

LAW OFFICE OF DANIEL MARKS
DANIEL MARKS, ESQ.
Nevada State Bar No. 002003
NICOLE M. YOUNG, ESQ.
Nevada State Bar No. 12659
610 South Ninth Street
Las Vegas, Nevada 89101
(702) 386-0536; FAX (702) 386-6812
Attorneys for Petitioner

Electronically Filed
Jan 21 2021 10:00 a.m.
Elizabeth A. Brown
Clerk of Supreme Court

IN THE SUPREME COURT OF THE STATE OF NEVADA

CHOLOE GREEN,

Petitioner,

Case No.
Dist. Ct. Case No. A-17-757722-C

v.

EIGHTH JUDICIAL DISTRICT
COURT, DEPARTMENT IX,
THE HONORABLE CRISTINA SILVA,
and DEPARTMENT XXXIII, THE
HONORABLE JASMIN LILLY-SPELLS,

Respondent,

and

FRANK J. DELEE, M.D.; FRANK J.
DELEE, P.C.; SUNRISE HOSPITAL
AND MEDICAL CENTER, LLC; ALI KIA,
M.D. and NEVADA HOSPITALIST
GROUP, LLP

_____ /

APPENDIX TO PETITION FOR WRIT OF MANDAMUS

Volume I of III

<u>Document</u>	<u>Volume</u>	<u>Page No.</u>
Complaint for Medical Malpractice, filed on June 30, 2017	I	APP1-0029-0035
Court Minutes, dated July 23, 2020	II	APP2-0441-0443
Court Minutes regarding Third-Party Defendant Nevada Hospitalist Group, LLP's Motion for Judgment on the Pleadings and Joinder, dated May 11, 2020	II	APP2-0260-0261
Defendants Frank J. Delee, M.D., and Frank J. Delee, M.D., P.C.'s Answer to plaintiff's Complaint. Filed on July 31, 2017	I	APP1-0043-0048
Defendant Frank J. Delee, M.D. and Frank J. Delee, M.D., P.C.'s Errata to Joinder to Plaintiff's (1) Motion for Reconsideration, and (2) Motion for Leave of Court to Amend Complaint, filed on October 23, 2020	III	APP3-0563-0566
Defendant Frank J. Delee, M.D. and Frank J. Delee, M.D., P.C.'s Joinder to Plaintiff's (1) Motion for Reconsideration, and (2) Motion for Leave of Court to Amend Complaint, filed on October 22, 2020	III	APP3-0514-0562
Defendant Sunrise Hospital and Medical Center's Answer to Plaintiff's Complaint, filed on July 20, 2017	I	APP1-0036-0042
Defendant Sunrise Hospital and Medical Center's Limited Opposition to Plaintiff's "Motion for Leave of Court to Amend Complaint, filed on October 26, 2020	III	APP3-0567-0578
Defendant Sunrise Hospital and Medical Center, LLC's Motion for Leave to File Third Party Complaint on Order Shortening Time, filed on May 1, 2019	I	APP1-0119-0146
Defendant Sunrise Hospital's Opposition to Plaintiff's "Motion for Leave of Court to Amend Complaint," filed on June 15, 2020	II	APP2-0387-0403
Defendant Sunrise Hospital and Medical Center's Opposition to Plaintiff's Motion for Reconsideration, filed on October 22, 2020	III	APP3-0498-0513

<u>Document</u>	<u>Volume</u>	<u>Page No.</u>
Defendant Sunrise Hospital's Renewed Motion for Partial Summary Judgment to Dismiss Any Claim of "Ostensible Agency" for Ali Kia, M.D., filed on May 20, 2020	II	APP2-0262-0278
Defendant Sunrise Hospital's Reply in Support of its Renewed Motion for Partial Summary Judgment to Dismiss Any Claim of "Ostensible Agency" for Ali Kia, M.D., and Opposition to Plaintiff's Countermotion to Strike Sunrise's Renewed Motion, for Attorney's Fees, and Sanctions, filed on June 15, 2020	II	APP2-0365-0386
Notice of Entry of Order Denying Plaintiff's "Motion for Reconsideration" Regarding Denial of Additional Claims of "Ostensible Agency" and "Corporate Negligence/Negligent Supervision," filed on December 8, 2020	III	APP3-0611-0622
Notice of Entry of Order From March 12, 2019 Hearing, filed on March 6, 2020	I	APP1-0179-0183
Notice of Entry of Order Granting in Part and Denying in Part Plaintiff's Motion for Leave to Amend Complaint, filed on December 15, 2020	III	APP3-06230631
Notice of Entry of Order Granting Sunrise Hospital and Medical Center, LLC's Motion to File Third Party Complaint for Contribution and Indemnity (Ali Kia, M.D.), filed on June 14, 2019	I	APP1-0147-0150
Notice of Entry of Order Regarding Third-Party Defendant Nevada Hospitalist Group, LLP's Motion for Judgment on the Pleadings and Third-Party Defendant Ali Kia, M.D.'s Joinder thereto, filed on June 3, 2020	II	APP2-0353-0364
Notice of Entry of Stipulation and Order to Extend the Discovery Deadlines and Trial Date (Fifth Request), filed on April 23, 2020	II	APP2-0252-0259

////

////

<u>Document</u>	<u>Volume</u>	<u>Page No.</u>
Notice of Entry of Three (3) Part Order: (1) Granting Partial Summary Judgment Dismissing Ostensible Agency; (2) Denying Sanctions; and (3) Denying Plaintiff's Motion to Amend Complaint in Part With Prejudice, and in Part Without Prejudice, filed on September 28, 2020	II	APP2-0444-0464
Plaintiff's Motion for Leave of Court to Amend Complaint, filed June 3, 2020	II	APP2-0335-0352
Plaintiff's Motion for Leave of Court to Amend Complaint, filed on October 16, 2020	II	APP2-0475-0497
Plaintiff's Motion for Reconsideration, filed on October 12, 2020	II	APP2-0465-0474
Plaintiff's Opposition to Motion for Partial Summary Judgment to Dismiss Any Claim of "Ostensible Agency" for Dr. Kia or Dr. Delee, filed on January 31, 2019	I	APP1-0097-0111
Plaintiff's Opposition to Defendant Sunrise Hospital's Renewed Motion for Partial Summary Judgment to Dismiss Any Claim of "Ostensible Agency" for Ali Kia, M.D.; and Countermotion to Strike Sunrise's Renewed Motion, for Attorney's Fees, and Sanctions, filed June 3, 2020	II	APP2-0279-0334
Plaintiff's Reply in Support of Countermotion to Strike Sunrise's Renewed motion, for Attorney's Fees, and Sanctions, filed on June 30, 2020	II	APP2-0411-0440
Plaintiff's Reply in Support of Motion for Leave of Court to Amend Complaint, filed on June 30, 2020	II	APP2-0404-0410
Plaintiff's Reply in Support of Motion for Reconsideration and Reply in Support of Motion for Leave of Court to Amend Complaint, November 11, 2020	III	APP3-0579-0610
Register of Actions- Events and Hearings	I	APP1-0001-0028

////

<u>Document</u>	<u>Volume</u>	<u>Page No.</u>
Reply in Support of Sunrise Hospital and Medical Center, LLC's Motion for Partial Summary Judgment to Dismiss Any Claim of "Ostensible Agency" for Dr. Kia or Dr. Delee, filed on February 12, 2019	I	APP1-0112-0118
Sunrise Hospital and Medical Center, LLC's Motion for Partial Summary Judgment to Dismiss Any Claim of "Ostensible Agency" for Dr. Kia or Dr. Delee, filed on January 15, 2019	I	APP1-0049-0096
Sunrise Hospital and Medical Center, LLC's Third Party Complaint for Contribution and Indemnity (Ali Kia, M.D.), filed on June 14, 2019	I	APP1-0151-0156
Third Party Defendant Ali Kia, M.D.'s Answer to Third Party Complaint, filed on August 2, 2019	I	APP1-0157-0171
Third Party Defendant Ali Kia, M.D.'s Joinder to Third-Party Defendant Nevada Hospitalist Group, LLP's Motion for Judgment on the Pleading and Reply in Support of Motion for Judgment on the Pleadings, filed on April 13, 2020	II	APP2-0248-0251
Third-Party Defendant Nevada Hospitalist Group, LLP's Answer to Sunrise Hospital and Medical Center, LLC's Third Party Complaint, filed on December 27, 2019	I	APP1-0172-0178
Third-Party Defendant Nevada Hospitalist Group, LLP's Motion for Judgment on the Pleadings, filed on March 19, 2020	I	APP1-0184-0191
Third-Party Defendant Nevada Hospitalist Group, LLP's Reply in Support of Motion for Judgment on the Pleadings, filed on April 6, 2020	I	APP1-0234-0240
Third-Party Defendant Nevada Hospitalist Group, LLP's Reply in Support of Motion for Judgment on the Pleadings, filed on April 10, 2020	I	APP1-0241-0247

////

////

<u>Document</u>	<u>Volume</u>	<u>Page No.</u>
Third-Party Plaintiff Sunrise Hospital's Opposition to Third-Party Defendant Nevada Hospitalist Group, LLP's Motion for Judgment on the Pleadings, filed on March 25, 2020	I	APP1-0192-0233

CERTIFICATE OF SERVICE BY ELECTRONIC FILING

I hereby certify that I am an employee of the LAW OFFICE OF DANIEL MARKS, and that on the 21st day of January, 2021, I did serve by way of electronic filing, a true and correct copy of the above and foregoing **APPENDIX TO PETITION FOR WRIT OF MANDAMUS- VOLUME I OF III** on the following:

Erik K. Stryker, Esq.
Wilson, Elser, Moskowitz, Edelman & Dicker LLP
300 South 4th Street, 11th floor
Las Vegas, Nevada 89101
Attorneys for Frank J. Delee M.D. and Frank J. Delee P.C.

Sherman Mayor, Esq.
Hall Prangle & Schoonveld, LLC
1160 N. Town Center Dr., Ste. 200
Las Vegas, Nevada 89144
Attorneys for Sunrise Hospital and Medical Center LLC

Patricia Daehnke, Esq.
Collinson, Daehnk, Inlow & Greco
2110 E. Flamingo Road, Suite 212
Las Vegas, Nevada 89119
Attorney for Ali Kia, M.D.

Erin Jordan, Esq.
Lewis Brisbois Bisgaard & Smith, LLP
6385 S. Rainbow Blvd., Suite 600
Las Vegas, Nevada 89118
Attorney for Nevada Hospitalist Group, LLP

////

I further certify that I did deposit in the U.S. Mail in Las Vegas, Nevada,
with first class postage fully prepaid thereon a true and correct copy of the

APPENDIX TO PETITION FOR WRIT OF MANDAMUS- VOLUME I OF

III to the addresses as follows:

The Honorable Cristina Silva
Eighth Judicial District Court
Department IX
200 Lewis Avenue
Las Vegas, Nevada 89155

The Honorable Jasmin Lilly-Spells
Eighth Judicial District Court
Department XXXIII
200 Lewis Avenue
Las Vegas, Nevada 89155

/s/ Jessica Flores

An employee of
LAW OFFICE OF DANIEL MARKS

Case Information

A-17-757722-C | Choloe Green, Plaintiff(s) vs. Frank Delee, M.D., Defendant(s)

Case Number	Court	Judicial Officer
A-17-757722-C	Department 23	Lilly-Spells, Jasmin
File Date	Case Type	Case Status
06/30/2017	Malpractice - Medical/Dental	Open

Events and Hearings

06/30/2017 Complaint ▼

Complaint - COMP

Comment
Complaint for Medical Malpractice

07/05/2017 Summons Electronically Issued - Service Pending ▼

Comment
Summons

07/05/2017 Summons Electronically Issued - Service Pending ▼

Comment
Summons

07/05/2017 Summons Electronically Issued - Service Pending ▼

Comment
Summons

07/05/2017 Initial Appearance Fee Disclosure ▼

APP1-0001

Initial Appearance Fee Disclosure - IAFD

Comment

Initial Appearance Fee Disclosure (NRS Chapter 19)

07/05/2017 Demand for Jury Trial ▼

Demand for Jury Trial - DMJT

Comment

Demand for Jury Trial

07/13/2017 Proof of Service ▼

Proof of Service - PSER

Comment

Proof of Service

07/13/2017 Proof of Service ▼

Proof of Service - PSER

Comment

Proof of Service

07/13/2017 Summons ▼

Summons - SUMM

Comment

Summons

07/13/2017 Summons ▼

Summons - SUMM

Comment

Summons

07/18/2017 Proof of Service ▼

Proof of Service - PSER

Comment

Proof of Service

07/18/2017 Summons ▼

Summons - SUMM

Comment

Summons

07/20/2017 Initial Appearance Fee Disclosure ▼

Initial Appearance Fee Disclosure - IAFD

APP1-0002

Comment
Defendant Sunrise Hospital and Medical Center, LLC's Initial
Appearance Fee Disclosure

07/20/2017 Answer to Complaint ▼

Answer to Complaint - ANSC

Comment
Defendant Sunrise Hospital and Medical Center's Answer to
Plaintiff's Complaint

07/20/2017 Demand for Jury Trial ▼

Demand for Jury Trial - DMJT

Comment
Defendant Sunrise Hospital and Medical Center, LLC's Demand for
Jury Trial

07/31/2017 Initial Appearance Fee Disclosure ▼

Initial Appearance Fee Disclosure - IAFD

Comment
Defendants Frank J. DeLee, M.D. and Frank J. DeLee, M.D. PC's
Initial Appearance Fee Disclosure

07/31/2017 Answer to Complaint ▼

Answer - ANS

Comment
Defendants Frank J. DeLee, M.D. and Frank J. DeLee, M.D. PC's
Answer to Plaintiff's Complaint

07/31/2017 Demand for Jury Trial ▼

Demand for Jury Trial - DMJT

Comment
Defendants Frank J. DeLee, M.D. and Frank J. DeLee, M.D. PC's
Demand for Jury Trial

07/31/2017 Disclosure Statement ▼

Disclosure Statement - DSST

Comment
Defendants Frank J. DeLee, M.D. and Frank J. DeLee, M.D. PC's
Disclosure Statement

08/07/2017 Notice of Early Case Conference ▼

Notice of Early Case Conference - NECC

APP1-0003

Comment
Notice of Early Case Conference

09/07/2017 Joint Case Conference Report ▼

Joint Case Conference Report - JCCR

Comment
Joint Case Conference Report

10/03/2017 Scheduling Order ▼

Scheduling Order - SCHO

Comment
Scheduling Order

11/15/2017 Order Setting Civil Jury Trial ▼

Order Setting Civil Jury Trial - OSCJ (CIV)

Comment
Order Setting Medical Malpractice Jury Trial

02/05/2018 Status Check: Medical/Dental Malpractice ▼

Judicial Officer
Wiese, Jerry A.

Hearing Time
1:00 PM

Cancel Reason
Vacated

02/05/2018 Status Check: Medical/Dental Malpractice ▼

Judicial Officer
Wiese, Jerry A.

Hearing Time
1:00 PM

Cancel Reason
Vacated - Duplicate Entry

03/06/2018 Order Setting Civil Jury Trial ▼

Order Setting Civil Jury Trial - OSCJ (CIV)

Comment
Amended Order setting Civil Jury Trial

03/07/2018 Stipulation and Order ▼

APP1-0004

Stipulation and Order - SAO (CIV) ▼

Comment

Stipulation and Order to Extend the Discovery Deadlines and Trial Date (First Request)

03/07/2018 Notice of Entry ▼

Notice of Entry - NEO (CIV)

Comment

Notice of ENTRY of Stipulation and Order to Extend the Discovery Deadline and Trial Date (First Request)

09/04/2018 Deposition Subpoena ▼

Deposition Subpoena - DSUB (CIV)

Comment

Deposition Subpoena

10/01/2018 Motion for Order ▼

Motion for Order - MODR (CIV)

Comment

(10/29/18 Withdrawn) Motion for Order to Show Cause and for Attorney's Fees and Costs

10/16/2018 Proof of Service ▼

Proof of Service - PSER (CIV)

Comment

Proof of Service

10/24/2018 Stipulation to Extend Discovery ▼

Stipulation to Extend Discovery - STED (CIV)

Comment

Stipulation and Order to Extend the Discovery Deadlines and Trial Date

10/25/2018 Notice of Entry of Stipulation and Order ▼

Notice of Entry of Stipulation and Order - NTSO (CIV)

Comment

Notice of Entry of Stipulation and Order to Extend the Discovery Deadline and Trial Date (Second Request)

10/29/2018 Notice ▼

Notice - NOTC (CIV)

Comment
Notice Withdrawing Motion for Order to Show Cause and For
Attorney's Fees and Documents

10/30/2018 Calendar Call ▼

Judicial Officer
Smith, Douglas E.

Hearing Time
8:00 AM

Cancel Reason
Vacated - per Stipulation and Order

11/02/2018 Motion for Order to Show Cause ▼

Judicial Officer
Bulla, Bonnie

Hearing Time
9:00 AM

Cancel Reason
Vacated

Comment
Motion for Order to Show Cause and for Attorney's Fees and Costs

11/13/2018 Jury Trial - FIRM ▼

Judicial Officer
Smith, Douglas E.

Hearing Time
9:30 AM

Cancel Reason
Vacated - per Stipulation and Order

Comment
Med-Mal Jury Trial

01/15/2019 Motion for Partial Summary Judgment ▼

Motion for Partial Summary Judgment - MPSJ (CIV)

Comment
Sunrise Hospital and Medical Center, LLC's Motion for Partial
Summary Judgment to Dismiss Any Claim of "Ostensible Agency" for
Dr. Kia or Dr. DeLee

01/31/2019 Opposition to Motion ▼

Opposition to Motion - OPPM (CIV)

APP1-0006

Comment

Plaintiff's Opposition to Motion for Partial Summary Judgment to Dismiss Any Claim of "Ostensible Agency" For Dr. Kia or Dr. DeLee

02/12/2019 Reply to Motion ▼

Reply to Motion - REM (CIV)

Comment

Reply in Support of Sunrise Hospital and Medical Center, LLC's Motion for Partial Summary Judgment to Dismiss Any Claim of "Ostensible Agency" for Dr. Kia or Dr. DeLee

02/19/2019 Stipulation and Order ▼

Stipulation and Order - SAO (CIV)

Comment

Stipulation and Order to Extend the Discovery Deadlines and Trial Date (Third Request)

02/21/2019 Notice of Entry of Stipulation and Order ▼

Notice of Entry of Stipulation and Order - NTSO (CIV)

Comment

Notice of Entry of Stipulation and Order to Extend the Discovery Deadline and Trial Date (Third Request)

03/12/2019 Motion for Partial Summary Judgment ▼

Motion for Partial Summary Judgment

Judicial Officer

Smith, Douglas E.

Hearing Time

8:00 AM

Result

Deferred Ruling

Comment

Sunrise Hospital and Medical Center, LLC's Motion for Partial Summary Judgment to Dismiss any Claim of "Ostensible Agency" for Dr. Kia or Dr. DeLee

Parties Present ▲

Plaintiff

Attorney: Marks, Daniel

Attorney: Young, Nicole M., ESQ

Defendant

Attorney: Najjar, Alia A

Defendant

Attorney: Mayor, Sherman Bennett

APP1-0007

04/09/2019 Calendar Call ▼

Judicial Officer
Cherry, Michael A.

Hearing Time
9:00 AM

Cancel Reason
Vacated - per Stipulation and Order

04/18/2019 Stipulation and Order to Extend Discovery Deadlines ▼

Stipulation and Order to Extend Discovery Deadlines - SOED (CIV)

Comment
Stipulation and Order to Extend the Discovery Deadlines and Trial
Date

04/18/2019 Notice of Entry of Stipulation and Order ▼

Notice of Entry of Stipulation and Order - NTSO (CIV)

Comment
Notice of Entry of Stipulation and Order to Extend the Discovery
Deadline and Trial Date (Fourth Request)

04/22/2019 Jury Trial ▼

Judicial Officer
Smith, Douglas E.

Hearing Time
9:30 AM

Cancel Reason
Vacated - per Stipulation and Order

04/29/2019 Case Reassigned to Department 9 ▼

Comment
Judicial Reassignment to Department 9 - Judge Cristina Silva

05/01/2019 Motion for Leave to File ▼

Motion for Leave to File - MLEV (CIV)

Comment
Defendant Sunrise Hospital Medical Center, LLC's Motion for Leave
to File Third Party Complaint on an Order Shortening Time

05/06/2019 Receipt of Copy ▼

Receipt of Copy - ROC (CIV)

APP1-0008

Comment

Receipt of Copy of Defendant Sunrise Hospital and Medical Center,
LLC's Motion for Leave to File Third Party Complaint on an Order
Shortening Time

05/13/2019 Motion for Leave ▼

Motion for Leave

Judicial Officer

Silva, Cristina D.

Hearing Time

3:00 AM

Result

Granted

Comment

Defendant Sunrise Hospital Medical Center, LLC's Motion for Leave to File
Third-Party Complaint on an Order Shortening Time

06/14/2019 Order ▼

Order - ORDR (CIV)

Comment

Order Granting Sunrise Hospital and Medical Center LLC's Motion to
File Third Party Complaint For Contribution and Indemnity (Ali Kia,
M.D.)

06/14/2019 Notice of Entry of Order ▼

Notice of Entry of Order - NEOJ (CIV)

Comment

Notice of Entry of Order

06/14/2019 Third Party Complaint ▼

Third Party Complaint - TPC (CIV)

Comment

Sunrise Hospital and Medical Center LLC's Third Party Complaint for
Contribution and Indemnity (Ali Kia, M.D.)

06/14/2019 Summons Electronically Issued - Service Pending ▼

Comment

Summons

06/18/2019 Notice of Rescheduling of Hearing ▼

Notice of Rescheduling of Hearing - NORH (CIV)

Comment

Notice of Rescheduling of Hearing - Status Check

APP1-0009

07/02/2019 Acceptance of Service ▼

Acceptance of Service - ACSR (CIV)

Comment

Acceptance of Service

07/08/2019 Summons Electronically Issued - Service Pending ▼

Comment

Summons

07/09/2019 Recorders Transcript of Hearing ▼

Recorders Transcript of Hearing - RTRAN (CIV)

Comment

RECORDER'S TRANSCRIPT OF HEARING: SUNRISE HOSPITAL
AND MEDICAL CENTER, LLC'S MOTION FOR PARTIAL
SUMMARY JUDGMENT TO DISMISS ANY CLAIM OF
"OSTENSIBLE AGENCY" FOR DR. KIA AND DR. DELEE. HEARD
ON MARCH 12, 2019

08/02/2019 Answer to Third Party Complaint ▼

Answer to Third Party Complaint - ANTC (CIV)

Comment

Third Party Defendant Ali Kia, M.D's Answer To Third Party
Complaint

08/02/2019 Initial Appearance Fee Disclosure ▼

Initial Appearance Fee Disclosure - IAFD (CIV)

Comment

Third Party Defendant Ali Kia, M.D. S Initial Appearance Fee
Disclosure

08/02/2019 Demand for Jury Trial ▼

Demand for Jury Trial - DMJT (CIV)

Comment

Third Party Defendant Ali Kia, M.D's Demand For Jury Trial

08/02/2019 Disclosure Statement ▼

Disclosure Statement - DSST (CIV)

Comment

THIRD PARTY DEFENDANT ALI KIA, M.D. S NRCP 7.1
DISCLOSURE STATEMENT

09/03/2019 Notice of Early Case Conference ▼

APP1-0010

Notice of Early Case Conference - NECC (CIV)

Comment

Notice of Early Case Conference

09/16/2019 Supplemental Joint Case Conference Report ▼

Supplemental Joint Case Conference Report - SJCCR (CIV)

Comment

Supplement to Joint Case Conference Report

09/17/2019 Status Check ▼

Status Check

Judicial Officer

Silva, Cristina D.

Hearing Time

8:30 AM

Result

Matter Heard

Comment

Status Check: Set New Trial Date

Parties Present ▲

Plaintiff

Attorney: Marks, Daniel

Defendant

Attorney: Stryker, Eric K.

Defendant

Attorney: Stryker, Eric K.

Defendant

Attorney: Dobbs, Tyson J.

09/30/2019 Mandatory Rule 16 Conference Order ▼

Mandatory Rule 16 Conference Order - MRSC (CIV)

Comment

Order to Appear for Mandatory Scheduling Conference (Parties Have Reached Joint Case Conference Report)

10/15/2019 Notice of Change of Address ▼

Notice of Change of Address - NCOA (CIV)

Comment

Notice of Change of Address

APP1-0011

11/07/2019 Mandatory Rule 16 Conference ▼

Mandatory Rule 16 Conference

Judicial Officer
Silva, Cristina D.

Hearing Time
9:00 AM

Result
Matter Heard

Parties Present ▲

Plaintiff

Attorney: Young, Nicole M., ESQ

Defendant

Attorney: Stryker, Eric K.

Defendant

Attorney: Stryker, Eric K.

Defendant

Attorney: Mayor, Sherman Bennett

11/08/2019 Scheduling and Trial Order ▼

Scheduling and Trial Order - SCHTO (CIV)

Comment
Scheduling Order and Order Setting Civil Jury Trial and Pre-Trial
Conference/Calendar Call

12/27/2019 Answer to Third Party Complaint ▼

Answer and Third Party Complaint - ATPC (CIV)

Comment
Third-Party Defendant Nevada Hospitalist Group, LLP's Answer to
Sunrise Hospital and Medical Center, LLC's Third Party Complaint

12/27/2019 Initial Appearance Fee Disclosure ▼

Initial Appearance Fee Disclosure - IAFD (CIV)

Comment
Initial Appearance Fee Disclosure (NRS Chapter 19)

12/27/2019 Demand for Jury Trial ▼

Demand for Jury Trial - DMJT (CIV)

Comment
Demand for Jury Trial

12/27/2019 Certificate of Mailing ▼

APP1-0012

Certificate of Mailing - CERT (CIV)

Comment

Certificate of Mailing

03/05/2020 Order ▼

Order - ORDR (CIV)

Comment

Order from March 12, 2019 Hearing

03/06/2020 Notice of Entry of Order ▼

Notice of Entry of Order - NEOJ (CIV)

Comment

Notice of Entry of Order from March 12, 2019 Hearing

03/19/2020 Motion for Judgment ▼

Motion for Judgment - MJUD (CIV)

Comment

Third-Party Defendant Nevada Hospitalist Group, LLP's Motion For Judgment On The Pleadings

03/20/2020 Clerk's Notice of Hearing ▼

Clerk's Notice of Hearing - CNOC (CIV)

Comment

Notice of Hearing

03/25/2020 Opposition to Motion ▼

Opposition to Motion - OPPM (CIV)

Comment

Third-Party Plaintiff Sunrise Hospital's Opposition to Third-Party Defendant Nevada Hospitalist Group, LLP's Motion for Judgment on the Pleadings

04/06/2020 Reply in Support ▼

Reply in Support - RIS (CIV)

Comment

Third-Party Defendant Nevada Hospitalist Group, LLP's Reply In Support Of Motion For Judgment On The Pleadings

04/10/2020 Reply in Support ▼

Reply in Support - RIS (CIV)

Comment

Third-Party Defendant Nevada Hospitalist Group, LLP s Reply In Support Of Motion For Judgment On The Pleadings

04/13/2020 Joinder To Motion ▼

Joinder To Motion - JMOT (CIV)

Comment

Third Party Defendant Ali Kia, M.D. s Joinder In Third-Party Defendant Nevada Hospitalist Group, LLP s Motion For Judgment On The Pleadings And Reply In Support Of Motion For Judgment On The Pleadings

04/16/2020 Notice of Rescheduling of Hearing ▼

Notice of Rescheduling of Hearing - NORH (CIV)

Comment

Notice of Rescheduling of Hearing

04/22/2020 Stipulation and Order to Extend Discovery Deadlines ▼

Stipulation and Order to Extend Discovery Deadlines - SOED (CIV)

Comment

Stipulation and Order to Extend Discovery Deadlines and Trial Date (Fifth Request)

04/23/2020 Notice of Entry of Stipulation and Order ▼

Notice of Entry of Stipulation and Order - NTSO (CIV)

Comment

Notice of Entry of Stipulation and Order to Extend the Discovery Deadlines and Trial Date (Fifth Request)

04/27/2020 Amended Order Setting Jury Trial ▼

Amended Order Setting Jury Trial - ARJT (CIV)

Comment

Amended Order Setting Civil Jury Trial, Calendar Call, and Status Check

04/29/2020 Motion ▼

Judicial Officer
Silva, Cristina D.

Hearing Time
11:30 AM

Result
Deferred Ruling

APP1-0014

Comment

Third-Party Defendant Nevada Hospitalist Group, LLP's Motion for Judgment on the Pleadings

04/29/2020 Joinder ▼

Judicial Officer

Silva, Cristina D.

Hearing Time

11:30 AM

Result

Deferred Ruling

Comment

Third-Party Defendant Ali Kia, M.D.'s Joinder in Third-Party Defendant Nevada Hospitalist Group, LLP's Motion for Judgment on the Pleadings and Reply in Support of Motion for Judgment on the Pleadings

04/29/2020 All Pending Motions ▼

All Pending Motions

Judicial Officer

Silva, Cristina D.

Hearing Time

11:30 AM

Result

Matter Heard

Comment

Third-Party Defendant Nevada Hospitalist Group, LLP's Motion for Judgment on the Pleadings . . . Third-Party Defendant Ali Kia, M.D.'s Joinder in Third-Party Defendant Nevada Hospitalist Group, LLP's Motion for Judgment on the Pleadings and Reply in Support of Motion for Judgment on the Pleadings

Parties Present ▲

Plaintiff

Attorney: Young, Nicole M., ESQ

Defendant

Attorney: Stryker, Eric K.

Defendant

Attorney: Stryker, Eric K.

Defendant

Attorney: Mayor, Sherman Bennett

Third Party Defendant

Attorney: Jordan, Erin E.

05/11/2020 Decision ▼

Decision

Judicial Officer
Silva, Cristina D.

Hearing Time
3:00 AM

Result
Decision Made

Comment
Decision: Third-Party Defendant Nevada Hospitalist Group, LLP's Motion for Judgment on the Pleadings & Joinder

05/13/2020 Filing Fee Remittance ▼

Comment
Filing Fee Remittance for Initial Appearance Fee Disclosure

05/19/2020 Notice of Change of Address ▼

Notice of Change of Address - NCOA (CIV)

Comment
Notice of Change of Address

05/20/2020 Motion for Partial Summary Judgment ▼

Motion for Partial Summary Judgment - MPSJ (CIV)

Comment
Defendant Sunrise Hospital's Renewed Motion for Partial Summary Judgment to Dismiss any Claim of "Ostensible Agency" for Ali Kia, M.D.

05/20/2020 Clerk's Notice of Hearing ▼

Clerk's Notice of Hearing - CNOC (CIV)

Comment
Notice of Hearing

06/02/2020 Order ▼

Order

Comment
Order Regarding Third- Party Defendant Nevada Hospitalist Group, LLP Motion For Judgment On the Pleadings And Third- Party Defendant Ali Kia, M.D. Joinder Thereto

06/03/2020 Opposition and Countermotion ▼

Opposition and Countermotion - OPPC (CIV)

APP1-0016

<p>Comment</p> <p>Opposition to Defendant Sunrise Hospital's Renewed Motion for Partial Summary Judgment to Dismiss any Claim of Ostensible Agency for Ali Kia, M.D.; and Countermotion to Strike Sunrise's Renewed Motion, for Attorney's Fees, and Sanctions</p>
<p>06/03/2020 Motion to Amend Complaint ▼</p> <p>Motion to Amend Complaint - MAMC (CIV)</p> <p>Comment</p> <p>Motion for Leave of Court to Amend Complaint</p>
<p>06/03/2020 Clerk's Notice of Hearing ▼</p> <p>Clerk's Notice of Hearing - CNOC (CIV)</p> <p>Comment</p> <p>Notice of Hearing</p>
<p>06/03/2020 Notice of Entry of Order ▼</p> <p>Notice of Entry of Order - NEOJ (CIV)</p> <p>Comment</p> <p>Notice Of Entry Of Order Regarding Third-Party Defendant Nevada Hospitalist Group, LLP s Motion For Judgment On The Pleadings And Third-Party Defendant Ali Kia, M.D. d Joinder Thereto</p>
<p>06/05/2020 Ex Parte Application ▼</p> <p>Ex Parte Application - EPAP (CIV)</p> <p>Comment</p> <p>Ex Parte Application to Consolidate Hearings</p>
<p>06/15/2020 Opposition ▼</p> <p>Opposition - OPPS (CIV)</p> <p>Comment</p> <p>DEFENDANT SUNRISE HOSPITAL S OPPOSITION TO PLAINTIFF S MOTION FOR LEAVE OF COURT TO AMEND COMPLAINT</p>
<p>06/15/2020 Reply in Support ▼</p> <p>Reply in Support - RIS (CIV)</p> <p>Comment</p> <p>DEFENDANT SUNRISE HOSPITAL S REPLY IN SUPPORT OF ITS RENEWED MOTION FOR PARTIAL SUMMARY JUDGMENT TO DISMISS ANY CLAIM OF OSTENSBLE AGENCY FOR ALI KIA, M.D. AND OPPOSITION TO PLAINTIFF S COUNTERMOTION TO STRIKE SUNRISE S RENEWED MOTION, FOR ATTORNEY S FEES, AND SANCTIONS</p>
<p>06/30/2020 Reply to Motion ▼</p>

Reply to Motion - REM (CIV)

Comment

Reply in Support of Countermotion to Strike Sunrise's Renewed Motion, for Attorney's Fees, and Sanctions

06/30/2020 Reply to Motion ▼

Reply to Motion - REM (CIV)

Comment

Reply in Support of Motion for Leave of Court to Amend Complaint

07/06/2020 Filing Fee Remittance ▼

Comment

Filing Fee Remittance

07/07/2020 Motion for Partial Summary Judgment ▼

Judicial Officer

Silva, Cristina D.

Hearing Time

9:00 AM

Result

Deferred Ruling

Comment

Defendant Sunrise Hospital's Renewed Motion for Partial Summary Judgment to Dismiss any Claim of "Ostensible Agency" for Ali Kia, M.D.

07/07/2020 Opposition and Countermotion ▼

Judicial Officer

Silva, Cristina D.

Hearing Time

9:00 AM

Result

Deferred Ruling

Comment

Opposition to Defendant Sunrise Hospital's Renewed Motion for Partial Summary Judgment to Dismiss any Claim of "Ostensible Agency" for Ali Kia, M.D. and Countermotion to Strike Sunrise's Renewed Motion, for Attorney's Fees, and Sanctions

07/07/2020 Motion to Amend Complaint ▼

Judicial Officer

Silva, Cristina D.

APP1-0018

Hearing Time

9:00 AM

Result

Deferred Ruling

Comment

Plaintiff's Motion for Leave of Court to Amend Complaint

07/07/2020 All Pending Motions ▼

All Pending Motions

Judicial Officer

Silva, Cristina D.

Hearing Time

9:00 AM

Result

Matter Heard

Comment

Plaintiff's Motion for Leave of Court to Amend Complaint . . . Defendant Sunrise Hospital's Renewed Motion for Partial Summary Judgment to Dismiss any Claim of "Ostensible Agency" for Ali Kia, M.D. . . . Opposition to Defendant Sunrise Hospital's Renewed Motion for Partial Summary Judgment to Dismiss any Claim of "Ostensible Agency" for Ali Kia, M.D. and Countermotion to Strike Sunrise's Renewed Motion, for Attorney's Fees, and Sanctions

Parties Present ▲

Plaintiff

Attorney: Marks, Daniel

Attorney: Young, Nicole M., ESQ

Defendant

Attorney: Stryker, Eric K.

Defendant

Attorney: Stryker, Eric K.

Defendant

Attorney: Mayor, Sherman Bennett

07/23/2020 Decision ▼

Decision

Judicial Officer

Silva, Cristina D.

Hearing Time

3:00 AM

Result

Decision Made

APP1-0019

Comment

Decision: Plaintiff's Motion for Leave of Court to Amend Complaint . . .
Defendant's Motion for Partial Summary Judgment . . . Plaintiff's
Countermotion to Strike Sunrise's Renewed Motion

08/24/2020 Judgment ▼

Judgment of Dismissal

Comment

Judgment Upon the Pleadings in Favor of Third-Party Defendant Ali
Kia, M.D. And Against Sunrise Hospital Medical Center, LLC

08/24/2020 Stipulation and Order to Extend Discovery Deadlines ▼

Stipulation and Order to Extend Discovery Deadlines

Comment

Stipulation and Order to Extend Discovery Deadlines and Trial Date
(Sixth Request)

08/25/2020 Notice of Entry of Order ▼

Notice of Entry of Order - NEOJ (CIV)

Comment

Notice of Entry of Order

08/26/2020 Notice of Entry of Judgment ▼

Notice of Entry of Judgment - NJUD (CIV)

Comment

Notice of Entry of Judgment Upon the Pleadings in Favor of Third-
Party Defendant Ali Kia, M.D. and Against Sunrise Hospital Medical
Center LLC

08/31/2020 Memorandum of Costs and Disbursements ▼

Memorandum of Costs and Disbursements - MEMC (CIV)

Comment

Third-Party Defendant Ali Kia, M.D.'s Verified Memorandum of Costs
and Disbursements

09/01/2020 Judgment ▼

Judgment of Dismissal

Comment

Judgment Upon the Pleadings in Favor of Third-Party Defendant
Nevada Hospitalist Group, LLP's and Against Sunrise Hospital
Medical Center, LLC

09/01/2020 Notice of Entry of Order ▼

Notice of Entry of Order - NEOJ (CIV)

APP1-0020

Comment
Notice of Entry of Order

09/02/2020 Motion to Retax ▼

Motion - MOT (CIV)

Comment
Defendant Sunrise Hospital abd Medical Center's Motion to Retax
and/or Settle the Costs

09/02/2020 Clerk's Notice of Hearing ▼

Clerk's Notice of Hearing - CNOC (CIV)

Comment
Notice of Hearing

09/17/2020 Opposition to Motion ▼

Opposition to Motion - OPPM (CIV)

Comment
Third-Party Defendant Ali Kia, M.D.'s Opposition to Third-Party
Plaintiff Sunrise Hospital and Medical Center's Motion to Retax
and/or Settle the Costs

09/25/2020 Order ▼

Order

Comment
Order Granting Partial Summary Judgment Dismissing Ostensible
Agency; Denying Sanctions; and Denying Plaintiff's Motion to Amend
Complaint In Part With Prejudice, and In Part Without Prejudice

09/28/2020 Notice of Entry ▼

Notice of Entry - NEO (CIV)

Comment
NOTICE OF ENTRY OF THREE (3) PART ORDER: (1) GRANTING
PARTIAL SUMMARY JUDGMENT DISMISSING OSTENSIBLE
AGENCY; (2) DENYING SANCTIONS; AND (3) DENYING
PLAINTIFF S MOTION TO AMEND COMPLAINT IN PART WITH
PREJUDICE, AND IN PART WITHOUT PREJUDICE

09/29/2020 Notice of Rescheduling of Hearing ▼

Notice of Rescheduling of Hearing

Comment
Notice of Rescheduling of Hearing

10/12/2020 Motion to Reconsider ▼

APP1-0021

Motion to Reconsider - MRCN (CIV)

Comment

Motion for Reconsideration

10/12/2020 Clerk's Notice of Hearing ▼

Clerk's Notice of Hearing - CNOC (CIV)

Comment

Notice of Hearing

10/13/2020 Motion to Retax ▼

Minutes - Motion to Retax

Judicial Officer

Silva, Cristina D.

Hearing Time

9:00 AM

Result

Matter Continued

Comment

Defendant Sunrise Hospital and Medical Center's Motion to Retax and/or Settle the Costs

Parties Present ▲

Plaintiff

Attorney: Young, Nicole M., ESQ

Defendant

Attorney: Stryker, Eric K.

Defendant

Attorney: Stryker, Eric K.

Defendant

Attorney: Mayor, Sherman Bennett

10/16/2020 Motion to Amend Complaint ▼

Motion to Amend Complaint - MAMC (CIV)

Comment

Motion for Leave to Amend Complaint

10/19/2020 Clerk's Notice of Hearing ▼

Clerk's Notice of Hearing - CNOC (CIV)

Comment

Notice of Hearing

10/21/2020 Amended Order Setting Jury Trial ▼

APP1-0022

Amended Order Setting Jury Trial

Comment

Amended Order Setting Civil Jury Trial, Calendar Call, and Status Check

10/22/2020 Opposition to Motion ▼

Opposition to Motion - OPPM (CIV)

Comment

DEFENDANT SUNRISE HOSPITAL AND MEDICAL CENTER S
OPPOSITION TO PLAINTIFF S MOTION FOR RECONSIDERATION

10/22/2020 Joinder To Motion ▼

Joinder To Motion - JMOT (CIV)

Comment

Defendants Frank J. DeLee, M.D. and Frank J. DeLee, M.D., P.C.'s
Joinder to Plaintiff's (1) Motion for Reconsideration, and (2) Motion
for Leave of Court to Amend Complaint

10/23/2020 Errata ▼

Errata - ERR (CIV)

Comment

Defendants Frank J. DeLee, M.D. and Frank J. DeLee, M.D., P.C.'s
Errata to Joinder to Plaintiff's (1) Motion for Reconsideration, and (2)
Motion for Leave of Court to Amend Complaint

10/26/2020 Opposition ▼

Opposition - OPPS (CIV)

Comment

DEFENDANT SUNRISE HOSPITAL AND MEDICAL CENTER S
LIMITED OPPOSITION TO PLAINTIFF S MOTION FOR LEAVE OF
COURT TO AMEND COMPLAINT

11/11/2020 Reply in Support ▼

Reply in Support - RIS (CIV)

Comment

Reply in Support of Motion for Reconsideration and Reply in Support
of Motion for Leave to Amend Complaint

11/17/2020 Motion For Reconsideration ▼

Judicial Officer

Silva, Cristina D.

Hearing Time

9:00 AM

APP1-0023

Result

Denied

Comment

Plaintiff Motion for Reconsideration

11/17/2020 Motion to Amend Complaint ▼

Judicial Officer

Silva, Cristina D.

Hearing Time

9:00 AM

Result

Granted in Part

Comment

Motion for Leave to Amend Complaint

11/17/2020 Joinder ▼

Judicial Officer

Silva, Cristina D.

Hearing Time

9:00 AM

Result

Denied in Part

Comment

Defendants Frank J. DeLee, M.D. and Frank J. Delee, M.D., P.C.'s Joinder to Plaintiff's (1) Motion for Reconsideration, and (2) Motion for Leave of Court to Amend Complaint

11/17/2020 All Pending Motions ▼

Minutes - All Pending Motions

Judicial Officer

Silva, Cristina D.

Hearing Time

9:00 AM

Result

Matter Heard

Parties Present ▲

Plaintiff

Attorney: Marks, Daniel

Attorney: Young, Nicole M., ESQ

Defendant

Attorney: Stryker, Eric K.

APP1-0024

Defendant

Attorney: Stryker, Eric K.

Defendant

Attorney: Mayor, Sherman Bennett

11/17/2020 All Pending Motions ▼

Judicial Officer
Silva, Cristina D.

Hearing Time
9:00 AM

Cancel Reason
Vacated - Duplicate Entry

12/03/2020 Order Denying ▼

Order Denying

Comment
Order Denying, without Prejudice, Third-Party Defendant Dr. Kia's
Verified Memorandum of Costs and Disbursements

12/04/2020 Notice of Entry ▼

Notice of Entry - NEO (CIV)

Comment
NOTICE OF ENTRY OF ORDER DENYING, WITHOUT
PREJUDICE, THIRD-PARTY DEFENDANT DR. KIA S VERIFIED
MEMORANDUM OF COSTS AND DISBURSEMENTS

12/07/2020 Order Denying Motion ▼

Order Denying Motion

Comment
Order Denying Plaintiff's Motion for Reconsideration Regarding
Denial of Additional Claims of Ostensible Agency and Corporate
Negligence/Negligent Supervision

12/08/2020 Status Check: Trial Readiness ▼

Judicial Officer
Silva, Cristina D.

Hearing Time
9:00 AM

Cancel Reason
Vacated - per Judge

12/08/2020 Notice of Entry of Order ▼

APP1-0025

<p>Notice of Entry of Order - NEOJ (CIV)</p> <p>Comment</p> <p>NOTICE OF ENTRY OF ORDER DENYING PLAINTIFF S MOTION FOR RECONSIDERATION REGARDING DENIAL OF ADDITIONAL CLAIMS OF OSTENSIBLE AGENCY AND CORPORATE NEGLIGENCE/NEGLIGENT SUPERVISION</p>
<p>12/15/2020 Order ▼</p> <p>Order</p> <p>Comment</p> <p>Order Granting In Part, and Denying In Part, Plaintiff's Motion for Leave to Amend Complaint</p>
<p>12/15/2020 Notice of Entry of Order ▼</p> <p>Notice of Entry of Order - NEOJ (CIV)</p> <p>Comment</p> <p>Notice of Entry of Order Granting in Part and Denying in Part Plaintiff's Motion for Leave to Amend Complaint</p>
<p>12/16/2020 Amended Complaint ▼</p> <p>Amended Complaint - ACOM (CIV)</p> <p>Comment</p> <p>Amended Complaint for Medical Malpractice</p>
<p>12/17/2020 Answer ▼</p> <p>Answer - ANS (CIV)</p> <p>Comment</p> <p>Defendant Sunrise Hospital and Medical Center's Answer to Plaintiff's Amended Complaint for Medical Malpractice</p>
<p>12/21/2020 Summons Electronically Issued - Service Pending ▼</p> <p>Comment</p> <p>Summons</p>
<p>12/21/2020 Summons Electronically Issued - Service Pending ▼</p> <p>Comment</p> <p>Summons</p>
<p>12/28/2020 Acceptance of Service ▼</p> <p>Acceptance of Service - ACSR (CIV)</p> <p>Comment</p> <p>Acceptance of Service - Kia</p>

12/28/2020 Acceptance of Service ▼

Acceptance of Service - ACSR (CIV)

Comment

Acceptance of Service - NHG

12/30/2020 Answer to Amended Complaint ▼

Answer - ANS (CIV)

Comment

Defendants Frank J. DeLee, M.D. and Frank J. DeLee M.D., PC's
Answer to Plaintiff's Amended Complaint for Medical Malpractice

01/04/2021 Case Reassigned to Department 23 ▼

Comment

Judicial Reassignment to Judge Jasmin Lilly-Spells

01/06/2021 Recorders Transcript of Hearing ▼

Recorders Transcript of Hearing - RTRAN (CIV)

Comment

RECORDER'S TRANSCRIPT OF PROCEEDINGS: ALL PENDING
MOTIONS. HEARD ON NOVEMBER 17, 2020

01/26/2021 Calendar Call ▼

Judicial Officer

Silva, Cristina D.

Hearing Time

9:00 AM

Cancel Reason

Vacated - per Stipulation and Order

02/08/2021 Jury Trial ▼

Judicial Officer

Silva, Cristina D.

Hearing Time

9:30 AM

Cancel Reason

Vacated - per Stipulation and Order

05/10/2021 Jury Trial - FIRM ▼

Judicial Officer

Silva, Cristina D.

APP1-0027

Hearing Time

9:30 AM

Cancel Reason

Vacated - per Stipulation and Order

06/22/2021 Calendar Call ▼

Judicial Officer

Miley, Stefany

Hearing Time

11:00 AM

07/06/2021 Status Check: Trial Readiness ▼

Judicial Officer

Lilly-Spells, Jasmin

Hearing Time

9:30 AM

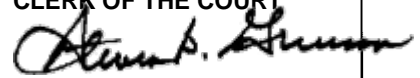
09/07/2021 Jury Trial - FIRM ▼

Judicial Officer

Miley, Stefany

Hearing Time

1:00 PM



COMP
LAW OFFICE OF DANIEL MARKS
DANIEL MARKS, ESQ.
Nevada State Bar No. 002003
NICOLE M. YOUNG, ESQ.
Nevada State Bar No. 12659
610 South Ninth Street
Las Vegas, Nevada 89101
(702) 386-0536; Fax (702) 386-6812
Attorneys for Plaintiff

DISTRICT COURT
CLARK COUNTY, NEVADA

CHLOE GREEN, an individual,

Case No.
Dept. No.

A-17-757722-C

Plaintiff,

Department 8

v.

FRANK J. DELEE, M.D., an individual;
FRANK J. DELEE MD, PC, a Domestic
Professional Corporation, SUNRISE HOSPITAL
AND MEDICAL CENTER, LLC, a Foreign
Limited-Liability Company.

**Arbitration Exempt - - Action
for Medical Malpractice**

Defendants.

COMPLAINT FOR MEDICAL MALPRACTICE

COMES NOW Plaintiff Chloe Green, by and through undersigned counsel Daniel Marks, Esq., and
Nicole M. Young, Esq., of the Law Office of Daniel Marks, and for her claims against Defendants herein
allege as follows:

1. That at all times material hereto, Plaintiff Chloe Green (hereinafter "Chloe") was a
resident of Clark County, Nevada.
2. That at all times material hereto, Defendant FRANK J. DELEE, M.D., was a licensed
medical doctor in the State of Nevada, and practiced in his professional corporation entitled
FRANK J. DELEE MD, PC.

////

////

3. That at all times material hereto, Defendant FRANK J. DELEE MD, PC, was a domestic professional corporation organized and existing under the laws of the state of Nevada and registered to do business, and doing business in the State of Nevada in Clark County, Nevada.
4. That Defendant FRANK J. DELEE, MD, is the President of Defendant FRANK J. DELEE MD, PC (hereinafter collectively referred to as "Dr. DeLee").
5. That Defendant SUNRISE HOSPITAL AND MEDICAL CENTER, LLC, (hereinafter "Sunrise Hospital"), was a foreign limited-liability company, registered to do business and doing business in the State of Nevada in Clark County, Nevada.
6. That on or about July 9, 2016, Dr. DeLee performed a cesarean section (C-Section) on Choloe at Sunrise Hospital. Choloe was discharged from the hospital the following day, on July 10, 2016, even though she did not have bowel movement prior to being discharged from the hospital.
7. On July 13, 2016, Choloe had an appointment with Dr. DeLee. At that appointment, Choloe notified Dr. Delee that she had not had a bowel movement post C-section. He did not provide any care or treatment to Choloe regarding her lack of a bowel movement.
8. On July 14, 2016, after still not having a bowel movement post C-section, Choloe went to the emergency room at Sunrise Hospital, with severe abdominal pain and reports of nausea, vomiting, fever, and chills. She was admitted to the medical/surgical unit because of the diagnosis of sepsis. Sunrise Hospital discharged Choloe on July 16, 2016, despite having a small bowel obstruction. The discharge was discussed and confirmed by Dr. DeLee.
9. On July 17, 2016, Choloe went to the emergency room at Centennial Hills Hospital where she was admitted until she was finally discharged on September 2, 2016. Centennial Hills admitted Choloe with the diagnosis of small bowel obstruction. She had an NG Tube placed, underwent surgery, had diffuse pulmonary infiltrates, suggestive of pulmonary edema or ARDS, and eventually needed a tracheostomy and PEG tube placement.
10. That Defendant Dr. DeLee and Sunrise Hospital breached the standard of care in their treatment of Choloe and as a direct and proximate result of that breach, Choloe has been damaged.

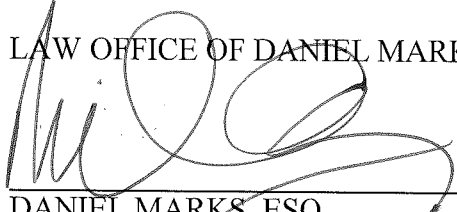
11. That as a direct and proximate result of all of the Defendants' negligence, Choloe has been damaged in an amount in excess of \$15,000.00.
12. This Complaint is supported by the Affidavit of Lisa Karamardian, M.D., a copy of which is attached hereto as Exhibit "1".
13. Choloe has been forced to retain counsel to bring this action and should be awarded his reasonable attorneys fees and costs.

WHEREFORE, Choloe prays for judgment against the Defendants, and each of them, as follows:

1. For special damages in a sum in excess of \$15,000.00;
2. For compensatory damages in a sum in excess of \$15,000.00;
3. For reasonable attorney's fees and litigation costs incurred;
4. For such other and further relief as the Court deems just and proper.

DATED this 30 day of June, 2017.

LAW OFFICE OF DANIEL MARKS


DANIEL MARKS, ESQ.
Nevada State Bar No. 002003
NICOLE M. YOUNG, ESQ.
Nevada State Bar No. 012659
610 South Ninth Street
Las Vegas, Nevada 89101
Attorneys for Plaintiff

1 VERIFICATION

2 STATE OF NEVADA)
3 COUNTY OF CLARK) ss:

4 CHLOE GREEN, being first duly sworn, deposes and says:

5 That I am the Plaintiff in the above-entitled matter; that I have read the above and foregoing
6 Complaint and know the contents thereof; that the same are true of my knowledge except for those
7 matters stated upon information and belief, and as to those matters, I believe them to be true.

8
9 Chloe Green
10 CHLOE GREEN

11 SUBSCRIBED AND SWORN to before me
12 this 26th day of June, 2017.

13 Glenda Guo
14 NOTARY PUBLIC in and for said
15 COUNTY and STATE

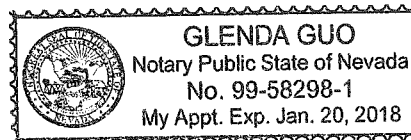


EXHIBIT 1

AFFIDAVIT OF DR. LISA KARAMARDIAN


STATE OF California }
COUNTY OF Orange }

DR. LISA KARAMARDIAN, being first duly sworn, under penalty of perjury, does say and depose the following:

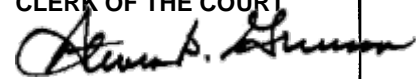
1. That I am a medical doctor licensed in the State of California and am board certified in the field of Obstetrics and Gynecology.
2. This affidavit is executed pursuant to NRS 41A.071 in support of a Complaint for Medical Malpractice against Dr. Frank DeLee and Sunrise Hospital and Medical Center.
3. That I have reviewed Plaintiff Choloe Green's medical records relating to the care and treatment she received from Dr. Frank DeLee, Sunrise Hospital and Medical Center, Valley Hospital Medical Center and Centennial Hills Medical Center.
4. A review of the medical records reveals that on July 9, 2016, Ms. Green had a cesarean section birth at Sunrise Hospital with Dr. DeLee as the obstetrician. She was released home on post-operative day number one. This was a breach of the standard of care by Dr. DeLee and Sunrise Hospital. The typical post-operative course for a routine cesarean is a 3-4 night stay in the hospital. The standard of care was also breached because Ms. Green had not even attempted to tolerate clear liquids and she had not passed flatus when she was released on post-operative day number one.
5. A review of the medical records also reveals that on July 14, 2016, Ms. Green presented again to Sunrise Hospital, now five (5) days post-partum, with severe abdominal pain and reports of nausea, vomiting, fever, and chills. She was admitted to the medical/surgical unit because of the diagnosis of sepsis. She was discharged on July 16, 2016. The discharge was discussed and confirmed by Dr. DeLee. This discharge violated the standard of care. Ms. Green was discharged despite the fact that she was not able to tolerate a regular diet. Further, on the day of her discharge, her KUB showed multiple dilated loops of bowel, thought to be related to a small bowel obstruction, yet she was sent home. An intraperitoneal abscess was suspected on a CT scan, yet she was still sent home. This was a violation of the standard of care by Sunrise Hospital and Dr. DeLee.

7. Because of the violations of the standard of care, her hospital course was protracted with multiple complications and she was apparently discharged to a step down facility once her antibiotic course was felt to be completed, still on a feeding tube and in need of rehabilitation.
8. That in my professional opinion, to a degree of medical probability, the standard of care was breached by both Dr. DeLee and Sunrise Hospital and Medical Center in their treatment of Ms. Green.


LISA KARAMARDIAN, MD.

 **TONY GANA**
Notary Public - California
Orange County
Commission # 2148987
My Comm. Expires Apr 14, 2020

2.



ANS
MICHAEL E. PRANGLE, ESQ.
Nevada Bar No.: 8619
JOHN F. BEMIS, ESQ.
Nevada Bar No.: 9509
TYSON J. DOBBS, ESQ.
Nevada Bar No.: 11953
HALL PRANGLE & SCHOONVELD, LLC
1160 N. Town Center Dr., Ste. 200
Las Vegas, NV 89144
(702) 889-6400 – Office
(702) 384-6025 – Facsimile
efile@hpslaw.com
Attorneys for Defendant
Sunrise Hospital and Medical Center, LLC

**DISTRICT COURT
CLARK COUNTY, NEVADA**

CHLOE GREEN, an individual,

Plaintiff,

vs.

FRANK J. DELEE, M.D., an individual;
FRANK J. DELEE MD, PC, a Domestic
Professional Corporation, SUNRISE
HOSPITAL AND MEDICAL CENTER,
LLC, a Foreign Limited-Liability Company,

Defendants.

CASE NO.: A-17-757722-C
DEPT NO.: VIII

**DEFENDANT SUNRISE HOSPITAL
AND MEDICAL CENTER'S ANSWER
TO PLAINTIFF'S COMPLAINT**

COMES NOW, Defendant, SUNRISE HOSPITAL AND MEDICAL CENTER, by and
through its attorneys of the law firm of HALL PRANGLE & SCHOONVELD, LLC, and hereby
provides its answer to Plaintiff's Complaint as follows:

1. In answering paragraphs 1, 2, 3, 4, 6, 7, 8 and 9 of Plaintiff's Complaint, this
answering Defendant states it is without sufficient information to form a belief as to the truth of
the allegations contained in said paragraphs and therefore denies the same.

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

2. In answering paragraph 5 of Plaintiff's Complaint, this answering Defendant admits each and every allegation contained therein.

3. In answering paragraphs 10, 11 and 13 of Plaintiff's Complaint, this answering Defendant denies each and every allegation contained therein.

4. In Answering paragraph 12 of Plaintiff's Complaint, this answering Defendant states that this paragraph call for a legal conclusion to which no response is required. To the extent any response is required, this answering Defendant admits an affidavit is attached to the Complaint. As to the remaining allegations contained therein, this answering Defendant denies the same.

FIRST AFFIRMATIVE DEFENSE

Plaintiff's Complaint on file herein fails to state a claim against this Defendant upon which relief can be granted.

SECOND AFFIRMATIVE DEFENSE

The injuries, if any, complained of by Plaintiff in the Complaint were proximately caused by the acts or omissions of unknown third parties or other persons over whom this Defendant exercised no control and over who this Defendant had no right or duty to control, nor ever has had a right or duty to exercise control.

THIRD AFFIRMATIVE DEFENSE

Plaintiff did not exercise ordinary care, caution or prudence in the conduct of her affairs relating to the allegations of the Complaint herein for damages in order to avoid the injuries or damages of which Plaintiff complained and said injuries or damages, if any, were directly and proximately contributed to or caused by the fault, carelessness and negligence of the Plaintiff.

FOURTH AFFIRMATIVE DEFENSE

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

...

...

FIFTH AFFIRMATIVE DEFENSE

The damages, if any, alleged by Plaintiff were not the result of any acts of omission, or commission, or negligence, but were the results of known risks which were consented to by the Plaintiff, such risks being inherent in the nature of the care rendered and such risks were assumed by the Plaintiff when they consented to treatment.

SIXTH AFFIRMATIVE DEFENSE

In all medical attention rendered by this Defendant to Plaintiff, this Defendant possessed and exercised that degree of skill and learning ordinarily possessed and exercised by the members of his profession in good standing, practicing in similar localities, and that at all times this Defendant used reasonable care and diligence in the exercise of his skills and the application of his learning, and at all times acted according to his best judgment; that the medical treatment administered by this Defendant was the usual and customary treatment for the physical condition and symptoms exhibited by Plaintiff, and that at no time was this Defendant guilty of negligence or improper treatment; that, on the contrary, this Defendant did perform each and every act of such treatment in a proper and efficient manner and in a manner most thoroughly approved and followed by the medical profession generally and under the circumstances and conditions as they existed when such medical attention was rendered.

SEVENTH AFFIRMATIVE DEFENSE

The injuries complained of in the Complaint, if any, were not the result of willful, malicious or deliberate conduct on the part of this answering Defendant.

EIGHTH AFFIRMATIVE DEFENSE

That it has been necessary for the Defendant to employ the services of an attorney to defend this action and a reasonable sum should be allowed Defendant for attorneys' fees, together with costs of suit incurred herein.

NINTH AFFIRMATIVE DEFENSE

Defendant is liable for only that portion of the Plaintiff's claims that represents the percentage of negligence, if any, attributed to Defendant.

...

TENTH AFFIRMATIVE DEFENSE

Plaintiff has failed to plead any acts or omissions of this answering Defendant sufficient to constitute punitive damages.

ELEVENTH AFFIRMATIVE DEFENSE

Plaintiff failed to file her Complaint before the running of the applicable statute of limitation, thereby barring their claims for relief.

TWELFTH AFFIRMATIVE DEFENSE

Plaintiff's Complaint, and each claim asserted therein and the relief sought, is barred by the statute of frauds.

THIRTEENTH AFFIRMATIVE DEFENSE

Plaintiff's action is barred and/or diminished by the doctrines of waiver, laches, estoppel, and/or unclean hands.

FOURTEENTH AFFIRMATIVE DEFENSE

The incident alleged in the Complaint and the resulting damages, if any, to Plaintiff were proximately caused or contributed to by Plaintiff's own negligence, and such negligence was greater than the alleged negligence of Defendants.

FIFTEENTH AFFIRMATIVE DEFENSE

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

SIXTEENTH AFFIRMATIVE DEFENSE

Plaintiff is barred from recovering any special damages herein as a result of the failure to comply with the provisions of N.R.C.P. 9(g).

SEVENTEENTH AFFIRMATIVE DEFENSE

Defendant alleges that Plaintiff have a duty to mitigate their damages and have failed to do so.

...

...

EIGHTEENTH AFFIRMATIVE DEFENSE

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

NINETEENTH AFFIRMATIVE DEFENSE

Plaintiff has failed to join all necessary parties.

TWENTIETH AFFIRMATIVE DEFENSE

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

TWENTY-FIRST AFFIRMATIVE DEFENSE

Defendant asserts that the Complaint should be dismissed on the basis that Plaintiff have not complied with NRS 41A.071.

TWENTY-SECOND AFFIRMATIVE DEFENSE

Defendants are entitled to all protections, benefits, and set offs available to Defendants in medical malpractice actions under NRS Chapters 41, 41A, and 42.

TWENTY-THIRD AFFIRMATIVE DEFENSE

Pursuant to N.R.C.P. 11, as amended, all possible Affirmative Defenses may not have been alleged herein insofar as sufficient facts were not available after reasonable inquiry upon the filing of Defendant's Answer, and therefore, Defendant reserves the right to amend his Answer to allege additional Affirmative Defenses if subsequent investigation warrants.

TWENTY-FOURTH AFFIRMATIVE DEFENSE

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

WHEREFORE, Defendant prays for judgment as follows:

1. That Plaintiff take nothing by virtue of the Complaint;
2. For reasonable attorney's fees and costs of suit incurred herein; and
3. For such other and further relief as the Court deems just and proper.

DATED this 20th day of July, 2017.

HALL PRANGLE & SCHOONVELD, LLC

By: 

JOHN F. BEMIS, ESQ.

Nevada Bar No.: 9509

TYSON J. DOBBS, ESQ.

Nevada Bar No.: 11953

1160 N. Town Center Dr., Ste. 200

Las Vegas, NV 89144

Attorneys for Defendant

Sunrise Hospital and Medical Center, LLC

CERTIFICATE OF SERVICE

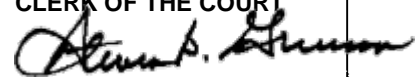
I HEREBY CERTIFY that I am an employee of HALL PRANGLE & SCHOONVELD, LLC; that on the 20th day of July, 2017, I served a true and correct copy of the foregoing **DEFENDANT SUNRISE HOSPITAL AND MEDICAL CENTER'S ANSWER TO PLAINTIFF'S COMPLAINT** via the E-Service Master List for the above referenced matter 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:

Daniel Marks, Esq.
Nicole M. Young, Esq.
LAW OFFICE OF DANIEL MARKS
610 South Ninth Street
Las Vegas, NV 89101
Attorneys for Plaintiff



An employee of HALL PRANGLE & SCHOONVELD, LLC

4846-5582-2923, v. 1



1 ANS

Eric K. Stryker

2 Nevada Bar No. 5793

3 **WILSON, ELSE, MOSKOWITZ, EDELMAN & DICKER LLP**

300 South 4th Street, 11th Floor

4 Las Vegas, NV 89101

(702) 727-1400; FAX (702) 727-1401

5 Eric.Stryker@wilsonelser.com

6 *Attorney for Defendants Frank J. DeLee, M.D. and Frank J. DeLee MD, PC*

7 DISTRICT COURT

8 CLARK COUNTY, NEVADA

9 CHOLOE GREEN, an individual,

10 Plaintiff,

11 v.

12 FRANK J. DELEE, M.D., an individual;
13 FRANK J. DELEE MD, PC, a Domestic
Professional Corporation, SUNRISE
14 HOSPITAL AND MEDICAL CENTER, LLC,
a Foreign Limited-Liability Company,

15 Defendants.
16

CASE NO.: A-17-757722-C
DEPT. NO.: VIII

**DEFENDANTS FRANK J. DeLEE, M.D.
AND FRANK J. DeLEE, M.D., PC's
ANSWER TO PLAINTIFFS' COMPLAINT**

17 Defendants, Frank J. DeLee, M.D. and Frank J. DeLee, M.D., PC through their attorney of
18 record, Eric K. Stryker, of the law firm of Wilson, Elser, Moskowitz, Edelman & Dicker LLP,
19 hereby answers Plaintiff's Complaint on file herein, as follows:

20 1. Answering paragraphs 1, 2, 3, 4, 5, 6, 7, 8, 9, 11, 12 and 13 of Plaintiff's Complaint,
21 these answering Defendants state they do not have sufficient knowledge or information upon which
22 to base a belief as to the truth of the allegations contained therein, and upon said grounds deny each
23 and every allegation contained therein.

24 2. Answering paragraph 10 of Plaintiff's Complaint, these answering Defendants DENY
25 each and every allegation contained therein.

26 ...

27 ...

28 ...

- 1
- 2
- 3
- 4
- 5
- 6
- 7
- 8
- 9
- 10
- 11
- 12
- 13
- 14
- 15
- 16
- 17
- 18
- 19
- 20
- 21
- 22
- 23
- 24
- 25
- 26
- 27
- 28

2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28

3
4

5

6
7
8
9

10

11
12
13

14

15
16
17
18

19

20

21

22

23

24
25
26

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28

EIGHTH AFFIRMATIVE DEFENSE

The complained of acts of these answering Defendants were justified under the circumstances.

NINTH AFFIRMATIVE DEFENSE

The injuries suffered by the Plaintiff(s), if any, as set forth in the Complaint, were caused by a pre-existing condition.

TENTH AFFIRMATIVE DEFENSE

These answering Defendants have been forced to retain the services of an attorney to defend this action and are entitled to an award of reasonable attorney's fees and costs incurred herein.

ELEVENTH AFFIRMATIVE DEFENSE

The injuries or damages, if any, complained of by Plaintiff's in the Complaint for damages were caused by the forces of nature and not by any acts or omissions of these answering Defendants.

TWELFTH AFFIRMATIVE DEFENSE

The damages claimed by Plaintiff's in the Complaint were not the result of any acts of omission or commission or negligence but were the result of a known risk, which was consented to, such risk being inherent in the nature of the treatment, procedures, and medical care rendered to the Plaintiff(s), and that such risks were assumed.

THIRTEENTH AFFIRMATIVE DEFENSE

That Plaintiff failed to join an indispensable party to this action.

FOURTEENTH AFFIRMATIVE DEFENSE

That in the event these answering Defendant(s) may be found liable for negligence, to which each of these answering Defendants deny, each Defendant is only severally liable and not jointly liable as to the other Defendants and that Plaintiffs shall only recover that portion of any judgment that represents the percentage of negligence attributable to each Defendant.

FIFTEENTH AFFIRMATIVE DEFENSE

Plaintiff(s)' non-economic damages, if any, may not exceed \$350,000.00 pursuant to NRS §41A.035.

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28

SIXTEENTH AFFIRMATIVE DEFENSE

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

SEVENTEENTH AFFIRMATIVE DEFENSE

To the extent Plaintiff(s) is/are entitled to recover any future damages from Defendant(s), Defendant(s) may satisfy that amount through periodic payments pursuant to NRS §42.021.

EIGHTEENTH AFFIRMATIVE DEFENSE

This Court has no personal jurisdiction over Defendant(s).

NINETEENTH SEVENTH DEFENSE

Pursuant to NRCP 11, as amended, all possible affirmative defenses may not have been alleged herein insofar as sufficient facts were not available after reasonably inquiry upon the filing of Plaintiff's Complaint and, therefore, these answering Defendants reserve the right to amend their Answer to allege additional affirmative defenses if subsequent investigation so warrants.

...
...
...

1 PRAYER FOR RELIEF

2 WHEREFORE, Defendants prays as follows:

- 3 1. That Plaintiff takes nothing by reason of her Complaint on file herein;
- 4 2. For all attorneys' fees incurred in the defense of Plaintiff's Complaint against these
- 5 answering Defendants;
- 6 3. For costs and disbursements incurred herein; and
- 7 4. For such other and further relief as the Court may deem just and proper in these
- 8 premises.

9 DATED this 31st day of July, 2017

10 WILSON, ELSER, MOSKOWITZ,
11 EDELMAN & DICKER LLP

12 BY: 

13 Eric K. Stryker
14 Nevada Bar No. 5793
15 300 South 4th Street, 11th Floor
16 Las Vegas, NV 89101
17 Attorneys for Defendants
18 Frank J. Delee, M.D. and Frank J. Delee MD,
19 PC

CERTIFICATE OF SERVICE

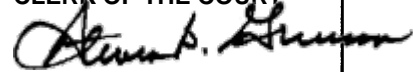
Pursuant to NRCP 5(b), I certify that I am an employee of WILSON ELSEER MOSKOWITZ
EDELMAN & DICKER LLP, and that on this 31 day of July, 2017, I served a true and correct
copy of the foregoing **DEFENDANTS FRANK J. DeLEE, M.D. AND FRANK J. DeLEE, M.D.,**
PC's ANSWER TO PLAINTIFFS' COMPLAINT as follows:

- ☐ by placing same to be deposited for mailing in the United States Mail, in a sealed
envelope upon which first class postage was prepaid in Las Vegas, Nevada;
- ☒ via electronic means by operation of the Court's electronic filing system, upon each
party in this case who is registered as an electronic case filing user with the Clerk;
and pursuant to Rule 9 of the N.E.F.C.R.
- ☐ via hand-delivery to the addressees listed below;
- ☐ by transmitting via email the document listed above to the email address set forth
below on this date before 5:00 p.m.

Daniel Marks
Nicole M. Young
LAW OFFICE OF DANIEL MARKS
610 South Ninth Street
Las Vegas, Nevada 89101
(702) 386-0536: Fax (702) 386-6812
Attorneys for Plaintiff

BY 

An Employee of
WILSON, ELSEER, MOSKOWITZ, EDELMAN & DICKER LLP



1 **MPSJ**
2 MICHAEL E. PRANGLE, ESQ.
3 Nevada Bar No.: 8619
4 TYSON J. DOBBS, ESQ.
5 Nevada Bar No.: 11953
6 SHERMAN B. MAYOR, ESQ.
7 Nevada Bar No. 1491
8 HALL PRANGLE & SCHOONVELD, LLC
9 1160 N. Town Center Dr., Ste. 200
10 Las Vegas, NV 89144
11 (702) 889-6400 – Office
12 (702) 384-6025 – Facsimile
13 efile@hpslaw.com
14 *Attorneys for Defendant*
15 *Sunrise Hospital and Medical Center, LLC*

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

12 CHOLOE GREEN, an individual,
13
14 Plaintiff,

15 vs.

16 FRANK J. DELEE, M.D., an individual;
17 FRANK J. DELEE MD, PC, a Domestic
18 Professional Corporation, SUNRISE
19 HOSPITAL AND MEDICAL CENTER,
20 LLC, a Foreign Limited-Liability Company,
21
22 Defendants.

CASE NO.: A-17-757722-C
DEPT NO.: VIII

SUNRISE HOSPITAL AND MEDICAL
CENTER, LLC'S MOTION FOR
PARTIAL SUMMARY JUDGMENT TO
DISMISS ANY CLAIM OF
"OSTENSIBLE AGENCY" FOR DR.
KIA OR DR. DELEE

22 COMES NOW Defendant Sunrise Hospital and Medical Center, by and through its
23 counsel of record, Hall Prangle & Schoonveld, LLC, and moves this Honorable Court for an
24 order granting partial summary judgment to dismissing any claim of "Ostensible Agency" for Dr.
25 Kia or Dr. DeLee.
26
27
28

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

1 This Motion is made and based upon the papers and pleadings on file herein, the
2 following points and authorities, and any oral argument which may be adduced at a hearing set
3 for this matter.

4 DATED this 15th day of January, 2019.

5 HALL PRANGLE & SCHOONVELD, LLC

6
7 By: _____

8 MICHAEL E. PRANGLE, ESQ.

9 Nevada Bar No.: 8619

10 TYSON J. DOBBS, ESQ.

11 Nevada Bar No.: 11953

12 SHERMAN B. MAYOR, ESQ.

13 Nevada Bar No. 1491

14 1160 N. Town Center Dr., Ste. 200

15 Las Vegas, NV 89144

16 *Attorneys for Defendant*

17 *Sunrise Hospital and Medical Center, LLC*

NOTICE OF MOTION

TO: ALL INTERESTED PARTIES AND THEIR COUNSEL OF RECORD

PLEASE TAKE NOTICE that Defendant will bring the foregoing Motion on for hearing
before the above-entitled Court on the February 19, 2019, at the hour of 8:00
AM/PM of that day, or as soon thereafter as counsel may be heard.

DATED this 15th day of January, 2019.

HALL PRANGLE & SCHOONVELD, LLC

By: _____

MICHAEL E. PRANGLE, ESQ.

Nevada Bar No.: 8619

TYSON J. DOBBS, ESQ.

Nevada Bar No.: 11953

SHERMAN B. MAYOR, ESQ.

Nevada Bar No. 1491

1160 N. Town Center Dr., Ste. 200

Las Vegas, NV 89144

Attorneys for Defendant

Sunrise Hospital and Medical Center, LLC

Prefatory Note

This Motion does not seek dismissal of any claims that Sunrise Hospital was
independently negligent in the care and treatment of Plaintiff. Rather, the Motion seeks to
dismiss any claims that Dr. Frank J. DeLee or Dr. Ali Kia were employees of Sunrise Hospital
(vicarious liability) or claims that said doctors were the ostensible agents of Sunrise Hospital.
Factually, and as a matter of law, the physicians were not agents of Sunrise Hospital.

POINTS AND AUTHORITIES

FACTS

This is a medical malpractice action. The Plaintiff, Choloe Green, delivered her fourth child, Israel Hank, via caesarean section at Sunrise Hospital on July 9, 2016. Ms. Green was formally discharged from the Hospital by her treating OB/Gyn, Dr. Frank DeLee on July 10, 2016. Ms. Green was readmitted to Sunrise Hospital on July 14, 2016 (pain, nausea, vomiting) and was discharged on July 16, 2016 by Dr. Ali Kia (internal medicine).

Plaintiff contends that her two hospital discharges (ordered by Drs. DeLee and Kia on July 10, 2016 and July 16, 2016, respectively) were premature and breached the applicable standard of care.

Plaintiff has not alleged in her Complaint that Sunrise Hospital and Medical Center was the employer of either Frank J. DeLee, M.D. or Ali Kia, M.D. Plaintiff has not alleged that either doctor is an "ostensible agent" of Sunrise Hospital. If Plaintiff does not contend that the two physicians are employees or ostensible agents of the Hospital, then, this Motion should be uncontested and granted¹.

In the event Plaintiff does contest this Motion, a brief factual description of Dr. DeLee and Dr. Kia will demonstrate that there is no basis to assert ostensible agency or vicarious liability for either physician as to Sunrise Hospital Medical Center.

Frank J. DeLee, M.D.'s Discharge Order of July 10, 2016

The Plaintiff, Choloe Green, age 32, has four children. According to Ms. Green's answers to interrogatories, Dr. DeLee delivered all four of her children between 2002 and 2016 (see Exhibit "A"). The Plaintiff acknowledges in her deposition that she had a long time

¹ Plaintiff has not named Ali Kia, M.D. as a Defendant in this case even though it was Dr. Ali (in consultation with Dr. DeLee) that actually ordered and signed the discharge report of July 16, 2016.

1 physician/ patient relationship with Dr. DeLee well before the delivery of her fourth child at
2 Sunrise Hospital on July 9, 2016. Moreover, Dr. DeLee was Plaintiff's actual treating
3 obstetrician, prior to delivery at Sunrise Hospital, of baby Israel Hanks on July 9, 2016. Ms.
4 Green chose and selected Dr. DeLee to be her treating OG/Gyn.

5 Attached as Exhibit "B" is the "Discharge Report" ordered by Frank J. DeLee, M.D.
6 releasing Choloe Green from Sunrise Hospital on July 10, 2016. Also attached as Exhibit "C"
7 are two physician discharge orders for Dr. DeLee's delivery of Plaintiff's second child, Tamyra
8 Green in 2009 and Dr. DeLee's delivery of Plaintiff's third child, Kai Banks in 2012. Attached
9 as Exhibit "D" are deposition excerpts of Dr. DeLee testifying that he has a private business
10 address at 700 Shadow Lane, Suite 330, Las Vegas, Nevada 89106. There is not even an
11 allegation, nor should there be, that Dr. DeLee was an employee of Sunrise Hospital.
12

13 Based on the argument and Nevada case law set forth below, Frank J. DeLee, M.D.,
14 when discharging baby Israel Hanks on July 10, 2016 was not an employee or ostensible agent of
15 Sunrise Hospital Medical Center.
16

17 **Ali Kia, M.D.'s Discharge Order of July 16, 2016**
18

19 Ali Kia, M.D., is a board certified internist (*See* Exhibit "E", Dr. Kia's deposition
20 transcript, p. 6.) Dr. Kia was "self employed" (Exhibit "E" p. 4). Dr. Kia worked with Pioneer
21 Group and Nevada Hospitalist Group (Exhibit "E" p. 11) for whom he treated "private patients"
22 (Exhibit "E" p. 13).
23

24 In his deposition, at page 12, Dr. Kia explains that in his work with Nevada Hospitalist
25 Group, private patients insured through Health Plan of Nevada are seen. In seeing such patients
26 through Nevada Hospitalist Group (including patients seen at Sunrise Hospital), Dr. Kia
27
28

specifically testified that he was an “independent contractor” (Exhibit “E” p. 12). Dr. Kia testified he also covers patients at University Medical Center (Exhibit “E” p. 11).

On page 14 of his deposition, Dr. Kia testified that he bills patients through Nevada Hospitalist Group which is separate billing from Sunrise Hospital. At page 68 of his deposition, Dr. Kia indicated that his selection as a consulting physician for Ms. Green was the result of her having been insured through Health Plan of Nevada. That insurer used Nevada Hospitalist Group and Dr. Kia was on call for the group (even though the patient was initially processed through the Hospital Emergency Department).

Attached as Exhibit “F” is a Certificate of Liability Insurance demonstrating that Dr. Kia maintained his own separate professional liability insurance. Attached as Exhibit “G” is a document entitled “Conditions of Admission and Consent for Outpatient Care” which Plaintiff, Choloe Green signed on admission to Sunrise Hospital on July 14, 2016. In that form, signed by Plaintiff Choloe Green, on the first page, in the first section, the following language states:

Legal Relationship between Hospital and Physicians. Most or all of the physicians performing services in the hospital are independent and are not hospital agents or employees. Independent physicians are responsible for their own actions and the hospital shall not be liable for the acts or omissions of any such independent physicians.

Then, on the second page of the “Conditions of Admission and Consent for Outpatient Care” form signed by Choloe Green on July 14, 2016 is the following additional language (which is set forth in **bold print**):

“Professional services rendered by independent contractors are not part of the hospital bill. These services will be billed to the patient separately. . . .” (Emphasis not added.)

Dr. Kia testified that he billed his patients including Choloe Green separately. Dr. Kia was on call for the Nevada Hospitalist Group then responding to a Health Plan of Nevada patient

1 at Sunrise Hospital. That Private Group assigned Dr. Kia via their own call schedule to see

2 Choloe Green:

3 Q. Doctor, my name is Mike Prangle. I represent Sunrise. And I
4 think you told us this earlier, but is it correct to say that **you were**
5 **not an employee of Sunrise Hospital while you cared for this**
6 **patient?**

7 A. That's correct.

8 Q. You were an independent contractor?

9 A. Yes, correct.

10 Q. The group that you were affiliated with was Nevada Hospital

11 A. That's correct.

12 Q. When did you begin your affiliation with that group?

13 A. Nevada Hospitalist Group?

14 Q. Yes.

15 A. That would have been January of 2016.

16 Q. And in terms of how it was that you were at Sunrise Hospital on
17 July 14th, **the day that this patient was assigned to you, was**
18 **that done pursuant to a call schedule?**

19 A. Yes, correct.

20 Q. And who prepared that call schedule?

21 A. It would have been Nevada Hospitalist Group.

22 Q. And so –

23 A. They have a team that they set up the call schedule for the HPN
24 or –

25 Q. So Nevada Hospitalist Group per that schedule is the one
26 who selected you to be at Sunrise on July 14th?

27 A. Yes.
28

1 **Q. Would you agree with me that Sunrise Hospital did not in**
2 **any way select you to be the on-call physician for July 14th?**

3 **A. I wasn't aware, no.** (Excerpt from pages 48-49 of Ali M. Kia,
4 M.D. (Emphasis added.) Exhibit "F")

5 Finally, attached as Exhibit "H" is the signed discharge report (signed by Ali Kia, M.D.
6 releasing Choloe Green from Sunrise Hospital on July 16, 2016. Dr. Kia testified at page 50 of
7 his deposition that it was his " . . . decision to discharge this patient. . . ."

8 Q. And then just lastly, with regard to – it was your decision to
9 discharge this patient?

10 A. It was.

11 Dr. Kia was an independent private doctor not selected by Sunrise Hospital to treat
12 Choloe Green. Dr. Kia discharged Ms. Green from Sunrise Hospital on July 16, 2016.

13 **ARGUMENT**

14 **Drs. DeLee And Kia Are Not "Employees" Or "Ostensible Agents"** 15 **Of Sunrise Hospital As A Matter Of Law.**

16 The general rule of vicarious liability is that an employer is liable for the negligence of its
17 employee but not the negligence of an independent contractor. *McCroskey v. Carson Tahoe*
18 *Regional Medical Center*, 133 Nev. Adv. Op 115 (Nev. 2017). *See, also Oehler v. Humana,*
19 *Inc.*, 105 Nev. 348, 775 P.2d 1273 (Nev. 1989) and *Schlotfeldt v. Charter Hospital of Las Vegas,*
20 112 Nev. 42, 910 P.2d 271 (Nev. 1996).
21

22 A doctor's mere affiliation with a hospital is not sufficient to hold a hospital vicariously
23 liable for the doctor's negligent conduct. *Schlotfeldt (citing to Hill v. St. Claire's Hospital*, 490
24 N.E.2d 823 (New York 1986)). Moreover, merely because a physician or surgeon is on a
25 hospital's staff does not necessarily render that physician an employee of the hospital.
26 *Schlotfeldt (citing to Evans v. Bernhard*, 23 Ariz. App. 413, 533 P.2d 725 (Ariz. 1975).
27
28

1 The Nevada Supreme Court in *Schlotfeldt v. Charter Hospital of Las Vegas*, 112 Nev. 42,
2 910 P.2d 271 (Nev. 1996), clearly and unambiguously stated that evidence that a physician
3 maintains a private practice may tend to dispel any claim of an agency relationship between a
4 hospital and doctor:

5 “Further, evidence that a doctor maintains a private practice may
6 tend to dispel any claim of an agency relationship between a doctor
7 and a hospital. *Hundt*, 284 N.E.2d at 678.” (*Schlotfeldt, supra.*)

8 Finally, while the existence of an agency relationship (ostensible agency or vicarious
9 liability) may present a question of fact for the jury, “. . . a question of law exists as to whether
10 sufficient competent evidence is present to require that the agency question be forwarded to the
11 jury. . . .” *Schlotfeldt*; see also 3AmJur2d Agency Section 362 (1986). The Nevada Supreme
12 Court has stated that determining whether an issue of fact exists for a jury is similar to determine
13 whether an issue of fact is present to preclude summary judgment. *Schlotfeldt, supra.*

14 In *Oehler v. Humana, Inc.*, 105 Nev. 348, 775 P.2d 1273 (Nev. 1989), the Nevada
15 Supreme Court affirmed a summary judgment order which found, as a matter of law, that agency
16 did not exist between a hospital and a doctor. The *Oehler* court stated that:

17 “. . . a hospital is not vicariously liable for acts of physicians who
18 are neither employees nor agents of the hospital. . . .” (*Oehler*
19 *(cited in Schlotfeldt)*.)

20 In this case, the issue as to whether Drs. DeLee and Kia are agents or ostensible agents of
21 Sunrise Hospital should, respectfully, be decided as a matter of law. There is not sufficient
22 competent evidence to require such issue to be resolved by a jury.

23 For instance, Dr. Frank DeLee was Plaintiff’s treating and delivering OB/Gyn for more
24 than 15 years prior to her presentation to Sunrise Hospital on July 9, 2016. Plaintiff selected Dr.
25 DeLee. Plaintiff had no reasonable expectation that Dr. DeLee was a hospital employee. To the
26
27
28

1 contrary, Plaintiff regularly treated with Dr. DeLee for obstetrical care at his private medical
2 offices. Dr. DeLee and Sunrise Hospital have both attested that Dr. DeLee is not an employee of
3 the hospital. Dr. DeLee issued the written "discharge report" releasing Plaintiff in her first
4 hospitalization. Under *Schlotfeldt*, *Oehler* and *McCroskey*, Sunrise Hospital cannot be
5 vicariously liable for Dr. DeLee's care or decision to discharge Plaintiff from the Hospital on
6 July 10, 2016.
7

8 Similarly, in Plaintiff's second discharge from Sunrise Hospital, Ali Kia, M.D. was not
9 an employee of Sunrise Hospital. Dr. Kia has testified that Choloe Green, Plaintiff, was a private
10 patient of his and that he was treating her as an independent contractor. Dr. Kia was selected as
11 Ms. Green's consulting internist because her insurer, HPN, utilizes Nevada Hospitalist Group.
12 Nevada Hospitalist Group had a call schedule and it was Dr. Kia's turn to take call for a patient
13 of that Group to be seen at Sunrise Hospital. It is Dr. Kia's testimony that it was his decision to
14 discharge Plaintiff on July 16, 2016 and it was Dr. Kia who signed the discharge report.
15

16 Moreover, Dr. Kia has testified he was an independent contractor at the time he
17 discharged Plaintiff. Dr. Kia testified Plaintiff was a private patient of his and Nevada
18 Hospitalist's Group. Dr. Kia billed separately from the Hospital for care rendered to Choloe
19 Green. Dr. Kia has a private office, a private practice, and maintains his own private
20 professional liability insurance. Dr. Kia is not an agent or ostensible agent of Sunrise Hospital.
21 To hold otherwise would render all consulting physicians of all patients, employees of the
22 hospitals where they treat such patients. Such a doctrine would directly violate the spirit and
23 intent of the *Schlotfeldt*, *Oehler*, and *McCroskey* opinions.
24
25

26 It is submitted that Plaintiff cannot offer sufficient competent evidence that Dr. DeLee
27 was employed by or has an agency relationship with Sunrise Hospital. As such, any theory of
28

1 agency or ostensible agency should be dismissed with prejudice. Similarly, Plaintiff cannot offer
2 sufficient competent evidence that Dr. Kia was employed by or had an agency relationship with
3 Sunrise Hospital. Any such claim, therefore, should be dismissed with prejudice.

4 **CONCLUSION**

5 Dr. Frank J. DeLee was not an employee, agent, or ostensible agent of Sunrise Hospital
6 when Dr. DeLee discharged Choloe Green from the Hospital on July 10, 2016. Similarly, Dr.
7 Ali Kia was not an employee, agent, or ostensible agent of Sunrise Hospital when Dr. Kia
8 discharged Choloe Green from the Hospital on July 16, 2016. As such, Sunrise Hospital's
9 Motion for Partial Summary Judgment seeking dismissal of any such claims, with prejudice,
10 should respectfully be granted.
11

12 DATED this 15th day of January, 2019.

13 HALL PRANGLE & SCHOONVELD, LLC

14 By: _____

15 MICHAEL E. PRANGLE, ESQ.

16 Nevada Bar No.: 8619

17 TYSON J. DOBBS, ESQ.

18 Nevada Bar No.: 11953

19 SHERMAN B. MAYOR, ESQ.

20 Nevada Bar No. 1491

21 1160 N. Town Center Dr., Ste. 200

22 Las Vegas, NV 89144

23 *Attorneys for Defendant*

24 *Sunrise Hospital and Medical Center, LLC*
25
26
27
28

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that I am an employee of HALL PRANGLE & SCHOONVELD, LLC; that on the 15th day of January, 2019, I served a true and correct copy of the foregoing **SUNRISE HOSPITAL AND MEDICAL CENTER, LLC'S MOTION FOR PARTIAL SUMMARY JUDGMENT TO DISMISS ANY CLAIM OF "OSTENSIBLE AGENCY" FOR DR. KIA OR DR. DELEE** 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:

Daniel Marks, Esq.
Nicole M. Young, Esq.
LAW OFFICE OF DANIEL MARKS
610 South Ninth Street
Las Vegas, NV 89101
Attorneys for Plaintiff

Erik Stryker, Esq.
WILSON ELSEER MOSKOWITZ
EDELMAN & DICKER LLP
300 S. 4th Street
Las Vegas, NV 89101
Attorney for Defendants
Frank J. Delee, M.D. and
Frank J. Delee, M.D., PC


An employee of HALL PRANGLE & SCHOONVELD, LLC

EXHIBIT A

LAW OFFICE OF DANIEL MARKS
DANIEL MARKS, ESQ.
Nevada State Bar No. 002003
NICOLE M. YOUNG, ESQ.
Nevada State Bar No. 12659
610 South Ninth Street
Las Vegas, Nevada 89101
(702) 386-0536; Fax (702) 386-6812
Attorneys for Plaintiff

DISTRICT COURT
CLARK COUNTY, NEVADA

CHOLOE GREEN, an individual,

Plaintiff,

Case No. A-17-757722-C
Dept. No. VIII

v.

FRANK J. DELEE, M.D., an individual;
FRANK J. DELEE MD, PC, a Domestic
Professional Corporation, SUNRISE HOSPITAL
AND MEDICAL CENTER, LLC, a Foreign
Limited-Liability Company.

Defendants.

**RESPONSE TO DEFENDANT FRANK J. DELEE, M.D.'S FIRST SET OF
INTERROGATORIES TO PLAINTIFF**

COMES NOW the Plaintiff Choloe Green, by and through her attorney, Daniel Marks, Esq., of the
Law Office of Daniel Marks, and hereby submits her Response to Defendants Frank J. DeLee, M.D.'s First
Set of Interrogatories to Plaintiff as follows:

INTERROGATORY NO. 1:

Please provide the following information personal identification information:

- (a) Your full name;
- (b) All names by which you have ever been known or names/aliases which you have used;
- (c) Your date of birth;
- (d) Your place of birth;

////

- 1 (e) The number of individuals living with you, including the person's name, age, and
2 relationship to you;
- 3 (f) Your present residence address, and any address at which you lived during the past ten years;
- 4 (g) Your telephone numbers, including cellular service provider(s)/carrier(s) at the time of the
5 alleged incident; and
- 6 (h) Your social security number.

7 **RESPONSE TO INTERROGATORY NO. 1:**

- 8 (a) Choloe Shacana Green
- 9 (b) Cece
- 10 (c) July 15, 1986
- 11 (d) Las Vegas, Nevada
- 12 (e) Betty Jimerson, 50s, Mother
13 Brandon Green, 17, child
14 Tamyah Green, 9, child
15 Kai Hanks, 6, child
16 Israel Hanks, 2, child
- 17 (f) Present Address: 4828 Golden Shimmer, Las Vegas, Nevada 89139 (1 ½ years)
18 Past Addresses: 5434 Lavender Grove Court, Las Vegas, Nevada 89103 (2 years)
19 3213 Denvers Dream, North Las Vegas, Nevada (1 year)
20 3668 Asbury Hill Ave., Las Vegas, NV 89110
21 Plaintiff does not remember the addresses of all other prior residences.
- 22 (g) Present: 702-628-0392; Metro PCS
- 23 (h) [REDACTED]

24 **INTERROGATORY NO. 2:**

25 Please identify your health care insurer and/or coordinator of benefits, any health insurance claim
26 number (HICN), any Medicare number, and whether you have been diagnosed with end stage renal disease.
27 (Your social security number from Interrogatory No. 1 will be provided to Medicare and/or Medicaid for
28 determination of Plaintiff's Medicare and/or Medicaid eligibility for reporting purposes mandated by Section

1 111 of the Medicare, Medicaid and SCHIP Extension Act of 2007.) IF YOU HAVE EVER APPLIED FOR
2 OR RECEIVED BENEFITS FROM MEDICARE OR MEDICAID AT ANY TIME, WHETHER PRIOR
3 TO OR AFTER THE ACCIDENT AT ISSUE, OR IF YOU HAVE EVER APPLIED FOR OR RECEIVED
4 BENEFITS FROM THE SOCIAL SECURITY ADMINISTRATION, PLEASE SO INDICATE IN YOUR
5 RESPONSE REGARDLESS OF ANY RELATIONSHIP TO THE INCIDENT(S) AT ISSUE.

6 **RESPONSE TO INTERROGATORY NO. 2:**

7 Plaintiff is on Medicaid, Recipient Number 00000035007. Plaintiff has not been diagnosed with end
8 stage renal disease.

9 **INTERROGATORY NO. 3:**

10 Please describe the details of the incident, in your own words, describing factually, without legal
11 conclusions, with as much specificity as possible, the circumstances of the Incident (i.e., who, what, when,
12 where, and how).

13 **RESPONSE TO INTERROGATORY NO. 3:**

14 Plaintiff was a long-time patient of Defendant Dr. Delee. He had delivered, via C-Section, all of
15 Plaintiff's children. On July 9, 2016, Dr. Delee delivered Plaintiff's fourth child, Israel Hanks, via C-Section.
16 Even though Plaintiff had not had a bowel movement since the C-Section on July 9, 2016, Dr. Delee
17 discharged Plaintiff from Sunrise Hospital on July 10, 2016. That was only one day after the C-section. After
18 Plaintiff got home she soon discovered that her recovery from the C-section was nothing like her recovery
19 from her prior three (3) C-Sections. On July 13, 2016, Plaintiff went to Valley Hospital because she was
20 experiencing pain because she still had not had a bowel movement since the C-Section. Her pain was so
21 severe that she had to have her 15 year old son help her get dressed. Valley Hospital gave her an injection
22 in her abdomen and discharged her that same day because she had an appointment with Dr. Delee the
23 following day.

24 On July 14, 2016, Plaintiff was scheduled to see Dr. Delee in the afternoon. However, Plaintiff's pain
25 was so severe that she arrived at his office that morning hoping to be seen sooner. Plaintiff told Dr. Delee
26 that she was in severe pain, had not had a bowel movement, and that something was not right. In response,
27 Dr. Delee, prescribed her a stool softener, patted her on the back and said she would be fine. Plaintiff also
28 remembers that Dr. Delee removed her staples that morning.

EXHIBIT B

RUN DATE: 07/20/16
RUN TIME: 0110
RUN USER: HPF.FEED

MEDITECH FACILITY: COCSZ
IDEV - Discharge Report

PAGE 37

PATIENT: GREEN,CHLOE S
ACCOUNT NO: D00113776996

A/S: 30 F
LOC: D.MIU
RM: D.3032
BD: 0

ADMIT: 07/09/16
DISCH/DEP: 07/10/16
STATUS: IN
UNIT NO: D001315049

ATTEND DR: Delee, Frank J MD
REPORT STATUS: FINAL

Weight Monitoring:
Kg: 109.316
Weight - Lb: 241
Other Specific Frequency:

What anticoagulation med is patient being sent home on:

List reason for medication choice:

Diet: Regular
Activity/Exercise/Limitations: Pelvic rest
Lifting Restrictions:

Return to Work/School:
OK to Drive:

Call Your Doctor If -
Fever Greater Than: 100.4

1st Follow Up:
2nd:
3rd:
Physician:
Follow-Up with: DELEE
Follow up in: 1 WEEK
Reason: FOLLOW UP

Physician:
Follow-Up with:
Follow up in:
Reason:
Physician:
Follow-Up with:
Follow up in:
Reason:

Physician:
Follow-Up with:
Follow up in:
Reason:
Physician:
Follow-Up with:
Follow up in:
Reason:
Physician:

Follow-Up with:
Follow up in:
Reason:
Physician:
Follow-Up with:
Follow up in:
Reason:

PERMANENT MEDICAL RECORD COPY

RUN DATE: 07/20/16
RUN TIME: 0110
RUN USER: HPF.FEED

MEDITECH FACILITY: COCSZ
IDEV - Discharge Report

PAGE 38

PATIENT: GREEN,CHLOE S
ACCOUNT NO: D00113776996
ATTEND DR: Delee, Frank J MD
REPORT STATUS: FINAL

A/S: 30 F
LDC: D.MIU
RM: D.3032
BD: 0

ADMIT: 07/09/16
DISCH/DEP: 07/10/16
STATUS: IN
UNIT NO: D001315049

Physician:
Follow-Up with:
Follow up in:

Reason:
Physician:
Follow-Up with:
Follow up in:
Reason:

-- INFANT/NICU ==

-- INFANT/PEDIATRIC/NICU ==
Primary Dx of Asthma:

Provide Pre-printed Mother/Infant Instructions:

-- Outpatient Services Needs ==

== REHAB / SNF / LTAC / HOSPICE ONLY ==

Rehabilitation Potential: (Group response undefined)
Anticipated LOS:
I certify that post-hospital skilled services are required at an extended
care facility as a continuation for which he/she was receiving in-patient
hospital services prior to the transfer to the extended care facility.

Order's Audit Trail of Events

1 07/10/16 1329 DNUR.DRL1 Order ENTER in OM
2 07/10/16 1329 DNUR.DRL1 Ordering Doctor: Delee, Frank J MD
3 07/10/16 1329 DNUR.DRL1 Order Source: WRITTEN
4 07/10/16 1331 DNUR.DCA2 order acknowledged

** IDEV END OF REPORT **

PERMANENT MEDICAL RECORD COPY

EXHIBIT C

APP1-0068

TRANSMIT TO PHARMACY

PHYSICIAN ORDERS

PATIENT CLASSIFICATION STATUS: ☐ I ☐ II (refer to Classification Order Form) ☐ III

Check One: ☐ Admit to INPATIENT Status for _____ Level of Care: _____

☐ Place patient in OUTPATIENT Status for _____ Location: _____

☐ Place patient in OUTPATIENT Status and begin observation services for _____

DO NOT USE!

AD ☒

AS ☒

AU ☒

IV ☒

PO ☒

OS ☒

OT ☒

OB ☒

QOD ☒

MS ☒

MS04 ☒

MS04 ☒

TW ☒

IG ☒

Training 74101 ☒

DATE	TIME	
4/3/12	11:00	11:00 chn in
4/11/12	12:00	12:00 chn in
2/1/12		found
		flu now 2/6
		Delee
		noted
2/1/12		1000

DIAGNOSIS:

CONDITION:

HEIGHT: _____ F/in _____ M/cm, WEIGHT: _____ lbs. or _____ kg

DRUG & FOOD ALLERGIES

SUNRISE
HOSPITAL & MEDICAL CENTER
SUNRISE CHILDREN'S HOSPITAL
3188 South Maryland Parkway
Las Vegas, Nevada 89109

PHYSICIAN ORDERS

GREEN, CHLOE SHACANA
D00104312715 ADM IN D.LRR6-9
01/30/12 0427 DELEE, FRANK J
DOB: 07/15/86 25 F MR# D001315049
Las Vegas, Nv Sunrise Hospital and Med C



PHYSICIAN ORDERS

PHYSICIAN'S ORDERS

Pg. 1 of 1

HOSPITAL
REGULATIONS

1. ALL MEDICATION ORDERS MUST BE REVIEWED FOR RENEWAL EVERY 30 DAYS FROM THE DATE OF ADMISSION
 2. USE DARK INK PEN, A SIGNATURE MUST ACCOMPANY EACH ORDER
- Promote Patient Safety! 1. Indicate reasons for use for all PRN orders. 2. Do NOT use dangerous abbreviations

PATIENT CLASSIFICATION STATUS: ☐ I ☐ II (refer to Classification Order Form) ☐ III
ADMISSION: ☒ INPATIENT ☐ OBSERVATION ☐ OUTPATIENT ADMIT TO: _____ UNIT

DO NOT
USE

AD

AS

AU

BU

U

OB

OS

OU

OD

QOD

MS

MS04

MS04

TW

U9

TRADING
ZETOS

DATE TIME

Handwritten notes:
5/20 6pm
Home to sleep in AM
the full
Note
5-20-09
JHE

DIAGNOSIS:

CONDITION:

HEIGHT: _____ Ft/in _____ M/cm WEIGHT: _____ lbs. or _____ kg..

TRANSMIT TO PHARMACY

PATIENT IDENTIFICATION

DRUG & FOOD ALLERGIES

ROOM NO. 3018

Sunrise Hospital and Medical Center
D00099630952
GREEN, CHLOE SHACANA
DOB 07/15/86 F/22 BAP
Attending MD: DELEE, FRANK J
MR# D001315049

BLACKEN box for STAT
Always feed top of form in first

STAT ☐

SR-2183 / - 00035-SZ (08/08)

PHYSICIAN'S ORDERS ☐

EXHIBIT D

1 DISTRICT COURT
2 CLARK COUNTY, NEVADA
3 * * * * *
4 CHLOE GREEN, an individual,)
5 Plaintiff,)
6 vs.) Case No.: A-17-757722-C
7 FRANK J. DELEE, M.D., an) Dept. No.: VIII
8 individual; FRANK J. DELEE)
9 MD, PC, a Domestic)
10 Professional Corporation,)
11 SUNRISE HOSPITAL AND MEDICAL)
12 CENTER, LLC, a Foreign)
13 Limited-Liability Company,)
14 Defendants.)
15
16
17
18
19
20
21
22
23
24
25

**CERTIFIED
COPY**

14 DEPOSITION OF FRANK J. DeLEE, M.D.
15 Taken on Thursday, September 20, 2018
16 At 9:40 a.m.
17 Taken at 610 South Ninth Street
18 Las Vegas, Nevada
19
20
21
22
23
24
25 Reported By: Terri M. Hughes, CCR No. 619

Page 2	Page 4
<p>1 DEPOSITION OF FRANK J. DeLEE, M.D., taken at the Law 2 Office of Daniel Marks, 610 South Ninth Street, Las Vegas, 3 Nevada, on Thursday, September 20, 2018, at 9:40 a.m., 4 before Terri M. Hughes, Certified Court Reporter, in and 5 for the State of Nevada. 6 APPEARANCES: 7 For the Plaintiff: 8 DANIEL MARKS, ESQ. 9 NICOLE M. YOUNG, ESQ. 10 Law Office of Daniel Marks 11 610 South Ninth Street 12 Las Vegas, Nevada 89101 13 (702) 386-0536 14 15 For the Defendants, Frank J. DeLee, M.D. and Frank J. 16 DeLee, M.D., P.C.: 17 ERIC K. STRYKER, ESQ. 18 Wilson Elser Moskowitz Edelman & Dicker LLP 19 300 South Fourth Street 20 11th Floor 21 Las Vegas, Nevada 89101 22 (702) 727-1400 23 24 For the Defendant, Sunrise Hospital and Medical Center, 25 LLC: 26 TYSON J. DOBBS, ESQ. 27 Hall Prangle & Schoonveld LLC 28 1160 North Town Center Drive 29 Suite 200 30 Las Vegas, Nevada 89144 31 (702) 889-6400</p>	<p>1 (In an off-the-record discussion held prior to the 2 commencement of the deposition proceedings, counsel 3 agreed to waive the court reporter requirements under 4 Rule 30(b)(4) of the Nevada Rules of Civil Procedure.) 5 Whereupon -- 6 FRANK J. DeLEE, M.D., 7 being first duly sworn to tell the truth, the whole truth, 8 and nothing but the truth, was examined and testified as 9 follows: 10 EXAMINATION 11 BY MR. MARKS: 12 Q. State your name, please. 13 A. Frank DeLee. 14 Q. And what's your business address? 15 A. 700 Shadow Lane, Suite 330, Las Vegas, 89106. 16 Q. And have you had your deposition taken before? 17 A. Yes. 18 Q. Do you know how many times? 19 A. Two or three. 20 Q. When's the last time you had it taken? 21 A. About five years ago. 22 Q. Okay. So why don't I review the ground rules. 23 Everything that's said in the room is taken down by 24 the court reporter, will be typed up in a booklet format. 25 You'll have a chance to read the booklet.</p>
Page 3	Page 5
<p>1 INDEX 2 Witness: FRANK J. DeLEE, M.D. 3 Examination Further Examination 4 By Mr. Marks 4 -- 5 By Mr. Dobbs 58 -- 6 7 EXHIBITS 8 Plaintiff's Page 9 1 - Curriculum Vitae..... 8 10 2 - Note FJD 000057..... 27 11 3 - Sign-In Sheet..... 31 12 4 - Note 11/28/16 FJD 000114..... 33 13 5 - Physician Orders..... 37 14 6 - Sunrise Hospital Record SH000584..... 39 15 7 - Centennial Hospital Record CHH002637..... 44 16 8 - Important Message..... 46 17 9 - Discharge Summary..... 49 18 10 - Sunrise Hospital Records SH000775; 19 SH000777-SH000785..... 51 20 11 - Sunrise Hospital Records SH000642-SH000651... 55 21 22 23 24 25</p>	<p>1 Have you read your depositions in the past? 2 A. Yes. 3 Q. Okay. So under the rules in Nevada you can read 4 the deposition, you can make changes in your testimony. 5 If you make changes and the matter went to trial, the 6 attorneys could comment on those changes. And by that we 7 could read verbatim what you said here today and then 8 comment on the fact that you made a change. Do you 9 understand that? 10 A. Yes. 11 Q. You understand you're under oath today and you 12 have the same obligation to tell the truth as if we were 13 in court in front of a judge? 14 A. Yes. 15 Q. So if you made changes, you'd be asked to sign in 16 front of a notary and you'd be under oath at that time. 17 Do you understand? 18 A. Yes. 19 Q. Okay. And if the matter went to trial, you'd be 20 under oath. So it's kind of a three-step process. You're 21 under oath here today, you're under oath if you read and 22 sign, you'd be under oath in court. Do you understand 23 that? 24 A. Yes. 25 Q. And if there were changes or different statements,</p>

EXHIBIT E

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25

DISTRICT COURT
CLARK COUNTY, NEVADA
* * * * *
CHOLOE GREEN, an individual,)
Plaintiff,)
vs.) Case No.: A-17-757722-C
FRANK J. DELEE, M.D., an) Dept. No.: VIII
individual; FRANK J. DELEE)
MD, PC, a Domestic)
Professional Corporation,)
SUNRISE HOSPITAL AND MEDICAL)
CENTER, LLC, a Foreign)
Limited-Liability Company,)
Defendants.)
_____)

**CERTIFIED
COPY**

DEPOSITION OF ALI KIA, M.D.
Taken on Wednesday, November 14, 2018
At 1:35 p.m.
Taken at 610 South Ninth Street
Las Vegas, Nevada

Reported By: Terri M. Hughes, CCR No. 619

1 (In an off-the-record discussion held prior to the
2 commencement of the deposition proceedings, counsel
3 agreed to waive the court reporter requirements under
4 Rule 30(b)(4) of the Nevada Rules of Civil Procedure.)
5 Whereupon --

6 ALI KIA, M.D.,
7 being first duly sworn to tell the truth, the whole truth,
8 and nothing but the truth, was examined and testified as
9 follows:

10 EXAMINATION

11 BY MR. MARKS:

12 Q. State your name, please.

13 A. Ali Kia.

14 Q. And what's your business address?

15 A. 3022 South Durango Drive, 89119.

16 Q. And who are --

17 A. Las Vegas.

18 Q. Who are you employed by?

19 A. I'm self-employed.

20 Q. Okay. Have you had your deposition taken before?

21 A. No, first time.

22 Q. Okay. So you had an opportunity to discuss the
23 rules of a deposition with your attorney?

24 A. I have.

25 Q. Okay. So just in addition to what she told you,

1 tell me, I'll rephrase it. Your attorney could make
2 objections from time to time. Unless she would instruct
3 you not to answer a question, normally the objections are
4 preserved and you would answer. Do you understand?

5 A. I do.

6 Q. Okay. So when you say you're self-employed, do
7 you have your own professional practice?

8 A. I do.

9 Q. Can you give us the name?

10 A. Ali Kia, M.D., Inc., Incorporated.

11 Q. And how long have you had that?

12 A. Since 2008, February.

13 Q. Okay. And what's your -- do you have a specialty
14 in medicine?

15 A. Internal medicine.

16 Q. Okay. Are you board certified?

17 A. I am.

18 Q. And when did you become board certified?

19 A. 2006 and renewed in 2016.

20 Q. Okay. And I'm going to ask a little about your
21 educational background. Your attorney said she could
22 supplement with your CV, but I'll hit the highlights.
23 Where did you go to college?

24 A. UC -- University of California-Riverside.

25 Q. Okay. UNLV played them last night.

1 at?

2 A. It's not. I also cover University Medical Center.

3 I'm on teaching staff at UNLV for the School of Medicine.

4 Q. When did you get on teaching staff?

5 A. July of 2017.

6 Q. And what do you do as teaching staff?

7 A. My title is an adjunct professor of medicine.

8 Q. So adjunct means clinical?

9 A. Clinical, teaching rounds with the residents and
10 seeing patients, admitting and --

11 Q. So how often do you do UMC versus Sunrise?

12 A. I'm at UMC every day now, so not too many
13 patients, but we break up our teaching weeks. Whenever
14 they need, I help them out.

15 Q. And how often are you at Sunrise?

16 A. Every day.

17 Q. So you're at both every day?

18 A. I alternate a little. I cover the Pioneer Group,
19 which is a group at UMC, and then Nevada Hospitalist Group
20 at Sunrise Hospital.

21 Q. Okay. So in terms of your interaction at Sunrise,
22 calling your attention to the year 2016, is it the same
23 now as it was in 2016, your interactions or working at
24 Sunrise?

25 A. I'm not quite sure I understand the question.

1 Q. Okay. In terms of your working at Sunrise now --

2 A. Uh-huh.

3 Q. -- do you get a schedule, the days you're on call,
4 so to speak, at Sunrise?

5 A. For the group of Nevada Hospitalist Group, and we
6 cover one of the insurance -- major insurances in town,
7 namely Health Plan of Nevada.

8 Q. Okay. So you have your own P.C., professional
9 corporation, but through Nevada Hospitalist you're
10 assigned Sunrise Hospital?

11 A. Yes, correct. So as an independent contractor.

12 Q. But you go virtually every day to Sunrise to see
13 patients?

14 A. Yeah, the days I'm covering. We do get days off
15 also.

16 Q. But you work five, six days a week?

17 A. Roughly.

18 Q. Okay. And was that the same in 2016?

19 A. It was roughly the same. It's been since 2016
20 about the same.

21 Q. So you were employed -- you were an independent
22 contractor but employed through Nevada Hospitalist
23 covering patients at Sunrise in July of 2016?

24 A. That's correct.

25 Q. So the patient didn't choose you, the patient

1 I'm a consulting physician.

2 Q. And why would you be consulting versus attending?

3 How do you explain the difference?

4 A. Some of the times patients are in the intensive
5 care unit, and Sunrise Hospital has a closed ICU. So the
6 intensivist, the ICU physicians would consult me for
7 medicine, and then I typically take over the case and
8 discharge the patient from that point.

9 Q. If it's not an ICU patient, then effectively you'd
10 be the attending at Sunrise if the patient is assigned to
11 you?

12 A. No. The only other case is if I'm consulted by a
13 surgeon that the patient is under their service, I'm still
14 a consultant.

15 Q. Okay. And you're paid directly Sunrise to you or
16 through Nevada Hospitalist?

17 A. Through Nevada Hospitalist Group.

18 Q. So it goes Sunrise, Nevada Hospitalist to you?

19 A. No. Sunrise is separate. I do my billing through
20 Nevada Hospitalist Group.

21 Q. Okay. And they bill Sunrise?

22 A. No, they don't. They bill the insurance of the
23 patient.

24 Q. Okay. What about Medicare and Medicaid, how does
25 that work?

1 Q. Did you ever review the records from Centennial
2 Hospital?

3 A. I was not aware she was at another hospital.

4 Q. You know nothing about that?

5 A. I had not followed up after this.

6 Q. And you never saw her or saw any records of her?

7 A. I'm sorry?

8 Q. You never saw her or saw any records regarding
9 what happened after?

10 A. I don't understand.

11 Q. After Sunrise, after she was discharged?

12 A. After Sunrise I'm not aware of what transpired.

13 MR. MARKS: Okay. I'll pass the witness.

14 MR. STRYKER: Go ahead.

15 EXAMINATION

16 BY MR. PRANGLE:

17 Q. Doctor, my name is Mike Prangle. I represent
18 Sunrise. And I think you told us this earlier, but is it
19 correct to say that you were not an employee of Sunrise
20 Hospital while you cared for this patient?

21 A. That's correct.

22 Q. You were an independent contractor?

23 A. Yes, correct.

24 Q. The group that you were affiliated with was Nevada
25 Hospitalist Group?

1 A. That's correct.

2 Q. When did you begin your affiliation with that
3 group?

4 A. Nevada Hospitalist Group?

5 Q. Yes.

6 A. That would have been January of 2016.

7 Q. And in terms of how it was that you were at
8 Sunrise Hospital on July 14th, the day that this patient
9 was assigned to you, was that done pursuant to a call
10 schedule?

11 A. Yes, correct.

12 Q. And who prepared that call schedule?

13 A. It would have been Nevada Hospitalist Group.

14 Q. And so --

15 A. They have a team that they set up the call
16 schedule for the HPN or --

17 Q. So Nevada Hospitalist Group per that schedule is
18 the one who selected you to be at Sunrise on July 14th?

19 A. Yes.

20 Q. Would you agree with me that Sunrise Hospital did
21 not in any way select you to be the on-call physician for
22 July 14th?

23 A. I wasn't aware, no.

24 Q. Okay. Because that scheduling -- that
25 decision-making process was done by Nevada Hospitalist

EXHIBIT F



CERTIFICATE OF LIABILITY INSURANCE

DATE (MM/DD/YYYY)
8/17/2015

THIS CERTIFICATE IS ISSUED AS A MATTER OF INFORMATION ONLY AND CONFERS NO RIGHTS UPON THE CERTIFICATE HOLDER. THIS CERTIFICATE DOES NOT AFFIRMATIVELY OR NEGATIVELY AMEND, EXTEND OR ALTER THE COVERAGE AFFORDED BY THE POLICIES BELOW. THIS CERTIFICATE OF INSURANCE DOES NOT CONSTITUTE A CONTRACT BETWEEN THE ISSUING INSURER(S), AUTHORIZED REPRESENTATIVE OR PRODUCER, AND THE CERTIFICATE HOLDER.

IMPORTANT: If the certificate holder is an ADDITIONAL INSURED, the policy(ies) must be endorsed. If SUBROGATION IS WAIVED, subject to the terms and conditions of the policy, certain policies may require an endorsement. A statement on this certificate does not confer rights to the certificate holder in lieu of such endorsement(s).

PRODUCER Aspen Insurance 3230 So. Valley View, #110 Las Vegas, NV 89102	CONTACT NAME:	
	PHONE (A/C No. Ext.) 702-362-5454 FAX (A/C No.) 702-362-9702	
INSURED Ali Kia, MD 3022 S Durango Dr. Las Vegas, NV 89117	INSURER(S) AFFORDING COVERAGE	NAIC#
	INSURER A:	ProAssurance
	INSURER B:	
	INSURER C:	
	INSURER D:	
	INSURER E:	

COVERAGES CERTIFICATE NUMBER: REVISION NUMBER:

THIS IS TO CERTIFY THAT THE POLICIES OF INSURANCE LISTED BELOW HAVE BEEN ISSUED TO THE INSURED NAMED ABOVE FOR THE POLICY PERIOD INDICATED. NOTWITHSTANDING ANY REQUIREMENT, TERM OR CONDITION OF ANY CONTRACT OR OTHER DOCUMENT WITH RESPECT TO WHICH THIS CERTIFICATE MAY BE ISSUED OR MAY PERTAIN, THE INSURANCE AFFORDED BY THE POLICIES DESCRIBED HEREIN IS SUBJECT TO ALL THE TERMS, EXCLUSIONS AND CONDITIONS OF SUCH POLICIES. LIMITS SHOWN MAY HAVE BEEN REDUCED BY PAID CLAIMS.

INSR LTR	TYPE OF INSURANCE	POLY INR	SUBR WVD	POLICY NUMBER	POLICY EFF (MM/DD/YYYY)	POLICY EXP (MM/DD/YYYY)	LIMITS
	GENERAL LIABILITY <input type="checkbox"/> COMMERCIAL GENERAL LIABILITY <input type="checkbox"/> CLAIMS-MADE <input type="checkbox"/> OCCUR GEN'L AGGREGATE LIMIT APPLIES PER: <input type="checkbox"/> POLICY <input type="checkbox"/> PRO-JECT <input type="checkbox"/> LOC						EACH OCCURRENCE \$ DAMAGE TO RENTED PREMISES (Per occurrence) \$ MED EXP (Any one person) \$ PERSONAL & ADV INJURY \$ GENERAL AGGREGATE \$ PRODUCTS - COMP/OP AGG \$ COMBINED SINGLE LIMIT (Per accident) \$
	AUTOMOBILE LIABILITY <input type="checkbox"/> ANY AUTO <input type="checkbox"/> SCHEDULED AUTOS <input type="checkbox"/> ALL OWNED AUTOS <input type="checkbox"/> NON-OWNED AUTOS <input type="checkbox"/> HIRED AUTOS						BODILY INJURY (Per person) \$ BODILY INJURY (Per accident) \$ PROPERTY DAMAGE (Per accident) \$ COMBINED SINGLE LIMIT (Per accident) \$
	UMBRELLA LIAB <input type="checkbox"/> OCCUR EXCESS LIAB <input type="checkbox"/> CLAIMS-MADE DED <input type="checkbox"/> RETENTION \$						EACH OCCURRENCE \$ AGGREGATE \$ COMBINED SINGLE LIMIT (Per accident) \$
	WORKERS COMPENSATION AND EMPLOYERS' LIABILITY ANY PROPRIETOR/PARTNER/EXECUTIVE OFFICER/OWNER EXCLUDED? <input type="checkbox"/> Y/N N/A (Mandatory in NH) (If yes, describe under DESCRIPTION OF OPERATIONS below)						WC STATUTORY LIMITS <input type="checkbox"/> OTH-ER <input type="checkbox"/> E L EACH ACCIDENT \$ E L DISEASE - EA EMPLOYER \$ E L DISEASE - POLICY LIMIT \$
	Professional Liability			MP89369	10-1-15	10-1-16	\$1,000,000 each claim \$3,000,000 aggregate

DESCRIPTION OF OPERATIONS / LOCATIONS / VEHICLES (Attach ACORD 101, Additional Remarks Schedule, if more space is required)

CERTIFICATE HOLDER

--

CANCELLATION

SHOULD ANY OF THE ABOVE DESCRIBED POLICIES BE CANCELLED BEFORE THE EXPIRATION DATE THEREOF, NOTICE WILL BE DELIVERED IN ACCORDANCE WITH THE POLICY PROVISIONS

AUTHORIZED REPRESENTATIVE

Mar F S Salh

© 1988-2010 ACORD CORPORATION. All rights reserved.

EXHIBIT G

Conditions of Admission and Consent for Outpatient Care

In this document, **"Patient"** means the person receiving treatment. **"Patient Representative"** means any person acting on behalf of the Patient and signing as the Patient's representative. Use of the word **"I," "you," "your"** or **"me"** may in context include both the Patient and the Patient Representative. With respect to financial obligations **"I"** or **"me"** may also, depending on the context, mean financial guarantor **"Guarantor"**.

"Provider" means the hospital and may include healthcare professionals on the hospital's staff and/or hospital-based physicians, which include but are not limited to: Emergency Department Physicians, Pathologists, Radiologists, Anesthesiologists, Hospitalists, certain other licensed independent practitioners and any authorized agents, contractors, affiliates, successors or assignees acting on their behalf.

Legal Relationship between Hospital and Physicians. Most or all of the physicians performing services in the hospital are independent and are not hospital agents or employees. Independent physicians are responsible for their own actions and the hospital shall not be liable for the acts or omissions of any such independent physicians.

1. **Consent to Treatment.** I consent to the procedures which may be performed during this hospitalization or during an outpatient episode of care, including, but not limited to, emergency treatment or services, and which may include laboratory procedures, x-ray examination, diagnostic procedures, medical, nursing or surgical treatment or procedures, anesthesia, or hospital services rendered as ordered by the Provider. I consent to allowing students as part of their training in health care education to participate in the delivery of my medical care and treatment or be observers while I receive medical care and treatment at the Hospital, and that these students will be supervised by instructors and/or hospital staff. I further consent to the hospital conducting blood-borne infectious disease testing, including but not limited to, testing for hepatitis, Acquired Immune Deficiency Syndrome ("AIDS"), and Human Immunodeficiency Virus ("HIV"), if a physician orders such tests or if ordered by protocol. I understand that the potential side effects and complications of this testing are generally minor and are comparable to the routine collection of blood specimens, including discomfort from the needle stick and/or slight burning, bleeding or soreness at the puncture site. The results of this test will become part of my confidential medical record.
2. **Consent to Treatment Using Telemedicine.** I consent to treatment involving the use of electronic communications ("Telemedicine") to enable health care providers at different locations to share my individual patient medical information for diagnosis, therapy, follow-up, and/or education purposes. I consent to forwarding my information to a third party as needed to receive Telemedicine services, and I understand that existing confidentiality protections apply. I acknowledge that while Telemedicine can be used to provide improved access to care, as with any medical procedure, there are potential risks and no results can be guaranteed or assured. These risks include, but are not limited to: technical problems with the information transmission or equipment failures that could result in lost information or delays in treatment. I understand that I have a right to withhold or withdraw my consent to the use of Telemedicine in the course of my care at any time, without affecting my right to future treatment and without risking the loss or withdrawal of any program benefit to which I would otherwise be entitled.
3. **Consent to Medication Not Yet FDA Approved and/or Medication Prepared/Repackaged by Outsourcing or Compounding Pharmacy.** As part of the services provided, you may be treated with a medication that has not received FDA approval. You may also receive a medication that has been prepared or repackaged by an outsourcing facility or compounding pharmacy. Certain medications, for

113938887
D001315049
D.ER
07/14/2016

SUNRISE HOSPITAL & MEDICAL CENTER

GREEN
07/15/1986

CHLOE

which there are no alternatives or which your physician recommends, may be necessary for potentially life-saving treatment.

4. **Consent to Photographs, Videotapes and Audio Recordings.** I consent to photographs, videotapes, digital or audio recordings, and/or images of me being recorded for security purposes and/or the hospital's quality improvement and/or risk management activities. I understand that the facility retains the ownership rights to the images and/or recordings. I will be allowed to request access to or copies of the images and/or recordings when technologically feasible unless otherwise prohibited by law. I understand that these images and/or recordings will be securely stored and protected. Images and/or recordings in which I am identified will not be released and/or used outside of the facility without a specific written authorization from me or my legal representative unless otherwise required by law.
5. **Financial Agreement.** In consideration of the services to be rendered to Patient, Patient or Guarantor individually promises to pay the Patient's account at the rates stated in the hospital's price list (known as the "Charge Master") effective on the date the charge is processed for the service provided, which rates are hereby expressly incorporated by reference as the price term of this agreement to pay the Patient's account. Some special items will be priced separately if there is no price listed on the Charge Master. An estimate of the anticipated charges for services to be provided to the Patient is available upon request from the hospital. Estimates may vary significantly from the final charges based on a variety of factors, including, but not limited to, the course of treatment, intensity of care, physician practices, and the necessity of providing additional goods and services.

Professional services rendered by independent contractors are not part of the hospital bill. These services will be billed to the Patient separately. I understand that physicians or other health care professionals may be called upon to provide care or services to me or on my behalf, but that I may not actually see, or be examined by, all physicians or health care professionals participating in my care; for example, I may not see physicians providing radiology, pathology, EKG interpretation and anesthesiology services. I understand that, in most instances, there will be a separate charge for professional services rendered by physicians to me or on my behalf, and that I will receive a bill for these professional services that is separate from the bill for hospital services.

The hospital will provide a medical screening examination as required to all Patients who are seeking medical services to determine if there is an emergency medical condition without regard to the Patient's ability to pay. If there is an emergency medical condition, the hospital will provide stabilizing treatment within its capacity. However, Patient and Guarantor understand that if Patient does not qualify under the hospital's charity care policy or other applicable policy, Patient or Guarantor is not relieved of his/her obligation to pay for these services.

If supplies and services are provided to Patient who has coverage through a governmental program or through certain private health insurance plans, the hospital may accept a discounted payment for those supplies and services. In this event any payment required from the Patient or Guarantor will be determined by the terms of the governmental program or private health insurance plan. If the Patient is uninsured and not covered by a governmental program, the Patient may be eligible to have his or her account discounted or forgiven under the hospital's uninsured discount or charity care programs in effect at the time of treatment. I understand that I may request information about these programs from the hospital.

113938887
D001315049
D. ER
07/14/2016

SUNRISE HOSPITAL & MEDICAL CENTER

GREEN
07/15/1986

CHLOE

I also understand that, as a courtesy to me, the hospital may bill an insurance company offering coverage, but may not be obligated to do so. Regardless, I agree that, except where prohibited by law, the financial responsibility for the services rendered belongs to me, the Patient or Guarantor. I agree to pay for services that are not covered and covered charges not paid in full by insurance coverage including, but not limited to, coinsurance, deductibles, non-covered benefits due to policy limits or policy exclusions, or failure to comply with insurance plan requirements.

6. **Third Party Collection.** I acknowledge that the Providers may utilize the services of a third party Business Associate or affiliated entity as an extended business office ("EBO Servicer") for medical account billing and servicing. During the time that the medical account is being serviced by the EBO Servicer, the account shall not be considered delinquent, past due or in default, and shall not be reported to a credit bureau or subject to collection legal proceedings. When the EBO Servicer's efforts to obtain payment have been exhausted due to a number of factors (for e.g., Patient or Guarantor's failure to pay or make a payment arrangement after insurance adjustments and payments have been credited, and/or the insurer's denial of claim(s) or benefits is received), the EBO Servicer will send a final notice letter which will include the date that the medical account may be returned from the EBO Servicer to the Provider. Upon return to the Provider by the EBO Servicer, the Provider may place the account back with the EBO Servicer, or, at the option of the Provider, may determine the account to be delinquent, past due and in default. Once the medical account is determined to be delinquent it may be subject to late fees, interest as stated, referral to a collection agency for collection as a delinquent account, credit bureau reporting and enforcement by legal proceedings.

I also agree that if the Provider initiates collection efforts to recover amounts owed by me or my Guarantor, then, in addition to amounts incurred for the services rendered, Patient or Guarantor will pay, to the extent permitted by law: (a) any and all costs incurred by the Provider in pursuing collection, including, but not limited to, reasonable attorneys' fees, and (b) any court costs or other costs of litigation incurred by the Provider.

7. **Assignment of Benefits.** Patient assigns all of his/her rights and benefits under existing policies of insurance providing coverage and payment for any and all expenses incurred as a result of services and treatment rendered by the Provider and authorizes direct payment to the Provider of any insurance benefits otherwise payable to or on behalf of Patient for the hospitalization or for outpatient services, including emergency services, if rendered. Patient understands that any payment received from these policies and/or plans will be applied to the amount that Patient or Guarantor has agreed to pay for services rendered during this admission and, that Provider will not retain benefits in excess of the amount owed to the Provider for the care and treatment rendered during the admission.

I understand that any health insurance policies under which I am covered may be in addition to other coverage or benefits or recovery to which I may be entitled, and that Provider, by initially accepting health insurance coverage, does not waive its rights to collect or accept, as payment in full, any payment made under different coverage or benefits or any other sources of payment that may or will cover expenses incurred for services and treatment.

I hereby irrevocably appoint the Provider as my authorized representative to pursue any claims, penalties, and administrative and/or legal remedies on my behalf for collection against any responsible payer, employer-sponsored medical benefit plans, third party liability carrier or, any other responsible third party

("Responsible Party") for any and all benefits due me for the payment of charges associated with my treatment. This assignment shall not be construed as an obligation of the Providers to pursue any such right of recovery. I acknowledge and understand that I maintain my right of recovery against my insurer or health benefit plan and the foregoing assignment does not divest me of such right.

I agree to take all actions necessary to assist the Provider in collecting payment from any such Responsible Party should the Provider(s) elect to collect such payment, including allowing the Provider(s) to bring suit against the Responsible Party in my name. If I receive payment directly from any source for the medical charges associated with my treatment acknowledge that it is my duty and responsibility to immediately pay any such payments to the Provider(s).

8. **Medicare Patient Certification and Assignment of Benefit.** I certify that any information I provide in applying for payment under Title XVIII ("Medicare") or Title XIX ("Medicaid") of the Social Security Act is correct. I request payment of authorized benefits to be made on my behalf to the hospital or hospital-based physician by the Medicare or Medicaid program.
9. **Private Room.** I understand and agree that I am (or Guarantor is) responsible for any additional charges associated with the request and/or use of a private room.
10. **Outpatient Medicare Patients.** Medicare does not provide coverage for "self-administered drugs" or drugs that you normally take on your own, with only a few limited exceptions. If you get self-administered drugs that aren't covered by Medicare Part B, we may bill you for the drug. However, if you are enrolled in a Medicare Part D Drug Plan, these drugs may be covered in accordance with Medicare Part D Drug Plan enrollment materials. If you pay for these self-administered drugs, you can submit a claim to your Medicare Part D Drug Plan for a possible refund.
11. **Communications About My Healthcare.** I authorize my healthcare information to be disclosed for purposes of communicating results, findings, and care decisions to my family members and others I designate to be responsible for my care. I will provide those individuals with a password or other verification means specified by the hospital. I agree I may be contacted by the Provider or an agent of the Provider or an independent physician's office for the purposes of scheduling necessary follow-up visits recommended by the treating physician.
12. **Consent to Telephone Calls for Financial Communications.** I agree that, in order for you, or your EBO Servicers and collection agents, to service my account or to collect any amounts I may owe, I expressly agree and consent that you or your EBO Servicer and collection agents may contact me by telephone at any telephone number I have provided or you or your EBO Servicer and collection agents have obtained or, at any number forwarded or transferred from that number, regarding the hospitalization, the services rendered, or my related financial obligations. Methods of contact may include using pre-recorded/artificial voice messages and/or use of an automatic dialing device, as applicable.
13. **Consent to Email or Text Usage for Discharge Instructions and Other Healthcare Communications.** If at any time I provide the Providers an email or text address at which I may be contacted, I consent to receiving discharge instructions and other healthcare communications at the email or text address I have provided or you or your EBO Servicer have obtained or, at any text number forwarded or transferred from that number. These discharge instructions may include, but not be limited to: post-operative instructions,

113938887
D001315049
D.ER
07/14/2016

SUNRISE HOSPITAL & MEDICAL CENTER

GREEN
07/15/1986

CHOLOE

physician follow-up instructions, dietary information, and prescription information. The other healthcare communications may include, but are not limited to communications to family or designated representatives regarding my treatment or condition, or reminder messages to me regarding appointments for medical care.

14. Release of Information. I hereby permit Providers to release healthcare information for purposes of treatment, payment or healthcare operations. Healthcare information regarding a prior admission(s) at other HCA affiliated facilities may be made available to subsequent HCA-affiliated admitting facilities to coordinate Patient care or for case management purposes. Healthcare information may be released to any person or entity liable for payment on the Patient's behalf in order to verify coverage or payment questions, or for any other purpose related to benefit payment. Healthcare information may also be released to my employer's designee when the services delivered are related to a claim under worker's compensation. If I am covered by Medicare or Medicaid, I authorize the release of healthcare information to the Social Security Administration or its intermediaries or carriers for payment of a Medicare claim or to the appropriate state agency for payment of a Medicaid claim. This information may include, without limitation, history and physical, emergency records, laboratory reports, operative reports, physician progress notes, nurse's notes, consultations, psychological and/or psychiatric reports, drug and alcohol treatment and discharge summary. Federal and state laws may permit this facility to participate in organizations with other healthcare providers, insurers, and/or other health care industry participants and their subcontractors in order for these individuals and entities to share my health information with one another to accomplish goals that may include but not be limited to: improving the accuracy and increasing the availability of my health records; decreasing the time needed to access my information; aggregating and comparing my information for quality improvement purposes; and such other purposes as may be permitted by law. I understand that this facility may be a member of one or more such organizations. This consent specifically includes information concerning psychological conditions, psychiatric conditions, intellectual disability conditions, genetic information, chemical dependency conditions and/or infectious diseases including, but not limited to, blood borne diseases, such as HIV and AIDS.

15. Other Acknowledgements.

Personal Valuables. I understand that the hospital maintains a safe for the safekeeping of money and valuables, and the hospital shall not be liable for the loss of or damage to any money, jewelry, documents, furs, fur coats and fur garments, or other articles of unusual value and small size, unless placed in the safe, and shall not be liable for the loss or damage to any other personal property, unless deposited with the hospital for safekeeping. The liability of the hospital for loss of any personal property that is deposited with the hospital for safekeeping is limited to the greater of five hundred dollars (\$500.00) or the maximum required by law, unless a written receipt for a greater amount has been obtained from the hospital by the Patient. The hospital is not responsible for the loss or damage of cell phones, glasses or dentures or personal valuables unless they are placed in the hospital safe in accordance with the terms as stated above.

Weapons/Explosives/Drugs. I understand and agree that if the hospital at any time believes there may be a weapon, explosive device, illegal substance or drug, or any alcoholic beverage in my room or with my belongings, the hospital may search my room and my belongings located anywhere on hospital property, confiscate any of the above items that are found, and dispose of them as appropriate, including delivery of any item to law enforcement authorities.

113938887
D001315049
D.ER
07/14/2016

SUNRISE HOSPITAL & MEDICAL CENTER

GREEN
07/15/1986

CHLOE

Patient Visitation Rights. I understand that I have the right to receive the visitors whom I or my Patient Representative designates, without regard to my relationship to these visitors. I also have the right to withdraw or deny such consent at any time. I will not be denied visitation privileges on the basis of age, race, color, national origin, religion, gender, gender identity and gender expression, and sexual orientation or disability. All visitors I designate will enjoy full and equal visitation privileges that are no more restrictive than those that my immediate family members would enjoy. Further, I understand that the hospital may need to place clinically necessary or reasonable restrictions or limitations on my visitors to protect my health and safety in addition to the health and safety of other Patients. The hospital will clearly explain the reason for any restrictions or limitations if imposed. If I believe that my visitation rights have been violated, I or my representative has the right to utilize the hospital's complaint resolution system.

Additional Provision for Admission of Minors/ Incapacitated Patient. I, the undersigned, acknowledge and verify that I am the legal guardian or custodian of the minor/incapacitated patient.

16. Patient Self Determination Act.

I have been furnished information regarding Advance Directives (such as durable power of attorney for healthcare and living wills). Please initial or place a mark next to one of the following applicable statements:

<input type="checkbox"/> I executed an Advance Directive and have been requested to supply a copy to the hospital	<input type="checkbox"/> I have not executed an Advance Directive, wish to execute one and have received information on how to execute an Advance Directive	<input checked="" type="checkbox"/> I have not executed an Advance Directive and do not wish to execute one at this time
---	---	--

17. Notice of Privacy Practices. I acknowledge that I have received the hospital's Notice of Privacy Practices, which describes the ways in which the hospital may use and disclose my healthcare information for its treatment, payment, healthcare operations and other prescribed and permitted uses and disclosures. I understand that this information may be disclosed electronically by the Provider and/or the Provider's business associates. I understand that I may contact the hospital Privacy Officer designated on the notice if I have a question or complaint.

Acknowledge: CE (Initial)

18. Consent to Authorize Use of Email and Text for Patient Billing and Financial Obligations. By my consent below, I authorize the use of any email address or cellular telephone number I provide for receiving information relating to my financial obligations, including, but not limited to, payment reminders, delinquent notifications, instructions and links to hospital Patient billing information. I understand and acknowledge that my patient account number may appear in the email or text.

Acknowledge: _____ (Initial) I consent to use of email for Patient billings and financial obligation purposes.

Acknowledge: _____ (Initial) I consent to use of text for Patient billings and financial obligation purposes.

19. Acknowledgement: I have been given the opportunity to read and ask questions about the information contained in this form, specifically including but not limited to the financial obligation's provisions and

113938887
D001315049
D.ER
07/14/2016

SUNRISE HOSPITAL & MEDICAL CENTER

GREEN
07/15/1986

CHOLOE

assignment of benefit provisions, and I acknowledge that I either have no questions or that my questions have been answered to my satisfaction and that I have signed this document freely and without inducement other than the rendition of services by the Providers.

Acknowledge: SG (Initial)

20. **Acknowledgement of Notice of Patient Rights and Responsibilities.** I have been furnished with a Statement of Patient Rights and Responsibilities ensuring that I am treated with respect and dignity and without discrimination or distinction based on age, gender, disability, race, color, ancestry, citizenship, religion, pregnancy, sexual orientation, gender identity or expression, national origin, medical condition, marital status, veteran status, payment source or ability, or any other basis prohibited by federal, state, or local law.

Acknowledge: Go (Initial)

Date: <u>7.14.16</u>	I, the undersigned, as the Patient or Patient Representative, or, for a minor/incapacitated Patient, as the legal guardian, hereby certify I have read, and fully and completely understand this Conditions of Admission and Authorization for Medical treatment, and that I have signed this Conditions of Admission and Authorization for Medical Treatment knowingly, freely, voluntarily and agree to be bound by its terms. I have received no promises, assurances, or guarantees from anyone as to the results that may be obtained by any medical treatment or services. If insurance coverage is insufficient, denied altogether, or otherwise unavailable, the undersigned agrees to pay all charges not paid by the insurer.
Time: <u>1710</u>	
Patient/Patient Representative Signature: <u>[Signature]</u>	Witness Signature and Title: <u>[Signature]</u>
If you are not the Patient, please identify your Relationship to the Patient. (Circle or mark relationship(s) from list below): Spouse Parent Legal Guardian Neighbor/Friend Sibling Healthcare Power of Attorney Guarantor Other (please specify): _____	Additional Witness Signature and Title: (required for Patients unable to sign without a representative or Patients who refuse to sign) X _____ HCA Corporate Standard COA-COS 06.20.2016

EXHIBIT H

RUN DATE: 07/27/16
RUN TIME: 0110
RUN USER: HPF.FEED

MEDITECH FACILITY: COCSZ
IDEV - Discharge Report

PAGE 51

PATIENT: GREEN, CHLOE S
ACCOUNT NO: D00113938887

A/S: 30 F
LOC: D.E4
RM: D.4508
BD: 0

ADMIT: 07/14/16
DISCH/DEP: 07/16/16
STATUS: IN
UNIT NO: D001315049

ATTEND DR: Kia, Ali MD
REPORT STATUS: FINAL

Press <Enter> for Order Details below

Comment: PER DR KIA DO NOT CALL FOR KUB RESULT MD WILL FOLLOW UP
IN AM 07/16/16

Order's Audit Trail of Events

1 07/16/16 0522 DNUR.CCV Order ENTER in OM
2 07/16/16 0522 DNUR.CCV Ordering Doctor: Kia, Ali MD
3 07/16/16 0522 DNUR.CCV Order Source: TELEPHONE & VERIFIED
4 07/16/16 0522 interface order's status changed from TRANS to ACTIVE by NUR
5 07/16/16 0540 DNUR.CCV order acknowledged
6 07/16/16 0713 DNUR.CCV order viewed from Order Management
7 07/16/16 0918 DR KIAAL Signed by Kia, Ali MD

Electronically signed by Kia, Ali MD on 07/16/16 at 1818

Order Date: 07/16/16		—Service—											
Category	Procedure Name	Order Number	Date	Time	Pri	Qty	Ord	Source	Status	Ordered By			
DISCHG	DISCHARGE ORDER	20160716-0093	07/16/16		R		E		TRN	KIAAL			
Other Provider :		Sig Lvl Provider :											

:

Discharge order written date: 07/16/16
Discharge order written time: 1521
Discharge To: Home
Discharge Type: Adult
* New/Additional DME/Home Health orders with Discharge?
N

Does patient have any of the following conditions at discharge?
NONE

Aspirin at Discharge?
Aspirin Contraindications:
Other Specific Reason:
EJ Fraction:
ACE/ARB at Discharge?
ACE/ARB Contraindications:
Other Specific Reason:

LDL Level:
Statin at Discharge?
Statin Contraindications:
Other Specific Reason:
Beta Blocker at Discharge?
Beta Blocker Contraindications:

Other Specific Reason:

Antithrombotic at Discharge?
Antithrombotic Contraindications:

Other Specific Reason:
Antiplatelet Therapy at Discharge?

PERMANENT MEDICAL RECORD COPY

RUN DATE: 07/27/16
RUN TIME: 0110
RUN USER: HPF.FEED

MEDITECH FACILITY: COCSZ
IDEV - Discharge Report

PAGE 52

PATIENT: GREEN,CHLOE S
ACCOUNT NO: D00113938887

A/S: 30 F
LOC: D.E4
RM: D.4508
BD: 0

ADMIT: 07/14/16
DISCH/DEP: 07/16/16
STATUS: IN
UNIT NO: D001315049

ATTEND DR: Kia,Ali MD
REPORT STATUS: FINAL

Antiplatelet Contraindications:

Other Specific Reason:

HX or current AFIB/AFLUTTER:
Anticoagulation Therapy at Discharge?

Anticoagulation Contraindications:

Other Specific Reason:
Assessed for Rehabilitation?
Reason for not ordering Rehab:

Weight Monitoring:
Kg: 104.54
Weight - Lb: 230
Other Specific Frequency:

What anticoagulation med is patient being sent home on:

List reason for medication choice:

Diet: Soft
Activity/Exercise/Limitations: No limitations
Lifting Restrictions:

Return to Work/School:
OK to Drive:

Call Your Doctor If -
Fever Greater Than: 101.5

1st Follow Up:
2nd:
3rd:
Physician: NO PRIMARY OR FAMILY PHYSICIAN
Follow-Up with: Provider Entered Above
Follow up in: 1 Week
Reason: MED FUP

Physician: Delee, Frank J MD
Follow-Up with: Provider Entered Above
Follow up in: 1 Week
Reason: OB FUP
Physician:
Follow-Up with:
Follow up in:
Reason:

Physician:
Follow-Up with:
Follow up in:
Reason:

PERMANENT MEDICAL RECORD COPY

RUN DATE: 07/27/16
RUN TIME: 0110
RUN USER: HPF.FEED

MEDITECH FACILITY: COCSZ
IDEV - Discharge Report

PAGE 53

PATIENT: GREEN,CHLOE S
ACCOUNT NO: D0011393887

A/S: 30 F
LOC: D.E4
RM: D.4508
BD: 0

ADMIT: 07/14/16
DISCH/DEP: 07/16/16
STATUS: IN
UNIT NO: D001315049

ATTEND DR: Kia,Ali MD
REPORT STATUS: FINAL

Physician:
Follow-Up with:
Follow up in:
Reason:
Physician:

Follow-Up with:
Follow up in:
Reason:

Physician:
Follow-Up with:
Follow up in:

Reason:
Physician:
Follow-Up with:
Follow up in:

Reason:
Physician:
Follow-Up with:
Follow up in:
Reason:

== INFANT/NICU ==

== INFANT/PEDIATRIC/NICU ==

Primary Dx of Asthma:

Provide Pre-printed Mother/Infant Instructions:

== Outpatient Services Needs ==

== REHAB / SNF / LTAC / HOSPICE ONLY ==

Rehabilitation Potential: (Group response undefined)

Anticipated LOS:

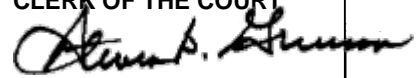
I certify that post-hospital skilled services are required at an extended
care facility as a continuation for which he/she was receiving in-patient
hospital services prior to the transfer to the extended care facility.

Order's Audit Trail of Events

1	07/16/16 1521 DR.KIAAL	Order ENTER in POM
2	07/16/16 1521 DR.KIAAL	Ordering Doctor: Kia,Ali MD
3	07/16/16 1521 DR.KIAAL	Order Source: EPOM
4	07/16/16 1521 DR.KIAAL	Signed by Kia,Ali MD
5	07/16/16 1554 DNURRAW	order viewed from Order Management
6	07/16/16 1736 DNURNPS	order acknowledged

Electronically signed by Kia,Ali MD on 07/16/16 at 1521

PERMANENT MEDICAL RECORD COPY



LAW OFFICE OF DANIEL MARKS
DANIEL MARKS, ESQ.
Nevada State Bar No. 002003
610 South Ninth Street
Las Vegas, Nevada 89101
(702) 386-0536; Fax (702) 386-6812
Attorneys for Plaintiff

DISTRICT COURT
CLARK COUNTY, NEVADA

CHLOE GREEN, an individual,

Plaintiff,

Case No. A-17-757722-C
Dept. No. VIII

Date: February 19, 2019
Time: 8:00 a.m.

v.

FRANK J. DELEE, M.D., an individual;
FRANK J. DELEE MD, PC, a Domestic
Professional Corporation, SUNRISE HOSPITAL
AND MEDICAL CENTER, LLC, a Foreign
Limited-Liability Company.


Defendants.

**PLAINTIFF'S OPPOSITION TO MOTION FOR PARTIAL SUMMARY JUDGMENT TO
DISMISS ANY CLAIM OF "OSTENSIBLE AGENCY" FOR DR. KIA OR DR. DELEE**

COMES NOW the Plaintiff Chloe Green, by and through her undersigned counsel, Daniel Marks, Esq., and Nicole M. Young, Esq., of the Law Office of Daniel Marks, and hereby submits her Opposition to Motion for Partial Summary Judgment to Dismiss any Claim of "Ostensible Agency" for Dr. Kia or Dr. DeLee. The grounds for Plaintiff's opposition are set forth in the following Memorandum of Points and Authorities.

DATED this 31 day of January, 2019.

LAW OFFICES OF DANIEL MARKS



DANIEL MARKS, ESQ.
Nevada State Bar No. 002003
NICOLE M. YOUNG, ESQ.
Nevada State Bar No. 12659
610 South Ninth Street
Las Vegas, Nevada 89101
Attorneys for Plaintiff

1 **MEMORANDUM OF POINTS AND AUTHORITIES**

2 **I. FACTUAL BACKGROUND**

3 Plaintiff Choloe Green (hereinafter "Choloe") was a long-time patient of Dr. Frank DeLee who
4 delivered her child at Sunrise Hospital on July 9, 2016. As part of his OB-GYN care and delivering of
5 the child, Dr. DeLee had the obligation to provide follow-up care for thirty (30) days. After Dr. DeLee
6 discharged Choloe only one day later, she had not yet passed a bowel movement. Choloe suffered from
7 abdominal pain and nausea. She sought treatment from Dr. DeLee after discharge and was told she will
8 be fine.

9 After suffering constant problems she went first to Valley Hospital emergency room and then
10 Sunrise Hospital emergency room for treatment. She was admitted to Sunrise Hospital on July 14, 2016,
11 for pain and nausea and spent two (2) days in the hospital. She had various conversations with doctors at
12 the hospital arranged by Sunrise Hospital. She was assigned a doctor, Dr. Kia, who she did not know.
13 She was treated by nurses of Sunrise Hospital and various other doctors called in by Sunrise Hospital.
14 She was discharged from Sunrise Hospital on July 16, 2016 with a diagnosis of possible bowel
15 obstruction.

16 Days later she presented at Centennial Hospital with sepsis, went into a coma, and now suffers
17 from COPD. She has permanent heart and lung issues caused by the breach of standard of care by both
18 Dr. DeLee and Sunrise Hospital.

19 **II. LEGAL ARGUMENT**

20 **A. Standard for Summary Judgment.**

21 Under Rule 56(c) of the Nevada Rules of Civil Procedure, summary judgment may not be
22 granted "if the pleadings, depositions, answers to interrogatories, and admissions on file, together with
23 the affidavits," show that there is a "genuine issue as to *any* material fact." See also *Ozawa v. Vision*
24 *Airlines, Inc.*, 125 Nev. 556, 216 P.3d 788, 791 (2009) (emphasis added).

25 A genuine issue of material fact exists when "the evidence is such that a reasonable jury could
26 return a verdict for the non-moving party." *Posadas v. City of Reno*, 109 Nev. 448, 452, 851 P.2d 438
27 (1993). On summary judgment, all evidence, "and any reasonable inferences drawn from it, must be
28 viewed in the light most favorable to the non-moving party." *Woods v. Safeway, Inc.*, 121 Nev. 724, 729,

1 121 P.3d 1026 (2005).

2 Although the Nevada Supreme Court abrogated the “slightest doubt” standard, in *Wood*, when it
3 adopted the U.S. Supreme Court’s standard set out in *Celotex Corp. v. Catrett*, 477 U.S. 317, 106 S.Ct
4 2548 (1986), and *Anderson v. Liberty Lobby*, 477 U.S. 242, 106 S.Ct. 2505 (1986), the standard now
5 used only changed the amount of evidence necessary to oppose a motion for summary judgment; it did
6 not change the manner in which the evidence must still be reviewed. *See Wood v. Safeway, Inc.*, 121
7 Nev. 724, 730, 121 P.3d 1026 (2005). As the Court noted in *Anderson*, “credibility determinations, the
8 weighing of evidence, and the drawing of legitimate inferences from the facts are jury functions, not
9 those of a judge... the evidence of the non-movant is to be believed and all justifiable inferences are to be
10 drawn in his favor.” 477 U.S., at 255; *see also Pegasus v. Reno Newspaper, Inc.*, 118 Nev. 706, 714, 57
11 P.3d 82 (2002).

12 The Nevada Supreme Court more recently reiterated that “when an NRCP is modeled after its
13 federal counterpart, ‘cases interpreting the federal rule are strongly persuasive.’” *FCHI v. Rodriguez*, 130
14 Nev. Adv. Op. 46 at *11, 335 P.3d 183, 189 (2014) (quoting *Rock Bay, LLC v. Eighth Judicial District*
15 *Court*, 129 Nev. Adv. Op. 21, 298 P.3d 441, 445 n.3 (2013). There is no dispute that the wording of
16 NRCP 56 closely mirrors and was modeled after its federal counterpart. The United States Supreme
17 Court recently interpreted FRCP 56 and found that “a ‘judge’s function’ at summary judgment is not ‘to
18 weigh the evidence and determine the truth of the matter but to determine whether there is a genuine
19 issue for trial.’” *Tolan v. Cotton*, 572 U.S. 650, 656 134 S.Ct. 1861, 1866 (2014) (quoting *Anderson v.*
20 *Liberty Lobby, Inc.*, 477 U.S. 242, 249, 106 S.Ct. 2505 (1986) As such, “[s]ummary judgment is
21 appropriate only if ‘the movant shows that there is no genuine issue as to any material fact and the
22 movant is entitled to judgment as a matter of law.’” *Id.* (quoting FRCP 56(a)). “In making that
23 determination, a court must view the evidence ‘in the light most favorable to the opposing party.’” *Id.*

24 In Nevada courts are reluctant to grant summary judgment in negligence actions because whether
25 a Defendant was negligent is generally a question of fact for the jury to decide. *Foster v. Costco*
26 *Wholesale Corp.*, 128 Nev. 773, 291 P.3d 150, 153 (2012).

27 ////

28 ////

1 **B. Dr. DeLee is not an agent of Sunrise Hospital.**

2 Defendant Sunrise Hospital is seeking a declaratory judgment that Dr. DeLee is not a agent of
3 Sunrise Hospital. Dr. DeLee was sued for negligence in discharging Choloe on July 10, 2016, from
4 Sunrise Hospital , for failing to provide any post delivery care, failing to see Choloe in the hospital from
5 July 14, 2016 to July 16, 2016, and being involved in the decision making to discharge Choloe from
6 Sunrise Hospital on July 10, 2016 and July 16, 2016. Choloe has not alleged that Sunrise is vicariously
7 liable for Dr. DeLee's actions. Dr. DeLee is liable for his own actions.

8 **C. Liability of Sunrise Hospital.**

9 Choloe presented to Sunrise Hospital on July 14, 2016 and was discharged on July 16, 2016.
10 Sunrise chose the doctors who treater her. Choloe saw various doctors including surgeons and
11 hospitalists, nurses, and others. In *McCrosky v. Carson Tahoe Regional Medical Center* 133 Nev. Adv.
12 Op 115, 408 P.3d 149 (2017), the Nevada Supreme Court dealt with a situation similar to that found in
13 this case. In *McCrosky* the District Court had held there was no vicarious liability and no ostensible
14 agency under Nevada medical malpractice law. The Supreme Court rejected these arguments and
15 reversed the District Court decision. While NRS 41A. 045(1) provides for several, rather than joint
16 liability, it did not abrogate vicarious liability.

17 Vicarious liability, *McCrosky* holds is “[l]iability that a supervisory party ... bears for the
18 actionable conduct of a subordinate ...based on the relationship between the two parties”. *McCrosky*, 408
19 P.3d at 152 (quoting Black's Law Dictionary 1055 (10th ed 2014)). The Court held the “supervisory party
20 need not be directly at fault to be liable, because the subordinate's negligence is imputed to the
21 supervisor.” *Id.* (citing Restatement (Third) of Torts: Apportionment of Liability § 13 (Am. Law Inst.
22 2000)). The Court reasoned that because “NRS 41A.045 is silent regarding vicariously liability, it leaves
23 vicarious liability intact,” and survives the several liability issue created by NRS 41A.045. *Id.* at 152-
24 153.

25 The Court further elaborated on the vicarious liability issue as it pertains to independent
26 contractors and doctors chosen by the hospital for the patient. While the general rule is that an employer
27 is not liable for the negligence of an independent contractor, “an exception exists ‘if the hospital selects
28 the doctor and it is reasonable for the patient to assume that the doctor is an agent of the hospital.’” *Id.* at

1 153. In such a scenario it is reasonable for a patient to assume “the doctor has apparent authority to bind
2 the hospital, making the hospital vicariously liable for the doctor’s actions under the doctrine of
3 ostensible agency.” *Id.* (internal quotations omitted). Finally, the Court held that “whether an ostensible
4 agency relationship exists is generally a question of fact for the jury if the facts showing the existence of
5 agency are disputed, or if conflicting inferences can be drawn from the facts.” *Id.* (internal quotations
6 omitted). The questions of fact for the jury include:

- 7 (1) Whether a patient entrusted herself to the hospital;
- 8 (2) Whether the hospital selected the doctor to serve the patient;
- 9 (3) Whether a patient reasonably believed the doctor was an employee or agent of the
10 hospital; and
- 11 (4) Whether the patient was put on notice that a doctor was an independent contractor.

12 *Id.*

13 Based on the Affidavit of Choloe Green, attached hereto, she thought Dr. Kia worked for Sunrise
14 Hospital because she did not chose Dr. Kia as her doctor. She presented at the emergency room at
15 Sunrise Hospital and then Dr. Kia was assigned to her to provide her with care.

16 **D. A “Conditions of Admission” does not require that summary judgment be granted.**

17 In *McCrosky*, the Conditions of Admission (hereinafter “COA”) signed by the patient stated
18 thatall physicians are independent contractors and are not employees or agents of the hospital. *Id.* at 151.
19 The Court held it was “debatable whether a typical patient would understand that statement to mean that
20 the hospital is not liable for the physicians negligence.” *Id.* at 154.

21 In the instant case the language is not as strong as the COA in *McCrosky* where the court
22 reversed summary judgment. The COA here states “Most or all of the physicians performing service in
23 the hospital are independent and are not hospital agents or employees”. Additionally that section of the
24 COA defines “Provider” as: “the hospital and may include healthcare professionals on the hospital’s
25 staff and/or hospital-based physicians, which include but are not limited to emergency department
26 physicians, pathologists, radiologists, anesthesiologists, hospitalists, certain other licensed independent
27 practitioner and any authorized agents, contractors, successors or assignees acting on their behalf.” (*See*
28 Exhibit G, attached to Defendant’s instant motion, at SH 000795). Based on the language quoted above,

1 which includes healthcare professionals on the hospital's staff and/or hospital-based physicians
2 including hospitalists, the language is more favorable to Choloe than the language in *McCrosky*. How
3 would a patient know who was a hospital-based physician or not? Dr. Kia, in his deposition, testified he
4 was assigned to Sunrise by his hospital group and was there virtually everyday. (See Excerpt of
5 Deposition of Ali Kia, M.D, dated November 14, 2018, attached hereto as Exhibit 1, at 12:1-24.) Ms.
6 Green did not choose Dr. Kia to be her doctor. (See Exhibit 1, at 12:25 to 13:1-2.) Dr. Kia admits he
7 was assigned to Ms. Green through the emergency department. (See Exhibit 1, at 12:25 to 13:1-2 &
8 18:6-12.)

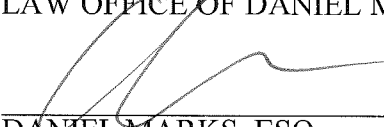
9 When Choloe was admitted to Sunrise Hospital, they ran various tests. She had various
10 conversations with doctors, none of whom she chose and who she thought were employed by Sunrise
11 Hospital. (See Affidavit of Choloe Green, attached hereto.) The decision to discharge Choloe, while
12 signed by Dr. Kia, is based on all the medical activity over the two (2) days. While Sunrise Hospital is
13 liable for Dr. Kia's actions under an ostensible agency theory, Sunrise Hospital is also liable for the act
14 of discharging Choloe from the hospital with a bowel obstruction and without actually treating Choloe
15 for that illness. Since Dr. Kia was assigned to Ms. Green through the emergency department, and she did
16 not choose the doctors who treated her, the theory of ostensible agency against Sunrise Hospital applies,
17 as stated in *McCrosky*.

18 **III. CONCLUSION**

19 Based on the foregoing, this Court should deny Defendant Sunrise Hospital's instant motion
20 because a genuine issue of material fact exists, based on the Deposition of Dr. Kia and the Affidavit of
21 Plaintiff Choloe Green, that Dr. Kia was an "ostensible agent" of Sunrise Hospital.

22 DATED this 31 day of January, 2019.

23 LAW OFFICE OF DANIEL MARKS

24
25 
26 DANIEL MARKS, ESQ.
27 Nevada State Bar No. 002003
28 NICOLE M. YOUNG, ESQ.
Nevada State Bar No. 12659
610 South Ninth Street
Las Vegas, Nevada 89101
Attorneys for Plaintiff

AFFIDAVIT OF CHLOE GREEN

STATE OF NEVADA)
) ss:
COUNTY OF CLARK)

CHLOE GREEN, being first duly sworn deposes and says under penalty of perjury:

1. That I am the Plaintiff in this action and made this affidavit in opposition to the motion for summary judgment filed by Sunrise Hospital.
2. I delivered my baby on July 9, 2016, at Sunrise Hospital, and my doctor was Dr. Frank DeLee.
3. After I was discharged from Sunrise Hospital on July 10, 2016, I continued to suffer from stomach pain and nausea.
4. I followed-up with Dr. Delee in his office on July 14, 2016, and he told me I would be fine.
5. Later that same day, on July 14, 2016, I went to Sunrise Hospital's emergency room because I had severe stomach pain and nausea. I was admitted into the hospital on that date. During my stay, I was treated at Sunrise Hospital by various doctors. I did not chose those doctors. They were assigned to me. I assumed those doctors who came to my bedside, ordered tests and gave me medication were employees and/or agents of Sunrise Hospital. I was never specifically told by any doctor that they were employed by anyone other than Sunrise Hospital. I was discharged on Saturday, July 16, 2016, and was told to follow-up with Dr. Delee in his office the following Monday. At that time I did not know how or why I was discharged because the symptoms I came to the hospital with continued and worsened.
6. The following day, Sunday, July 17, 2016, I went to Centennial Hills Hospital emergency room because I was still in extreme pain. I was told that I had a bowel obstruction and needed emergency surgery. I was also diagnosed as being septic. During my admission with Centennial Hills Hospital my lungs collapsed, and I was put into a medically

////

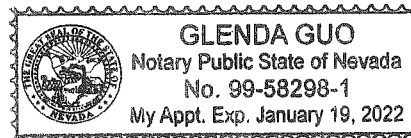
////

1 induced coma. I was eventually discharged from that hospital on September 2, 2016. I
2 now suffer from COPD and require constant use of an oxygen tank. I also suffer from
3 additional health issues relating to the COPD.

4 FURTHER YOUR AFFIANT SAYETH NAUGHT.

5
6 
7 _____
8 CHLOE GREEN

9 SUBSCRIBED and SWORN to before me
10 this 30th day of January, 2019.



13 
14 _____
15 NOTARY PUBLIC in and for said
16 COUNTY and STATE
17
18
19
20
21
22
23
24
25
26
27
28

- 1
- 2
- 3
- 4
- 5
- 6
- 7
- 8
- 9
- 10
- 11
- 12
- 13
- 14
- 15
- 16
- 17
- 18
- 19
- 20
- 21
- 22
- 23
- 24
- 25
- 26
- 27
- 28

Tyson J. Dobbs, Esq.
HALL PRANGLE & SCHOONVELD, LLC.
1160 N. Town Center Dr., Ste. 200
Las Vegas, NV 89144
Attorney for Sunrise Hospital & Medical Center



 An employee of the
LAW OFFICE OF DANIEL MARKS

EXHIBIT 1

1 DISTRICT COURT
2 CLARK COUNTY, NEVADA
3 * * * * *
4 CHLOE GREEN, an individual,)
5 Plaintiff,)
6 vs.) Case No.: A-17-757722-C
7 FRANK J. DELEE, M.D., an) Dept. No.: VIII
8 individual; FRANK J. DELEE)
9 MD, PC, a Domestic)
10 Professional Corporation,)
11 Sunrise Hospital and Medical)
12 Center, LLC, a Foreign)
13 Limited-Liability Company,)
14 Defendants.)
15 _____)

13 **CERTIFIED**
14 **COPY**

16 DEPOSITION OF ALI KIA, M.D.
17 Taken on Wednesday, November 14, 2018
18 At 1:35 p.m.
19 Taken at 610 South Ninth Street
20 Las Vegas, Nevada
21
22
23
24

25 Reported By: Terri M. Hughes, CCR No. 619

1 Q. Okay. In terms of your working at Sunrise now --

2 A. Uh-huh.

3 Q. -- do you get a schedule, the days you're on call,
4 so to speak, at Sunrise?

5 A. For the group of Nevada Hospitalist Group, and we
6 cover one of the insurance -- major insurances in town,
7 namely Health Plan of Nevada.

8 Q. Okay. So you have your own P.C., professional
9 corporation, but through Nevada Hospitalist you're
10 assigned Sunrise Hospital?

11 A. Yes, correct. So as an independent contractor.

12 Q. But you go virtually every day to Sunrise to see
13 patients?

14 A. Yeah, the days I'm covering. We do get days off
15 also.

16 Q. But you work five, six days a week?

17 A. Roughly.

18 Q. Okay. And was that the same in 2016?

19 A. It was roughly the same. It's been since 2016
20 about the same.

21 Q. So you were employed -- you were an independent
22 contractor but employed through Nevada Hospitalist
23 covering patients at Sunrise in July of 2016?

24 A. That's correct.

25 Q. So the patient didn't choose you, the patient

1 through Sunrise was assigned to you?

2 A. Yes, correct, through mostly the emergency
3 department.

4 Q. Okay. And could you tell me what a hospitalist
5 does?

6 A. They oversee inpatient services and management
7 including patient care and also very close association
8 with the medical staff and administration of the facility
9 to see that we follow the hospital guidelines as well as
10 the national guidelines and the insurance guidelines.

11 Q. You mean for patient care?

12 A. That's correct, yes.

13 Q. For how many days you can stay in a hospital?

14 A. I'm not quite sure.

15 Q. Is it for the days of stay, patient care when you
16 say the national guidelines and hospital guidelines?

17 A. Yes, for the patient's stay during their
18 hospitalization, but then we also do clerical type work,
19 so overseeing charts and signing off and -- well, at UMC
20 we do co-signing for the residents. At Sunrise I don't
21 have residents. It's just my private patients.

22 Q. So as a hospitalist are you essentially the
23 attending, what they used to call the attending for the
24 patient?

25 A. Majority of the time I'm the attending, oftentimes

1 A. Thank you.

2 Q. And then everyone can get a copy.

3 Talking about Choloe Green, do you remember her at
4 all?

5 A. I do.

6 Q. Okay. How did she become your patient?

7 A. I was consulted through the emergency department
8 and became her attending physician on July 14, 2016.

9 Q. And was that the emergency department at Sunrise?

10 A. Yes, correct.

11 Q. So they really assigned her to you?

12 A. They did. I was on call at the time.

13 Q. Okay. And do you remember how she presented at
14 the emergency room? What were her complaints? You can
15 look at your records.

16 A. I do. Chief complaint was abdominal pain.

17 Q. Okay. And she presented at the emergency room on
18 June -- was it July 14th?

19 A. July 14th.

20 Q. July 14th, 2016; correct?

21 A. Yes, correct.

22 Q. And was she admitted?

23 A. She was, to inpatient status.

24 Q. And when she's admitted from the emergency room to
25 inpatient, she's then assigned to you?

CERTIFICATE OF REPORTER

STATE OF NEVADA)
) ss:
COUNTY OF CLARK)

I, Terri M. Hughes, CCR No. 619, do hereby
certify: That I reported the deposition of ALI KIA, M.D.,
commencing on Wednesday, November 14, 2018, at 1:35 p.m.

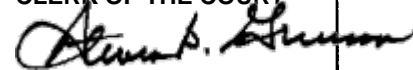
That prior to being deposed, the witness was
duly sworn by me to testify to the truth, the whole truth
and nothing but the truth. That I thereafter transcribed
my said shorthand notes into typewritten form, and that
the typewritten transcript of said deposition is a
complete, true and accurate transcription of my said
shorthand notes. That prior to the conclusion of the
proceedings, pursuant to NRCP 30(e) the reading and
signing of the transcript was requested by the witness or
a party.

I further certify that I am not a relative or
employee of counsel of any of the parties, nor a relative
or employee of the parties involved in said action, nor a
person financially interested in said action.

IN WITNESS WHEREOF, I have set my hand in my
office in the County of Clark, State of Nevada, this 4th
day of December, 2018.



Terri M. Hughes, CCR No. 619



1 **RIS**
2 MICHAEL E. PRANGLE, ESQ.
3 Nevada Bar No.: 8619
4 TYSON J. DOBBS, ESQ.
5 Nevada Bar No.: 11953
6 SHERMAN B. MAYOR, ESQ.
7 Nevada Bar No. 1491
8 HALL PRANGLE & SCHOONVELD, LLC
9 1160 N. Town Center Dr., Ste. 200
10 Las Vegas, NV 89144
11 (702) 889-6400 – Office
12 (702) 384-6025 – Facsimile
13 efile@hpslaw.com
14 *Attorneys for Defendant*
15 *Sunrise Hospital and Medical Center, LLC*

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

12 CHLOE GREEN, an individual,
13
14 Plaintiff,

15 vs.

16 FRANK J. DELEE, M.D., an individual;
17 FRANK J. DELEE MD, PC, a Domestic
18 Professional Corporation, SUNRISE
19 HOSPITAL AND MEDICAL CENTER,
20 LLC, a Foreign Limited-Liability Company,

21 Defendants.

CASE NO.: A-17-757722-C
DEPT NO.: VIII

**REPLY IN SUPPORT OF SUNRISE
HOSPITAL AND MEDICAL CENTER,
LLC'S MOTION FOR PARTIAL
SUMMARY JUDGMENT TO DISMISS
ANY CLAIM OF "OSTENSIBLE
AGENCY" FOR DR. KIA OR DR.
DELEE**

Date of Hearing: 02/19/19
Time of Hearing: 8:00 am

22 Defendant, Sunrise Hospital and Medical Center, LLC, by and through its counsel of
23 record, Hall Prangle & Schoonveld, LLC, and files its Reply in Support of Motion for Partial
24 Summary Judgment to Dismiss Any Claims of "Ostensible Agency" for Dr. Kia or Dr. DeLee.

25 This Reply is made and based upon the papers and pleadings on file herein, the following
26 points and authorities and any oral argument which may be heard at the hearing set for this
27 matter.
28

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

REPLY POINTS AND AUTHORITIES

Prelude

There are two ways to impose liability upon a hospital for the alleged negligence of a physician. The first is to find that the hospital is “vicariously liable”. However, vicarious liability can only be imposed upon the hospital for the acts of its “employees”. *Rockwell v. Sunrise Harbor Budget Suites*, 925 P.2d 1175 (Nev. 1996). There is no contention, no allegation, no facts and no argument that either Dr. DeLee or Dr. Kia were employees of Sunrise Hospital.

The other way to impose liability is through the use of the theory of “ostensible agency”. Ostensible agency may apply if the hospital “selects” the doctor and it is reasonable for the patient to assume the doctor is an agent of the hospital. *McCroskey v. Carson Tahoe Regional Medical Center*, 133 Nev.Adv.Rptr. 115, 408 P.3d 149 (2017).

Here, Plaintiff seems to concede (to be confirmed at hearing) that there is no vicarious liability or ostensible agency on the part of Sunrise Hospital for Dr. Frank J. DeLee. Moreover, there cannot be an argument that the Hospital is vicariously liable for Dr. Ali Kia since he is in fact not an employee of the Hospital. What remains, possibly, is an unpled contention that Dr. Kia is the ostensible agent of Sunrise Hospital. The argument below demonstrates he is not.

Standard for Review

In *Wood v. Safeway, Inc.*, 121 Nev. 724, 121 P.2d 1026 (Nev. 2005), the Nevada Supreme Court abrogated the “slightest doubt” standard for summary judgment motions. Instead, the Nevada Supreme Court stated that while the pleadings must be construed in a light most favorable to the non moving party, that party bears the burden to “. . . do more than simply show there is some metaphysical doubt . . .” as to the operative facts in order to avoid summary judgment.

1 In *Wood*, the Nevada Supreme Court stated that the non moving party "... is not entitled
2 to build a case on the gossamer threads of whimsy, speculation, and conjecture ...". Further, in
3 *Elizabeth v. ADT Security Systems West*, 839 P.2d 1308 (Nev. 1992), the Nevada Supreme Court
4 stated that the availability of summary proceedings promotes judicial economy and reduces
5 litigation expense associated with actions early lacking in merit. As such, a party opposing
6 summary judgment must "... by competent evidence ..." produce "... specific facts ..." that
7 demonstrate the presence of a genuine issue for trial.
8

9 Here, Plaintiff offers no specific facts, whatsoever, rather, provides the court with the
10 woulda, coulda shouldas type speculation that violates the standards in *Wood* and *Elizabeth* (not
11 based on speculation).
12

13 *Argument*

14 **1. Sunrise Hospital Cannot Be "Vicariously Liable" for Dr. DeLee or Dr. Kia** 15 **Since They Are Not "Employees" of the Hospital per NRS 41.130**

16 First, Plaintiff does not assert or allege in her Complaint that either Dr. DeLee or Dr. Kia
17 are agents of the Hospital. However, if Plaintiff had so plead, Sunrise Hospital cannot be
18 "vicariously liable" for Dr. DeLee or Dr. Kia as neither are employees of the Hospital. An
19 employer can be vicariously liable "... only for the acts of its employees not someone else ...".
20 *Rockwell v. Sun Harbor Budget Suites*, 925 P.2d 1175 (Nev. 1996). Moreover, *Rockwell* is
21 entirely consistent with the requirements of NRS 41.130 which states as follows:
22

23 "NRS 41.130 Liability for personal injury. Except as otherwise
24 provided in NRS 41.745, whenever any person shall suffer
25 personal injury by wrongful act, neglect or default of another, the
26 person causing the injury is liable to the person injured for
27 damages; and where the person causing the injury is employed
28 by another person or corporation responsible for the conduct
of the person causing the injury, that other person or
corporation so responsible is liable to the person injured for
damages." (Emphasis added.) (NRS 41.130)

Neither Dr. Kia or Dr. DeLee were employed by Sunrise Hospital. No W2s, no employment contracts, separate billing, each physician has a private practice and office.

2. Ostensible Agency – Plaintiff Seems to Concede that Dr. DeLee is Not An Ostensible Agent Leaving Only an Unpled Contention that Dr. Kia is Such an Agent.

Sunrise Hospital cannot, as a matter of law (NRS 41.170) be vicariously liable for either Dr. DeLee or Dr. Kia. Since Dr. DeLee has been treating Plaintiff and her children for more than 15 years, Plaintiff seems to concede that Sunrise Hospital is not vicariously liable for Dr. DeLee and that Dr. DeLee is not an ostensible agent of the Hospital.

Sunrise Hospital cannot be vicariously liable for Dr. Kia since he is not an employee of the Hospital. That leaves, only, an unpled theory that Dr. Kia is an “ostensible agent” of the Hospital. However, Plaintiff has provided no specific facts to support that unpled contention.

A doctor’s mere affiliation with a hospital is not sufficient to hold a hospital vicariously liable for the doctor’s negligent conduct. *Schlotfeld v. Charter Hospital of Las Vegas*, 112 Nev. 42, 910 P.2d 271 (1996). Moreover, merely because a physician is on a hospital staff does not necessarily render that physician an employee of the hospital. *Schlotfeld, supra*. In fact, in *Oehler v. Humana, Inc.*, 105 Nev. 348, 775 P.2d 1273 (Nev. 1989) the Nevada Supreme Court **affirmed a summary judgment** order which found, as a matter of law, that agency did not exist between a hospital and a doctor. The *Oehler* court stated that:

“ . . . a hospital is not vicariously liable for acts of physicians who are neither employees nor agents of the hospital . . . ”

Here, Plaintiff tries to create the genuine issues of specific fact needed to avoid summary judgment in her Opposition by arguing that “ . . . Sunrise chose the doctors who treated her . . . ” (p. 4 of Plaintiff’s Opposition). Plaintiff then goes on to argue that if the Hospital actually selects the doctor, then it would be reasonable for the patient to assume that the doctor is an

1 agent of the hospital. *McCroskey v. Carson Tahoe Regional Medical Center*, 133 Nev.Adv.Rptr.
2 115, 408 P.3d 149 (2017). Plaintiff then argues in her affidavit that “. . . I did not chose (sic)
3 these doctors. They were assigned to me. . . .” (Paragraph 5 of the affidavit of Choloe Green.)

4 The uncontested **facts** are that Choloe Green came to Sunrise Hospital on July 14, 2016.
5 She was seen in the emergency department. She was ill and was going to be admitted. Ms.
6 Green’s health insurance was through Health Plan of Nevada (HPN). Dr. Kia testified at page 68
7 of his deposition, under oath, that his selection as a physician for Ms. Green was a result of her
8 having been insured through HPN. That insurer used Nevada Hospitalist Group (a private
9 medical group) and Dr. Kia was on call for the group.
10

11 The facts are not going to change or get better for the Plaintiff. Dr. Kia has a private
12 medical practice. His practice is a provider of care for HPN. Plaintiff had HPN insurance.
13 Plaintiff’s insurer called Nevada Hospitalist Group. The doctor on call for that Group was Dr.
14 Kia. Sunrise Hospital did not select Dr. Kia. The application of a theory of ostensible agency
15 requires, specifically, that the hospital “. . . select” the physician for whom ostensible agency is
16 imposed. *See, McCroskey and Schlotfeldt*.
17

18 There are no facts at issue or in dispute. It does not matter that Plaintiff executes an
19 affidavit saying she assumed all doctors were hospital employees. That assumption is irrelevant
20 if the hospital did not employ or select a physician who treated the Plaintiff. Dr. Kia was no
21 selected by the Hospital and was not employed by the Hospital. In fact, in *Schlotfeldt*, the
22 Nevada Supreme Court stated as follows:
23

24
25 “Further, evidence that a doctor maintains a private practice may
26 tend to dispel any claim of an agency relationship between a doctor
27 and a hospital. *Hundt*, 284 N.E.2d at 678.” (*Schlotfeldt, supra*).
28

1 Dr. Kia is a private physician. He is not an employee of Sunrise Hospital. He was not
2 selected by Sunrise Hospital to treat Plaintiff. Such would "... tend to dispel any claim of an
3 agency relationship between a doctor and a hospital ..." *Schlotfeldt*.

4 There is nothing left to argue. There is nothing for the jury to see. There is no competent
5 evidence that Dr. Kia was selected by the Hospital, was employed by the Hospital, whose
6 services were billed by the Hospital or anything approaching agency. Absent such competent
7 evidence, the issue is one of law and, here, mandates summary judgment. *See, Schlotfeldt*.

8
9 Sunrise Hospital is not seeking its dismissal from this case at this time. Sunrise
10 recognizes that Plaintiff did actually plead Sunrise as a Defendant in the case. Sunrise is only
11 seeking any potential exposure for Plaintiff's unpled theories of vicarious liability or ostensible
12 agency for Drs. DeLee and Kia.
13

14 *Conclusion*

15 Sunrise Hospital will remain a Defendant in the case. Sunrise seeks a ruling from the
16 Court that Dr. DeLee and Dr. Kia are not ostensible agents of the Hospital and there is no
17 evidence that either was employed by the Hospital. Such ruling is completely consistent with the
18 evidence and there is no real evidence to the contrary.
19

20 DATED this 12th day of February, 2019.

21 HALL PRANGLE & SCHOONVELD, LLC

22
23 By: Mario Zolenton 4581/ja
24 MICHAEL E. PRANGLE, ESQ.
25 Nevada Bar No.: 8619
26 SHERMAN B. MAYOR, ESQ.
27 Nevada Bar No. 1491
28 1160 N. Town Center Dr., Ste. 200
Las Vegas, NV 89144
Attorneys for Defendant
Sunrise Hospital and Medical Center, LLC

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that I am an employee of HALL PRANGLE & SCHOONVELD, LLC; that on the 12th day of February, 2019, I served a true and correct copy of the foregoing

REPLY IN SUPPORT OF SUNRISE HOSPITAL AND MEDICAL CENTER, LLC'S

MOTION FOR PARTIAL SUMMARY JUDGMENT TO DISMISS ANY CLAIM OF

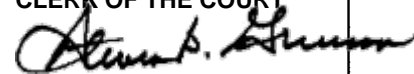
"OSTENSIBLE AGENCY" FOR DR. KIA OR DR. DELEE via the E-Service Master List

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:

Daniel Marks, Esq.
Nicole M. Young, Esq.
LAW OFFICE OF DANIEL MARKS
610 South Ninth Street
Las Vegas, NV 89101
Attorneys for Plaintiff

Erik Stryker, Esq.
WILSON ELSE MOSKOWITZ
EDELMAN & DICKER LLP
300 S. 4th Street
Las Vegas, NV 89101
Attorney for Defendants
Frank J. Delee, M.D. and
Frank J. Delee, M.D., PC

Rebecca Mecham
An employee of HALL PRANGLE & SCHOONVELD, LLC



MLEV
MICHAEL E. PRANGLE, ESQ.
Nevada Bar No.: 8619
TYSON J. DOBBS, ESQ.
Nevada Bar No.: 11953
SHERMAN B. MAYOR, ESQ.
Nevada Bar No. 1491
HALL PRANGLE & SCHOONVELD, LLC
1160 N. Town Center Dr., Ste. 200
Las Vegas, NV 89144
(702) 889-6400 – Office
(702) 384-6025 – Facsimile
efile@hpslaw.com
Attorneys for Defendant
Sunrise Hospital and Medical Center, LLC

**DISTRICT COURT
CLARK COUNTY, NEVADA**

CHLOE GREEN, an individual,

Plaintiff,

vs.

FRANK J. DELEE, M.D., an individual;
FRANK J. DELEE MD, PC, a Domestic
Professional Corporation, SUNRISE
HOSPITAL AND MEDICAL CENTER,
LLC, a Foreign Limited-Liability Company,

Defendants.

CASE NO.: A-17-757722-C
DEPT NO.: 1X

**DEFENDANT SUNRISE HOSPITAL
AND MEDICAL CENTER, LLC'S
MOTION FOR LEAVE TO FILE THIRD
PARTY COMPLAINT ON ORDER
SHORTENING TIME**

COMES NOW Defendant Sunrise Hospital and Medical Center, by and through its
counsel of record, HALL PRANGLE & SCHOONVELD, LLC, and moves this Honorable Court for an
order granting Defendant Sunrise Hospital and Medical Center, LLC leave to add Ali Kia, M.D.
and Nevada Hospitalist Group, LLP as Third-Party Defendants in this litigation (on an Order
Shortening Time).

...

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

This Motion is made and based upon the papers and pleadings on file herein, the following points and authorities, and any oral argument which may be adduced at a hearing set for this matter.

DATED this 24th day of April, 2019.

HALL PRANGLE & SCHOONVELD, LLC

By: _____

MICHAEL E. PRANGLE, ESQ.

Nevada Bar No.: 8619

TYSON J. DOBBS, ESQ.

Nevada Bar No.: 11953

SHERMAN B. MAYOR, ESQ.

Nevada Bar No. 1491

1160 N. Town Center Dr., Ste. 200

Las Vegas, NV 89144

Attorneys for Defendant

Sunrise Hospital and Medical Center, LLC

ORDER SHORTENING TIME

It appearing to the satisfaction of the Court, and good cause appearing therefore, IT IS HEREBY ORDERED that the foregoing **DEFENDANT SUNRISE HOSPITAL AND MEDICAL CENTER, LLC'S MOTION FOR LEAVE TO FILE THIRD PARTY COMPLAINT ON ORDER SHORTENING TIME** shall be heard on the 13 day of

Mar, 2019, at the hour of 3:00 ^{CD} a.m./p.m. in Department 9.

DATED April 29, 2019.

DISTRICT COURT JUDGE


1 **DECLARATION OF SHERMAN B. MAYOR, ESQ., IN SUPPORT OF ORDER**
2 **SHORTENING TIME FOR SUNRISE HOSPITAL'S MOTION**
3 **FOR LEAVE TO FILE THRID PARTY COMPLAINT**

4 STATE OF NEVADA)
) ss:
5 COUNTY OF CLARK)

6 SHERMAN B. MAYOR, ESQ., attests and states as follows:

- 7 1. Your affiant is an attorney licensed to practice law in the State of Nevada and is
8 practicing with the law firm of Hall, Prangle and Schoonveld, LLC. Your affiant is a
9 counsel of record for Defendant, Sunrise Hospital and Medical, LLC., in the above-
10 entitled matter.
- 11 2. Sunrise Hospital recently filed a Motion for Partial Summary Judgment. That motion
12 sought, in part, to dismiss any claim of vicarious liability or ostensible agency that
13 might be imposed against Sunrise Hospital as a result of care and treatment rendered
14 to Plaintiff by Ali Kia, M.D. during the hospitalization at issue in this case.
- 15 3. The court, by minute order dated April 1, 2019, determined that there was a factual
16 question as to whether Dr. Kia was an ostensible agent of the hospital when he cared
17 for Plaintiff, Chole Green. Accordingly, the motion for partial summary judgment to
18 dismiss the ostensible agency claim as to Dr. Kia was denied. The final proposed
19 order for this ruling has been submitted to the court for consideration.
- 20 4. As a result, Sunrise Hospital is seeking leave to file a third-party complaint against
21 Ali Kia, M.D. (a physician who is not named in Plaintiff's underlying complaint for
22 medical malpractice). In addition, Ali Kia, M.D. was an agent and/or employee of
23 Nevada Hospitalist Group, LLP. Leave is also sought to add Nevada Hospitalist
24 Group, LLP as a third-party defendant.

5. The purpose of the third-party complaint is for Sunrise Hospital to seek equitable indemnity and/or contribution from Dr. Kia and/or Nevada Hospitalist Group should liability be imposed upon the hospital as a result of the care rendered by these two potential Third-Party Defendants.
6. Currently, this case is scheduled for status check to take place on June 18, 2019 to schedule the case for trial.
7. However, the court recently signed a stipulation by all parties to extend the discovery cut-off to June 1, 2020.
8. Defendant Sunrise Hospital seeks leave to file its motion for leave to file third party complaint so that: (1) Dr. Kia and Nevada Hospitalist Group can participate in any discovery as the case progresses; and (2) Sunrise Hospital will participate in discovery with knowledge that its third-party complaint is in place.
9. It is therefore requested that a hearing on Sunrise Hospital's motion for leave to file third party complaint on an order shortening time be granted and this matter be scheduled accordingly.
10. This motion for leave to file third party complaint is brought in good faith and not for purposed of undue delay or harassment.
11. I declare under the penalty of perjury that the foregoing is true and correct to the best of your Affiant's knowledge.


4/24/19

SHERMAN B. MAYOR, ESQ.

PREFATORY NOTE

Although Defendant Sunrise Hospital's motion for leave to file third-party complaint seeks authority to bring third party claims against *both* Ali Kia, M.D. and Nevada Hospitalist Group, LLP, Sunrise Hospital reserves the right to only pursue a third-party claim against Ali Kia, M.D. (and not Nevada Hospitalist Group, LLP should additional discovery and malpractice insurance documentation indicate a third-party action against the group is unnecessary).

POINTS AND AUTHORITIES

I. FACTS

This is a medical practice action. Plaintiff, Choloe Green, delivered her 4th child by caesarian section birth at Defendant, Sunrise Hospital and Medical Center ("Sunrise Hospital") on July 9, 2016. Defendant, Frank J. DeLee, M.D., Plaintiff's treating OB/GYN, then discharged Ms. Green from the hospital on July 10, 2016. Plaintiff contends this discharge was premature as she had not had a bowel movement and a typical post-operative course for caesarian section is 3-4 days. Plaintiff alleges Dr. DeLee and Sunrise Hospital breached the standard of care.

Plaintiff then alleges she was readmitted to Sunrise Hospital on July 14, 2016 (nausea, vomiting, fever, and chills). Plaintiff contends she was discharged prematurely, a second time, on July 16, 2016. Plaintiff asserts this second discharge also violated the standard of care as she was not able to tolerate a regular diet and her KUB x-ray showed dilated bowel loops.

Plaintiff contends that this second hospital discharge was "discussed and confirmed with Dr. DeLee." The medical records, however, reveal that Ali Kia, M.D. (internal

1 medicine/hospitalist) was actually the physician who ordered and electronically signed the
2 second hospital discharge of July 16, 2016. *See* Exhibit "A."

3 Recently, Sunrise Hospital filed a Motion for Partial Summary Judgment seeking to
4 dismiss any claims of vicarious liability or ostensible agency on the part of the hospital with
5 regard to Frank J. DeLee, M.D. and Ali Kia, M.D. The court granted the partial summary
6 judgment motion (in part) and denied the motion (in part). Specifically, the claims, if any, that
7 the hospital may have vicarious liability for either Dr. DeLee or Dr. Kia were dismissed.
8 Further, any claim that Dr. DeLee (Plaintiff's long-time treating OB/GYN) was the ostensible
9 agent of the hospital was also dismissed.
10

11 In Plaintiff's "Complaint for Medical Malpractice," there is no mention of Ali Kia, M.D.
12 Nor is there any mention that the Dr. Kia is an agent or employee of Sunrise Hospital. Sunrise
13 Hospital moved for partial summary judgment to dismiss any potential claim in discovery or trial
14 that Dr. Kia was an ostensible agent of Sunrise Hospital. The court, by decision rendered on
15 April 1, 2019, denied the hospital's motion as it pertained to the ostensible agency issue and Dr.
16 Kia. *See* Exhibit "B."
17

18 Sunrise Hospital denies any allegations of negligence against the hospital. The hospital
19 also denies that Dr. Kia is an ostensible agent of the hospital. However, this court has ruled that
20 there is a factual question concerning ostensible agency that should be resolved by the finder of
21 fact (the jury). As such, Sunrise Hospital seeks leave to file a third-party complaint naming Ali
22 Kia, M.D. as a third-party defendant. Further, it appears that Dr. Kia was the agent and/or
23 employee of Nevada Hospitalist Group, LLP, which is also being added. Sunrise Hospital files
24 this third-party complaint, specifically, for equitable indemnity and/or contribution from Dr. Kia
25
26
27
28

1 and Nevada Hospitalist Group, LLP, should Sunrise Hospital be liable for any verdict or
2 judgment arising from from Dr. Kia's care of Plaintiff, Choloe Green.

3 Additionally, Sunrise Hospital is not enclosing an expert affidavit with its third-party
4 complaint. Instead, the hospital is attaching Plaintiff's underlying complaint and the expert
5 affidavit attached to the complaint (Lisa Karamardian, M.D.) to comply with the requirements of
6 NRS 41A.071. *A copy of Sunrise's Hospital proposed Third-Party Complaint (with Exhibits)*
7 *is attached to this motion for leave as Exhibit "C."*
8

9 Defendant, Sunrise Hospital motion for leave to file third-party complaint to add Ali Kia,
10 M.D. and Nevada Hospitalist Group, LLP, as third-party defendants is necessitated by the court's
11 recent ruling finding that there is a factual question (to be resolved at trial) as to whether Dr. Kia
12 is an ostensible agent of the hospital. The court's minute order in this regard is dated April 1,
13 2019. The final proposed order has been submitted to the court and is pending the court's
14 review, consideration, and approval.
15

16 II. 17 ARGUMENT

18 NRCP 14 provides in relevant part:

19 (a) **When Defendant May Bring in Third Party.** At any time
20 after commencement of the action a defending party, as a third-
21 party plaintiff, may cause a summons and complaint to be served
22 upon a person not a party to the action who is or may be liable to
23 the third-party plaintiff for all or part of the plaintiff's claim
24 against the third-party plaintiff. The third-party plaintiff need not
25 obtain leave to make the service if the third-party plaintiff files the
third-party complaint not later than 10 days after serving the
original answer. Otherwise the third-party plaintiff must obtain
leave on motion upon notice to all parties to the action.

26 A defendant is permitted to defend the case and at the same time assert his right of
27 indemnity against the party ultimately responsible for the damage. *Reid v. Royal Ins. Co.*, 80
28

1 Nev. 137, 390 P.2d 45 (1964). The clear import of the Nevada Rules of Civil Procedure is to
2 enable litigants to try fully their issues before the court. . ." *Morris v. Morris* 83 Nev. 412, 414,
3 432 P.2d. 1022 (1967).

4 Sunrise Hospital now brings the instant motion for leave to assert a third-party complaint
5 against Ali Kia M.D. and Nevada Hospitalist Group, LLP. The court's recent decision that the
6 issue as to whether Dr. Kia is an ostensible agent of Sunrise Hospital is a factual question for the
7 finder of fact. If, during trial, a jury determines that Dr. Kia is an ostensible agent of Sunrise
8 Hospital, the hospital will be seeking, as part of the verdict, relief in the form of equitable
9 indemnity and/or contribution for any hospital liability arising out of Dr. Kia's care of
10 underlying Plaintiff, Choloe Green.
11

12
13 **III.**
14 **CONCLUSION**

15 Based upon the foregoing, Defendant Sunrise Hospital respectfully requests that the
16 Court enter an Order Granting its Motion for Leave to File a Third-Party Complaint Against Ali
17 Kia, M.D. and Nevada Hospitalist Group, and for any other relief that this Honorable Court
18 deems just and proper.

19 DATED this 24th day of April, 2019.

20
21 HALL PRANGLE & SCHOONVELD, LLC

22 By: _____

23 MICHAEL E. PRANGLE, ESQ.

24 Nevada Bar No.: 8619

25 TYSON J. DOBBS, ESQ.

26 Nevada Bar No.: 11953

27 SHERMAN B. MAYOR, ESQ.

28 Nevada Bar No. 1491

1160 N. Town Center Dr., Ste. 200

Las Vegas, NV 89144

Attorneys for Defendant

Sunrise Hospital and Medical Center, LLC

EXHIBIT A

EXHIBIT A

RUN DATE: 07/27/16 RUN TIME: 0110 RUN USER: HPF.FEED		MEDITECH FACILITY: COCSZ IDEV - Discharge Report		PAGE 51
PATIENT: GREEN,CHLOE S ACCOUNT NO: D00113938887		A/S: 30 F LOC: D.E4 RM: D.4508 BD: 0		ADMIT: 07/14/16 DISCH/DEP: 07/16/16 STATUS: IN UNIT NO: D001315049
ATTEND DR: Kia,Ali MD REPORT STATUS: FINAL				

Press <Enter> for Order Details below

Comment: PER DR KIA DO NOT CALL FOR KUB RESULT MD WILL FOLLOW UP IN AM 07/16/16

Order's Audit Trail of Events

```

1 07/16/16 0522 DNUR.CCV Order ENTER in CM
2 07/16/16 0522 DNUR.CCV Ordering Doctor: Kia,Ali MD
3 07/16/16 0522 DNUR.CCV Order Source: TELEPHONE & VERIFIED
4 07/16/16 0522 interface order's status changed from TRANS to ACTIVE by NUR
5 07/16/16 0540 DNUR.CCV order acknowledged
6 07/16/16 0713 DNUR.CCV order viewed from Order Management

```

Electronics

Order Date:	07/16/16	Service
Category	Procedure Name	Order Number Date Time Pri Qty Ord Source Status Ordered By
DISCHG	DISCHARGE ORDER	20160716-0093 07/16/16 R E TRN KIAAL
Other Provider :	Sig Lvl Provider :	

Discharge order written date: 07/16/16
 Discharge order written time: 1521
 Discharge To: Home
 Discharge Type: Adult
 * New/Additional DHE/Home Health orders with Discharge?
 N

Does patient have any of the following conditions at discharge?
 NONE

Aspirin at Discharge?
 Aspirin Contraindications:
 Other Specific Reason:
 EJ Fraction:
 ACE/ARB at Discharge?
 ACE/ARB Contraindications:
 Other Specific Reason:

LDL Level:
 Statin at Discharge?
 Statin Contraindications:
 Other Specific Reason:
 Beta Blocker at Discharge?
 Beta Blocker Contraindications:

Other Specific Reason:

Antithrombotic at Discharge?
 Antithrombotic Contraindications:

Other Specific Reason:
 Antiplatelet Therapy at Discharge?

PERMANENT MEDICAL RECORD COPY

RUN DATE: 07/27/16
RUN TIME: 0110
RUN USER: HPF.FEED

MEDITECH FACILITY: COCSZ
IDEV - Discharge Report

PAGE 52

PATIENT: GREEN, CHLOE S
ACCOUNT NO: D00113938887

A/S: 30 F
LOC: D.E4
RM: D.4508
BD: 0

ADMIT: 07/14/16
DISCH/DEP: 07/16/16
STATUS: IN
UNIT NO: D001315049

ATTEND DR: Kia, Ali MD
REPORT STATUS: FINAL

Antiplatelet Contraindications:

Other Specific Reason:

HX or current AFIB/AFLUTTER:
Anticoagulation Therapy at Discharge?

Anticoagulation Contraindications:

Other Specific Reason:
Assessed for Rehabilitation?
Reason for not ordering Rehab:

Weight Monitoring:
Kg: 104.54
Weight - Lb: 230
Other Specific Frequency:

What anticoagulation med is patient being sent home on:

List reason for medication choice:

Diet: Soft
Activity/Exercise/Limitations: No limitations
Lifting Restrictions:

Return to Work/School:
OK to Drive:

Call Your Doctor If -
Fever Greater Than: 101.5

1st Follow Up:
2nd:
3rd:
Physician: NO PRIMARY OR FAMILY PHYSICIAN
Follow-Up with: Provider Entered Above
Follow up in: 1 Week
Reason: MED FUP

Physician: Delee, Frank J MD
Follow-Up with: Provider Entered Above
Follow up in: 1 Week
Reason: OB FUP
Physician:
Follow-Up with:
Follow up in:
Reason:

Physician:
Follow-Up with:
Follow up in:
Reason:

PERMANENT MEDICAL RECORD COPY

RUN DATE: 07/27/16
RUN TIME: 0110
RUN USER: HPF.FEED

MEDITECH FACILITY: COCSZ
IDEV - Discharge Report

PAGE 53

PATIENT: GREEN, CHLOE S
ACCOUNT NO: D00113938887

A/S: 30 F
LOC: D.E4
RM: D.4508
BD: 0

ADMIT: 07/14/16
DISCH/DEP: 07/16/16
STATUS: IN
UNIT NO: D001315049

ATTEND DR: Kia, Alf MD
REPORT STATUS: FINAL

Physician:
Follow-Up with:
Follow up in:
Reason:
Physician:

Follow-Up with:
Follow up in:
Reason:
Physician:
Follow-Up with:
Follow up in:
Reason:
Physician:
Follow-Up with:
Follow up in:

Reason:
Physician:
Follow-Up with:
Follow up in:
Reason:

== INFANT/NICU ==

== INFANT/PEDIATRIC/NICU ==
Primary Dx of Asthma:

Provide Pre-printed Mother/Infant Instructions:

== Outpatient Services Needs ==

== REHAB / SNF / LTAC / HOSPICE ONLY ==

Rehabilitation Potential: (Group response undefined)
Anticipated LOS:
I certify that post-hospital skilled services are required at an extended
care facility as a continuation for which he/she was receiving in-patient
hospital services prior to the transfer to the extended care facility.

Order's Audit Trail of Events

1	07/16/16 1521 DR.KIAAL	Order ENTER in POM
2	07/16/16 1521 DR.KIAAL	Ordering Doctor: Kia, Alf MD
3	07/16/16 1521 DR.KIAAL	Order Source: EPOM
4	07/16/16 1554 DNURRAW	order viewed from Order Management
5	07/16/16 1554 DNURRAW	order acknowledged
6	07/16/16 1736 DNURNPS	order acknowledged

Electronic Signature of Kia, Alf MD on 07/27/16 at 01:10:10

PERMANENT MEDICAL RECORD COPY

EXHIBIT B

EXHIBIT B

From: Judd, Joshua [<mailto:Dept08LC@clarkcountycourts.us>]
Sent: Monday, April 01, 2019 3:03 PM
To: efile; Tyson Dobbs; Office (office@danielmarks.net)
Subject: A757722 (Green v. DeLee et al.) Motion for Partial Summary Judgment

Good Afternoon,

At the hearing on March 12, 2019, Judge Smith deferred his decision on Defts' Motion for Partial Summary Judgment. He has reviewed the pleadings and has asked that the parties submit proposed Orders Granting in Part and Denying in Part the Motion, consistent with the following:

- GRANTED as to Plt's claims against the hospital for vicarious liability
- GRANTED as to Plt's claims against the hospital for any of Dr. DeLee's actions
- DENIED as to Plt's claims against the hospital for any of Dr. Kia's actions, under the theory of ostensible agency

Please submit your orders to me in Word format, for Judge Smith's consideration. Judge intends to write and issue his own Order from Chambers. Please let me know if you have any questions, or if anything remains unclear.

Thank you,

Joshua D. Judd, Esq.
Court Law Clerk to the Honorable Douglas E. Smith
Eighth Judicial District Court | Department VIII
P: (702) 671-4335
F: (702) 671-4337

EXHIBIT C

EXHIBIT C

TPC

MICHAEL E. PRANGLE, ESQ.
Nevada Bar No.: 8619
TYSON J. DOBBS, ESQ.
Nevada Bar No.: 11953
SHERMAN B. MAYOR, ESQ.
Nevada Bar No. 1491
HALL PRANGLE & SCHOONVELD, LLC
1160 N. Town Center Dr., Ste. 200
Las Vegas, NV 89144
(702) 889-6400 – Office
(702) 384-6025 – Facsimile
efile@hpslaw.com
Attorneys for Defendant
Sunrise Hospital and Medical Center, LLC

DISTRICT COURT
CLARK COUNTY, NEVADA

CHOLOE GREEN, an individual,

Plaintiff,

vs.

FRANK J. DELEE, M.D., an individual;
FRANK J. DELEE MD, PC, a Domestic
Professional Corporation, SUNRISE
HOSPITAL AND MEDICAL CENTER,
LLC, a Foreign Limited-Liability Company,

Defendants.

SUNRISE HOSPITAL AND MEDICAL
CENTER, LLC, a Foreign Limited-Liability
Company,

Third-Party Plaintiff,

vs.

ALI KIA, M.D., Individually and his
employer, NEVADA HOSPITALIST
GROUP, LLP; DOES 1-10; AND ROE
CORPORATION 1-10; inclusive.

Third-Party Defendants.

CASE NO.: A-17-757722-C
DEPT NO.: VIII

**SUNRISE HOSPITAL AND MEDICAL
CENTER, LLC'S THIRD PARTY
COMPLAINT FOR CONTRIBUTION
AND INDEMNITY (ALI KIA, M.D.)**

COMES NOW Third-Party Plaintiff, Sunrise Hospital and Medical Center ("Sunrise Hospital"), by and through its counsel of record HALL PRANGLE AND SCHOONVELD, LLC, and hereby complains and alleges against Third-Party Defendants, Ali Kia, M.D. and Nevada Hospitalist Group, LLP, as follows:

GENERAL ALLEGATIONS

1. Third-Party Plaintiff, SUNRISE HOSPITAL AND MEDICAL CENTER, a Nevada Corporation (hereinafter referred to as "SUNRISE HOSPITAL"), is a corporation duly organized under the laws of the State of Nevada and is authorized to do business as a hospital in Clark County, Nevada.
2. Third-Party Defendant Ali Kia, M.D., is a Board-Certified Internist who practices as a "Hospitalist." Dr. Kia holds himself out as duly licensed to practice his profession under and by virtue of the laws of the State of Nevada and was, and now is, engaged in the practice of his profession in the State of Nevada.
3. Ali Kia, M.D., is an agent and/or employee of Third-Party Defendant, Nevada Hospitalist Group, LLP. Nevada Hospitalist Group, LLP is a Nevada Limited Liability Partnership in Clark County, Nevada.
4. Plaintiff, Choloe Green, an individual, has asserted that Ali Kia, M.D., is an ostensible agent of Third-Party Plaintiff Sunrise Hospital. The court has denied Sunrise Hospital's motion to dismiss such potential claim finding there is a factual issue to be resolved by the finder of fact.
5. On information and belief DOES/ROE Corporations were the employer and/or were responsible for Third-Party Defendant Ali Kia M.D. being called into consulting and/or treating Plaintiff Choloe Green for her Sunrise hospitalization which commenced on July

1 14, 2016. When the true names and capacities of said Third-Party Defendants
2 DOES/ROE Corporations have been ascertained, Third-Party Plaintiff will amend this
3 Third-Party Complaint accordingly.

4 **STATEMENTS OF FACTS**

- 5 6. Third-Party Plaintiff, Sunrise Hospital repeats and realleges and incorporates each and
6 every allegation contained in paragraphs 1-5 as though fully set forth herein.
- 7 7. Plaintiff, Choloe Green, had a caesarian section birth on July 9, 2016 at Sunrise Hospital
8 with Frank J. DeLee, M.D., as the treating Obstetrician. Plaintiff was released home on
9 the first post-operative day, July 10, 2016. Plaintiff contends in her complaint that her
10 release was premature since a routine post-operative course is 3-4 days. Plaintiff also
11 contends in her complaint that she was released prior to tolerating clear liquids and
12 passing flatus.
- 13 8. Plaintiff alleges that Sunrise Hospital and Dr. DeLee breached the applicable standard of
14 care in discharging Plaintiff from the hospital on July 10, 2016. *See* attached Exhibit "A"
15 (Plaintiff's Choloe Green's Complaint for Medical Malpractice and Affidavit of Lisa
16 Karamardian, M.D.).
- 17 9. Plaintiff, Choloe Green asserts that she was readmitted to Sunrise Hospital on July 14,
18 2016 with severe abdominal pain, nausea, vomiting, fever and chills. Ms. Green was
19 admitted to the medical/surgical unit of the hospital. She was seen, treated, and/or
20 consulted by Frank J. DeLee, M.D. and Ali Kia, M.D.
- 21 10. Plaintiff was discharged from Sunrise Hospital on July 16, 2016. Plaintiff alleges that her
22 discharge was "discussed and confirmed by Dr. DeLee. . ."
- 23 11. The Sunrise Hospital records indicate that Ali Kia, M.D. ordered and electronically
24 signed Plaintiff's July 16, 2016 discharge from Sunrise Hospital.
- 25
26
27
28

12. Plaintiff contends that her second discharge from sunrise Hospital on July 16, 2016 violated the standard of care. Plaintiff asserts that she was not able to tolerate a regular diet at the time of discharge and that her KUB showed multiple dilated loops of bowel (which Plaintiff asserts are related to small bowel obstruction).
13. Plaintiff alleges in her underlying complaint that because of the aforementioned negligence and breaches of the standard of care she suffered a protracted hospital course with multiple complications including discharge to a step-down facility once her antibiotic course was felt to be completed. Plaintiff asserts that she remained on a feeding tube and in need of rehabilitation.
14. Plaintiff contends that it was Sunrise Hospital and Dr. DeLee that breached the standard of care in discharging her from the hospital July 16, 2016.
15. Sunrise Hospital filed a Motion for Partial Summary Judgment which, in part, sought to dismiss any potential claim that Ali Kia, M.D. was an ostensible agent of the hospital during Plaintiff's July 14 – 16, 2016 hospitalization. The court denied the motion finding that there was a genuine issue of fact to be resolved by the finder of fact (jury).
16. Third-Party Defendant, Ali Kia, M.D. was "on call" for Nevada Hospitalist Group, LLP which resulted in Dr. Kia becoming a treating physician of the underlying Plaintiff, Choloe Green.
17. When Dr. Kia was "on call" for Nevada Hospitalist Group he was employed and/or an agent of Nevada Hospitalist Group.

THIRD-PARTY PLAINTIFF SUNRISE HOSPITAL CLAIM FOR INDEMNITY AND CONTRIBUTION AGAINST ALI KIA, M.D., AND NEVADA HOSPITALIST GROUP

18. Third-Party Plaintiff, Sunrise Hospital repeats and realleges and incorporates each and every allegation contained in paragraphs 1-17 as though fully set forth herein.

- 1 19. Plaintiff contends that she suffered injury and damage as a result of the care and
2 treatment she received at Sunrise Hospital for her July 9, 2016 and July 14, 2016
3 hospitalizations.
- 4 20. Frank J. DeLee, M.D. discharged Choloe Green from her first hospitalization at
5 Sunrise Hospital on July 10, 2016. Ali Kia, M.D. discharged Choloe Green from her
6 second hospitalization at Sunrise Hospital on July 16, 2016.
- 7 21. The court has determined that during Plaintiff's July 9, 2016 hospitalization and July
8 16, 2016 hospitalization, Frank J. DeLee, M.D. was not an ostensible agent of the
9 hospital and the hospital is not vicariously liable for Dr. DeLee.
- 10 22. The court has also determined that Sunrise Hospital is not vicariously liable for any
11 care or treatment rendered by Ali Kia, M.D. to Plaintiff, Choloe Green during her
12 July 16, 2016 hospital admission. The court, however, denied Sunrise Hospital's
13 motion to dismiss any claim that Dr. Kia was an ostensible agent of the hospital
14 during this same hospital admission (genuine issue of material fact precluding
15 summary judgment).
- 16 23. Although unnamed as a party in Plaintiff Choloe Green's underlying complaint, Ali
17 Kia, M.D. (Third-Party Defendant) discharged Plaintiff on July 16, 2016. As such,
18 Dr. Kia's care of Choloe Green is at issue in Plaintiff's underlying complaint.
- 19 24. Attached as Exhibit "A" to this Third-Party Complaint is the Plaintiff, Choloe
20 Green's underlying complaint for medical malpractice and attached expert affidavit of
21 Lisa Karamardian, M.D.
- 22 25. Third-Party Plaintiff Sunrise Hospital pursuant to NRS 17.225 and 17.285, Nevada's
23 contribution statutes, and also the doctrine equitable indemnity, seeks judgment
24
25
26
27
28

1 against Ali Kia, M.D. and Nevada Hospitalist Group for any amount awarded (by
2 verdict or judgment) against the hospital resulting from Ali Kia, M.D.'s treatment and
3 care of Choloe Green during her July 14, 2016 hospital admission.

4 26. WHEREFORE, Third-Party Plaintiff Sunrise Hospital and Medical Center prays that
5 judgment be entered in its favor and against Third-Party Defendants, Ali Kia, M.D.,
6 and Nevada Hospitalist Group, LLP, in an amount commensurate with the relative
7 degree of fault by Dr. Kia in causing the Plaintiff's alleged injuries and damages.
8

9 DATED this 24th day of April, 2019.

10 HALL PRANGLE & SCHOONVELD, LLC

11 By: _____
12

13 MICHAEL E. PRANGLE, ESQ.

14 Nevada Bar No.: 8619

15 TYSON J. DOBBS, ESQ.

16 Nevada Bar No.: 11953

17 SHERMAN B. MAYOR, ESQ.

18 Nevada Bar No. 1491

19 1160 N. Town Center Dr., Ste. 200

20 Las Vegas, NV 89144

21 *Attorneys for Defendant*

22 *Sunrise Hospital and Medical Center, LLC*
23
24
25
26
27
28

Steven D. Grierson

1 **COMP**
2 **LAW OFFICE OF DANIEL MARKS**
3 **DANIEL MARKS, ESQ.**
4 Nevada State Bar No. 002003
5 **NICOLE M. YOUNG, ESQ.**
6 Nevada State Bar No. 12659
7 610 South Ninth Street
8 Las Vegas, Nevada 89101
9 (702) 386-0536; Fax (702) 386-6812
10 Attorneys for Plaintiff

7 **DISTRICT COURT**
8 **CLARK COUNTY, NEVADA**

9 **CHLOE GREEN, an individual,**
10
11 **Plaintiff,**

Case No.
Dept. No.

A-17-757722-C y

Department 8

12 **v.**

13 **FRANK J. DELEE, M.D., an individual;**
14 **FRANK J. DELEE MD, PC, a Domestic**
15 **Professional Corporation, SUNRISE HOSPITAL**
AND MEDICAL CENTER, LLC, a Foreign
Limited-Liability Company.

Arbitration Exempt -- Action
for Medical Malpractice

16 **Defendants.**

17
18 **COMPLAINT FOR MEDICAL MALPRACTICE**

19 **COMES NOW Plaintiff Chloe Green, by and through undersigned counsel Daniel Marks, Esq., and**
20 **Nicole M. Young, Esq., of the Law Office of Daniel Marks, and for her claims against Defendants herein**
21 **allege as follows:**

- 22 1. That at all times material hereto, Plaintiff Chloe Green (hereinafter "Chloe") was a
23 resident of Clark County, Nevada.
24 2. That at all times material hereto, Defendant FRANK J. DELEE, M.D., was a licensed
25 medical doctor in the State of Nevada, and practiced in his professional corporation entitled
26 FRANK J. DELEE MD, PC.

27 **////**

28 **////**

- 1 3. That at all times material hereto, Defendant FRANK J. DELEE MD, PC, was a domestic
2 professional corporation organized and existing under the laws of the state of Nevada and
3 registered to do business, and doing business in the State of Nevada in Clark County, Nevada.
- 4 4. That Defendant FRANK J. DELEE, MD, is the President of Defendant FRANK J. DELEE
5 MD, PC (hereinafter collectively referred to as "Dr. DeLee").
- 6 5. That Defendant SUNRISE HOSPITAL AND MEDICAL CENTER, LLC, (hereinafter
7 "Sunrise Hospital"), was a foreign limited-liability company, registered to do business and
8 doing business in the State of Nevada in Clark County, Nevada.
- 9 6. That on or about July 9, 2016, Dr. DeLee performed a cesarean section (C-Section) on
10 Cholee at Sunrise Hospital. Cholee was discharged from the hospital the following day, on
11 July 10, 2016, even though she did not have bowel movement prior to being discharged from
12 the hospital.
- 13 7. On July 13, 2016, Cholee had an appointment with Dr. DeLee. At that appointment, Cholee
14 notified Dr. DeLee that she had not had a bowel movement post C-section. He did not provide
15 any care or treatment to Cholee regarding her lack of a bowel movement.
- 16 8. On July 14, 2016, after still not having a bowel movement post C-section, Cholee went to
17 the emergency room at Sunrise Hospital, with severe abdominal pain and reports of nausea,
18 vomiting, fever, and chills. She was admitted to the medical/surgical unit because of the
19 diagnosis of sepsis. Sunrise Hospital discharged Cholee on July 16, 2016, despite having a
20 small bowel obstruction. The discharge was discussed and confirmed by Dr. DeLee.
- 21 9. On July 17, 2016, Cholee went to the emergency room at Centennial Hills Hospital where
22 she was admitted until she was finally discharged on September 2, 2016. Centennial Hills
23 admitted Cholee with the diagnosis of small bowel obstruction. She had an NG Tube placed,
24 underwent surgery, had diffuse pulmonary infiltrates, suggestive of pulmonary edema or ARDS,
25 and eventually needed a tracheostomy and PEG tube placement.
- 26 10. That Defendant Dr. DeLee and Sunrise Hospital breached the standard of care in their
27 treatment of Cholee and as a direct and proximate result of that breach, Cholee has been
28 damaged.

1 11. That as a direct and proximate result of all of the Defendants' negligence, Cholee has been
2 damaged in an amount in excess of \$15,000.00.

3 12. This Complaint is supported by the Affidavit of Lisa Karamardian, M.D., a copy of which
4 is attached hereto as Exhibit "1".

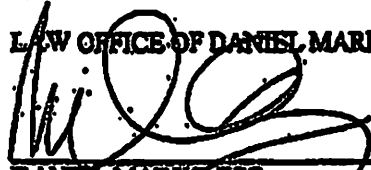
5 13. Cholee has been forced to retain counsel to bring this action and should be awarded his
6 reasonable attorneys fees and costs.

7 WHEREFORE, Cholee prays for judgment against the Defendants, and each of them, as follows:

- 8 1. For special damages in a sum in excess of \$15,000.00;
9 2. For compensatory damages in a sum in excess of \$15,000.00;
10 3. For reasonable attorney's fees and litigation costs incurred;
11 4. For such other and further relief as the Court deems just and proper.

12 DATED this 30 day of June, 2017.

13 LAW OFFICE OF DANIEL MARKS

14 
15 DANIEL MARKS, ESQ.
16 Nevada State Bar No. 002003
17 NICOLE M. YOUNG, ESQ.
18 Nevada State Bar No. 012659
19 610 South Ninth Street
20 Las Vegas, Nevada 89101
21 Attorneys for Plaintiff
22
23
24
25
26
27
28

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28

VERIFICATION

STATE OF NEVADA }
COUNTY OF CLARK } ss:

CHLOE GREEN, being first duly sworn, deposes and says:

That I am the Plaintiff in the above-entitled matter, that I have read the above and foregoing Complaint and know the contents thereof; that the same are true of my knowledge except for those matters stated upon information and belief, and as to those matters, I believe them to be true.

Chloe Green
CHLOE GREEN

SUBSCRIBED AND SWORN to before me
this *16* day of June, 2017.

Glenda Guo
NOTARY PUBLIC in and for said
COUNTY and STATE

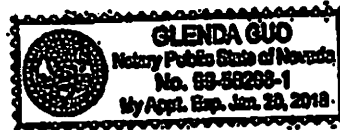


EXHIBIT 1

AFFIDAVIT OF DR. LISA KARAMARDIAN

STATE OF California
COUNTY OF Orange } ss.

DR. LISA KARAMARDIAN, being first duly sworn, under penalty of perjury, does say and depose the following:

1. That I am a medical doctor licensed in the State of California and am board certified in the field of Obstetrics and Gynecology.
2. This affidavit is executed pursuant to NRS 41A.071 in support of a Complaint for Medical Malpractice against Dr. Frank DeLee and Sunrise Hospital and Medical Center.
3. That I have reviewed Plaintiff Cholea Green's medical records relating to the care and treatment she received from Dr. Frank DeLee, Sunrise Hospital and Medical Center, Valley Hospital Medical Center and Centennial Hills Medical Center.
4. A review of the medical records reveals that on July 9, 2016, Ms. Green had a cesarean section birth at Sunrise Hospital with Dr. DeLee as the obstetrician. She was released home on post-operative day number one. This was a breach of the standard of care by Dr. DeLee and Sunrise Hospital. The typical post-operative course for a routine cesarean is a 3-4 night stay in the hospital. The standard of care was also breached because Ms. Green had not even attempted to tolerate clear liquids and she had not passed flatus when she was released on post-operative day number one.
5. A review of the medical records also reveals that on July 14, 2016, Ms. Green presented again to Sunrise Hospital, now five (5) days post-partum, with severe abdominal pain and reports of nausea, vomiting, fever, and chills. She was admitted to the medical/surgical unit because of the diagnosis of sepsis. She was discharged on July 16, 2016. The discharge was discussed and confirmed by Dr. DeLee. This discharge violated the standard of care. Ms. Green was discharged despite the fact that she was not able to tolerate a regular diet. Further, on the day of her discharge, her KUB showed multiple dilated loops of bowel, thought to be related to a small bowel obstruction, yet she was sent home. An intraperitoneal abscess was suspected on a CT scan, yet she was still sent home. This was a violation of the standard of care by Sunrise Hospital and Dr. DeLee.

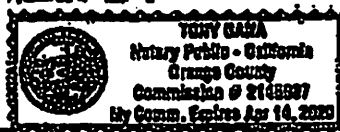
- 1 6. The day after she was released from Sunrise Hospital, Ms. Green presented at Centennial
2 Hills Hospital, on July 17, 2016. At the time of presentation she was now 7 days
3 postpartum, had not had a bowel movement, and was unable to even tolerate liquids. She
4 was still in severe pain. Her imaging studies had worsened and she was now admitted,
5 again, with the diagnosis of small bowel obstruction. An NG tube was finally placed and
6 a general surgery evaluation ordered. She was admitted for concern for bowel perforation.
7 She underwent an exploratory laparotomy on July 18th for what was presumed to be a
8 perforated viscus, but none was found intraoperatively, just diffuse ascites. Infarcted
9 mesentery was removed and post-op her condition deteriorated, culminating in a rapid
10 response call on July 20th when she was found to be hypoxic. By the 22nd she had diffuse
11 pulmonary infiltrates, suggestive of pulmonary edema or ARDS, and her condition worsened. CT
12 guided drain placement cultures of fluid revealed enterococcus fecalis, supporting the fact that
13 there must have been a bowel perforation. She then developed a pneumothorax and eventually
14 needed a tracheostomy and PEG tube placement. On August 5, 2016, there was difficulty with
15 her airway support.
- 16 7. Because of the violations of the standard of care, her hospital course was protracted with
17 multiple complications and she was apparently discharged to a step down facility once her
18 antibiotic course was felt to be completed, still on a feeding tube and in need of rehabilitation.
- 19 8. That in my professional opinion, to a degree of medical probability, the standard of care
20 was breached by both Dr. DeLee and Sunrise Hospital and Medical Center in their
21 treatment of Ms. Green.

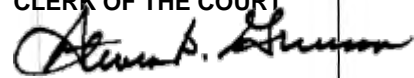
22 FURTHER YOUR AFFIANT SAYETH NAUGHT.

23 
24 LISA KARAMARDIAN, MD.

25 SUBSCRIBED and SWORN to before me
26 this 29 day of June, 2017,

27 
28 NOTARY PUBLIC in and for said
COUNTY and STATE





1 TPC

2 MICHAEL E. PRANGLE, ESQ.

3 Nevada Bar No.: 8619

4 TYSON J. DOBBS, ESQ.

5 Nevada Bar No.: 11953

6 SHERMAN B. MAYOR, ESQ.

7 Nevada Bar No. 1491

8 HALL PRANGLE & SCHOONVELD, LLC

9 1160 N. Town Center Dr., Ste. 200

10 Las Vegas, NV 89144

11 (702) 889-6400 – Office

12 (702) 384-6025 – Facsimile

13 efile@hpslaw.com

14 *Attorneys for Defendant*

15 *Sunrise Hospital and Medical Center, LLC*

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

18 CHOLOE GREEN, an individual,

19 Plaintiff,

20 vs.

21 FRANK J. DELEE, M.D., an individual;
22 FRANK J. DELEE MD, PC, a Domestic
23 Professional Corporation, SUNRISE
24 HOSPITAL AND MEDICAL CENTER,
25 LLC, a Foreign Limited-Liability Company,

26 Defendants.

27 SUNRISE HOSPITAL AND MEDICAL
28 CENTER, LLC, a Foreign Limited-Liability
Company,

Third-Party Plaintiff,

vs.

ALI KIA, M.D., Individually and his
employer, NEVADA HOSPITALIST
GROUP, LLP; DOES 1-10; AND ROE
CORPORATION 1-10; inclusive.

Third-Party Defendants.

CASE NO.: A-17-757722-C
DEPT NO.: IX

NOTICE OF ENTRY OF ORDER

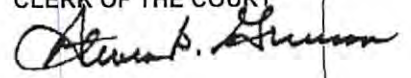
HALL PRANGLE & SCHOONVELD, LLC
1160 NORTH TOWN CENTER DRIVE
SUITE 200
LAS VEGAS, NEVADA 89144
TELEPHONE: 702-889-6400 FACSIMILE: 702-384-6025

1 PLEASE TAKE NOTICE than an Order Granting Sunrise Hospital and Medical Center,
2 LLC's Motion to File Third Party Complaint for Contribution and Indemnity (Ali Kia, M.D.)
3 was entered on the 14th day of June, 2019. A copy of which is attached hereto.

4 DATED this 14th day of June, 2019.

5 HALL PRANGLE & SCHOONVELD, LLC

6
7 By: /s/ Tyson J. Dobbs
8 MICHAEL E. PRANGLE, ESQ.
9 Nevada Bar No.: 8619
10 TYSON J. DOBBS, ESQ.
11 Nevada Bar No.: 11953
12 SHERMAN B. MAYOR, ESQ.
13 Nevada Bar No. 1491
14 1160 N. Town Center Dr., Ste. 200
15 Las Vegas, NV 89144
16 *Attorneys for Defendant*
17 *Sunrise Hospital and Medical Center, LLC*
18
19
20
21
22
23
24
25
26
27
28



1 MICHAEL E. PRANGLE, ESQ.
Nevada Bar No.: 8619
2 TYSON J. DOBBS, ESQ.
Nevada Bar No.: 11953
3 SHERMAN B. MAYOR, ESQ.
Nevada Bar No. 1491
4 HALL PRANGLE & SCHOONVELD, LLC
5 1160 N. Town Center Dr., Ste. 200
Las Vegas, NV 89144
6 (702) 889-6400 – Office
7 (702) 384-6025 – Facsimile
efile@hpslaw.com
8 Attorneys for Defendant
Sunrise Hospital and Medical Center, LLC
9

10 DISTRICT COURT
CLARK COUNTY, NEVADA

11 CHOLOE GREEN, an individual,
12
13 Plaintiff,

14 vs.

15 FRANK J. DELEE, M.D., an individual;
16 FRANK J. DELEE MD, PC, a Domestic
Professional Corporation, SUNRISE
17 HOSPITAL AND MEDICAL CENTER,
18 LLC, a Foreign Limited-Liability Company,

19 Defendants.

20 SUNRISE HOSPITAL AND MEDICAL
CENTER, LLC, a Foreign Limited-Liability
21 Company,

22 Third-Party Plaintiff,

23 vs.

24 ALI KIA, M.D., Individually and his
employer, NEVADA HOSPITALIST
25 GROUP, LLP; DOES 1-10; AND ROE
CORPORATION 1-10; inclusive.
26

27 Third-Party Defendants.
28

CASE NO.: A-17-757722-C
DEPT NO.: VH- 9

ORDER GRANTING SUNRISE
HOSPITAL AND MEDICAL CENTER,
LLC'S MOTION TO FILE THIRD
PARTY COMPLAINT FOR
CONTRIBUTION AND INDEMNITY
(ALI KIA, M.D.)

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

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

1 On May 1, 2019, Defendant Sunrise Hospital Medical Center, LLC filed its Motion for
2 Leave to File Third-Party Complaint on Order Shortening Time. No Opposition was filed and
3 the Court considered the Motion in Chambers on May 13, 2019.


4 The Court, having reviewed the pleadings and papers on file, HEREBY ORDERS,
5 ADJUDGES, AND DECREES that Defendant Sunrise Hospital Medical Center's Motion for
6 Leave to File Third-Party Complaint is hereby GRANTED.

7 DATED this 11th day of June, 2019.

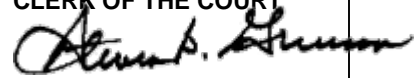
8
9
10 
DISTRICT COURT JUDGE

11 Respectfully Submitted:

12 HALL PRANGLE & SCHOONVELD LLC

13 
14
15 TYSON J. DOBBS, ESQ.
16 Nevada Bar No. 11953
17 1160 North Town Center Drive, Ste. 200
18 Las Vegas, Nevada 89144
19 *Attorneys for Plaintiff*
Valley Health System, LLC
d/b/a Valley Hospital Medical Center

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



TPC

MICHAEL E. PRANGLE, ESQ.
Nevada Bar No.: 8619
TYSON J. DOBBS, ESQ.
Nevada Bar No.: 11953
SHERMAN B. MAYOR, ESQ.
Nevada Bar No. 1491
HALL PRANGLE & SCHOONVELD, LLC
1160 N. Town Center Dr., Ste. 200
Las Vegas, NV 89144
(702) 889-6400 – Office
(702) 384-6025 – Facsimile
efile@hpslaw.com
Attorneys for Defendant
Sunrise Hospital and Medical Center, LLC

**DISTRICT COURT
CLARK COUNTY, NEVADA**

CHOLOE GREEN, an individual,

Plaintiff,

vs.

FRANK J. DELEE, M.D., an individual;
FRANK J. DELEE MD, PC, a Domestic
Professional Corporation, SUNRISE
HOSPITAL AND MEDICAL CENTER,
LLC, a Foreign Limited-Liability Company,

Defendants.

SUNRISE HOSPITAL AND MEDICAL
CENTER, LLC, a Foreign Limited-Liability
Company,

Third-Party Plaintiff,

vs.

ALI KIA, M.D., Individually and his
employer, NEVADA HOSPITALIST
GROUP, LLP; DOES 1-10; AND ROE
CORPORATION 1-10; inclusive.

Third-Party Defendants.

CASE NO.: A-17-757722-C
DEPT NO.: IX

**SUNRISE HOSPITAL AND MEDICAL
CENTER, LLC'S THIRD PARTY
COMPLAINT FOR CONTRIBUTION
AND INDEMNITY (ALI KIA, M.D.)**

COMES NOW Third-Party Plaintiff, Sunrise Hospital and Medical Center (“Sunrise Hospital”), by and through its counsel of record HALL PRANGLE AND SCHOONVELD, LLC, and hereby complains and alleges against Third-Party Defendants, Ali Kia, M.D. and Nevada Hospitalist Group, LLP, as follows:

GENERAL ALLEGATIONS

1. Third-Party Plaintiff, SUNRISE HOSPITAL AND MEDICAL CENTER, a Nevada Corporation (hereinafter referred to as “SUNRISE HOSPITAL”), is a corporation duly organized under the laws of the State of Nevada and is authorized to do business as a hospital in Clark County, Nevada.
2. Third-Party Defendant Ali Kia, M.D., is a Board-Certified Internist who practices as a “Hospitalist.” Dr. Kia holds himself out as duly licensed to practice his profession under and by virtue of the laws of the State of Nevada and was, and now is, engaged in the practice of his profession in the State of Nevada.
3. Ali Kia, M.D., is an agent and/or employee of Third-Party Defendant, Nevada Hospitalist Group, LLP. Nevada Hospitalist Group, LLP is a Nevada Limited Liability Partnership in Clark County, Nevada.
4. Plaintiff, Choloe Green, an individual, has asserted that Ali Kia, M.D., is an ostensible agent of Third-Party Plaintiff Sunrise Hospital. The court has denied Sunrise Hospital’s motion to dismiss such potential claim finding there is a factual issue to be resolved by the finder of fact.
5. On information and belief DOES/ROE Corporations were the employer and/or were responsible for Third-Party Defendant Ali Kia M.D. being called into consulting and/or treating Plaintiff Choloe Green for her Sunrise hospitalization which commenced on July

14, 2016. When the true names and capacities of said Third-Party Defendants DOES/ROE Corporations have been ascertained, Third-Party Plaintiff will amend this Third-Party Complaint accordingly.

STATEMENTS OF FACTS

6. Third-Party Plaintiff, Sunrise Hospital repeats and realleges and incorporates each and every allegation contained in paragraphs 1-5 as though fully set forth herein.
7. Plaintiff, Choloe Green, had a caesarian section birth on July 9, 2016 at Sunrise Hospital with Frank J. DeLee, M.D., as the treating Obstetrician. Plaintiff was released home on the first post-operative day, July 10, 2016. Plaintiff contends in her complaint that her release was premature since a routine post-operative course is 3-4 days. Plaintiff also contends in her complaint that she was released prior to tolerating clear liquids and passing flatus.
8. Plaintiff alleges that Sunrise Hospital and Dr. DeLee breached the applicable standard of care in discharging Plaintiff from the hospital on July 10, 2016. *See* attached Exhibit "A" (Plaintiff's Choloe Green's Complaint for Medical Malpractice and Affidavit of Lisa Karamardian, M.D.).
9. Plaintiff, Choloe Green asserts that she was readmitted to Sunrise Hospital on July 14, 2016 with severe abdominal pain, nausea, vomiting, fever and chills. Ms. Green was admitted to the medical/surgical unit of the hospital. She was seen, treated, and/or consulted by Frank J. DeLee, M.D. and Ali Kia, M.D.
10. Plaintiff was discharged from Sunrise Hospital on July 16, 2016. Plaintiff alleges that her discharge was "discussed and confirmed by Dr. DeLee. . ."
11. The Sunrise Hospital records indicate that Ali Kia, M.D. ordered and electronically signed Plaintiff's July 16, 2016 discharge from Sunrise Hospital.

12. Plaintiff contends that her second discharge from sunrise Hospital on July 16, 2016 violated the standard of care. Plaintiff asserts that she was not able to tolerate a regular diet at the time of discharge and that her KUB showed multiple dilated loops of bowel (which Plaintiff asserts are related to small bowel obstruction).

13. Plaintiff alleges in her underlying complaint that because of the aforementioned negligence and breaches of the standard of care she suffered a protracted hospital course with multiple complications including discharge to a step-down facility once her antibiotic course was felt to be completed. Plaintiff asserts that she remained on a feeding tube and in need of rehabilitation.

14. Plaintiff contends that it was Sunrise Hospital and Dr. DeLee that breached the standard of care in discharging her from the hospital July 16, 2016.

15. Sunrise Hospital filed a Motion for Partial Summary Judgment which, in part, sought to dismiss any potential claim that Ali Kia, M.D. was an ostensible agent of the hospital during Plaintiff's July 14 – 16, 2016 hospitalization. The court denied the motion finding that there was a genuine issue of fact to be resolved by the finder of fact (jury).

16. Third-Party Defendant, Ali Kia, M.D. was “on call” for Nevada Hospitalist Group, LLP which resulted in Dr. Kia becoming a treating physician of the underlying Plaintiff, Choloe Green.

17. When Dr. Kia was “on call” for Nevada Hospitalist Group he was employed and/or an agent of Nevada Hospitalist Group.

THIRD-PARTY PLAINTIFF SUNRISE HOSPITAL CLAIM FOR INDEMNITY AND CONTRIBUTION AGAINST ALI KIA, M.D., AND NEVADA HOSPITALIST GROUP

18. Third-Party Plaintiff, Sunrise Hospital repeats and realleges and incorporates each and every allegation contained in paragraphs 1-17 as though fully set forth herein.

19. Plaintiff contends that she suffered injury and damage as a result of the care and treatment she received at Sunrise Hospital for her July 9, 2016 and July 14, 2016 hospitalizations.
20. Frank J. DeLee, M.D. discharged Choloe Green from her first hospitalization at Sunrise Hospital on July 10, 2016. Ali Kia, M.D. discharged Choloe Green from her second hospitalization at Sunrise Hospital on July 16, 2016.
21. The court has determined that during Plaintiff's July 9, 2016 hospitalization and July 16, 2016 hospitalization, Frank J. DeLee, M.D. was not an ostensible agent of the hospital and the hospital is not vicariously liable for Dr. DeLee.
22. The court has also determined that Sunrise Hospital is not vicariously liable for any care or treatment rendered by Ali Kia, M.D. to Plaintiff, Choloe Green during her July 16, 2016 hospital admission. The court, however, denied Sunrise Hospital's motion to dismiss any claim that Dr. Kia was an ostensible agent of the hospital during this same hospital admission (genuine issue of material fact precluding summary judgment).
23. Although unnamed as a party in Plaintiff Choloe Green's underlying complaint, Ali Kia, M.D. (Third-Party Defendant) discharged Plaintiff on July 16, 2016. As such, Dr. Kia's care of Choloe Green is at issue in Plaintiff's underlying complaint.
24. Attached as Exhibit "A" to this Third-Party Complaint is the Plaintiff, Choloe Green's underlying complaint for medical malpractice and attached expert affidavit of Lisa Karamardian, M.D.
25. Third-Party Plaintiff Sunrise Hospital pursuant to NRS 17.225 and 17.285, Nevada's contribution statutes, and also the doctrine equitable indemnity, seeks judgment

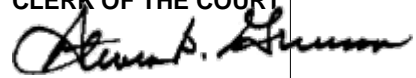
1 against Ali Kia, M.D. and Nevada Hospitalist Group for any amount awarded (by
2 verdict or judgment) against the hospital resulting from Ali Kia, M.D.'s treatment and
3 care of Choloe Green during her July 14, 2016 hospital admission.

4 26. WHEREFORE, Third-Party Plaintiff Sunrise Hospital and Medical Center prays that
5 judgment be entered in its favor and against Third-Party Defendants, Ali Kia, M.D.,
6 and Nevada Hospitalist Group, LLP, in an amount commensurate with the relative
7 degree of fault by Dr. Kia in causing the Plaintiff's alleged injuries and damages.
8

9 DATED this 14th day of June, 2019.

10 HALL PRANGLE & SCHOONVELD, LLC

11
12 By: /s/ Tyson J. Dobbs
13 MICHAEL E. PRANGLE, ESQ.
14 Nevada Bar No.: 8619
15 TYSON J. DOBBS, ESQ.
16 Nevada Bar No.: 11953
17 SHERMAN B. MAYOR, ESQ.
18 Nevada Bar No. 1491
19 1160 N. Town Center Dr., Ste. 200
20 Las Vegas, NV 89144
21 *Attorneys for Defendant*
22 *Sunrise Hospital and Medical Center, LLC*
23
24
25
26
27
28



1 ANTC
2 Patricia Egan Daehnke
3 Nevada Bar No. 4976
4 Patricia.Daehnke@cdiglaw.com
5 Linda K. Rurangirwa
6 Nevada Bar No. 9172
7 Linda.Rurangirwa@cdiglaw.com
8 COLLINSON, DAEHNKE, INLOW & GRECO
9 2110 E. Flamingo Road, Suite 212
10 Las Vegas, Nevada 89119
11 (702) 979-2132 Telephone
12 (702) 979-2133 Facsimile
13
14 *Attorneys for Third- Party Defendant*
15 *Ali Kia, M.D.*

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

12 CHLOE GREEN, an individual,
13
14 Plaintiffs,

15 vs.

16 FRANK J. DELEE, M.D., an individual;
17 FRANK J. DELEE MD, PC, a Domestic
18 Professional Corporation, SUNRISE
19 HOSPITAL AND MEDICAL CENTER, LLC,
20 a Foreign Limited-Liability Company.

21 Defendants.

22 SUNRISE HOSPITAL AND MEDICAL
23 CENTER, LLC, a Foreign Limited-Liability
24 Company,

25 Third-Party Plaintiff,

26 vs.

27 ALI KIA, M.D., Individually and his
28 employer, NEVADA HOSPITALIST
GROUP, LLP; DOES 1-10; AND ROE
CORPORATION 1-10; inclusive.

Third-Party Defendants.

CASE NO.: A-17-757722-C
DEPT. NO.: IX

**THIRD PARTY DEFENDANT ALI KIA,
M.D.'S ANSWER TO THIRD PARTY
COMPLAINT**

COLLINS, DAEHNKE, INLOW & GRECO
2110 E. Flamingo Road, Suite 305
LAS VEGAS, NEVADA 89119
TEL. (702) 979-2132 | FAX (702) 979-2133

COMES NOW Third Party Defendant, ALI KIA, M.D. (“Answering Third Party Defendant”) by and through his attorneys, COLLINSON, DAEHNKE, INLOW & GRECO and in answer to Third Party Plaintiff’s Third Party Complaint on file herein, admits, denies and alleges as follows:

GENERAL ALLEGATIONS

1. Answering Paragraph 1 of Third Party Plaintiff’s Third Party Complaint, Answering Third Party Defendant is without sufficient knowledge or information to form a belief as to the truth of the allegations contained in said paragraph, and on that basis denies each and every allegation contained therein.

2. Answering Paragraph 2 of Third Party Plaintiff’s Third Party Complaint, Answering Third Party Defendant admits the allegations contained therein.

3. Answering Paragraph 3 of Third Party Plaintiff’s Third Party Complaint, Answering Third Party Defendant denies he is an agent and/or employee of Third Party Defendant, Nevada Hospitalist Group, LLP. As to all other allegations contained therein, Answering Third Party Defendant is without sufficient knowledge or information to form a belief as to the truth of such allegations contained in said paragraph, and on that basis denies each and every allegation contained therein.

4. Answering Paragraph 4 of Third Party Plaintiff’s Third Party Complaint, Answering Third Party Defendant is without sufficient knowledge or information to form a belief as to the truth of the allegations contained in said paragraph, and on that basis denies each and every allegation contained therein.

5. Answering Paragraph 5 of Third Party Plaintiff’s Third Party Complaint, Answering Third Party Defendant is without sufficient knowledge or information to form a belief as to the truth of the allegations contained in said paragraph, and on that basis denies each and every allegation contained therein.

STATEMENT OF FACTS

6. Answering Paragraph 6 of Third Party Plaintiff’s Third Party Complaint, Answering Third Party Defendant repeats, realleges and incorporates each and every

1 response to allegations contained in paragraphs 1-5 as though fully set forth herein.

2 7. Answering Paragraph 7 of Third Party Plaintiff's Third Party Complaint,
3 Answering Third Party Defendant is without sufficient knowledge or information to form a
4 belief as to the truth of the allegations contained in said paragraph, and on that basis denies
5 each and every allegation contained therein.

6 8. Answering Paragraph 8 of Third Party Plaintiff's Third Party Complaint,
7 Answering Third Party denies there was an Exhibit "A" attached to the Third Party
8 Complaint served on him and contends the document speaks for itself. As to all other
9 allegations contained therein, Answering Third Party Defendant is without sufficient
10 knowledge or information to form a belief as to the truth of such allegations contained in said
11 paragraph, and on that basis denies each and every allegation contained therein.

12 9. Answering Paragraph 9 of Third Party Plaintiff's Third Party Complaint,
13 Answering Third Party contends the document speaks for itself. As to all other allegations
14 contained therein, Answering Third Party Defendant is without sufficient knowledge or
15 information to form a belief as to the truth of such allegations contained in said paragraph,
16 and on that basis denies each and every allegation contained therein.

17 10. Answering Paragraph 10 of Third Party Plaintiff's Third Party Complaint,
18 Answering Third Party contends the document speaks for itself. As to all other allegations
19 contained therein, Answering Third Party Defendant is without sufficient knowledge or
20 information to form a belief as to the truth of such allegations contained in said paragraph,
21 and on that basis denies each and every allegation contained therein.

22 11. Answering Paragraph 11 of Third Party Plaintiff's Third Party Complaint,
23 Answering Third Party contends the document speaks for itself. As to all other allegations
24 contained therein, Answering Third Party Defendant is without sufficient knowledge or
25 information to form a belief as to the truth of such allegations contained in said paragraph,
26 and on that basis denies each and every allegation contained therein.

27 12. Answering Paragraph 12 of Third Party Plaintiff's Third Party Complaint,
28 Answering Third Party contends the document speaks for itself. As to all other allegations

1 contained therein, Answering Third Party Defendant is without sufficient knowledge or
2 information to form a belief as to the truth of such allegations contained in said paragraph,
3 and on that basis denies each and every allegation contained therein.

4 13. Answering Paragraph 13 of Third Party Plaintiff's Third Party Complaint,
5 Answering Third Party contends the document speaks for itself. As to all other allegations
6 contained therein, Answering Third Party Defendant is without sufficient knowledge or
7 information to form a belief as to the truth of such allegations contained in said paragraph,
8 and on that basis denies each and every allegation contained therein.

9 14. Answering Paragraph 14 of Third Party Plaintiff's Third Party Complaint,
10 Answering Third Party contends the document speaks for itself. As to all other allegations
11 contained therein, Answering Third Party Defendant is without sufficient knowledge or
12 information to form a belief as to the truth of such allegations contained in said paragraph,
13 and on that basis denies each and every allegation contained therein.

14 15. Answering Paragraph 15 of Third Party Plaintiff's Third Party Complaint,
15 Answering Third Party Defendant is without sufficient knowledge or information to form a
16 belief as to the truth of the allegations contained in said paragraph, and on that basis denies
17 each and every allegation contained therein.

18 16. Answering Paragraph 16 of Third Party Plaintiff's Third Party Complaint,
19 Answering Third Party Defendant admits he was covering for Nevada Hospitalist Group,
20 LLP and on call which resulted in him becoming at treating physician of Choloe Green. As
21 to all other allegations contained therein, Answering Third Party Defendant is without
22 sufficient knowledge or information to form a belief as to the truth of such allegations
23 contained in said paragraph, and on that basis denies each and every allegation contained
24 therein.

25 17. Answering Paragraph 17 of Third Party Plaintiff's Third Party Complaint,
26 Answering Third Party Defendant denies he was employed by Nevada Hospitalist Group.
27 As to all other allegations contained therein, Answering Third Party Defendant is without
28 sufficient knowledge or information to form a belief as to the truth of such allegations

1 contained in said paragraph, and on that basis denies each and every allegation contained
2 therein.

3 **THIRD-PARTY PLAINTIFF SUNRISE HOSPITAL'S CLAIM FOR INDEMNITY**
4 **AND CONTRIBUTION AGAINST ALI KIA, M.D. AND NEVADA HOSPITALIST**
5 **GROUP.**

6 18. Answering Paragraph 18 of Third Party Plaintiff's Third Party Complaint,
7 Answering Third Party Defendant repeats, realleges and incorporates each and every
8 response to allegations contained in paragraphs 1-17 as though fully set forth herein.

9 19. Answering Paragraph 19 of Third Party Plaintiff's Third Party Complaint,
10 Answering Third Party Defendant is without sufficient knowledge or information to form a
11 belief as to the truth of the allegations contained in said paragraph, and on that basis denies
12 each and every allegation contained therein.

13 20. Answering Paragraph 20 of Third Party Plaintiff's Third Party Complaint,
14 Answering Third Party Defendant admits he discharged Choloe Green from Sunrise Hospital
15 on July 16, 2016. As to all other allegations contained therein, Answering Third Party
16 Defendant is without sufficient knowledge or information to form a belief as to the truth of
17 such allegations contained in said paragraph, and on that basis denies each and every
18 allegation contained therein.

19 21. Answering Paragraph 21 of Third Party Plaintiff's Third Party Complaint,
20 Answering Third Party Defendant is without sufficient knowledge or information to form a
21 belief as to the truth of the allegations contained in said paragraph, and on that basis denies
22 each and every allegation contained therein.

23 22. Answering Paragraph 22 of Third Party Plaintiff's Third Party Complaint,
24 Answering Third Party Defendant is without sufficient knowledge or information to form a
25 belief as to the truth of the allegations contained in said paragraph, and on that basis denies
26 each and every allegation contained therein.

27 23. Answering Paragraph 23 of Third Party Plaintiff's Third Party Complaint,
28 Answering Third Party Defendant admits he discharged Plaintiff on July 16, 2016. As to all
other allegations contained therein, Answering Third Party Defendant is without sufficient

1 knowledge or information to form a belief as to the truth of such allegations contained in said
2 paragraph, and on that basis denies each and every allegation contained therein.

3 24. Answering Paragraph 24 of Third Party Plaintiff's Third Party Complaint,
4 Answering Third Party denies there was an Exhibit "A" attached to the Third Party
5 Complaint served on him and contends the document speaks for itself. As to all other
6 allegations contained therein, Answering Third Party Defendant is without sufficient
7 knowledge or information to form a belief as to the truth of such allegations contained in said
8 paragraph, and on that basis denies each and every allegation contained therein.

9 25. Answering Paragraph 25 of Third Party Plaintiff's Third Party Complaint,
10 Answering Third Party denies Sunrise Hospital is entitled to equitable indemnity or
11 contribution from Answering Third Party Defendant. As to all other allegations contained
12 therein, Answering Third Party Defendant is without sufficient knowledge or information to
13 form a belief as to the truth of such allegations contained in said paragraph, and on that basis
14 denies each and every allegation contained therein.

15 26. Answering Paragraph 26 of Third Party Plaintiff's Third Party Complaint,
16 Answering Third Party denies he is at fault in causing Plaintiff's alleged injuries and damages
17 and further denies Sunrise Hospital is entitled to judgment against him for such alleged
18 injuries and damages. As to all other allegations contained therein, Answering Third Party
19 Defendant is without sufficient knowledge or information to form a belief as to the truth of
20 such allegations contained in said paragraph, and on that basis denies each and every
21 allegation contained therein.

22 **AFFIRMATIVE DEFENSES**

23 **FIRST AFFIRMATIVE DEFENSE**

24 Third Party Plaintiff's Third Party Complaint fails to state a claim against Answering
25 Third Party Defendant upon which relief can be granted.

26 **SECOND AFFIRMATIVE DEFENSE**

27 Answering Third Party Defendant alleges that in all medical care rendered to Plaintiff
28 Choloe Green, Answering Third Party Defendant possessed and exercised that degree of skill

1 and learning ordinarily possessed and exercised by members of the medical profession in
2 good standing practicing in similar localities, and that at all times Answering Third Party
3 Defendant used reasonable care and diligence in the exercise of this skill and application of
4 this learning, and at all times acted in accordance with his best medical judgment.

5 **THIRD AFFIRMATIVE DEFENSE**

6 Answering Third Party Defendant alleges that any liability or damages assessed
7 against Third Party Plaintiff is not based on, or secondary to, any acts or omissions—
8 including negligence and/or medical negligence of Answering Third Party Defendant.

9 **FOURTH AFFIRMATIVE DEFENSE**

10 Answering Third Party Defendant made, consistent with good medical practice, a full
11 and complete disclosure to Plaintiff Choloe Green of all material facts known to him or
12 reasonably believed by him to be true concerning Plaintiff Choloe Green's physical condition
13 and the appropriate alternative procedures available for treatment of such condition. Further,
14 each and every service rendered to Plaintiff Choloe Green by Answering Third Party
15 Defendant was expressly and impliedly consented to and authorized by Plaintiff Choloe
16 Green, on the basis of said full and complete disclosure.

17 **FIFTH AFFIRMATIVE DEFENSE**

18 Third Party Plaintiff's Third Party Complaint is barred by the applicable statute of
19 limitations.

20 **SIXTH AFFIRMATIVE DEFENSE**

21 Plaintiff Choloe Green assumed the risks of the medical procedures and treatment
22 performed by Answering Third Party Defendant.

23 **SEVENTH AFFIRMATIVE DEFENSE**

24 Plaintiff Choloe Green's damages, if any, were caused by, and due to, an unavoidable
25 condition or occurrence.

26 **EIGHTH AFFIRMATIVE DEFENSE**

27 Third Party Plaintiff and Plaintiff Choloe Green have failed to mitigate their damages,
28 if any, in spite of a duty to do so.

NINTH AFFIRMATIVE DEFENSE

The injuries and damages alleged by Plaintiff Choloe Green were caused by the actions or inactions of third parties over whom Answering Third Party Defendant has no liability, responsibility or control.

TENTH AFFIRMATIVE DEFENSE

The injuries and damages alleged by Plaintiff Choloe Green were unforeseeable.

ELEVENTH AFFIRMATIVE DEFENSE

The injuries and damages alleged by Plaintiff Choloe Green were caused by forces of nature over which Answering Third Party Defendant had no responsibility, liability or control.

TWELFTH AFFIRMATIVE DEFENSE

Third Party Plaintiff's Third Party Complaint violates the Statute of Frauds.

THIRTEENTH AFFIRMATIVE DEFENSE

Pursuant to Nevada law, Third Party Defendants cannot be jointly liable and that if liability is imposed, such liability would be several for that portion of Third Party Plaintiff's damages, if any, which represents the percentage attributed to each Third Party Defendant.

FOURTEENTH AFFIRMATIVE DEFENSE

The injuries and damages alleged by Plaintiff Choloe Green were caused by new, independent, intervening and superseding causes and not by Answering Third Party Defendant's alleged negligence or other actionable conduct, the existence of which is specifically denied.

FIFTEENTH AFFIRMATIVE DEFENSE

Any damages assessed against Answering Defendant are subject to the limitations and protections as set forth in Chapter 41A of the Nevada Revised Statutes including, without limitation, several liability and limits on noneconomic damages.

SIXTEENTH AFFIRMATIVE DEFENSE

It has been necessary to employ the services of an attorney to defend this action and a reasonable sum should be allowed Answering Third Party Defendant for attorney's fees, together with his costs expended in this action.

SEVENTEENTH AFFIRMATIVE DEFENSE

The injuries and damages alleged by Plaintiff Choloe Green can and do occur in the absence of negligence.

EIGHTEENTH AFFIRMATIVE DEFENSE

Should liability be found against Answering Third Party Defendant—which is expressly denied—and damages assessed, the proportionate degree of negligence, fault, and/or legal responsibility of each and every person or entity (whether such other person or entity are parties to the Third Party Complaint) must be determined and prorated, and any judgment which may be rendered against Answering Third Party Defendant must be reduced by the degree of negligence, fault and/or other legal responsibility found to exist as to the other parties, persons or entities.

NINETEENTH AFFIRMATIVE DEFENSE

No contractual guarantees or warranties were in existence and there is no privity of contract between Third Party Plaintiff and Answering Third Party Defendant, or between Plaintiff Choloe Green and Answering Third Party Defendant.

TWENTETH AFFIRMATIVE DEFENSE

Answering Third Party Defendant is entitled to assert all available defenses to contract, the existence of which is specifically denied.

TWENTY-FIRST AFFIRMATIVE DEFENSE

Answering Third Party Defendant asserts all defenses available to him in law and equity, including, without limitation, all available defenses pursuant to Nevada Rule of Civil Procedure 12.

TWENTY-SECOND AFFIRMATIVE DEFENSE

Answering Third Party Defendant is entitled to all protections, benefits, and set offs available to Answering Defendant in medical malpractice actions under Nevada Revised Statutes Chapters 41A and 42.

///

///

TWENTY-THIRD AFFIRMATIVE DEFENSE

To the extent Plaintiff Choloe Green has been reimbursed from any source for any special damages claimed to have been sustained as a result of the incidents alleged in Plaintiff Choloe Green's Complaint against Third Party Plaintiff, Answering Third Party Defendant may elect to offer those amounts into evidence and, if Third Party Answering Defendant so elects, Third Party Plaintiff's special damages shall be reduced by those amounts pursuant to Nevada Revised Statute 42.021.

TWENTY-FOURTH AFFIRMATIVE DEFENSE

To the extent a portion of Third Party Plaintiff's claimed damages are based on future damages, Answering Third Party Defendant may satisfy that amount through payments pursuant to Nevada Revised Statute 42.021.

TWENTY-FIFTH AFFIRMATIVE DEFENSE

At all times mentioned herein, Answering Third Party Defendant acted reasonably, in good faith, and within the applicable standard of care with regard to the acts and transactions which are the subject of the Third Party Plaintiff's Third Party Complaint.

TWENTY-SIXTH AFFIRMATIVE DEFENSE

The complained of acts of Answering Third Party Defendant were justified under the circumstances.

TWENTY-SEVENTH AFFIRMATIVE DEFENSE

Answering Third Party Defendant is entitled to a conclusive presumption of informed consent pursuant to NRS 41A.110.

TWENTY-EIGHTH AFFIRMATIVE DEFENSE

The expert affidavit of Lisa Karamardian, M.D. attached to Third Party Plaintiff's Third Party Complaint does not comply with NRS 41A.071 in that it fails to demonstrate Answering Third Party Defendant breached the standard of care in Plaintiff Choloe Green's case, and fails to demonstrate an alleged causal link between the Answering Third Party Defendant's treatment of Plaintiff Choloe Green and Third Party Plaintiff's alleged injuries and damages.

TWENTY-NINTH AFFIRMATIVE DEFENSE

The expert affidavit of Lisa Karamardian, M.D. attached to Third Party Plaintiff's Third Party Complaint does not comply with NRS 41A.071 in that it fails to support the allegations contained in the Third Party Complaint.

THIRTEETH AFFIRMATIVE DEFENSE

Third Party Plaintiff's Third Party Complaint fails to comply with NRS 41A.100 as Third Party Plaintiff has failed to provide expert medical testimony to demonstrate the alleged deviation from the accepted standard of care in the specific circumstances of this case and to prove causation of the alleged personal injury.

THIRTY-FIRST AFFIRMATIVE DEFENSE

Answering Third Party Defendant has fully performed his duties owed to Plaintiff Choloe Green and Third Party Plaintiff is, therefore, estopped to assert any claim against him.

THIRTY-SECOND AFFIRMATIVE DEFENSE

Third Party Plaintiff has not suffered any compensable injury as a result of Answering Defendant's alleged actions and, as a result, is not entitled to contribution or indemnification against Answering Third Party Defendant.

THIRTY-THIRD AFFIRMATIVE DEFENSE

Third Party Plaintiff's contribution and indemnification claims are premature, not ripe for consideration, and request speculative damages as Third Party Plaintiff has not suffered any actual injury or damages.

THIRTY-FOURTH AFFIRMATIVE DEFENSE

Third Party Plaintiff is barred from bringing the current contribution claim against Answering Defendant as medical negligence is a foreseeable consequence of the alleged negligence of Third Party Plaintiff and, therefore, Third Party Plaintiff is responsible for any and all injuries and damages stemming from the alleged medical negligence of Answering Third Party Defendant.

///

///

1 **THIRTY-FIFTH AFFIRMATIVE DEFENSE**

2 Any injuries or damages allegedly sustained or suffered by Plaintiff Choloe Green
3 referred in the Complaint, were caused, in whole or in part, or were contributed to, by the
4 negligence or fault or want of care of Plaintiff Choloe Green, and that the negligence, fault or
5 want of care on the part of Plaintiff Choloe Green was greater than that, if any, of the
6 Answering Third Party Defendant, the existence of which is specifically denied.

7 **THIRTY-SIXTH AFFIRMATIVE DEFENSE**

8 Pursuant to Nevada Rule of Civil Procedure 11, all possible affirmative defenses may
9 not have been alleged as sufficient facts were not available, after reasonable inquiry, upon the
10 filing of Answering Defendant's Answer to Third Party Complaint and, therefore, Answering
11 Third Party Defendant reserves the right to amend his Answer to allege additional affirmative
12 defenses if subsequent investigation warrants. Additionally, one or more of these affirmative
13 defenses may have been pled for the purposes of non-waiver.

14 **WHEREFORE**, Answering Third Party Defendant prays as follows:

- 15 1. That Third Party Plaintiff take nothing by reason of its Third Party Complaint;
16 2. For all attorney's fees incurred in the defense of Third Party Plaintiff's Third
17 Party Complaint against Answering Third Party Defendant;
18 3. For costs and disbursements incurred herein; and

19 ///

20 ///

21 ///

22 ///

23 ///

24 ///

25 ///

26 ///

27 ///

28 ///

1 **CERTIFICATE OF SERVICE**

2 I hereby certify that on this 2nd day of August, 2019, a true and correct copy of
3 **THIRD PARTY DEFENDANT ALI KIA, M.D.'S ANSWER TO THIRD PARTY**
4 **COMPLAINT** was served by electronically filing with the Clerk of the Court using the
5 Odyssey File & Serve system and serving all parties with an email address on record, who
6 have agreed to receive Electronic Service in this action.

7
8 DANIEL MARKS, ESQ.
9 NICOLE M. YOUNG, ESQ.
10 Law Office of Daniel Marks
11 610 South Ninth Street
12 Las Vegas, Nevada 89101
13 (702) 386-0536
14 *Attorneys for Plaintiff Choloe Green*

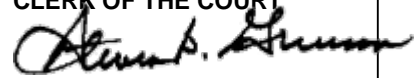
15 ERIC K. STRYKER, ESQ.
16 Wilson Elser Moskowitz Edelman & Dicker LLP
17 300 South Fourth Street
18 11th Floor
19 Las Vegas, Nevada 89101
20 (702) 727-1400
21 *Attorneys for Defendants*
22 *Frank J. DeLee, M.D. and Frank J. DeLee, M.D., P.C.:*

23 MICHAEL E. PRANGLE, ESQ.
24 TYSON J. DOBBS, ESQ.
25 SHERMAN B. MAYOR, ESQ.
26 Hall Prangle and Schoonveld LLC
27 19 1160 North Town Center Drive
28 Suite 200
20 Las Vegas, Nevada 89144
Attorneys for Defendant and Third Party Plaintiff
Sunrise Hospital and Medical Center, LLC

26 By /s/ Linda K. Rurangirwa
27 An employee of COLLINSON, DAEHNKE,
28 INLOW & GRECO

COLLINSON, DAEHNKE, INLOW & GRECO
2110 E. Flamingo Road, Suite 305
LAS VEGAS, NEVADA 89119
TEL. (702) 979-2132 | FAX (702) 979-2133

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28



1 S. BRENT VOGEL
Nevada Bar No. 006858
2 E-Mail: Brent.Vogel@lewisbrisbois.com
ERIN E. JORDAN
3 Nevada Bar No. 10018
E-Mail: Erin.Jordan@lewisbrisbois.com
4 LEWIS BRISBOIS BISGAARD & SMITH LLP
6385 S. Rainbow Boulevard, Suite 600
5 Las Vegas, Nevada 89118
702.893.3383
6 FAX: 702.893.3789
*Attorneys for Third-Party Defendant Nevada
Hospitalist Group, LLP*

8
9 DISTRICT COURT
10 CLARK COUNTY, NEVADA

11 CHOLOE GREEN, an individual,
12
13 Plaintiff,

14 vs.

15 FRANK J. DELEE, M.D., an individual;
16 FRANK J. DELEE, MD, PC, a Domestic
Professional Corporation, SUNRISE
HOSPITAL AND MEDICAL CENTER, LLC,
a foreign Limited-Liability Company, ,

17 Defendants.

CASE NO. A-17-757722-C
Dept. No.: IX

**THIRD-PARTY DEFENDANT NEVADA
HOSPITALIST GROUP, LLP'S ANSWER
TO SUNRISE HOSPITAL AND MEDICAL
CENTER, LLC'S THIRD PARTY
COMPLAINT**

18
19 SUNRISE HOSPITAL AND MEDICAL
CENTER, LLC, a Foreign Limited-Liability
20 Company,

21 Third Party Plaintiff,

22 vs.

23 ALI KIA, M.D., Individually and his
employer, NEVADA HOSPITALIST
24 GROUP, LLP; DOES 1-10; AND ROE
CORPORATION 1-10; inclusive.,

25 Third Party Defendants.
26
27
28

1 Third-Party Defendant NEVADA HOSPITALIST GROUP, LLP, (“Defendant”) by and
2 through its attorneys of record, S. Brent Vogel, Esq. and Erin E. Jordan, Esq. of LEWIS
3 BRISBOIS BISGAARD & SMITH LLP, hereby answers Third-Party Plaintiff’s Third Party
4 Complaint as follows:

5 **GENERAL ALLEGATIONS**

6 1. Answering Paragraphs 1 and 2 of Third-Party Plaintiff’s Third Party Complaint, Third-
7 Party Defendant is without sufficient information or knowledge to form a belief as to the truth or
8 falsity of the allegations contained therein and upon that basis, denies each and every allegation
9 contained therein.

10 2. Answering Paragraph 3 of Third-Party Plaintiff’s Third Party Complaint, Third-Party
11 Defendant denies each and every allegation contained therein.

12 3. Answering Paragraphs 4 and 5 of Third-Party Plaintiff’s Third Party Complaint, Third-
13 Party Defendant is without sufficient information or knowledge to form a belief as to the truth or
14 falsity of the allegations contained therein and upon that basis, denies each and every allegation
15 contained therein.

16 **STATEMENT OF FACTS**

17 4. Answering Paragraph 6 of Third-Party Plaintiff’s Third Party Complaint, Third-Party
18 Defendant hereby repeats, realleges and incorporates by reference its responses to Paragraphs 1
19 through 5, supra, as though fully set forth herein.

20 5. Answering Paragraphs 7, 8, 9, 10, 11, 12, 13, 14 and 15 of Third-Party Plaintiff’s Third
21 Party Complaint, Third-Party Defendant is without sufficient information or knowledge to form a
22 belief as to the truth or falsity of the allegations contained therein and upon that basis, denies each
23 and every allegation contained therein.

24 6. Answering Paragraphs 16 and 17 of Third-Party Plaintiff’s Third Party Complaint, Third-
25 Party Defendant denies each and every allegation contained therein.

26 ///

27 ///

28 ///

1 **THIRD-PARTY PLAINTIFF SUNRISE HOSPITAL CLAIM FOR INDEMNITY AND**
2 **CONTRIBUTION AGAINST ALI KIA, M.D., AND NEVADA HOSPITALIST GROUP**

3 7. Answering Paragraph 18 of Third-Party Plaintiff's Third Party Complaint, Third-Party
4 Defendant hereby repeats, realleges and incorporates by reference its responses to Paragraphs 1
5 through 17, supra, as though fully set forth herein.

6 8. Answering Paragraphs 19, 20, 21, 22, 23, 24 and 25 of Third-Party Plaintiff's Third Party
7 Complaint, Third-Party Defendant is without sufficient information or knowledge to form a belief
8 as to the truth or falsity of the allegations contained therein and upon that basis, denies each and
9 every allegation contained therein.

10 **AFFIRMATIVE DEFENSES**

11 1. Third-Party Plaintiff's Third Party Complaint on file herein fails to state a claim against
12 Third-Party Defendant upon which relief can be granted.

13 2. Third-Party Plaintiff's Third Party Complaint on file herein is barred by the applicable
14 statute of limitations.

15 3. The injuries, if any, allegedly suffered by Third-Party Plaintiff as set forth in the Third-
16 Party Complaint were caused in whole or in part by the negligence of a third party or third parties
17 over which Third-Party Defendant had no control.

18 4. The damages, if any, alleged by Third-Party Plaintiff are not the result of any acts of
19 omission, commission, or negligence by this Third-Party Defendant, but were the result of a
20 known risk, which was consented to by Third-Party Plaintiff.

21 5. Pursuant to NRS 41A.110, Defendant is entitled to a conclusive presumption of informed
22 consent.

23 6. The damages, if any, incurred by Third-Party Plaintiff are not attributable to any act,
24 conduct, or omission on the part of this Third-Party Defendant. Third-Party Defendant denies that
25 it was negligent or otherwise culpable in any matter or in any degree with respect to the matters set
26 forth in Third-Party Plaintiff's Third-Party Complaint.

27 7. That it has been necessary for Third-Party Defendant to employ the services of an attorney
28 to defend this action and a reasonable sum should be allowed Third-Party Defendant for attorneys'

1 fees, together with costs of suit incurred herein.

2 8. Pursuant NRS 41A.035 Plaintiffs' non-economic damages, if any, may not exceed
3 \$350,000.

4 9. Third-Party Defendant is not jointly liable with any other entity that may or may not be
5 named in this action, and will only be severally liable for that portion of Third-Party Plaintiff's
6 claims that represent the percentage of negligence attributable to Third-Party Defendant, if any.

7 10. Third-Party Plaintiff's damages, if any, were not proximately caused by Third-Party
8 Defendant.

9 11. Third-Party Plaintiff's injuries and damages, if any, are the result of forces of nature over
10 which Third-Party Defendant had no control or responsibility.

11 12. Third-Party Plaintiff are barred from asserting any claims against Third-Party Defendant
12 because the alleged damages were the result of one or more unforeseeable intervening and
13 superseding causes.

14 13. Third-Party Plaintiff failed to mitigate damages, if any.

15 14. Third-Party Plaintiff failed to allege facts in support of any award of pre-judgment interest.

16 15. The incident alleged in the Third-Party Complaint, and the resulting damages, if any, to
17 Third-Party Plaintiff, were proximately caused or contributed to by the decedent's own
18 negligence, and such negligence was greater than the negligence, if any, of Third-Party Defendant.

19 16. Pursuant to NRCP 11, as amended, all applicable Affirmative Defenses may not have been
20 alleged herein insofar as sufficient facts were not available after reasonable inquiry upon the filing
21 of Third-Party Defendant's Answer and, therefore, Third-Party Defendant reserves the right to
22 amend its Answer to allege additional Affirmative Defenses if subsequent investigation warrants.

23 17. Third-Party Plaintiff failed to substantively comply with NRS 41A.071.

24 18. At all times mentioned herein, Third-Party Defendant acted reasonably and in good faith
25 with regard to the acts and transactions which are the subject of this lawsuit.

26 19. To the extent Third-Party Plaintiff has been reimbursed from any source for any special
27 damages claimed to have been sustained as a result of the incidents alleged in Third-Party
28 Plaintiff's Third-Party Complaint, Third-Party Defendant may elect to offer those amounts into

1 evidence and, if Third-Party Defendant so elects, Third-Party Plaintiff's special damages shall be
2 reduced by those amounts pursuant to NRS 42.021.

3 20. Third-Party Defendant hereby incorporates by reference those affirmative defenses
4 enumerated in NRCP 8 as if fully set forth herein. In the event further investigation or discovery
5 reveals the applicability of such defenses, Third-Party Defendant reserves the right to seek leave
6 of the Court to amend his Answer to assert the same. Such defenses are incorporated herein by
7 reference for the purpose of not waiving the same.

8 21. Third-Party Defendant avail itself of all affirmative defenses and limitations of action as
9 set out in NRS 41.085, 41A.035, 41A.045, 41A.061, 41A.071, 41A.097, 41A.100, 42.005, 42.021,
10 41.141, and all applicable subparts.

11 22. NRS Chapters 41 and 41A limit damages that may be collectable against Third-Party
12 Defendant.

13 23. Third-Party Plaintiff is barred from bringing this action for failure to comply with
14 applicable contractual remedies and requirements, including arbitration, if applicable. Third-Party
15 Plaintiff's failure to comply with the contractual remedies and requirements notwithstanding,
16 Third-Party Defendant reserves his right to enforce any applicable arbitration provision.

17 WHEREFORE, Third-Party Defendant prays for judgment as follows:

18 1. That Third-Party Plaintiff take nothing by way of the Third Party Complaint on file
19 herein;

20 ///

21 ///

22 ///

23 ///

24 ///

25 ///

26 ///

27 ///

28 ///

CERTIFICATE OF SERVICE

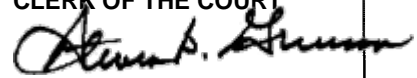
I hereby certify that on this 27th day of December, 2019, a true and correct copy of **THIRD-PARTY DEFENDANT NEVADA HOSPITALIST GROUP, LLP'S ANSWER TO SUNRISE HOSPITAL AND MEDICAL CENTER, LLC'S THIRD PARTY COMPLAINT** was served by electronically filing with the Clerk of the Court using the Electronic Service system and serving all parties with an email-address on record, who have agreed to receive Electronic Service in this action.

Daniel Marks, Esq.
Nicole M. Young, Esq.
LAW OFFICE OF DANIEL MARKS
610 S. 9th St.
Las Vegas, NV 89101
Tel: 702.386.0536
Fax: 702.386.6812
Attorneys for Plaintiff

Erik Stryker, Esq.
WILSON ELSEER MOSKOWITZ EDELMAN
& DICKER LLP
300 S. 4th St.
Las Vegas, NV 89101
Tel: 702.727.1400
Fax: 702.727.1401
*Attorneys for Defendants Frank J. Delee, M.D.
and Frank J. Delee, M.D., PC*

Michael E. Prangle, Esq.
Tyson J. Dobbs, Esq.
Sherman B. Mayor, Esq.
HALL PRANGLE & SCHOONVELD, LLC
1160 N. Town Center Dr., Suite 200
Las Vegas, NV 89144
Tel: 702.889.6400
Fax: 702.384.6025
Attorneys for Defendant/Third-Party Plaintiff

By /s/ Johana Whitbeck
An Employee of
LEWIS BRISBOIS BISGAARD & SMITH LLP



LAW OFFICE OF DANIEL MARKS
DANIEL MARKS, ESQ.
Nevada State Bar No. 002003
NICOLE M. YOUNG, ESQ.
Nevada State Bar No. 12659
610 South Ninth Street
Las Vegas, Nevada 89101
(702) 386-0536; Fax (702) 386-6812
Attorneys for Plaintiff

DISTRICT COURT
CLARK COUNTY, NEVADA

CHLOE GREEN, an individual,

Case No.
Dept. No.

A-17-757722-C
IX

Plaintiff,

v.

FRANK J. DELEE, M.D., an individual;
FRANK J. DELEE MD, PC, a Domestic
Professional Corporation, SUNRISE HOSPITAL
AND MEDICAL CENTER, LLC, a Foreign
Limited-Liability Company.

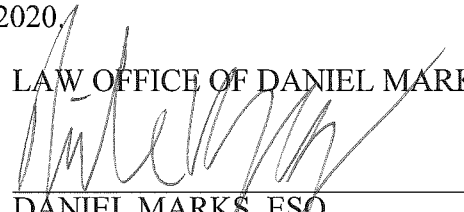
Defendants.

NOTICE OF ENTRY OF ORDER FROM MARCH 12, 2019 HEARING

PLEASE TAKE NOTICE that an order from March 12, 2019 hearing was entered in the above-entitled action on the 5th day of March, 2020, a copy of which is attached hereto.

DATED this 6 day of March, 2020.

LAW OFFICE OF DANIEL MARKS



DANIEL MARKS, ESQ.
Nevada State Bar No. 002003
NICOLE M. YOUNG, ESQ.
Nevada State Bar No. 12659
610 South Ninth Street
Las Vegas, Nevada 89101
Attorneys for Plaintiff

- 1
- 2
- 3
- 4
- 5
- 6
- 7
- 8
- 9
- 10
- 11
- 12
- 13
- 14
- 15
- 16
- 17
- 18
- 19
- 20
- 21
- 22
- 23
- 24
- 25
- 26
- 27
- 28

Erik Stryker
WILSON, ELSE, MOSKOWITZ, EDELMAN & DICKER LLP
300 South 4th Street, 11th floor
Las Vegas, Nevada 89101
Attorneys for Frank J. Delee M.D. and Frank J. Delee P.C.


An employee of the
LAW OFFICE OF DANIEL MARKS



LAW OFFICE OF DANIEL MARKS
DANIEL MARKS, ESQ.
Nevada State Bar No. 002003
NICOLE M. YOUNG, ESQ.
Nevada State Bar No. 12659
610 South Ninth Street
Las Vegas, Nevada 89101
(702) 386-0536; Fax (702) 386-6812
Attorneys for Plaintiff

DISTRICT COURT
CLARK COUNTY, NEVADA

Please Note
Dept. Change

CHLOE GREEN, an individual,

Case No.
Dept. No.

A-17-757722-C
VIII IX

Plaintiff,

v.

FRANK J. DELEE, M.D., an individual;
FRANK J. DELEE MD, PC, a Domestic
Professional Corporation, SUNRISE HOSPITAL
AND MEDICAL CENTER, LLC, a Foreign
Limited-Liability Company.

Defendants.

ORDER FROM MARCH 12, 2019 HEARING

This matter having come on for hearing on the 12th day of March, 2019, at the hour of 8:00 a.m. on Defendant Sunrise Hospital and Medical Center, LLC's Motion for Partial Summary Judgment to Dismiss Any Claim of "Ostensible Agency" for Dr. Kia or Dr. Delee; Plaintiff appearing by and through her counsel, Daniel Marks, Esq., and Nicole M. Young, Esq., of the Law Office of Daniel Marks; Defendants Frank J. Delee, M.D. and Frank J. Delee, M.D., P.C., appearing by and through its counsel, Alia A. Najjar, Esq., of Wilson Elser Moskowitz Edelman & Dicker, LLP; and Defendant Sunrise Hospital and Medical Center, LLC, appearing by and through its counsel, Sherman Mayor,

1 Esq., of Hall Prangle Schoonfeld, LLC; the Court having reviewed the papers and pleadings on file,
2 having heard the arguments of counsel and good appearing:

3 IT IS HEREBY ORDERED, ADJUDGED AND DECREED that Defendant Sunrise Hospital
4 and Medical Center, LLC's instant motion is GRANTED IN PART and DENIED IN PART, as
5 follows:

- 6 1. Defendant's motion is DENIED as it relates to Plaintiff's claims against the hospital for any
7 of Dr. Kia's actions under the theory of ostensible agency. As such, Plaintiff may argue that
8 Defendant Sunrise Hospital and Medical Center, LLC, is vicariously liable for Dr. Kia's
9 actions under the doctrine of ostensible agency. "Whether an ostensible agency relationship
10 exists is... a question of fact for the jury." *McCrosky v. Carson Tahoe Regional Medical*
11 *Center*, 133 Nev. Adv. Op. 115, 408 P.3d 149 (2017).
- 12 2. Defendant's motion is GRANTED as it relates to any claim that the hospital is vicariously
13 liable for Dr. Delee's actions. In addition, Plaintiff concedes that Defendant Sunrise
14 Hospital and Medical Center, LLC, is not liable for the actions of Dr. Delee.

15 ////

16 ////

17 ////

18 ////

19 ////

20 ////

21 ////

22 ////

23 ////

24 ////

25 ////

3. Defendant's motion is GRANTED as to all other claims against the hospital for vicarious liability, with the exception of the application of the ostensible agency doctrine of vicarious liability against the hospital for Dr. Kia's actions, as discussed above.

DATED this 4th day of ^{March} February, 2020.


DISTRICT COURT JUDGE

Respectfully Submitted:

Approved as to Form and Content:

DATED this 27 day of February, 2020.

DATED this 27 day of February, 2020.

LAW OFFICE OF DANIEL MARKS

HALL PRANGLE & SCHOONVELD, LLC

/s/ Nicole M. Young

/s/ Sherman Mayor

DANIEL MARKS, ESQ.
Nevada State Bar No. 002003
NICOLE M. YOUNG, ESQ.
Nevada State Bar No. 12659
610 South Ninth Street
Las Vegas, Nevada 89101
Attorney for Plaintiff

SHERMAN MAYOR, ESQ.
Nevada State Bar No. 001491
1140 North Town Center Drive, Suite 350
Las Vegas, Nevada 89144
Attorney for Defendant Sunrise Hospital

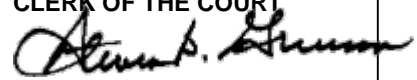
Approved as to Form and Content:

DATED this _____ day of February, 2020.

WILSON, ELSER, MOSKOWITZ,
EDELMAN & DICKER LLP

/s/ Eric K. Stryker

ERIC K. STRYKER, ESQ.
Nevada State Bar No. 005793
300 South 4th Street, 11th floor
Las Vegas, Nevada 89101
Attorney for Defendant Frank DeLee, M.D. and
Defendant Frank DeLee, M.D., PC's



1 S. BRENT VOGEL
Nevada Bar No. 006858
2 E-Mail: Brent.Vogel@lewisbrisbois.com
ERIN E. JORDAN
3 Nevada Bar No. 10018
E-Mail: Erin.Jordan@lewisbrisbois.com
4 LEWIS BRISBOIS BISGAARD & SMITH LLP
6385 S. Rainbow Boulevard, Suite 600
5 Las Vegas, Nevada 89118
702.893.3383
6 FAX: 702.893.3789
Attorneys for Third-Party Defendant Nevada
7 *Hospitalist Group, LLP*

8
9 DISTRICT COURT

10 CLARK COUNTY, NEVADA

11 CHOLOE GREEN, an individual,
12 Plaintiff,

13 vs.

14 FRANK J. DELEE, M.D., an individual;
15 FRANK J. DELEE, MD, PC, a Domestic
Professional Corporation, SUNRISE
HOSPITAL AND MEDICAL CENTER, LLC,
a foreign Limited-Liability Company, ,

16 Defendants.

17
18 SUNRISE HOSPITAL AND MEDICAL
CENTER, LLC, a Foreign Limited-Liability
Company,

19 Third-Party Plaintiff,

20 vs.

21 ALI KIA, M.D., Individually and his
22 employer, NEVADA HOSPITALIST
GROUP, LLP; DOES 1-10; AND ROE
23 CORPORATION 1-10; inclusive.,

24 Third-Party Defendants.

CASE NO. A-17-757722-C
Dept. No.: IX

HEARING REQUESTED

**THIRD-PARTY DEFENDANT NEVADA
HOSPITALIST GROUP, LLP'S MOTION
FOR JUDGMENT ON THE PLEADINGS**

25
26 Third-Party Defendant NEVADA HOSPITALIST GROUP, LLP, by and through its
27 attorneys of record, S. Brent Vogel, Esq. and Erin E. Jordan, Esq. of LEWIS BRISBOIS
28 BISGAARD & SMITH LLP, hereby files this Motion for Judgment on the Pleadings.

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

4 DATED this 19th day of March, 2020.

5 LEWIS BRISBOIS BISGAARD & SMITH LLP
6
7

8 By /s/ Erin E. Jordan

9 S. BRENT VOGEL

10 Nevada Bar No. 006858

11 ERIN E. JORDAN

12 Nevada Bar No. 10018

13 6385 S. Rainbow Boulevard, Suite 600

14 Las Vegas, Nevada 89118

15 Tel. 702.893.3383

16 *Attorneys for Third-Party Defendant Nevada
Hospitalist Group, LLP*

17 **MEMORANDUM OF POINTS AND AUTHORITIES**

18 **I. FACTUAL BACKGROUND**

19 This is a professional negligence case that arises out of medical care and treatment
20 Defendants Dr. DeLee and Sunrise Hospital provided to Choloe Green between July 9, 2016 and
21 July 17, 2016 following a cesarean section. Complaint, ¶¶ 6-17. Plaintiff alleges that Defendants
22 Dr. DeLee and Sunrise Hospital breached the standard of care while caring for her following the
23 cesarean section and that she sustained injury requiring long-term hospitalization as a result. *Id.*,
¶¶ 10-11.

24 Plaintiff Choloe Green brought a claim for professional negligence against Dr. DeLee and
25 Sunrise Hospital on June 20, 2017. Defendant Sunrise Hospital filed a Third-Party Complaint
26 against two Third-Party Defendants, Ali Kia, M.D. and Nevada Hospitalist Group, LLP on June
27 14, 2019. Third-Party Plaintiff Sunrise Hospital brought claims against Dr. Kia and Nevada
28 Hospitalist Group, LLP for contribution and indemnity. The basis for Sunrise Hospital's third-

1 party claims against Nevada Hospitalist Group, LLP was alleged vicarious liability for the alleged
2 professional negligence of Third-Party Defendant Ali Kia, M.D. Third-Party Complaint, ¶¶ 6-17.

3 Third-Party Plaintiff Sunrise Hospital specifically alleges that the bases of its claims
4 against Third-Party Defendants Dr. Kia and Nevada Hospitalist Group is the medical care and
5 treatment that Dr. Kia provided to Choloe Green on July 16, 2016. Third-Party Complaint, ¶ 23
6 (“Although unnamed as a party in Plaintiff Choloe Green’s underlying complaint, Ali Kia, M.D.
7 (Third-Party Defendant) discharged Plaintiff on July 16, 2016. **As such, Dr. Kia’s care of**
8 **Choloe Green is at issue in Plaintiff’s underlying complaint.**”) (emphasis added). Sunrise
9 Hospital did not attach an affidavit of merit specifying breaches of the standard of care of either
10 Dr. Kia or Nevada Hospitalist Group, LLP, and has therefore failed to satisfy NRS 41A.071.

11 II. ARGUMENT

12 a. Motion for Judgment on the Pleadings Standard of Review

13 Nevada Rule of Civil Procedure 12(c) provides that “[a]fter the pleadings are closed but
14 early enough not to delay trial, a party may move for judgment on the pleadings.” NRCP
15 12(h)(2)(B) further provides that the “defense of failure to state a claim upon which relief can be
16 granted...may be raised...by a motion under Rule 12(c).”

17 The Nevada Supreme Court has held that a motion for judgment on the pleadings should
18 be granted where material facts “are not in dispute and the movant is entitled to judgment as a
19 matter of law.” *Bonicamp v. Vazquez*, 120 Nev. 377, 379, 91 P.3d 584, 585 (2004). The motion is
20 useful where only questions of law remain. *Bernard v. Rockhill Dev. Co.*, 103 Nev. 132, 135,
21 (1987). NRCP 12(c) may also be utilized where there are “allegations in the plaintiff’s pleadings
22 that, if proved, would [not] permit recovery.” *Id.* at 136. See also NRCP 12(h)(2)(B) (allowing the
23 defense of failure to state a claim upon which relief may be granted to be asserted in a motion for
24 judgment on the pleadings). The latter scenario is the one applicable here.

25 The defense of failure to state a claim may be raised at any time. *Clark County Sch. Dist.*
26 *v. Richardson Constr., Inc.*, 123 Nev. 382, 396 (2007) (“a defense under NRCP 12(b)(5) need not
27 be pleaded affirmatively because it may be asserted at any time.”). It is appropriate to grant a
28 Defendant judgment on the pleadings pursuant to NRCP 12 when a professional negligence

1 Plaintiff has failed to comply with NRS 41A.071. *Peck v. Zipf*, 133 Nev. Adv. Rep. 108 (2017)
2 (“Based on the foregoing, we affirm the district court’s order granting Doctors Zipf’s and
3 Barnum’s motion for judgment on the pleadings because Peck failed to include a medical expert
4 affidavit with his medical malpractice complaint.”).

5 Here, the Plaintiff has failed to comply with NRS 41A.071, and therefore, judgment on the
6 pleadings in Third-Party Defendant Nevada Hospitalist Group, LLC’s favor should be granted.

7 **b. The Third-Party Plaintiff Has Failed to State A Claim for Professional**
8 **Negligence by Failing to Comply with NRS 41A.071, and Therefore, Third-**
9 **Party Defendant Nevada Hospitalist Group, LLP is Entitled to Judgment as a**
10 **Matter of Law**

11 A Plaintiff that files a professional negligence action must attach a supporting affidavit to
12 his or her Complaint, which supports the allegations in the Complaint. NRS 41A.071. This
13 statute requires a Plaintiff to provide an expert opinion that supports the allegations in the
14 complaint. The expert must practice in an area that is substantially similar to the type of practice
15 engaged in at the time of the alleged professional negligence.

16 NRS 41A.071 Dismissal of action filed without affidavit of medical expert. If
17 an action for professional negligence is filed in the district court, the district court
18 shall dismiss the action, without prejudice, if the action is filed without an
19 affidavit that:

1. Supports the allegations contained in the action;
2. Is submitted by a medical expert who practices or has practiced in
an area that is substantially similar to the type of practice engaged in at the
time of the alleged 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.

21 It is well-established that NRS 41A.071 was enacted to deter frivolous claims and provide
22 Defendants with notice of the claims against them. *Zohar v. Zbiegien*, 130 Nev. Adv. Rep. 74, *2
23 (2014). A Complaint that is filed in violation of NRS 41A.071 is *void ab initio* and must be
24 dismissed. *Washoe Med. Ctr. v. Second Judicial Dist. Court*, 122 Nev. 1298, 1300 (2006) (“We
25 conclude that, under NRS 41A.071, a complaint filed without a supporting medical expert
26 affidavit is void ab initio and must be dismissed.”).

27 In this case, the Third-Party Plaintiff Sunrise Hospital filed a Third-Party Complaint that
28 fails to satisfy NRS 41A.071 and therefore, judgment on the pleadings in favor of Defendant

1 Nevada Hospitalist Group, LLP is warranted.

2 Third-Party Plaintiff Sunrise Hospital did not attach a NRS 41A.071 affidavit to its Third-
3 Party Complaint. However, Sun rise Hospital acknowledges that this is a professional negligence
4 claim and that NRS 41A.071 applies by referencing it in the Third-Party Complaint. Third-Party
5 Complaint, ¶ 24.

6 24. Attached as Exhibit "A" to this Third-Party Complaint is the Plaintiff, Choloe
7 Green's underlying complaint for medical malpractice and attached expert affidavit of
8 Lisa Karamardian, M.D.
9

10 Third-Party Plaintiff Sunrise Hospital only refers to the affidavit filed by Plaintiff Choloe Green.
11 Plaintiff Choloe Green's NRS 41A.071 affidavit does not state that Dr. Kia breached the standard
12 of care or caused injury to her. Rather, it identifies alleged breaches of the standard of care by
13 Defendants Dr. DeLee and Sunrise Hospital only. Karamardian Affidavit Attached to Complaint,
14 ¶ 5. The following paragraph discusses the hospital admission during which Dr. Kia provided care
15 to Ms .Green, but does not identify any alleged breaches of the standard of care by Dr. Kia. *Id.*

16 5. A review of the medical records also reveals that on July 14, 2016, Ms. Green presented
17 again to Sunrise Hospital , now five (5) days post-partum, with severe abdominal pain
18 and reports of nausea, vomiting, fever, and chills. She was admitted to the
19 medical/surgical unit because of the diagnosis of sepsis. She was discharged on July 16,
20 2016. The discharge was discussed and confirmed by Dr. DeLee. This discharge violated
21 the standard of care. Ms. Green was discharged despite the fact that she was not able to
22 tolerate a regular diet. Further, on the day of her discharge, her KUB showed multiple
23 dilated loops of bowel, thought to be related to a small bowel obstruction, yet she was
24 sent home. An intraperitoneal abscess was suspected on a CT scan, yet she was still sent
25 home. This was a violation of the standard of care by Sunrise Hospital and Dr. DeLee.
26

27 Sunrise Hospital did not provide an affidavit that states that Dr. Kia breached the standard
28 of care, which is required by NRS 41A.071. While Sunrise Hospital labeled its claims against Dr.

1 Kia and Nevada Hospitalist Group as claims for contribution and indemnity, the gravamen of
2 those claims is the alleged professional negligence of Dr. Kia. Without any professional
3 negligence by Dr. Kia, Sunrise Hospital's claims for contribution and indemnity would fail.
4 Therefore, a NRS 41A.071 requires an affidavit setting forth alleged breaches of the standard of
5 care on the part of Dr. Kia and Nevada Hospitalist Group, LLP.

6 A claim sounds in malpractice if it is related to medical diagnosis, judgment, or treatment.
7 *Deboer v. Senior Bridges of Sparks Family Hospital, Inc.*, 282 P.3d 727 (Nev. 2012). ("Savage's
8 complaint was grounded in ordinary negligence, as it was not related to medical diagnosis,
9 judgment, or treatment. As such, the district court erred in branding Savage's complaint as a
10 medical malpractice claim."). Here, Third-Party Plaintiff Sunrise Hospital's claims for
11 contribution and indemnity against Dr. Kia are based upon allegations that he was professionally
12 negligent and its claims against Nevada Hospitalist Group, LLP are based upon allegations that it
13 is vicariously negligence for the alleged professional negligence of Dr. Kia. Therefore, pursuant
14 to *Deboer* and *Szymborski*, the claims are grounded in professional negligence and NRS 41A.071
15 applies. *Id.*, *Szymborski v. Spring Mt. Treatment Ctr.*, 133 Nev. Adv. Rep. 80, ("Allegations of
16 breach of duty involving medical judgment, diagnosis, or treatment indicate that a claim is for
17 medical malpractice.").

18 The Nevada Supreme Court has adopted this analysis and held that a contribution claim
19 based upon medical malpractice allegations is subject to the affidavit requirement found in NRS
20 41A.071. *Pack v. LaTourette*, 128 Nev. 264, 270 (2012).

21 Here, Sun Cab's complaint rested upon the theory that La Tourette's negligence
22 had contributed to Zinni's injuries. In other words, to establish a right to
23 contribution, Sun Cab would have been required to establish that LaTourette
24 committed medical malpractice. Thus, Sun Cab is required to satisfy the statutory
prerequisites in place for a medical malpractice action before bringing its
contribution claim.

25 *Id.*

26 There can be no dispute that Third-Party Plaintiff Sunrise Hospital did not attach an
27 affidavit that discusses alleged breaches of the standard of care by either Dr. Kia or Nevada
28 Hospitalist Group, LLP and that, therefore, it did not satisfy NRS 41A.71.

- 1
- 2
- 3
- 4
- 5
- 6
- 7
- 8
- 9
- 10
- 11
- 12
- 13
- 14
- 15
- 16
- 17
- 18
- 19
- 20
- 21
- 22
- 23
- 24
- 25
- 26
- 27
- 28

2
3
4
5
6

7

8

9

10

11

12

13

14

15

16

1 **CERTIFICATE OF SERVICE**

2 I hereby certify that on this 19th day of March, 2020, a true and correct copy of THIRD-
3 PARTY DEFENDANT NEVADA HOSPITALIST GROUP, LLP'S MOTION FOR JUDGMENT
4 ON THE PLEADINGS was served by electronically filing with the Clerk of the Court using the
5 Electronic Service system and serving all parties with an email-address on record, who have
6 agreed to receive Electronic Service in this action.

7 Daniel Marks, Esq.
8 Nicole M. Young, Esq.
9 LAW OFFICE OF DANIEL MARKS
10 610 S. 9th St.
11 Las Vegas, NV 89101
12 Tel: 702.386.0536
13 Fax: 702.386.6812
14 nyoung@danielmarks.net
15 *Attorneys for Plaintiff*

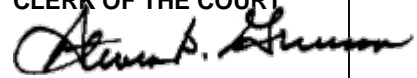
Erik Stryker, Esq.
WILSON ELSEER MOSKOWITZ EDELMAN
& DICKER LLP
300 S. 4th St.
Las Vegas, NV 89101
Tel: 702.727.1400
Fax: 702.727.1401
eric.stryker@wilsonelser.com
*Attorneys for Defendants Frank J. Delee, M.D.
and Frank J. Delee, M.D., PC*

13 Michael E. Prangle, Esq.
14 Tyson J. Dobbs, Esq.
15 Sherman B. Mayor, Esq.
16 HALL PRANGLE & SCHOONVELD, LLC
17 1160 N. Town Center Dr., Suite 200
18 Las Vegas, NV 89144
19 Tel: 702.889.6400
20 Fax: 702.384.6025
21 smayor@hpslaw.com
22 tdobbs@hpslaw.com
23 *Attorneys for Defendant/Third-Party Plaintiff*
24 *Sunrise Hospital and Medical Center, LLC*

Patricia E. Daehnke, Esq.
Linda K. Rurangirwa, Esq.
COLLINSON, DAEHNKE, INLOW, GRECO
2110 E. Flamingo Road, Suite 212
Las Vegas, NV 89119
Tel: 702.979.2132
Fax: 702.979.2133
patricia.daehnke@cdiglaw.com
linda.rurangirwa@cdiglaw.com
*Attorneys for Third-Party Defendant Ali Kia,
M.D.*

25
26
27
28
By /s/ Johana Whitbeck
An Employee of
LEWIS BRISBOIS BISGAARD & SMITH LLP

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



OPPM

MICHAEL E. PRANGLE, ESQ.
Nevada Bar No.: 8619
TYSON J. DOBBS, ESQ.
Nevada Bar No.: 11953
SHERMAN B. MAYOR, ESQ.
Nevada Bar No. 1491
HALL PRANGLE & SCHOONVELD, LLC
1140 N. Town Center Dr., Ste. 350
Las Vegas, NV 89144
(702) 889-6400 – Office
(702) 384-6025 – Facsimile
efile@hpslaw.com
Attorneys for Defendant / Third-Party Plaintiff
Sunrise Hospital and Medical Center, LLC

**DISTRICT COURT
CLARK COUNTY, NEVADA**

CHOLOE GREEN, an individual,

Plaintiff,

vs.

FRANK J. DELEE, M.D., an individual;
FRANK J. DELEE MD, PC, a Domestic
Professional Corporation, SUNRISE
HOSPITAL AND MEDICAL CENTER,
LLC, a Foreign Limited-Liability Company,

Defendants.

SUNRISE HOSPITAL AND MEDICAL
CENTER, LLC, a Foreign Limited-Liability
Company,

Third-Party Plaintiff,

vs.

ALI KIA, M.D., Individually and his
employer, NEVADA HOSPITALIST
GROUP, LLP; DOES 1-10; AND ROE
CORPORATION 1-10; inclusive.

Third-Party Defendants.

CASE NO.: A-17-757722-C
DEPT NO.: IX

**THIRD-PARTY PLAINTIFF SUNRISE
HOSPITAL'S OPPOSITION TO THIRD-
PARTY DEFENDANT NEVADA
HOSPITALIST GROUP, LLP'S
MOTION FOR JUDGMENT ON THE
PLEADINGS**

**Hearing Date: April 21, 2020
Hearing Time: 8:30 a.m.**

**THIRD-PARTY PLAINTIFF SUNRISE HOSPITAL’S OPPOSITION TO THIRD-
PARTY DEFENDANT NEVADA HOSPITALIST GROUP, LLP’S MOTION FOR
JUDGMENT ON THE PLEADINGS**

COMES NOW, Defendant/Third-Party Plaintiff, SUNRISE HOSPITAL AND MEDICAL CENTER, LLC (“Sunrise Hospital” or “Defendant”) by and through its counsel of record, HALL PRANGLE & SCHOONVELD, LLC and hereby files its Opposition to Third-Party Defendant Nevada Hospitalist Group, LLP’s Motion for Judgment on the Pleadings.

This Opposition is made and based upon the papers and pleadings on file herein, the points and authorities attached hereto and such argument of counsel, which may be adduced at the time of hearing such Motion.

POINTS AND AUTHORITIES

(PREFATORY NOTE)

Although Third-Party Plaintiff Sunrise Hospital filed an action for indemnity and contribution against both Dr. Ali Kia and Nevada Hospitalist Group, LLP, only the Group is seeking dismissal by Motion for Judgment on the Pleadings.

I.

STATEMENT OF FACTS

On June 30, 2017, Plaintiff, Cholo Green, filed a Complaint for Medical Malpractice. At the heart of Ms. Green's Complaint is a contention that she was prematurely discharged from Sunrise Hospital on July 10, 2016, following the caesarean section delivery of her fourth child. Ms. Green then also complains that following readmission to Sunrise Hospital she was prematurely discharged, a second time, on July 14, 2016. Ms. Green contends that she subsequently was hospitalized for an extended period of time at Centennial Hills Hospital from complications allegedly suffered due to her two Sunrise Hospital discharges.

Ms. Green's treating OBGYN, Frank J. DeLee, M.D., is a named defendant in Ms. Green's Complaint. Dr. DeLee issued the first discharge order for July 10, 2016. However, and for reasons unknown, Plaintiff did not name Ali Kia, M.D. as a defendant in her complaint even though Dr. Kia ordered her second discharge from Sunrise Hospital on July 14, 2016. In addition, and also for unknown reasons, Plaintiff failed to name Nevada Hospitalist Group, LLP

as a defendant in her Complaint. Nevada Hospitalist Group is alleged to be the employer of Dr. Kia and the group's call schedule assigned Dr. Kia to treat Choloe Green.

Dr. Kia has testified in this case, in Interrogatory and/or Deposition, that Nevada Hospitalist Group, LLP was his employer on July 14, 2016, and that he came to treat the Plaintiff, Choloe Green, because he was on the Nevada Hospitalist Group, LLP call schedule. Nevada Hospitalist Group denies that it was Dr. Kia's employer, creating a genuine issue of fact.

On January 15, 2019, Sunrise Hospital filed a Motion for Partial Summary Judgment to Dismiss any Claim of "Ostensible Agency" for Dr. DeLee or Dr. Kia. No party has challenged Sunrise Hospital's assertion that neither Dr. DeLee or Dr. Kia were "employees" of Sunrise Hospital. They were not. As such, the only liability the hospital could have for the care rendered by Dr. DeLee or Dr. Kia would be via "ostensible agency."

District Court Judge Doug Smith heard Sunrise Hospital's Motion for Partial Summary Judgment. Judge Smith ruled that both Dr. DeLee and Dr. Kia were not employees of Sunrise Hospital. Further, Judge Smith dismissed any claim of "ostensible agency" by the hospital for Dr. DeLee (first hospital discharge). However, Judge Smith decided that there was a factual question as to whether Dr. Kia was an "ostensible agent" of the hospital (second hospital discharge) and denied the Motion to that extent.

Accordingly, and since Sunrise Hospital could conceivably have liability exposure for Dr. Kia's care via the Doctrine of Ostensible Agency, Sunrise Hospital decided to file a Third-Party Complaint against Dr. Kia and his employer, Nevada Hospitalist Group, LLP (via the group's call schedule) for indemnity and contribution. That Motion for Leave to File Third-Party Complaint against both Dr. Kia and Nevada Hospitalist Group, LLP was granted on June 14, 2019 (*See Exhibit A* – Motion for Leave to File Third Party Complaint and *Exhibit B* – Order Granting Motion for Leave to File Third Party Complaint).

On June 14, 2019, with leave of court having been granted, Sunrise Hospital filed a Third-Party Complaint for Contribution and Indemnity against both Ali Kia, M.D. and Nevada Hospitalist Group, LLP. In the Third-Party Complaint, Ali Kia, M.D. is described as an agent and/or employee of Third-Party Defendant Nevada Hospitalist Group, LLP.

1 In Paragraph 22 of the Third-Party Complaint, it is noted that Sunrise Hospital’s Motion
2 to Dismiss any claim that Dr. Kia was an ostensible agent of the hospital was denied. In
3 Paragraph 16 of the Third-Party Complaint, it is alleged that Ali Kia, M.D. was “on call” for
4 Nevada Hospitalist Group, LLP which resulted in Dr. Kia becoming a treating physician of
5 Plaintiff, Choloe Green.

6 In Paragraph 23 of the Third-Party Complaint, Sunrise Hospital notes that although Ali
7 Kia, M.D. was unnamed as a party in Choloe Green’s underlying complaint, his care was
8 criticized in the underlying Complaint. (Please see paragraphs 23 and 24 of Third-Party
9 Complaint). Further, Sunrise Hospital attached, as *Exhibit A* to its Third-Party Complaint, (to
10 comply with NRS 41A.071) the underlying Complaint filed by Choloe Green. The underlying
11 Complaint (which is attachment “A” to Sunrise’s Third-Party Complaint) sets forth the criticism
12 Dr. Kia’s care although that care was erroneously attributed to Sunrise Hospital and Dr. DeLee:

13
14 “... A review of the medical records also reveals that on July 14, 2016, Ms. Green
15 presented again to Sunrise Hospital, now five (5) days post-partum, with severe
16 abdominal pain and reports of nausea, vomiting, fever, and chills. She was
17 admitted to the medical/surgical unit because of the diagnosis of sepsis. She was
18 discharged on July 16, 2016. The discharge was discussed and confirmed by Dr.
19 DeLee. This discharge violated the standard of care. Ms. Green was discharged
20 despite the fact that she was not able to tolerate a regular diet. Further, on the day
21 of her discharge, her KUB showed multiple dilated loops of bowel, though to be
22 related to bowel obstruction, yet she was sent home. An intraperitoneal abscess
23 was suspected on a CT scan, yet she was still sent home. This was a violation of
24 the standard of care by Sunrise Hospital and Dr. DeLee.”

25 To be clear, Plaintiff’s underlying complaint repeatedly criticizes the care rendered by
26 Dr. Kia in discharging Choloe Green from Sunrise Hospital on July 14, 2016. It is acknowledged
27 that the underlying complaint mistakenly attributes that discharge to a conversation between Dr.
28 DeLee and Sunrise Hospital. Dr. Kia has stated, under oath, twice, by Interrogatory Answer and
Deposition, that he discharged Choloe Green from Sunrise Hospital on July 14, 2016. Dr. Kia’s
actual discharge order, for July 14, 2016, is attached as an exhibit to Sunrise Hospital’s Motion
for Leave to File Third-Party Complaint, which was granted by the Court.

Sunrise Hospital is in an interesting legal position here. On the one hand, the hospital denies that Ali Kia, M.D. was a hospital employee or ostensible agent. However, the Court has found that whether Dr. Kia was or was not an ostensible agent of the hospital presents a factual issue. As such, Sunrise Hospital could potentially have liability exposure for Dr. Kia's discharge order of July 14, 2016 via the Doctrine of Ostensible Agency. On the other hand, if the hospital does have liability exposure for Dr. Kia's discharge order of July 14, 2016, the hospital, then, would not be in a position to provide an expert affidavit challenging Dr. Kia's care of Choloe Green (since he is a potential hospital ostensible agent).

Sunrise Hospital satisfies this conundrum by having attached Plaintiff's underlying complaint (with expert criticism of Dr. Kia's care) as Exhibit "A" to its Third-Party Complaint. This would satisfy any requirement about an expert affidavit as to the care provided by Dr. Kia. With regard to Nevada Hospitalist Group, LLP, Sunrise Hospital, in its Third-Party Complaint, does not contend that Nevada Hospitalist Group, LLP was negligent. There is no contention by Sunrise Hospital that Nevada Hospitalist Group, LLP violated the standard of care. Instead, there is a claim that Nevada Hospitalist Group, LLP was the employer of Dr. Kia on July 14, 2016, and is therefore liable for any negligence on his part. AS the argument below will demonstrate, there is no requirement to provide an expert affidavit, per NRS 41A.071, against a professional group or corporation whose liability arises out solely of vicarious liability or agency.¹

II.

ARGUMENT

A. Plaintiffs' Underlying Complaint Contains an Expert Affidavit, Which Criticizes the Care of Dr. Kia.

In Plaintiff Choloe Green's Underling Complaint, she attached an Expert Affidavit of Lisa Karamardian, MD. In Paragraph 5 of her expert affidavit, Dr. Karamardian criticized the

¹ Sunrise Hospital's Third-Party Complaint against Nevada Hospitalist Group, LLP is solely for indemnity and contribution. The claim arises out of an employment relationship. There is no claim of direct negligence against the group, separate and apart from the care provided by Dr. Kia.

hospital discharge of Choloe Green on July 14, 2016, as premature. Unfortunately, Dr. Karamardian attributed that decision to discharge to Sunrise Hospital and Dr. DeLee. In this case, Dr. Kia has acknowledged, twice, that he was the discharging physician of Choloe Green on July 14, 2016. Although unnamed, Dr. Kia's care was criticized and is at the heart of Plaintiffs' Complaint.

Plaintiff, Choloe Green's expert criticized the July 14, 2016, discharge (which we now know was issued by Dr. Kia). To make such claim, Plaintiff had to satisfy the requirements of NRS 41A.071. If such requirement was not satisfied in Plaintiff's underlying complaint, then respectfully, Sunrise Hospital should have no liability exposure via ostensible agency for Dr. Kia's care. Since the Court denied Sunrise's Hospital's Motion for Summary Judgment, based upon a claim of ostensible agency, then attachment of the underlying Complaint to Sunrise Hospital's Third-Party Complaint for contribution and indemnity necessarily satisfies the expert affidavit requirement.²

B. If the Underlying Complaint Does Not Establish a Claim Against Dr. Kia, Then There is No Basis for An Ostensible Agency Claim for Sunrise Hospital Due to His Care.

Sunrise Hospital's Third-Party Complaint seeks contribution and/or indemnity from Dr. Kia arising from the care he rendered, which is criticized by Plaintiff in her underlying Complaint. That underlying Complaint and criticism was attached to Sunrise Hospital's Third-Party Complaint to satisfy the requirements of NRS 41A.071.

Sunrise does not challenge the authority provided by Nevada Hospitalist Group stating that a Third-Party Complaint for contribution and/or indemnity, which is based on medical malpractice, must comply with the requirements of NRS 41A.071. That is, it is agreed that if no claim for professional negligence is made against Dr. Kia, then he cannot be liable for indemnity and/or contribution for the care he rendered to Choloe Green. *See Pack v. LaTourette*, 277 P.3d 1246, 1249 128 Nev. Adv. Op. 25 (2012). Such, however, is not the case with regard to Sunrise

² If no claim against Dr. Kia can be found, in name or deed, then there can be no ostensible agency for him, in name or in deed.

Hospital's Third-Party claim for indemnity and contribution from Nevada Hospitalist Group.
(See the argument immediately below).

C. NRS 41A.071 Only Applies Against Defendants Against Whom Specific Acts of Negligence are Asserted. No Acts of Negligence are Asserted Against Nevada Hospitalist Group.

NRS 41A.071 (2017) provides that if an action for professional negligence, is filed without an affidavit setting forth specific acts of alleged negligence, such action shall be dismissed. In applying that statute to Dr. Kia, against whom allegations of negligence are asserted, NRS 41A.071 must be satisfied. However, with regard to Nevada Hospitalist Group, LLP, Sunrise Hospital is not asserting any specific act of alleged negligence against that group. Instead, the hospital is merely asserting a Third-Party claim for Indemnity and Contribution based upon the facts that the group was the employer of Dr. Kia and that the Group's call schedule steered Dr. Kia into treating Choloe Green.

Sunrise Hospital does not contend that Nevada Hospitalist Group committed any independent act of negligence. Further, Sunrise Hospital does not contend that Nevada Hospitalist Group negligently hired Dr. Kia. Sunrise Hospital does not contend that Nevada Hospitalist Group was negligent in having Dr. Kia on its call schedule for patient referral. Sunrise Hospital is contending that because of such activities Nevada Hospitalist Group is vicariously liable for Dr. Kia either through his employment relationship or ostensible agency.

In *Fierle v. Perez*, 125 Nev. 728, 736 (Nev. 2009), the Nevada Supreme Court concluded that NRS 41A.071 required the attachment of an expert affidavit for "professional negligence claims against providers of healthcare and that such requirement applied to professional corporations. However, in *Fierle*, the Court is very clear that the professional corporation in that case was subject to claims of direct negligence. That is, the Plaintiff in *Fierle* was asserting that the Professional Corporation of Dr. Perez was also actively negligent. While Nevada Hospitalist Group, LLP may be a professional group or corporation there is no allegation of direct negligence against it asserted by Sunrise Hospital's Third-Party Complaint.

As the Nevada Supreme Court stated in *Szydel v. Markman*, 121 Nev. 453, 460 (Nev. 2005) it would be unreasonable to suspect a Plaintiff to provide expert testimony against a Defendant against whom expert testimony is not needed in order for a Plaintiff to prevail.³ Third Party Defendant, Nevada Hospitalist Group, LLP's reliance upon the case of *Pack v. LaTourette*, 128 Nev. 264 (Nev. 2012), is misplaced. In *Pack*, the case involved an automobile accident. The Defendant Sun-Cab sued Dr. LaTourette for negligence claiming that he was the cause of Plaintiff's injuries. In *Pack*, Sun-Cab's Complaint for indemnity and contribution required a finding of medical malpractice against Dr. LaTourette. Here, no finding of medical malpractice need be established to prove that Nevada Hospitalist Group, LLP is vicariously liable for Dr. Kia.

A claim for indemnity and contribution against Dr. Kia required satisfaction of the requirements of NRS 41A.071 to support a claim or indemnity and contribution. That is why Sunrise Hospital attached Plaintiffs' underlying Complaint and expert affidavit to its Third-Party Complaint. No such attachment is needed to prove that Nevada Hospitalist Group, LLP had an employee/employer relationship with Dr. Kia that subjects the group to vicarious liability (and Sunrise Hospital's indemnity and contribution claims).⁴

///

///

///

///

///

///

///

³ While *Szydel* was a "res ipsa loquitor" case, the principle is the same. If no expert affidavit is required then a case cannot be dismissed for a lack of one. Sunrise Hospital does not need expert testimony to prove an agency relationship between Nevada Hospitalist Group, LLP and Dr. Kia. Nothing more is asserted.

⁴ It is a straw argument to contend that Sunrise has to comply with NRS 41A.071 to bring an indemnity claim against a professional group against which no negligence is asserted. There can be no expert affidavit formulated when no specific acts of negligence are asserted.

III.

CONCLUSION

Third-Party Defendant Nevada Hospitalist Group, LLP's Motion for Judgment on the Pleadings, should be denied.

DATED this 25th day of March 2020.

HALL PRANGLE & SCHOONVELD, LLC

By: /s/ Sherman B. Mayor

MICHAEL E. PRANGLE, ESQ.

Nevada Bar No.: 8619

TYSON J. DOBBS, ESQ.

Nevada Bar No.: 11953

SHERMAN B. MAYOR, ESQ.

Nevada Bar No. 1491

1140 N. Town Center Dr., Ste. 350

Las Vegas, NV 89144

*Attorneys for Defendant / Third-Party Plaintiff
Sunrise Hospital and Medical Center, LLC*

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

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that I am an employee of HALL PRANGLE & SCHOONVELD, LLC; that on the 25th day of March 2020, I served a true and correct copy of the foregoing **THIRD-PARTY PLAINTIFF SUNRISE HOSPITAL'S OPPOSITION TO THIRD-PARTY DEFENDANT NEVADA HOSPITALIST GROUP, LLP'S MOTION FOR JUDGMENT ON THE PLEADINGS** to the following parties via:

XX 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:

S. Brent Vogel, Esq.
Erin E. Jordan, Esq.
LEWIS BRISBOIS BISGAARD & SMITH LLP
6385 S. Rainbow Blvd., Suite 600
Las Vegas, NV 89118
*Attorneys for Third-Party Defendant
Nevada Hospitalist Group, LLP*

Eric K. Stryker, Esq.
WILSON ELSER MOSKOWITZ
EDELMAN & DICKER LLP
300 S. 4th Street
Las Vegas, NV 89101
*Attorney for Defendants
Frank J. DeLee, M.D. and
Frank J. DeLee, M.D., PC*

Patricia Egan Daehnke, Esq.
Linda K. Rurangirwa, Esq.
COLLINSON, DAEHNKE, INLOW & GRECO
2110 E. Flamingo Road, Suite 212
Las Vegas, NV 89119
*Attorneys for Third-Party Defendant
Ali Kia, M.D.*

Daniel Marks, Esq.
Nicole M. Young, Esq.
LAW OFFICE OF DANIEL MARKS
610 South Ninth Street
Las Vegas, NV 89101
Attorneys for Plaintiff

/s/ Kelli Wightman
An employee of HALL PRANGLE & SCHOONVELD, LLC

EXHIBIT A

EXHIBIT A

Steven D. Grierson

MLEV

MICHAEL E. PRANGLE, ESQ.

Nevada Bar No.: 8619

TYSON J. DOBBS, ESQ.

Nevada Bar No.: 11953

SHERMAN B. MAYOR, ESQ.

Nevada Bar No. 1491

HALL PRANGLE & SCHOONVELD, LLC

1160 N. Town Center Dr., Ste. 200

Las Vegas, NV 89144

(702) 889-6400 – Office

(702) 384-6025 – Facsimile

efile@hpslaw.com

Attorneys for Defendant

Sunrise Hospital and Medical Center, LLC

**DISTRICT COURT
CLARK COUNTY, NEVADA**

CHLOE GREEN, an individual,

Plaintiff,

vs.

FRANK J. DELEE, M.D., an individual;
FRANK J. DELEE MD, PC, a Domestic
Professional Corporation, SUNRISE
HOSPITAL AND MEDICAL CENTER,
LLC, a Foreign Limited-Liability Company,

Defendants.

CASE NO.: A-17-757722-C

DEPT NO.: 1X

**DEFENDANT SUNRISE HOSPITAL
AND MEDICAL CENTER, LLC'S
MOTION FOR LEAVE TO FILE THIRD
PARTY COMPLAINT ON ORDER
SHORTENING TIME**

COMES NOW Defendant Sunrise Hospital and Medical Center, by and through its
counsel of record, HALL PRANGLE & SCHOONVELD, LLC, and moves this Honorable Court for an
order granting Defendant Sunrise Hospital and Medical Center, LLC leave to add Ali Kia, M.D.
and Nevada Hospitalist Group, LLP as Third-Party Defendants in this litigation (on an Order
Shortening Time).

...

HALL PRANGLE & SCHOONVELD, LLC

1160 NORTH TOWN CENTER DRIVE

SUITE 200

LAS VEGAS, NEVADA 89144

TELEPHONE: 702-889-6400 FACSIMILE: 702-384-6025

app: 5/10
certified

R2C → 5-20-19. (R) 5-17-19

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

1
2 This Motion is made and based upon the papers and pleadings on file herein, the
3 following points and authorities, and any oral argument which may be adduced at a hearing set
4 for this matter.

5 DATED this 24th day of April, 2019.

6 HALL PRANGLE & SCHOONVELD, LLC

7
8 By: _____

9 MICHAEL E. PRANGLE, ESQ.

10 Nevada Bar No.: 8619

11 TYSON J. DOBBS, ESQ.

12 Nevada Bar No.: 11953

13 SHERMAN B. MAYOR, ESQ.

14 Nevada Bar No. 1491

15 1160 N. Town Center Dr., Ste. 200

16 Las Vegas, NV 89144

17 *Attorneys for Defendant*

18 *Sunrise Hospital and Medical Center, LLC*

19 **ORDER SHORTENING TIME**

20 It appearing to the satisfaction of the Court, and good cause appearing therefore, IT IS
21 HEREBY ORDERED that the foregoing **DEFENDANT SUNRISE HOSPITAL AND**
22 **MEDICAL CENTER, LLC'S MOTION FOR LEAVE TO FILE THIRD PARTY**
23 **COMPLAINT ON ORDER SHORTENING TIME** shall be heard on the 13 day of

24 May, 2019, at the hour of 3:00 ^{CDL} ~~am~~ ^{p.m.} in Department 9.

25 DATED April 29, 2019.

26
27
28 _____
DISTRICT COURT JUDGE

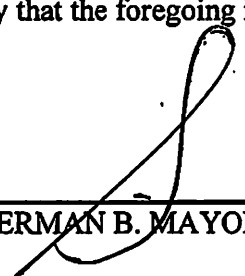
1 **DECLARATION OF SHERMAN B. MAYOR, ESQ., IN SUPPORT OF ORDER**
2 **SHORTENING TIME FOR SUNRISE HOSPITAL'S MOTION**
3 **FOR LEAVE TO FILE THRID PARTY COMPLAINT**

4 STATE OF NEVADA)
5) ss:
6 COUNTY OF CLARK)

7 SHERMAN B. MAYOR, ESQ., attests and states as follows:

- 8 1. Your affiant is an attorney licensed to practice law in the State of Nevada and is
9 practicing with the law firm of Hall, Prangle and Schoonveld, LLC. Your affiant is a
10 counsel of record for Defendant, Sunrise Hospital and Medical, LLC., in the above-
11 entitled matter.
- 12 2. Sunrise Hospital recently filed a Motion for Partial Summary Judgment. That motion
13 sought, in part, to dismiss any claim of vicarious liability or ostensible agency that
14 might be imposed against Sunrise Hospital as a result of care and treatment rendered
15 to Plaintiff by Ali Kia, M.D. during the hospitalization at issue in this case.
- 16 3. The court, by minute order dated April 1, 2019, determined that there was a factual
17 question as to whether Dr. Kia was an ostensible agent of the hospital when he cared
18 for Plaintiff, Chole Green. Accordingly, the motion for partial summary judgment to
19 dismiss the ostensible agency claim as to Dr. Kia was denied. The final proposed
20 order for this ruling has been submitted to the court for consideration.
- 21 4. As a result, Sunrise Hospital is seeking leave to file a third-party complaint against
22 Ali Kia, M.D. (a physician who is not named in Plaintiff's underlying complaint for
23 medical malpractice). In addition, Ali Kia, M.D. was an agent and/or employee of
24 Nevada Hospitalist Group, LLP. Leave is also sought to add Nevada Hospitalist
25 Group, LLP as a third-party defendant.

- 1 5. The purpose of the third-party complaint is for Sunrise Hospital to seek equitable
2 indemnity and/or contribution from Dr. Kia and/or Nevada Hospitalist Group should
3 liability be imposed upon the hospital as a result of the care rendered by these two
4 potential Third-Party Defendants.
- 5 6. Currently, this case is scheduled for status check to take place on June 18, 2019 to
6 schedule the case for trial.
- 7 7. However, the court recently signed a stipulation by all parties to extend the discovery
8 cut-off to June 1, 2020.
- 9 8. Defendant Sunrise Hospital seeks leave to file its motion for leave to file third party
10 complaint so that: (1) Dr. Kia and Nevada Hospitalist Group can participate in any
11 discovery as the case progresses; and (2) Sunrise Hospital will participate in
12 discovery with knowledge that its third-party complaint is in place.
- 13 9. It is therefore requested that a hearing on Sunrise Hospital's motion for leave to file
14 third party complaint on an order shortening time be granted and this matter be
15 scheduled accordingly.
- 16 10. This motion for leave to file third party complaint is brought in good faith and not for
17 purposed of undue delay or harassment.
- 18 11. I declare under the penalty of perjury that the foregoing is true and correct to the best
19 of your Affiant's knowledge.

20
21
22
23
24
25
26
27
28

4/24/19
SHERMAN B. MAYOR, ESQ.

PREFATORY NOTE

Although Defendant Sunrise Hospital's motion for leave to file third-party complaint seeks authority to bring third party claims against *both* Ali Kia, M.D. and Nevada Hospitalist Group, LLP, Sunrise Hospital reserves the right to only pursue a third-party claim against Ali Kia, M.D. (and not Nevada Hospitalist Group, LLP should additional discovery and malpractice insurance documentation indicate a third-party action against the group is unnecessary).

POINTS AND AUTHORITIES

I. FACTS

This is a medical practice action. Plaintiff, Choloe Green, delivered her 4th child by caesarian section birth at Defendant, Sunrise Hospital and Medical Center ("Sunrise Hospital") on July 9, 2016. Defendant, Frank J. DeLee, M.D., Plaintiff's treating OB/GYN, then discharged Ms. Green from the hospital on July 10, 2016. Plaintiff contends this discharge was premature as she had not had a bowel movement and a typical post-operative course for caesarian section is 3-4 days. Plaintiff alleges Dr. DeLee and Sunrise Hospital breached the standard of care.

Plaintiff then alleges she was readmitted to Sunrise Hospital on July 14, 2016 (nausea, vomiting, fever, and chills). Plaintiff contends she was discharged prematurely, a second time, on July 16, 2016. Plaintiff asserts this second discharge also violated the standard of care as she was not able to tolerate a regular diet and her KUB x-ray showed dilated bowel loops.

Plaintiff contends that this second hospital discharge was "discussed and confirmed with Dr. DeLee." The medical records, however, reveal that Ali Kia, M.D. (internal

1 medicine/hospitalist) was actually the physician who ordered and electronically signed the
2 second hospital discharge of July 16, 2016. *See* Exhibit "A."

3 Recently, Sunrise Hospital filed a Motion for Partial Summary Judgment seeking to
4 dismiss any claims of vicarious liability or ostensible agency on the part of the hospital with
5 regard to Frank J. DeLee, M.D. and Ali Kia, M.D. The court granted the partial summary
6 judgment motion (in part) and denied the motion (in part). Specifically, the claims, if any, that
7 the hospital may have vicarious liability for either Dr. DeLee or Dr. Kia were dismissed.
8 Further, any claim that Dr. DeLee (Plaintiff's long-time treating OB/GYN) was the ostensible
9 agent of the hospital was also dismissed.
10

11 In Plaintiff's "Complaint for Medical Malpractice," there is no mention of Ali Kia, M.D.
12 Nor is there any mention that the Dr. Kia is an agent or employee of Sunrise Hospital. Sunrise
13 Hospital moved for partial summary judgment to dismiss any potential claim in discovery or trial
14 that Dr. Kia was an ostensible agent of Sunrise Hospital. The court, by decision rendered on
15 April 1, 2019, denied the hospital's motion as it pertained to the ostensible agency issue and Dr.
16 Kia. *See* Exhibit "B."
17

18 Sunrise Hospital denies any allegations of negligence against the hospital. The hospital
19 also denies that Dr. Kia is an ostensible agent of the hospital. However, this court has ruled that
20 there is a factual question concerning ostensible agency that should be resolved by the finder of
21 fact (the jury). As such, Sunrise Hospital seeks leave to file a third-party complaint naming Ali
22 Kia, M.D. as a third-party defendant. Further, it appears that Dr. Kia was the agent and/or
23 employee of Nevada Hospitalist Group, LLP, which is also being added. Sunrise Hospital files
24 this third-party complaint, specifically, for equitable indemnity and/or contribution from Dr. Kia
25
26
27
28

1 and Nevada Hospitalist Group, LLP, should Sunrise Hospital be liable for any verdict or
2 judgment arising from from Dr. Kia's care of Plaintiff, Choloe Green.

3 Additionally, Sunrise Hospital is not enclosing an expert affidavit with its third-party
4 complaint. Instead, the hospital is attaching Plaintiff's underlying complaint and the expert
5 affidavit attached to the complaint (Lisa Karamardian, M.D.) to comply with the requirements of
6 NRS 41A.071. *A copy of Sunrise's Hospital proposed Third-Party Complaint (with Exhibits)*
7 *is attached to this motion for leave as Exhibit "C."*
8

9 Defendant, Sunrise Hospital motion for leave to file third-party complaint to add Ali Kia,
10 M.D. and Nevada Hospitalist Group, LLP, as third-party defendants is necessitated by the court's
11 recent ruling finding that there is a factual question (to be resolved at trial) as to whether Dr. Kia
12 is an ostensible agent of the hospital. The court's minute order in this regard is dated April 1,
13 2019. The final proposed order has been submitted to the court and is pending the court's
14 review, consideration, and approval.
15

16 II. 17 ARGUMENT

18 NRCP 14 provides in relevant part:

19 (a) **When Defendant May Bring in Third Party.** At any time
20 after commencement of the action a defending party, as a third-
21 party plaintiff, may cause a summons and complaint to be served
22 upon a person not a party to the action who is or may be liable to
23 the third-party plaintiff for all or part of the plaintiff's claim
24 against the third-party plaintiff. The third-party plaintiff need not
25 obtain leave to make the service if the third-party plaintiff files the
third-party complaint not later than 10 days after serving the
original answer. Otherwise the third-party plaintiff must obtain
leave on motion upon notice to all parties to the action.

26 A defendant is permitted to defend the case and at the same time assert his right of
27 indemnity against the party ultimately responsible for the damage. *Reid v. Royal Ins. Co.*, 80
28

1 Nev. 137, 390 P.2d 45 (1964). The clear import of the Nevada Rules of Civil Procedure is to
2 enable litigants to try fully their issues before the court. . ." *Morris v. Morris* 83 Nev. 412, 414,
3 432 P.2d. 1022 (1967).

4 Sunrise Hospital now brings the instant motion for leave to assert a third-party complaint
5 against Ali Kia M.D. and Nevada Hospitalist Group, LLP. The court's recent decision that the
6 issue as to whether Dr. Kia is an ostensible agent of Sunrise Hospital is a factual question for the
7 finder of fact. If, during trial, a jury determines that Dr. Kia is an ostensible agent of Sunrise
8 Hospital, the hospital will be seeking, as part of the verdict, relief in the form of equitable
9 indemnity and/or contribution for any hospital liability arising out of Dr. Kia's care of
10 underlying Plaintiff, Choloe Green.
11

12
13 **III.**
14 **CONCLUSION**

15 Based upon the foregoing, Defendant Sunrise Hospital respectfully requests that the
16 Court enter an Order Granting its Motion for Leave to File a Third-Party Complaint Against Ali
17 Kia, M.D. and Nevada Hospitalist Group, and for any other relief that this Honorable Court
18 deems just and proper.

19 DATED this 24th day of April, 2019.

20
21 HALL PRANGLE & SCHOONVELD, LLC

22 By: _____

23 MICHAEL E. PRANGLE, ESQ.

24 Nevada Bar No.: 8619

25 TYSON J. DOBBS, ESQ.

26 Nevada Bar No.: 11953

27 SHERMAN B. MAYOR, ESQ.

28 Nevada Bar No. 1491

1160 N. Town Center Dr., Ste. 200

Las Vegas, NV 89144

Attorneys for Defendant

Sunrise Hospital and Medical Center, LLC

EXHIBIT A

EXHIBIT A

RUN DATE: 07/27/16 RUN TIME: 0110 RUN USER: KPF.FEED		MEDITECH FACILITY: COCSZ IDEV - Discharge Report		PAGE 51
PATIENT: GREEN, CHLOE S ACCOUNT NO: D00113938887		A/S: 30 F LOC: D.54 RM: D.4508 BD: 0		ADMIT: 07/14/16 DISCH/DEP: 07/16/16 STATUS: IN UNIT NO: D001315049
ATTEND DR: Kia, All MD REPORT STATUS: FINAL				

Press <Enter> for Order Details below

Comment: PER DR KIA DO NOT CALL FOR KUB RESULT MD WILL FOLLOW UP IN AM 07/16/16

Order's Audit Trail of Events

1	07/16/16 0522 DNUR.CCV	Order ENTER in CM
2	07/16/16 0522 DNUR.CCV	Ordering Doctor: Kia, All MD
3	07/16/16 0522 DNUR.CCV	Order Source: TELEPHONE & VERIFIED
4	07/16/16 0522 interface	order's status changed from TRANS to ACTIVE by NUR
5	07/16/16 0540 DNUR.CCV	order acknowledged
6	07/16/16 0713 DNUR.CCV	order viewed from Order Management

Electronic ~~Signature~~

Order Date: 07/16/16	—Service—								
Category Procedure Name	Order Number	Date	Time	Pri	Qty	Ord	Source	Status	Ordered By
DISCHG DISCHARGE ORDER	20160716-0093	07/16/16		R		E		TRN	KIAAL
Other Provider :	Sig Lvl Provider :								

Discharge order written date: 07/16/16
 Discharge order written time: 1521
 Discharge To: Home
 Discharge Type: Adult
 * New/Additional DME/Home Health orders with Discharge?
 N

Does patient have any of the following conditions at discharge?
 NONE

Aspirin at Discharge?
 Aspirin Contraindications:
 Other Specific Reason:
 EJ Fraction:
 ACE/ARB at Discharge?
 ACE/ARB Contraindications:
 Other Specific Reason:

LDL Level:
 Statin at Discharge?
 Statin Contraindications:
 Other Specific Reason:
 Beta Blocker at Discharge?
 Beta Blocker Contraindications:

Other Specific Reason:

Antithrombotic at Discharge?
 Antithrombotic Contraindications:

Other Specific Reason:
 Antiplatelet Therapy at Discharge?

PERMANENT MEDICAL RECORD COPY

RUN DATE: 07/27/16 RUN TIME: 0110 RUN USER: HPF.FEED		MEDITECH FACILITY: CICSZ IDEV - Discharge Report		PAGE 52
PATIENT: GREEN, CHLOE S ACCOUNT NO: 000113938887		A/S: 30 F LOC: D.E4 RM: D.4508 BD: 0		ADMIT: 07/14/16 DISCH/DEP: 07/16/16 STATUS: IN UNIT NO: D001315049
ATTEND DR: K1a.A11 MD REPORT STATUS: FINAL				

Antiplatelet Contraindications:

Other Specific Reason:

HX or current AFIB/AFLUTTER:
 Anticoagulation Therapy at Discharge?

Anticoagulation Contraindications:

Other Specific Reason:
 Assessed for Rehabilitation?
 Reason for not ordering Rehab:

Height Monitoring: 104.54
 Kg: 230
 Weight - Lb:
 Other Specific Frequency:

What anticoagulation med is patient being sent home on:

List reason for medication choice:

Diet: Soft
 Activity/Exercise/Limitations: No limitations
 Lifting Restrictions:

Return to Work/School:
 OK to Drive:

Call Your Doctor If -
 Fever Greater Than: 101.5

1st Follow Up:
 2nd:
 3rd:
 Physician: NO PRIMARY OR FAMILY PHYSICIAN
 Follow-up with: Provider Entered Above
 Follow up in: 1 Week
 Reason: MED FUP

Physician: Delee, Frank J MD
 Follow-up with: Provider Entered Above
 Follow up in: 1 Week
 Reason: OB FUP
 Physician:
 Follow-up with:
 Follow up in:
 Reason:

Physician:
 Follow-up with:
 Follow up in:
 Reason:

PERMANENT MEDICAL RECORD COPY

RUN DATE: 07/27/16
RUN TIME: 0110
RUN USER: HPF.FEED

NEDITECH FACILITY: COCSZ
IDEV - Discharge Report

PAGE 53

PATIENT: GREEN, CHLOE S
ACCOUNT NO: D00113938887
ATTEND DR: K1a.A11 MD
REPORT STATUS: FINAL

A/S: 30 F
LOC: D.E4
RM: D.4508
BD: 0

ADMIT: 07/14/16
DISCH/DEP: 07/16/16
STATUS: IN
UNIT NO: D001315049

Physician:
Follow-Up with:
Follow up in:
Reason:
Physician:

Follow-Up with:
Follow up in:
Reason:

Physician:
Follow-Up with:
Follow up in:
Reason:

Physician:
Follow-Up with:
Follow up in:

Reason:
Physician:
Follow-Up with:
Follow up in:
Reason:

INFANT/NICU

INFANT/PEDIATRIC/NICU
Primary Dx of Asthma:

Provide Pre-printed Mother/Infant Instructions:

Outpatient Services Needs

REHAB / SNF / LTAC / HOSPICE ONLY

Rehabilitation Potential: (Group response undefined)

Anticipated LOS:
I certify that post-hospital skilled services are required at an extended
care facility as a continuation for which he/she was receiving in-patient
hospital services prior to the transfer to the extended care facility.

Order's Audit Trail of Events

1	07/16/16 1521 DR.KIAAL	Order ENTER in POM
2	07/16/16 1521 DR.KIAAL	Ordering Doctor: K1a.A11 MD
3	07/16/16 1521 DR.KIAAL	Order Source: EPOH
4	07/16/16 1521 DR.KIAAL	Order viewed from Order Management
5	07/16/16 1554 DHURRAM	order viewed from Order Management
6	07/16/16 1736 DHURRAM	order acknowledged

Electronic Signature: [REDACTED]

PERMANENT MEDICAL RECORD COPY

EXHIBIT B

EXHIBIT B

From: Judd, Joshua [<mailto:Dept08LC@clarkcountycourts.us>]
Sent: Monday, April 01, 2019 3:03 PM
To: efile; Tyson Dobbs; Office (office@danielmarks.net)
Subject: A757722 (Green v. DeLee et al.) Motion for Partial Summary Judgment

Good Afternoon,

At the hearing on March 12, 2019, Judge Smith deferred his decision on Defts' Motion for Partial Summary Judgment. He has reviewed the pleadings and has asked that the parties submit proposed Orders Granting in Part and Denying in Part the Motion, consistent with the following:

- GRANTED as to Plt's claims against the hospital for vicarious liability
- GRANTED as to Plt's claims against the hospital for any of Dr. DeLee's actions
- DENIED as to Plt's claims against the hospital for any of Dr. Kia's actions, under the theory of ostensible agency

Please submit your orders to me in Word format, for Judge Smith's consideration. Judge intends to write and issue his own Order from Chambers. Please let me know if you have any questions, or if anything remains unclear.

Thank you,

Joshua D. Judd, Esq.
Court Law Clerk to the Honorable Douglas E. Smith
Eighth Judicial District Court | Department VIII
P: (702) 671-4335
F: (702) 671-4337

EXHIBIT C

EXHIBIT C

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

TPC
MICHAEL E. PRANGLE, ESQ.
Nevada Bar No.: 8619
TYSON J. DOBBS, ESQ.
Nevada Bar No.: 11953
SHERMAN B. MAYOR, ESQ.
Nevada Bar No. 1491
HALL PRANGLE & SCHOONVELD, LLC
1160 N. Town Center Dr., Ste. 200
Las Vegas, NV 89144
(702) 889-6400 – Office
(702) 384-6025 – Facsimile
efile@hpslaw.com
Attorneys for Defendant
Sunrise Hospital and Medical Center, LLC

DISTRICT COURT
CLARK COUNTY, NEVADA

CHLOE GREEN, an individual,

Plaintiff,

vs.

FRANK J. DELEE, M.D., an individual;
FRANK J. DELEE MD, PC, a Domestic
Professional Corporation, SUNRISE
HOSPITAL AND MEDICAL CENTER,
LLC, a Foreign Limited-Liability Company,

Defendants.

SUNRISE HOSPITAL AND MEDICAL
CENTER, LLC, a Foreign Limited-Liability
Company,

Third-Party Plaintiff,

vs.

ALI KIA, M.D., Individually and his
employer, NEVADA HOSPITALIST
GROUP, LLP; DOES 1-10; AND ROE
CORPORATION 1-10; inclusive.

Third-Party Defendants.

CASE NO.: A-17-757722-C
DEPT NO.: VIII

**SUNRISE HOSPITAL AND MEDICAL
CENTER, LLC'S THIRD PARTY
COMPLAINT FOR CONTRIBUTION
AND INDEMNITY (ALI KIA, M.D.)**

COMES NOW Third-Party Plaintiff, Sunrise Hospital and Medical Center ("Sunrise Hospital"), by and through its counsel of record HALL PRANGLE AND SCHOONVELD, LLC, and hereby complains and alleges against Third-Party Defendants, Ali Kia, M.D. and Nevada Hospitalist Group, LLP, as follows:

GENERAL ALLEGATIONS

1. Third-Party Plaintiff, SUNRISE HOSPITAL AND MEDICAL CENTER, a Nevada Corporation (hereinafter referred to as "SUNRISE HOSPITAL"), is a corporation duly organized under the laws of the State of Nevada and is authorized to do business as a hospital in Clark County, Nevada.
2. Third-Party Defendant Ali Kia, M.D., is a Board-Certified Internist who practices as a "Hospitalist." Dr. Kia holds himself out as duly licensed to practice his profession under and by virtue of the laws of the State of Nevada and was, and now is, engaged in the practice of his profession in the State of Nevada.
3. Ali Kia, M.D., is an agent and/or employee of Third-Party Defendant, Nevada Hospitalist Group, LLP. Nevada Hospitalist Group, LLP is a Nevada Limited Liability Partnership in Clark County, Nevada.
4. Plaintiff, Choloe Green, an individual, has asserted that Ali Kia, M.D., is an ostensible agent of Third-Party Plaintiff Sunrise Hospital. The court has denied Sunrise Hospital's motion to dismiss such potential claim finding there is a factual issue to be resolved by the finder of fact.
5. On information and belief DOES/ROE Corporations were the employer and/or were responsible for Third-Party Defendant Ali Kia M.D. being called into consulting and/or treating Plaintiff Choloe Green for her Sunrise hospitalization which commenced on July

1 14, 2016. When the true names and capacities of said Third-Party Defendants
2 DOES/ROE Corporations have been ascertained, Third-Party Plaintiff will amend this
3 Third-Party Complaint accordingly.

4 **STATEMENTS OF FACTS**

- 5 6. Third-Party Plaintiff, Sunrise Hospital repeats and realleges and incorporates each and
6 every allegation contained in paragraphs 1-5 as though fully set forth herein.
- 7 7. Plaintiff, Choloe Green, had a caesarian section birth on July 9, 2016 at Sunrise Hospital
8 with Frank J. DeLee, M.D., as the treating Obstetrician. Plaintiff was released home on
9 the first post-operative day, July 10, 2016. Plaintiff contends in her complaint that her
10 release was premature since a routine post-operative course is 3-4 days. Plaintiff also
11 contends in her complaint that she was released prior to tolerating clear liquids and
12 passing flatus.
- 13 8. Plaintiff alleges that Sunrise Hospital and Dr. DeLee breached the applicable standard of
14 care in discharging Plaintiff from the hospital on July 10, 2016. *See* attached Exhibit "A"
15 (Plaintiff's Choloe Green's Complaint for Medical Malpractice and Affidavit of Lisa
16 Karamardian, M.D.).
- 17 9. Plaintiff, Choloe Green asserts that she was readmitted to Sunrise Hospital on July 14,
18 2016 with severe abdominal pain, nausea, vomiting, fever and chills. Ms. Green was
19 admitted to the medical/surgical unit of the hospital. She was seen, treated, and/or
20 consulted by Frank J. DeLee, M.D. and Ali Kia, M.D.
- 21 10. Plaintiff was discharged from Sunrise Hospital on July 16, 2016. Plaintiff alleges that her
22 discharge was "discussed and confirmed by Dr. DeLee. . ."
- 23 11. The Sunrise Hospital records indicate that Ali Kia, M.D. ordered and electronically
24 signed Plaintiff's July 16, 2016 discharge from Sunrise Hospital.
- 25
26
27
28

12. Plaintiff contends that her second discharge from sunrise Hospital on July 16, 2016 violated the standard of care. Plaintiff asserts that she was not able to tolerate a regular diet at the time of discharge and that her KUB showed multiple dilated loops of bowel (which Plaintiff asserts are related to small bowel obstruction).

13. Plaintiff alleges in her underlying complaint that because of the aforementioned negligence and breaches of the standard of care she suffered a protracted hospital course with multiple complications including discharge to a step-down facility once her antibiotic course was felt to be completed. Plaintiff asserts that she remained on a feeding tube and in need of rehabilitation.

14. Plaintiff contends that it was Sunrise Hospital and Dr. DeLee that breached the standard of care in discharging her from the hospital July 16, 2016.

15. Sunrise Hospital filed a Motion for Partial Summary Judgment which, in part, sought to dismiss any potential claim that Ali Kia, M.D. was an ostensible agent of the hospital during Plaintiff's July 14 – 16, 2016 hospitalization. The court denied the motion finding that there was a genuine issue of fact to be resolved by the finder of fact (jury).

16. Third-Party Defendant, Ali Kia, M.D. was "on call" for Nevada Hospitalist Group, LLP which resulted in Dr. Kia becoming a treating physician of the underlying Plaintiff, Choloe Green.

17. When Dr. Kia was "on call" for Nevada Hospitalist Group he was employed and/or an agent of Nevada Hospitalist Group.

THIRD-PARTY PLAINTIFF SUNRISE HOSPITAL CLAIM FOR INDEMNITY AND CONTRIBUTION AGAINST ALI KIA, M.D., AND NEVADA HOSPITALIST GROUP

18. Third-Party Plaintiff, Sunrise Hospital repeats and realleges and incorporates each and every allegation contained in paragraphs 1-17 as though fully set forth herein.

- 1 19. Plaintiff contends that she suffered injury and damage as a result of the care and
2 treatment she received at Sunrise Hospital for her July 9, 2016 and July 14, 2016
3 hospitalizations.
- 4 20. Frank J. DeLee, M.D. discharged Choloe Green from her first hospitalization at
5 Sunrise Hospital on July 10, 2016. Ali Kia, M.D. discharged Choloe Green from her
6 second hospitalization at Sunrise Hospital on July 16, 2016.
- 7 21. The court has determined that during Plaintiff's July 9, 2016 hospitalization and July
8 16, 2016 hospitalization, Frank J. DeLee, M.D. was not an ostensible agent of the
9 hospital and the hospital is not vicariously liable for Dr. DeLee.
- 10 22. The court has also determined that Sunrise Hospital is not vicariously liable for any
11 care or treatment rendered by Ali Kia, M.D. to Plaintiff, Choloe Green during her
12 July 16, 2016 hospital admission. The court, however, denied Sunrise Hospital's
13 motion to dismiss any claim that Dr. Kia was an ostensible agent of the hospital
14 during this same hospital admission (genuine issue of material fact precluding
15 summary judgment).
- 16 23. Although unnamed as a party in Plaintiff Choloe Green's underlying complaint, Ali
17 Kia, M.D. (Third-Party Defendant) discharged Plaintiff on July 16, 2016. As such,
18 Dr. Kia's care of Choloe Green is at issue in Plaintiff's underlying complaint.
- 19 24. Attached as Exhibit "A" to this Third-Party Complaint is the Plaintiff, Choloe
20 Green's underlying complaint for medical malpractice and attached expert affidavit of
21 Lisa Karamardian, M.D.
- 22 25. Third-Party Plaintiff Sunrise Hospital pursuant to NRS 17.225 and 17.285, Nevada's
23 contribution statutes, and also the doctrine equitable indemnity, seeks judgment
24
25
26
27
28

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

1 against Ali Kia, M.D. and Nevada Hospitalist Group for any amount awarded (by
2 verdict or judgment) against the hospital resulting from Ali Kia, M.D.'s treatment and
3 care of Choloe Green during her July 14, 2016 hospital admission.

4 26. WHEREFORE, Third-Party Plaintiff Sunrise Hospital and Medical Center prays that
5 judgment be entered in its favor and against Third-Party Defendants, Ali Kia, M.D.,
6 and Nevada Hospitalist Group, LLP, in an amount commensurate with the relative
7 degree of fault by Dr. Kia in causing the Plaintiff's alleged injuries and damages.
8

9 DATED this 24th day of April, 2019.

10 HALL PRANGLE & SCHOONVELD, LLC

11
12 By: _____

13 MICHAEL E. PRANGLE, ESQ.

14 Nevada Bar No.: 8619

15 TYSON J. DOBBS, ESQ.

16 Nevada Bar No.: 11953

17 SHERMAN B. MAYOR, ESQ.

18 Nevada Bar No. 1491

19 1160 N. Town Center Dr., Ste. 200

20 Las Vegas, NV 89144

21 *Attorneys for Defendant*

22 *Sunrise Hospital and Medical Center, LLC*
23
24
25
26
27
28

Steven G. Griesen

1 **COMP**
2 **LAW OFFICE OF DANIEL MARKS**
3 **DANIEL MARKS, ESQ.**
4 Nevada State Bar No. 002003
5 **NICOLE M. YOUNG, ESQ.**
6 Nevada State Bar No. 12659
7 **610 South Ninth Street**
8 **Las Vegas, Nevada 89101**
9 **(702) 386-0536; Fax (702) 386-6812**
10 **Attorneys for Plaintiff**

7 **DISTRICT COURT**
8 **CLARK COUNTY, NEVADA**

9 **CHLOE GREEN, an individual,**

Case No.
Dept. No.

A-17-757722-C y

11 **Plaintiff,**

Department 8

12 **v.**

13 **FRANK J. DELEE, M.D., an individual;**
14 **FRANK J. DELEE MD, PC, a Domestic**
15 **Professional Corporation, SUNRISE HOSPITAL**
16 **AND MEDICAL CENTER, LLC, a Foreign**
17 **Limited-Liability Company.**

Arbitration Exempt -- Action
for Medical Malpractice

18 **Defendants.**

19 **COMPLAINT FOR MEDICAL MALPRACTICE**

20 **COMES NOW Plaintiff Chloe Green, by and through undersigned counsel Daniel Marks, Esq., and**
21 **Nicole M. Young, Esq., of the Law Office of Daniel Marks, and for her claims against Defendants herein**
22 **allege as follows:**

- 23 1. That at all times material hereto, Plaintiff Chloe Green (hereinafter "Chloe") was a
24 resident of Clark County, Nevada.
- 25 2. That at all times material hereto, Defendant FRANK J. DELEE, M.D., was a licensed
26 medical doctor in the State of Nevada, and practiced in his professional corporation entitled
27 **FRANK J. DELEE MD, PC.**

28 **////**

////

- 1 3. That at all times material hereto, Defendant FRANK J. DELEE MD, PC, was a domestic
2 professional corporation organized and existing under the laws of the state of Nevada and
3 registered to do business, and doing business in the State of Nevada in Clark County, Nevada.
- 4 4. That Defendant FRANK J. DELEE, MD, is the President of Defendant FRANK J. DELEE
5 MD, PC (hereinafter collectively referred to as "Dr. DeLee").
- 6 5. That Defendant SUNRISE HOSPITAL AND MEDICAL CENTER, LLC, (hereinafter
7 "Sunrise Hospital"), was a foreign limited-liability company, registered to do business and
8 doing business in the State of Nevada in Clark County, Nevada.
- 9 6. That on or about July 9, 2016, Dr. DeLee performed a cesarean section (C-Section) on
10 Cholee at Sunrise Hospital. Cholee was discharged from the hospital the following day, on
11 July 10, 2016, even though she did not have bowel movement prior to being discharged from
12 the hospital.
- 13 7. On July 13, 2016, Cholee had an appointment with Dr. DeLee. At that appointment, Cholee
14 notified Dr. DeLee that she had not had a bowel movement post C-section. He did not provide
15 any care or treatment to Cholee regarding her lack of a bowel movement.
- 16 8. On July 14, 2016, after still not having a bowel movement post C-section, Cholee went to
17 the emergency room at Sunrise Hospital, with severe abdominal pain and reports of nausea,
18 vomiting, fever, and chills. She was admitted to the medical/surgical unit because of the
19 diagnosis of sepsis. Sunrise Hospital discharged Cholee on July 16, 2016, despite having a
20 small bowel obstruction. The discharge was discussed and confirmed by Dr. DeLee.
- 21 9. On July 17, 2016, Cholee went to the emergency room at Centennial Hills Hospital where
22 she was admitted until she was finally discharged on September 2, 2016. Centennial Hills
23 admitted Cholee with the diagnosis of small bowel obstruction. She had an NG Tube placed,
24 underwent surgery, had diffuse pulmonary infiltrates, suggestive of pulmonary edema or ARDS,
25 and eventually needed a tracheostomy and PEG tube placement.
- 26 10. That Defendant Dr. DeLee and Sunrise Hospital breached the standard of care in their
27 treatment of Cholee and as a direct and proximate result of that breach, Cholee has been
28 damaged.

1 11. That as a direct and proximate result of all of the Defendants' negligence, Cholee has been
2 damaged in an amount in excess of \$15,000.00.

3 12. This Complaint is supported by the Affidavit of Lisa Karamardian, M.D., a copy of which
4 is attached hereto as Exhibit "1".


5 13. Cholee has been forced to retain counsel to bring this action and should be awarded his
6 reasonable attorneys fees and costs.

7 WHEREFORE, Cholee prays for judgment against the Defendants, and each of them, as follows:

- 8 1. For special damages in a sum in excess of \$15,000.00;
9 2. For compensatory damages in a sum in excess of \$15,000.00;
10 3. For reasonable attorney's fees and litigation costs incurred;
11 4. For such other and further relief as the Court deems just and proper.

12 DATED this 30 day of June, 2017.

13 LAW OFFICE OF DANIEL MARKS

14 
15 DANIEL MARKS, ESQ.
16 Nevada State Bar No. 002003
17 NICOLE M. YOUNG, ESQ.
18 Nevada State Bar No. 012659
19 610 South Ninth Street
20 Las Vegas, Nevada 89101
21 Attorneys for Plaintiff
22
23
24
25
26
27
28

VERIFICATION

STATE OF NEVADA
COUNTY OF CLARK

ss:

CHLOE GREEN, being first duly sworn, deposes and says:

That I am the Plaintiff in the above-entitled matter; that I have read the above and foregoing Complaint and know the contents thereof; that the same are true of my knowledge except for those matters stated upon information and belief, and as to those matters, I believe them to be true.

Chloe Green
CHLOE GREEN

SUBSCRIBED AND SWORN to before me
this 22nd day of June, 2017.

Glenda Guo
NOTARY PUBLIC in and for said
COUNTY and STATE

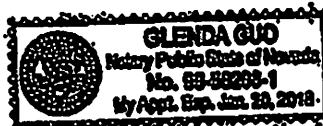


EXHIBIT 1

AFFIDAVIT OF DR. LISA KARAMARDIAN

1
2 **STATE OF** California
3 **COUNTY OF** Orin

4 **DR. LISA KARAMARDIAN**, being first duly sworn, under penalty of perjury, does say and
5 depose the following:

- 6 1. That I am a medical doctor licensed in the State of California and am board certified in
7 the field of Obstetrics and Gynecology.
- 8 2. This affidavit is executed pursuant to NRS 41A.071 in support of a Complaint for
9 Medical Malpractice against Dr. Frank DeLee and Sunrise Hospital and Medical Center.
- 10 3. That I have reviewed Plaintiff Cholee Green's medical records relating to the care and
11 treatment she received from Dr. Frank DeLee, Sunrise Hospital and Medical Center,
12 Valley Hospital Medical Center and Centennial Hills Medical Center.
- 13 4. A review of the medical records reveals that on July 9, 2016, Ms. Green had a cesarean
14 section birth at Sunrise Hospital with Dr. DeLee as the obstetrician. She was released
15 home on post-operative day number one. This was a breach of the standard of care by Dr.
16 DeLee and Sunrise Hospital. The typical post-operative course for a routine cesarean is a
17 3-4 night stay in the hospital. The standard of care was also breached because Ms. Green
18 had not even attempted to tolerate clear liquids and she had not passed flatus when she
19 was released on post-operative day number one.
- 20 5. A review of the medical records also reveals that on July 14, 2016, Ms. Green presented
21 again to Sunrise Hospital, now five (5) days post-partum, with severe abdominal pain
22 and reports of nausea, vomiting, fever, and chills. She was admitted to the
23 medical/surgical unit because of the diagnosis of sepsis. She was discharged on July 16,
24 2016. The discharge was discussed and confirmed by Dr. DeLee. This discharge violated
25 the standard of care. Ms. Green was discharged despite the fact that she was not able to
26 tolerate a regular diet. Further, on the day of her discharge, her KUB showed multiple
27 dilated loops of bowel, thought to be related to a small bowel obstruction, yet she was
28 sent home. An intraperitoneal abscess was suspected on a CT scan, yet she was still sent
home. This was a violation of the standard of care by Sunrise Hospital and Dr. DeLee.

- 1 6. The day after she was released from Sunrise Hospital, Ms. Green presented at Centennial
2 Hills Hospital, on July 17, 2016. At the time of presentation she was now 7 days
3 postpartum, had not had a bowel movement, and was unable to even tolerate liquids. She
4 was still in severe pain. Her imaging studies had worsened and she was now admitted,
5 again, with the diagnosis of small bowel obstruction. An NG tube was finally placed and
6 a general surgery evaluation ordered. She was admitted for concern for bowel perforation.
7 She underwent an exploratory laparotomy on July 18th for what was presumed to be a
8 perforated viscus, but none was found intraoperatively, just diffuse ascites. Infarcted
9 mesentery was removed and post-op her condition deteriorated, culminating in a rapid
10 response call on July 20th when she was found to be hypoxic. By the 22nd she had diffuse
11 pulmonary infiltrates, suggestive of pulmonary edema or ARDS, and her condition worsened. CT
12 guided drain placement cultures of fluid revealed enterococcus faecalis, supporting the fact that
13 there must have been a bowel perforation. She then developed a pneumothorax and eventually
14 needed a tracheostomy and PEG tube placement. On August 5, 2016, there was difficulty with
15 her airway support.
- 16 7. Because of the violations of the standard of care, her hospital course was protracted with
17 multiple complications and she was apparently discharged to a step down facility once her
18 antibiotic course was felt to be completed, still on a feeding tube and in need of rehabilitation.
- 19 8. That in my professional opinion, to a degree of medical probability, the standard of care
20 was breached by both Dr. DeLee and Sunrise Hospital and Medical Center in their
21 treatment of Ms. Green.

22 FURTHER YOUR AFFIANT SAYETH NAUGHT.

23 
24 LISA KARAMARDIAN, MD.

25 SUBSCRIBED and SWORN to before me
26 this 28 day of June, 2017,

27 
28 NOTARY PUBLIC in and for said
COUNTY and STATE

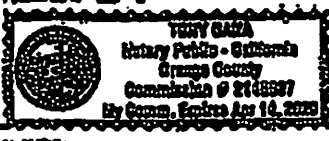
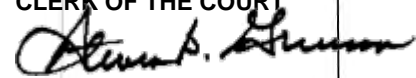


EXHIBIT B

EXHIBIT B



MICHAEL E. PRANGLE, ESQ.
Nevada Bar No.: 8619
TYSON J. DOBBS, ESQ.
Nevada Bar No.: 11953
SHERMAN B. MAYOR, ESQ.
Nevada Bar No. 1491
HALL PRANGLE & SCHOONVELD, LLC
1160 N. Town Center Dr., Ste. 200
Las Vegas, NV 89144
(702) 889-6400 – Office
(702) 384-6025 – Facsimile
efile@hpslaw.com
Attorneys for Defendant
Sunrise Hospital and Medical Center, LLC

DISTRICT COURT
CLARK COUNTY, NEVADA

CHLOE GREEN, an individual,

Plaintiff,

CASE NO.: A-17-757722-C
DEPT NO.: VH- 9

vs.

FRANK J. DELEE, M.D., an individual;
FRANK J. DELEE MD, PC, a Domestic
Professional Corporation, SUNRISE
HOSPITAL AND MEDICAL CENTER,
LLC, a Foreign Limited-Liability Company,

Defendants.

**ORDER GRANTING SUNRISE
HOSPITAL AND MEDICAL CENTER,
LLC'S MOTION TO FILE THIRD
PARTY COMPLAINT FOR
CONTRIBUTION AND INDEMNITY
(ALI KIA, M.D.)**

SUNRISE HOSPITAL AND MEDICAL
CENTER, LLC, a Foreign Limited-Liability
Company,

Third-Party Plaintiff,

vs.

ALI KIA, M.D., Individually and his
employer, NEVADA HOSPITALIST
GROUP, LLP; DOES 1-10; AND ROE
CORPORATION 1-10; inclusive.

Third-Party Defendants.

1 On May 1, 2019, Defendant Sunrise Hospital Medical Center, LLC filed its Motion for
2 Leave to File Third-Party Complaint on Order Shortening Time. No Opposition was filed and
3 the Court considered the Motion in Chambers on May 13, 2019.

4 The Court, having reviewed the pleadings and papers on file, HEREBY ORDERS,
5 ADJUDGES, AND DECREES that Defendant Sunrise Hospital Medical Center's Motion for
6 Leave to File Third-Party Complaint is hereby GRANTED.

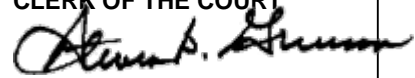
7 DATED this 11th day of June, 2019.

8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28
DISTRICT COURT JUDGE

Respectfully Submitted:

HALL PRANGLE & SCHOONVELD LLC

TYSON J. DOBBS, ESQ.
Nevada Bar No. 11953
1160 North Town Center Drive, Ste. 200
Las Vegas, Nevada 89144
Attorneys for Plaintiff
Valley Health System, LLC
d/b/a Valley Hospital Medical Center



1 S. BRENT VOGEL
Nevada Bar No. 006858
2 E-Mail: Brent.Vogel@lewisbrisbois.com
ERIN E. JORDAN
3 Nevada Bar No. 10018
E-Mail: Erin.Jordan@lewisbrisbois.com
4 LEWIS BRISBOIS BISGAARD & SMITH LLP
6385 S. Rainbow Boulevard, Suite 600
5 Las Vegas, Nevada 89118
702.893.3383
6 FAX: 702.893.3789
Attorneys for Third-Party Defendant Nevada
7 *Hospitalist Group, LLP*

8
9 DISTRICT COURT

10 CLARK COUNTY, NEVADA

11 CHOLOE GREEN, an individual,
12 Plaintiff,

13 vs.

14 FRANK J. DELEE, M.D., an individual;
15 FRANK J. DELEE, MD, PC, a Domestic
Professional Corporation, SUNRISE
HOSPITAL AND MEDICAL CENTER, LLC,
a foreign Limited-Liability Company, ,

16 Defendants.

17
18 SUNRISE HOSPITAL AND MEDICAL
CENTER, LLC, a Foreign Limited-Liability
Company,

19 Third-Party Plaintiff,

20 vs.

21 ALI KIA, M.D., Individually and his
22 employer, NEVADA HOSPITALIST
GROUP, LLP; DOES 1-10; AND ROE
23 CORPORATION 1-10; inclusive.,

24 Third-Party Defendants.

CASE NO. A-17-757722-C
Dept. No.: IX

**THIRD-PARTY DEFENDANT NEVADA
HOSPITALIST GROUP, LLP'S REPLY
IN SUPPORT OF MOTION FOR
JUDGMENT ON THE PLEADINGS**

25
26 Third-Party Defendant NEVADA HOSPITALIST GROUP, LLP, by and through its
27 attorneys of record, S. Brent Vogel, Esq. and Erin E. Jordan, Esq. of LEWIS BRISBOIS
28 BISGAARD & SMITH LLP, hereby files this Reply in Support of Motion for Judgment on the

1 Pleadings.

2 This Reply is based upon the following Memorandum of Points and Authorities, the papers
3 and pleadings on file in this matter, and any oral argument offered at the hearing of this matter.

4 DATED this 6th day of April, 2020.

5 LEWIS BRISBOIS BISGAARD & SMITH LLP

6
7 By /s/ Erin E. Jordan

8 S. BRENT VOGEL

9 Nevada Bar No. 006858

10 ERIN E. JORDAN

11 Nevada Bar No. 10018

12 6385 S. Rainbow Boulevard, Suite 600

13 Las Vegas, Nevada 89118

14 Tel. 702.893.3383

15 *Attorneys for Third-Party Defendant Nevada
Hospitalist Group, LLP*

16 **MEMORANDUM OF POINTS AND AUTHORITIES**

17 **I. ARGUMENT**

18 Third-Party Defendant Nevada Hospitalist Group, LLP filed a Motion for Judgment on the
19 Pleadings asking this Court to dismiss Third-Party Plaintiff Sunrise Hospital's claims against it
20 because the claims Sunrise Hospital brought did not comply with NRS 41A.071. There is no
21 dispute that Third-Party Plaintiff Sunrise Hospital seeks to hold Nevada Hospitalist Group, LLC
22 vicariously liable for the actions of Third-Party Defendant hospitalist Dr. Kia. The basis of
23 Sunrise Hospital's third-party claims is alleged negligence on the behalf of Dr. Kia as a basis for
24 indemnity and contribution claim against Dr. Kia and vicarious liability for Nevada Hospitalist
25 Group for the actions of Dr. Kia. All parties agree that the basis of all third-party claims in this
26 matter is the alleged professional negligence of Dr. Kia. Defendant NHG filed the instant Motion
27 for Judgment on the Pleadings based upon Sunrise Hospital's failure to attach an affidavit to the
28 Third-Party Complaint as required by NRS 41A.071.

1 Sunrise Hospital filed an Opposition to NHG's Motion for Judgment on the Pleadings in
2 which it made the following arguments: 1) the affidavit that Plaintiff originally filed contains
3 criticism of Dr. Kia by implication, although he is never named in the affidavit; 2) Sunrise
4 Hospital cannot produce an affidavit critical of Dr. Kia because Sunrise Hospital is concerned that
5 it may become liable for Dr. Kia's actions through the doctrine of ostensible agency; and 3)
6 Sunrise Hospital does not need to provide a NRS 41A.071 affidavit against NHG because the
7 claims against NHG are vicarious in nature only.

8 Sunrise Hospital has failed to give this Court any reason to deny NHG's Motion for
9 Judgment on the Pleadings for the reasons set forth below.

10 **a. A NRS 41A.071 Affidavit Regarding Acts of Negligence by Dr. Kia Is**
11 **Required**

12 Sunrise Hospital argues in its Opposition that NHG's Motion for Judgment on the
13 Pleadings that the Motion should be denied because it is not required to provide an NRS 41A.071
14 affidavit against NHG because Sunrise Hospital has not alleged any acts of negligence against
15 NHG. Opposition, pp. 7-8 ("However, with regard to Nevada Hospitalist Group, LLP, Sunrise
16 Hospital is not asserting any specific act of alleged negligence against that group."). Sunrise
17 Hospital has misconstrued NHG's position. NHG has never argued that Sunrise Hospital needed
18 to attach a NRS 41A.071 affidavit regarding NHG. Rather, NHG very clearly explained in its
19 Motion for Judgment on the Pleadings that the third-party claims all fail because Sunrise Hospital
20 did not satisfy NRS 41A.071 for the allegations of professional negligence against Dr. Kia, the
21 alleged professional negligence of which forms the basis of the alleged vicarious liability of
22 NHG.¹ Motion, pp. 5-6.

23 Third-Party Plaintiff Sunrise Hospital admits that contribution and indemnity claims like
24 those that it brought in this action must satisfy NRS 41A.071 if the basis of those claims is alleged

25
26 ¹ Sunrise Hospital repeatedly refers to NHG as Dr. Kia's employer, however, it is surely aware of
27 Dr. Kia's Answers to Requests for Admission in which he clearly states that he was not an
28 employee of NHG. However, a factual determination need not be made regarding this issue for a
decision on the Motion for Judgment on the Pleadings that is before this Court.

1 professional negligence. Opposition, p. 6.

2 Sunrise does not challenge the authority provided by Nevada Hospitalist Group
3 stating that a Third-Party Complaint for contribution and/or indemnity, which is
4 based upon medical malpractice, must comply with the requirements of NRS
5 41A.071. That is, it is agreed that if no claim for professional negligence is made
against Dr. Kia, then he cannot be liable for indemnity and/or contribution for the
care he rendered to Choloe Green.

6 *Id.*

7 There is, therefore, no dispute that Third-Party Plaintiff Sunrise Hospital was required to
8 provide a NRS 41A.071 affidavit that supported its indemnity and contribution claims against Dr.
9 Kia. As any vicarious liability claim against NHG is dependent upon the claim against Dr. Kia,
10 the claims against NHG fail if Sunrise Hospital failed to satisfy NRS 41A.071 regarding Dr. Kia.

11 **b. Third-Party Plaintiff Sunrise Hospital did Not Satisfy NRS 41A.071**
12 **Regarding its Allegations of Professional Negligence Against Dr. Kia**

13 Third-Party Plaintiff Sunrise Hospital contends that it satisfied the requirement that it
14 admits that it has, to provide a NRS 41A.071 affidavit of merit supporting allegations of
15 professional negligence against Dr. Kia. Sunrise Hospital argues that it satisfied this requirement
16 by simply attaching Plaintiff Choloe Green's NRS 41A.071 affidavit to the Third-Party
17 Complaint. This affidavit is insufficient. It does not mention Dr. Kia one single time. It cannot
18 be concluded that the affidavit is referencing Dr. Kia because Dr. Kia is not a Defendant in the
19 underlying action. Sunrise Hospital asks this Court to make a factual finding that even though the
20 affidavit does not discuss Dr. Kia at all, the affidavit is really talking about Dr. Kia. Opposition,
21 p. 6. The argument is silly. Additionally, a Motion for Judgment on the Pleadings does not
22 require factual findings, but rather, is made based upon the pleadings as they are pled. Asking this
23 Court to deny the Motion based upon anything other than what is in the pleadings is asking this
24 Court to disregard the law of motions for judgment on the pleadings.

25 A motion for judgment on the pleadings should be granted when a decision can be made as
26 a matter of law. *Bernard v. Rockhill Dev. Co.*, 103 Nev. 132, 135, (1987). *Id.* at 136. It must be
27 determined whether as a matter of law, Third-Party Plaintiff Sunrise Hospital has stated a claim
28 for relief. There can be no dispute that Third-Party Plaintiff Sunrise Hospital did not attach an

1 affidavit that discusses alleged breaches of the standard of care by either Dr. Kia or Nevada
2 Hospitalist Group, LLP and that, therefore, it did not satisfy NRS 41A.71.

3 **c. Ostensible Agency Does Not Excuse Sunrise Hospital From the Requirements**
4 **of NRS 41A.071**

5 Third-Party Plaintiff Sunrise Hospital also argues that it is in a unique position that
6 prevents it from being able to file an affidavit alleging professional negligence of Dr. Kia.
7 Opposition, p. 5 (“On the other hand, if the hospital does have liability exposure for Dr. Kia’s
8 discharge order of July 14, 2016, the hospital, then, would not be in a position to provide an expert
9 affidavit challenging Dr. Kia’s care of Choloe Green (since he is a potential hospital ostensible
10 agent)”. The fact that Sunrise Hospital’s own litigation strategy has forced it into the position
11 where it must comply with NRS 41A.071 for claims it chose to bring against Dr. Kia and an entity
12 that has proven not to be his employer is not a burden that NHG must bear.

13 Sunrise Hospital made the strategic decision to file a Motion for Summary Judgment
14 regarding ostensible agency of then non-party Dr. Kia. Sunrise Hospital then, presumably upset
15 with this Court’s ruling on that Motion, filed a Third-Party Complaint against Dr. Kia and also
16 NHG. Sunrise Hospital was well within the bounds of proper litigation tactics pursuant to the
17 Nevada Rules of Civil Procedure when it filed the Third-Party Complaint. However, Sunrise
18 Hospital, as a provider of healthcare, is intimately familiar with NRS 41A.071 and is aware that
19 there is no ostensible agency exception to the affidavit requirement. The claims against Dr. Kia
20 and NHG are subject to NRS 41A.071 like any other professional negligence claims.

21 **II. CONCLUSION**

22 Judgment on the Pleadings in favor of Third-Party Defendant Nevada Hospitalist Group,
23 LLP is appropriate in this case because Third-Party Plaintiff Sunrise Hospital has failed to state a
24 claim for which relief may be granted by failing to comply with NRS 41A.071. Therefore,
25 Nevada Hospitalist Group, LLP respectfully requests that this Court enter judgment in its favor
26 based upon the pleadings in this case. The claims against NHG are vicarious only, and therefore

27 ///

28 ///

1 may only succeed if the claims against Dr. Kia succeed. The claims against Dr. Kia fail as a
2 matter of law because Sunrise Hospital has failed to comply with NRS 41A.071.

3 DATED this 6th day of April, 2020.

4 LEWIS BRISBOIS BISGAARD & SMITH LLP

5

6

7

By /s/ Erin E. Jordan

8

S. BRENT VOGEL

9

Nevada Bar No. 006858

ERIN E. JORDAN

10

Nevada Bar No. 10018

6385 S. Rainbow Boulevard, Suite 600

11

Las Vegas, Nevada 89118

Tel. 702.893.3383

12

*Attorneys for Third-Party Defendant Nevada
Hospitalist Group, LLP*

13

14

15

16

17

18

19

20

21

22

23

24

25

26

27

28

CERTIFICATE OF SERVICE

I hereby certify that on this 6th day of April, 2020, a true and correct copy of THIRD-PARTY DEFENDANT NEVADA HOSPITALIST GROUP, LLP'S REPLY IN SUPPORT OF MOTION FOR JUDGMENT ON THE PLEADINGS was served by electronically filing with the Clerk of the Court using the Electronic Service system and serving all parties with an email-address on record, who have agreed to receive Electronic Service in this action.

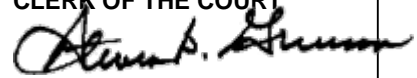
Daniel Marks, Esq.
Nicole M. Young, Esq.
LAW OFFICE OF DANIEL MARKS
610 S. 9th St.
Las Vegas, NV 89101
Tel: 702.386.0536
Fax: 702.386.6812
nyoung@danielmarks.net
Attorneys for Plaintiff

Erik Stryker, Esq.
WILSON ELSEER MOSKOWITZ EDELMAN
& DICKER LLP
300 S. 4th St.
Las Vegas, NV 89101
Tel: 702.727.1400
Fax: 702.727.1401
eric.stryker@wilsonelser.com
*Attorneys for Defendants Frank J. Delee, M.D.
and Frank J. Delee, M.D., PC*

Michael E. Prangle, Esq.
Tyson J. Dobbs, Esq.
Sherman B. Mayor, Esq.
HALL PRANGLE & SCHOONVELD, LLC
1160 N. Town Center Dr., Suite 200
Las Vegas, NV 89144
Tel: 702.889.6400
Fax: 702.384.6025
smayor@hpslaw.com
tdobbs@hpslaw.com
*Attorneys for Defendant/Third-Party Plaintiff
Sunrise Hospital and Medical Center, LLC*

Patricia E. Daehnke, Esq.
Linda K. Rurangirwa, Esq.
COLLINSON, DAEHNKE, INLOW, GRECO
2110 E. Flamingo Road, Suite 212
Las Vegas, NV 89119
Tel: 702.979.2132
Fax: 702.979.2133
patricia.daehnke@cdiglaw.com
linda.rurangirwa@cdiglaw.com
*Attorneys for Third-Party Defendant Ali Kia,
M.D.*

By /s/ Johana Whitbeck
An Employee of
LEWIS BRISBOIS BISGAARD & SMITH LLP



1 S. BRENT VOGEL
Nevada Bar No. 006858
2 E-Mail: Brent.Vogel@lewisbrisbois.com
ERIN E. JORDAN
3 Nevada Bar No. 10018
E-Mail: Erin.Jordan@lewisbrisbois.com
4 LEWIS BRISBOIS BISGAARD & SMITH LLP
6385 S. Rainbow Boulevard, Suite 600
5 Las Vegas, Nevada 89118
702.893.3383
6 FAX: 702.893.3789
Attorneys for Third-Party Defendant Nevada
7 *Hospitalist Group, LLP*

8
9 DISTRICT COURT

10 CLARK COUNTY, NEVADA

11 CHOLOE GREEN, an individual,
12 Plaintiff,

13 vs.

14 FRANK J. DELEE, M.D., an individual;
15 FRANK J. DELEE, MD, PC, a Domestic
Professional Corporation, SUNRISE
HOSPITAL AND MEDICAL CENTER, LLC,
a foreign Limited-Liability Company, ,

16 Defendants.

17
18 SUNRISE HOSPITAL AND MEDICAL
CENTER, LLC, a Foreign Limited-Liability
Company,

19 Third-Party Plaintiff,

20 vs.

21 ALI KIA, M.D., Individually and his
22 employer, NEVADA HOSPITALIST
GROUP, LLP; DOES 1-10; AND ROE
23 CORPORATION 1-10; inclusive.,

24 Third-Party Defendants.

CASE NO. A-17-757722-C
Dept. No.: IX

**THIRD-PARTY DEFENDANT NEVADA
HOSPITALIST GROUP, LLP'S REPLY
IN SUPPORT OF MOTION FOR
JUDGMENT ON THE PLEADINGS**

25
26 Third-Party Defendant NEVADA HOSPITALIST GROUP, LLP, by and through its
27 attorneys of record, S. Brent Vogel, Esq. and Erin E. Jordan, Esq. of LEWIS BRISBOIS
28 BISGAARD & SMITH LLP, hereby files this Reply in Support of Motion for Judgment on the

1 Pleadings.

2 This Reply is based upon the following Memorandum of Points and Authorities, the papers
3 and pleadings on file in this matter, and any oral argument offered at the hearing of this matter.

4 DATED this 10th day of April, 2020.

5 LEWIS BRISBOIS BISGAARD & SMITH LLP

6
7 By /s/ Erin E. Jordan

8 S. BRENT VOGEL

9 Nevada Bar No. 006858

10 ERIN E. JORDAN

11 Nevada Bar No. 10018

12 6385 S. Rainbow Boulevard, Suite 600

13 Las Vegas, Nevada 89118

14 Tel. 702.893.3383

15 *Attorneys for Third-Party Defendant Nevada
Hospitalist Group, LLP*

16 **MEMORANDUM OF POINTS AND AUTHORITIES**

17 **I. ARGUMENT**

18 Third-Party Defendant Nevada Hospitalist Group, LLP filed a Motion for Judgment on the
19 Pleadings asking this Court to dismiss Third-Party Plaintiff Sunrise Hospital's claims against it
20 because the claims Sunrise Hospital brought did not comply with NRS 41A.071. There is no
21 dispute that Third-Party Plaintiff Sunrise Hospital seeks to hold Nevada Hospitalist Group, LLC
22 vicariously liable for the actions of Third-Party Defendant hospitalist Dr. Kia. The basis of
23 Sunrise Hospital's third-party claims is alleged negligence on the behalf of Dr. Kia as a basis for
24 indemnity and contribution claim against Dr. Kia and vicarious liability for Nevada Hospitalist
25 Group for the actions of Dr. Kia. All parties agree that the basis of all third-party claims in this
26 matter is the alleged professional negligence of Dr. Kia. Defendant NHG filed the instant Motion
27 for Judgment on the Pleadings based upon Sunrise Hospital's failure to attach an affidavit to the
28 Third-Party Complaint as required by NRS 41A.071.

1 Sunrise Hospital filed an Opposition to NHG's Motion for Judgment on the Pleadings in
2 which it made the following arguments: 1) the affidavit that Plaintiff originally filed contains
3 criticism of Dr. Kia by implication, although he is never named in the affidavit; 2) Sunrise
4 Hospital cannot produce an affidavit critical of Dr. Kia because Sunrise Hospital is concerned that
5 it may become liable for Dr. Kia's actions through the doctrine of ostensible agency; and 3)
6 Sunrise Hospital does not need to provide a NRS 41A.071 affidavit against NHG because the
7 claims against NHG are vicarious in nature only.

8 Sunrise Hospital has failed to give this Court any reason to deny NHG's Motion for
9 Judgment on the Pleadings for the reasons set forth below.

10 **a. A NRS 41A.071 Affidavit Regarding Acts of Negligence by Dr. Kia Is**
11 **Required**

12 Sunrise Hospital argues in its Opposition that NHG's Motion for Judgment on the
13 Pleadings that the Motion should be denied because it is not required to provide an NRS 41A.071
14 affidavit against NHG because Sunrise Hospital has not alleged any acts of negligence against
15 NHG. Opposition, pp. 7-8 ("However, with regard to Nevada Hospitalist Group, LLP, Sunrise
16 Hospital is not asserting any specific act of alleged negligence against that group."). Sunrise
17 Hospital has misconstrued NHG's position. NHG has never argued that Sunrise Hospital needed
18 to attach a NRS 41A.071 affidavit regarding NHG. Rather, NHG very clearly explained in its
19 Motion for Judgment on the Pleadings that the third-party claims all fail because Sunrise Hospital
20 did not satisfy NRS 41A.071 for the allegations of professional negligence against Dr. Kia, the
21 alleged professional negligence of which forms the basis of the alleged vicarious liability of
22 NHG.¹ Motion, pp. 5-6.

23 Third-Party Plaintiff Sunrise Hospital admits that contribution and indemnity claims like
24 those that it brought in this action must satisfy NRS 41A.071 if the basis of those claims is alleged

25
26 ¹ Sunrise Hospital repeatedly refers to NHG as Dr. Kia's employer, however, it is surely aware of
27 Dr. Kia's Answers to Requests for Admission in which he clearly states that he was not an
28 employee of NHG. However, a factual determination need not be made regarding this issue for a
decision on the Motion for Judgment on the Pleadings that is before this Court.

1 professional negligence. Opposition, p. 6.

2 Sunrise does not challenge the authority provided by Nevada Hospitalist Group
3 stating that a Third-Party Complaint for contribution and/or indemnity, which is
4 based upon medical malpractice, must comply with the requirements of NRS
5 41A.071. That is, it is agreed that if no claim for professional negligence is made
against Dr. Kia, then he cannot be liable for indemnity and/or contribution for the
care he rendered to Choloe Green.

6 *Id.*

7 There is, therefore, no dispute that Third-Party Plaintiff Sunrise Hospital was required to
8 provide a NRS 41A.071 affidavit that supported its indemnity and contribution claims against Dr.
9 Kia. As any vicarious liability claim against NHG is dependent upon the claim against Dr. Kia,
10 the claims against NHG fail if Sunrise Hospital failed to satisfy NRS 41A.071 regarding Dr. Kia.

11 **b. Third-Party Plaintiff Sunrise Hospital did Not Satisfy NRS 41A.071**
12 **Regarding its Allegations of Professional Negligence Against Dr. Kia**

13 Third-Party Plaintiff Sunrise Hospital contends that it satisfied the requirement that it
14 admits that it has, to provide a NRS 41A.071 affidavit of merit supporting allegations of
15 professional negligence against Dr. Kia. Sunrise Hospital argues that it satisfied this requirement
16 by simply attaching Plaintiff Choloe Green's NRS 41A.071 affidavit to the Third-Party
17 Complaint. This affidavit is insufficient. It does not mention Dr. Kia one single time. It cannot
18 be concluded that the affidavit is referencing Dr. Kia because Dr. Kia is not a Defendant in the
19 underlying action. Sunrise Hospital asks this Court to make a factual finding that even though the
20 affidavit does not discuss Dr. Kia at all, the affidavit is really talking about Dr. Kia. Opposition,
21 p. 6. The argument is silly. Additionally, a Motion for Judgment on the Pleadings does not
22 require factual findings, but rather, is made based upon the pleadings as they are pled. Asking this
23 Court to deny the Motion based upon anything other than what is in the pleadings is asking this
24 Court to disregard the law of motions for judgment on the pleadings.

25 A motion for judgment on the pleadings should be granted when a decision can be made as
26 a matter of law. *Bernard v. Rockhill Dev. Co.*, 103 Nev. 132, 135, (1987). *Id.* at 136. It must be
27 determined whether as a matter of law, Third-Party Plaintiff Sunrise Hospital has stated a claim
28 for relief. There can be no dispute that Third-Party Plaintiff Sunrise Hospital did not attach an

1 affidavit that discusses alleged breaches of the standard of care by either Dr. Kia or Nevada
2 Hospitalist Group, LLP and that, therefore, it did not satisfy NRS 41A.71.

3 **c. Ostensible Agency Does Not Excuse Sunrise Hospital From the Requirements**
4 **of NRS 41A.071**

5 Third-Party Plaintiff Sunrise Hospital also argues that it is in a unique position that
6 prevents it from being able to file an affidavit alleging professional negligence of Dr. Kia.
7 Opposition, p. 5 (“On the other hand, if the hospital does have liability exposure for Dr. Kia’s
8 discharge order of July 14, 2016, the hospital, then, would not be in a position to provide an expert
9 affidavit challenging Dr. Kia’s care of Choloe Green (since he is a potential hospital ostensible
10 agent)”. The fact that Sunrise Hospital’s own litigation strategy has forced it into the position
11 where it must comply with NRS 41A.071 for claims it chose to bring against Dr. Kia and an entity
12 that has proven not to be his employer is not a burden that NHG must bear.

13 Sunrise Hospital made the strategic decision to file a Motion for Summary Judgment
14 regarding ostensible agency of then non-party Dr. Kia. Sunrise Hospital then, presumably upset
15 with this Court’s ruling on that Motion, filed a Third-Party Complaint against Dr. Kia and also
16 NHG. Sunrise Hospital was well within the bounds of proper litigation tactics pursuant to the
17 Nevada Rules of Civil Procedure when it filed the Third-Party Complaint. However, Sunrise
18 Hospital, as a provider of healthcare, is intimately familiar with NRS 41A.071 and is aware that
19 there is no ostensible agency exception to the affidavit requirement. The claims against Dr. Kia
20 and NHG are subject to NRS 41A.071 like any other professional negligence claims.

21 **II. CONCLUSION**

22 Judgment on the Pleadings in favor of Third-Party Defendant Nevada Hospitalist Group,
23 LLP is appropriate in this case because Third-Party Plaintiff Sunrise Hospital has failed to state a
24 claim for which relief may be granted by failing to comply with NRS 41A.071. Therefore,
25 Nevada Hospitalist Group, LLP respectfully requests that this Court enter judgment in its favor
26 based upon the pleadings in this case. The claims against NHG are vicarious only, and therefore

27 ///

28 ///

1 may only succeed if the claims against Dr. Kia succeed. The claims against Dr. Kia fail as a
2 matter of law because Sunrise Hospital has failed to comply with NRS 41A.071.

3 DATED this 10th day of April, 2020.

4 LEWIS BRISBOIS BISGAARD & SMITH LLP

5

6

7

By /s/ Erin E. Jordan

8

S. BRENT VOGEL

9

Nevada Bar No. 006858

ERIN E. JORDAN

10

Nevada Bar No. 10018

6385 S. Rainbow Boulevard, Suite 600

11

Las Vegas, Nevada 89118

Tel. 702.893.3383

12

*Attorneys for Third-Party Defendant Nevada
Hospitalist Group, LLP*

13

14

15

16

17

18

19

20

21

22

23

24

25

26

27

28

CERTIFICATE OF SERVICE

I hereby certify that on this 10th day of April, 2020, a true and correct copy of THIRD-PARTY DEFENDANT NEVADA HOSPITALIST GROUP, LLP'S REPLY IN SUPPORT OF MOTION FOR JUDGMENT ON THE PLEADINGS was served by electronically filing with the Clerk of the Court using the Electronic Service system and serving all parties with an email-address on record, who have agreed to receive Electronic Service in this action.

Daniel Marks, Esq.
Nicole M. Young, Esq.
LAW OFFICE OF DANIEL MARKS
610 S. 9th St.
Las Vegas, NV 89101
Tel: 702.386.0536
Fax: 702.386.6812
nyoung@danielmarks.net
Attorneys for Plaintiff

Erik Stryker, Esq.
WILSON ELSEER MOSKOWITZ EDELMAN
& DICKER LLP
300 S. 4th St.
Las Vegas, NV 89101
Tel: 702.727.1400
Fax: 702.727.1401
eric.stryker@wilsonelser.com
*Attorneys for Defendants Frank J. Delee, M.D.
and Frank J. Delee, M.D., PC*

Michael E. Prangle, Esq.
Tyson J. Dobbs, Esq.
Sherman B. Mayor, Esq.
HALL PRANGLE & SCHOONVELD, LLC
1160 N. Town Center Dr., Suite 200
Las Vegas, NV 89144
Tel: 702.889.6400
Fax: 702.384.6025
smayor@hpslaw.com
tdobbs@hpslaw.com
*Attorneys for Defendant/Third-Party Plaintiff
Sunrise Hospital and Medical Center, LLC*

Patricia E. Daehnke, Esq.
Linda K. Rurangirwa, Esq.
COLLINSON, DAEHNKE, INLOW, GRECO
2110 E. Flamingo Road, Suite 212
Las Vegas, NV 89119
Tel: 702.979.2132
Fax: 702.979.2133
patricia.daehnke@cdiglaw.com
linda.rurangirwa@cdiglaw.com
*Attorneys for Third-Party Defendant Ali Kia,
M.D.*

By /s/ Johana Whitbeck
An Employee of
LEWIS BRISBOIS BISGAARD & SMITH LLP