural history pertinent to this Court's disposition of the Petition for Writ. Further, this Court sets forth a detailed analysis of the legal issues supporting its Order.

IV. CONCLUSION

Based upon the foregoing, Petitioner respectfully requests the Court reissue its unpublished Order as an opinion to be published in Nevada Reports.

DATED this 19th day of October, 2021

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CERTIFICATE OF SERVICE

I hereby certify that on this 19th day of October, 2021, a true and correct copy of **PETITIONER’S MOTION TO REISSUE ORDER AS A PUBLISHED OPINION PURSUANT TO NRAP 36(f)** 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:.

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