

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 10:02 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

\_\_\_\_\_ /

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**APPENDIX TO PETITION FOR WRIT OF MANDAMUS**

Volume II of III

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<b><u>Document</u></b>	<b><u>Volume</u></b>	<b><u>Page No.</u></b>
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

<b><u>Document</u></b>	<b><u>Volume</u></b>	<b><u>Page No.</u></b>
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

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<b><u>Document</u></b>	<b><u>Volume</u></b>	<b><u>Page No.</u></b>
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

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<b><u>Document</u></b>	<b><u>Volume</u></b>	<b><u>Page No.</u></b>
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

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<b><u>Document</u></b>	<b><u>Volume</u></b>	<b><u>Page No.</u></b>
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 II OF III** on the following:

Erik K. Stryker, Esq.  
Wilson, Elser, Moskowitz, Edelman & Dicker LLP  
300 South 4<sup>th</sup> Street, 11<sup>th</sup> 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 II OF**

**III** to the addresses as follows:

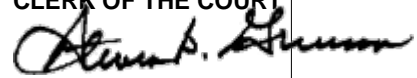
The Honorable Cristina Silva  
Eighth Judicial District Court  
Department IX  
200 Lewis Avenue  
Las Vegas, Nevada 89155

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



**JOIN**

Patricia Egan Daehnke  
Nevada Bar No. 4976

[Patricia.Daehnke@cdiglaw.com](mailto:Patricia.Daehnke@cdiglaw.com)

Linda K. Rurangirwa  
Nevada Bar No. 8843

[Linda.Rurangirwa@cdiglaw.com](mailto:Linda.Rurangirwa@cdiglaw.com)

COLLINSON, DAEHNKE, INLOW & GRECO

2110 E. Flamingo Road, Suite 212

Las Vegas, Nevada 89119

(702) 979-2132 Telephone

(702) 979-2133 Facsimile

*Attorneys for Third-Party Defendant*

ALI KIA, M.D.

**DISTRICT COURT**

**CLARK COUNTY, NEVEDA**

CHOLOE GREEN, an individual,

Plaintiffs,

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

**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**

**DATE: APRIL 21, 2020**

**TIME: 8:30 A.M.**

COMES NOW Third-Party Defendant ALI KIA, M.D., by and through his attorneys,  
the law office of COLLINSON, DAEHNKE, INLOW & GRECO, and hereby file this  
Joinder in NEVADA HOSPITALIST GROUP, LLP's Motion for Judgment on the  
Pleadings.

This Joinder is made and based on the Points and Authorities contained in Nevada  
Hospitalist Group, LLP's Motion for Judgment on the Pleadings and Reply in Support of  
Motion for Judgment on the Pleadings, as such applies equally to Dr. Kia. Thus, Nevada  
Hospitalist Group, LLP's Motion for Judgment on the Pleadings and Reply in Support of  
Motion for Judgment on the Pleadings is hereby referenced and incorporated as though fully  
set forth herein.

This Joinder is also based on the pleadings and papers on file herein and any oral  
argument that may be permitted at the hearing on this matter.

DATED: April 13, 2020

**COLLINSON, DAEHNKE, INLOW & GRECO**

BY: /s/ Linda K. Rurangirwa

PATRICIA EGAN DAEHNKE

Nevada Bar No. 4976

LINDA K. RURANGIRWA

Nevada Bar No.

2110 E. Flamingo Road, Suite 212

Las Vegas, Nevada 89119

Tel. (702) 979-2132

Fax (702) 979-2133

*Attorneys for Third-Party Defendant*  
ALI KIA, M.D.

1 **CERTIFICATE OF SERVICE**

2 I hereby certify that on this 13<sup>th</sup> day of April 2020, a true and correct copy of **THIRD**  
3 **PARTY DEFENDANT ALI KIA, M.D.'S JOINDER IN THIRD-PARTY DEFENDANT**  
4 **NEVADA HOSPITALIST GROUP, LLP'S MOTION FOR JUDGMENT ON THE**  
5 **PLEADINGS AND REPLY IN SUPPORT OF MOTION FOR JUDGMENT ON THE**  
6 **PLEADINGS** was served by electronically filing with the Clerk of the Court using the  
7 Odyssey File & Serve system and serving all parties with an email address on record, who  
8 have agreed to receive Electronic Service in this action.

9 DANIEL MARKS, ESQ.  
10 NICOLE M. YOUNG, ESQ.  
11 Law Office of Daniel Marks  
12 610 South Ninth Street  
13 Las Vegas, Nevada 89101  
14 (702) 386-0536  
15 *Attorneys for Plaintiff Choloe Green*

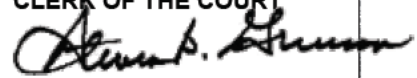
16 ERIC K. STRYKER, ESQ.  
17 Wilson Elser Moskowitz Edelman & Dicker LLP  
18 300 South Fourth Street  
19 11th Floor  
20 Las Vegas, Nevada 89101  
21 (702) 727-1400  
22 *Attorneys for Defendants*  
23 *Frank J. DeLee, M.D. and Frank J. DeLee, M.D., P.C.:*

24 MICHAEL E. PRANGLE, ESQ.  
25 TYSON J. DOBBS, ESQ.  
26 SHERMAN B. MAYOR, ESQ.  
27 Hall Prangle and Schoonveld LLC  
28 19 1160 North Town Center Drive  
Suite 200  
Las Vegas, Nevada 89144  
*Attorneys for Defendant and Third Party Plaintiff*  
*Sunrise Hospital and Medical Center, LLC*

1 S. BRENT VOGEL, ESQ.  
ERIN E. JORDAN  
2 Lewis Brisbois Bisgaard & Smith, LLP  
3 6385 Rainbow Boulevard, Suite 600  
Las Vegas, Nevada 89118  
4 *Attorneys for Third-Party Defendant*  
*Nevada Hospitalist Group, LLP*  
5

6 By /s/ Linda K. Rurangirwa  
7 An employee of COLLINSON, DAEHNKE,  
INLOW & GRECO  
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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,

Case No. A-17-757722-C  
Dept. No. 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 STIPULATION AND ORDER**  
**TO EXTEND THE DISCOVERY DEADLINES AND TRIAL DATE**  
**(Fifth Request)**

PLEASE TAKE NOTICE that a stipulation and order to extend the discovery deadlines and trial date  
was entered in the above-entitled action on the 22nd day of April, 2020, a copy of which is attached hereto.

DATED this 23 day of April, 2020.

LAW OFFICE OF DANIEL MARKS

/s/ Nicole Young  
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

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Erik K. Stryker, Esq.  
WILSON, ELSE, MOSKOWITZ, EDELMAN & DICKER LLP  
300 South 4<sup>th</sup> Street, 11<sup>th</sup> 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.

Linda K. Rurangirwa, Esq.  
Collinson, Daehn, 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

/s/ Jessica Flores  
An employee of the  
LAW OFFICE OF DANIEL MARKS



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

DISTRICT COURT

CLARK COUNTY, NEVADA

8 CHOLOE GREEN, an individual,  
9 Plaintiff,

Case No. A-17-757722-C  
Dept. No. 9

10 v.

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

14 Defendants.

15 \_\_\_\_\_/  
16 SUNRISE HOSPITAL AND MEDICAL  
CENTER, LLC, a Foreign Limited-Liability  
17 Company,

18 Third-Party Plaintiff,

19 v.

20 ALI KIA, M.D., Individually and his employer,  
NEVADA HOSPITALIST GROUP, LLP; Does  
21 1-10; and ROE CORPORATION1-10; inclusive  
Third-Party Defendants.

22 \_\_\_\_\_/  
23 STIPULATION AND ORDER TO EXTEND THE  
DISCOVERY DEADLINES AND TRIAL DATE

24 (Fifth Request)

1 IT IS HEREBY STIPULATED AND AGREED by and between Plaintiff Choloe Green, by and  
2 through her counsel, Daniel Marks, Esq., and Nicole M. Young, Esq., of the Law Office of Daniel  
3 Marks; Defendants Frank J. DeLee, M.D., and Frank J. DeLee Md, PC, by and through their counsel  
4 Eric Stryker, Esq., of Wilson Elser, Moskowitz Edelman & Dicker, LLP; and Defendant Sunrise  
5 Hospital and Medical Center, LLC, by and though its counsel Sherman Mayor, Esq., of Hall Prangle &  
6 Schoonveld, LLC, Third-Party Defendant Ali Kia, M.D., by and through his counsel, Laura Lucero,  
7 Esq., of Collinson, Daehnke, Inlow, & Greco, and Third-Party Defendant Nevada Hospitalist Group,  
8 LLP, by and through its counsel, Erin Jordan, Esq., of Lewis Brisbois, as follows, :

9 **1. Summary of Discovery Completed**

10 The parties have exchanged written discovery and made all initial disclosures pursuant to NRCP  
11 16.1. Plaintiff has responded to written discovery requests and provided authorizations to obtain  
12 medical records. Defendants have also responded to written discovery requests.

13 Plaintiff has taken the deposition of Defendant Frank Delec, M.D., Ali Kia, M.D., and Pankaj  
14 Bhatnagar, M.D. Defendant Sunrise Hospital has taken the deposition of Plaintiff Choloe Green.

15 Plaintiff scheduled the depositions of Dr. Orevillo and Dr. Breedan. Plaintiff was unable to  
16 serve Dr. Breedan and Dr. Orevillo's deposition was rescheduled due to COVID-19 because he is a  
17 pulmonologist. Dr. Breedan is also a pulmonologist.

18 **2. Discovery to be Completed**

19 Expert reports have not been disclosed in this case. Plaintiff is still treating with her pulmonary,  
20 cardiology, and various other doctors. The parties conducted the deposition of Dr. Bhatnagar via Zoom.  
21 The parties agree depositions via Zoom are not ideal in this case.

22 **3. Reasons Why Discovery Not Completed**

23 The parties have been moving forward with discovery. Plaintiff is still treating.

24 ////

Defendant Sunrise Hospital filed a third-party complaint on June 14, 2019, against Third-Party Defendant Ali Kia, M.D., and Third-Party Defendant Nevada Hospitalist Group, LLP. Dr. Kia filed his answer on August 2, 2019, and Nevada Hospitalist Group filed its answer on December 27, 2019. Nevada Hospitalist Group's Motion for Judgment on the Pleadings is currently scheduled for hearing before this Court on April 21, 2020, at 8:30 a.m. The inclusion of these third-party defendants delayed the completion of discovery because the parties wanted to wait for the inclusion these parties so they would not have to engage in duplicative and/or repetitious discovery.

With the expert report deadline coming up and the current situation relating to COVID-19, it is impossible for the parties to meet the current expert disclosure deadline in light of the current social distancing guidelines. For instance, Plaintiff will need to be personally evaluated by her life care planner. This evaluation is impossible because Plaintiff is at increased risk of contracting COVID-19 due to her significant pulmonary issues that are directly at issue in this case.

4. Proposed Schedule for Completing all Remaining Discovery

	<u>Current Deadline</u>	<u>Proposed Deadline</u>
Close of Discovery	October 1, 2020	December 30, 2020
Initial Expert Witness Reports	June 1, 2020	September 1, 2020
Last Day to Amend Pleadings and/or Add Additional Parties	June 1, 2020	September 1, 2020
Rebuttal Expert Witness Reports	July 31, 2020	October 29, 2020
Dispositive Motions	November 1, 2020	February 1, 2021

5. **Current Trial Date**

The calendar call/pretrial conference is currently scheduled for January 26, 2021, at 8:30 a.m., with the case set for jury trial on a 5-week stack beginning February 8, 2021, at 9:30 a.m. The parties request the current calendar call/pretrial conference and trial date be rescheduled in accordance with the above deadlines.

1 The parties represent that this Stipulation is entered into in good faith and not for the purposes  
2 of undue delay.

3 DATED this 17th day of April, 2020.

DATED this 17th day of April, 2020.

4 LAW OFFICE OF DANIEL MARKS

HALL PRANGLE & SCHOONVELD, LLC

5  
6 /s/ Nicole M. Young

/s/ Sherman Mayor

7 DANIEL MARKS, ESQ.  
8 Nevada State Bar No. 002003  
9 NICOLE M. YOUNG, ESQ.  
10 Nevada State Bar No. 12659  
11 610 South Ninth Street  
12 Las Vegas, Nevada 89101  
13 Attorney for Plaintiff

SHERMAN MAYOR, ESQ.  
Nevada State Bar No. 001491  
1160 N. Town Center Drive Suite #200  
Las Vegas, Nevada 89144  
Attorney for Sunrise Hospital

11 DATED this 17th day of April, 2020.

DATED this 17th day of April, 2020.

12 WILSON, ELSER, MOSKOWITZ,  
13 EDELMAN & DICKER LLP

COLLINSON, DAEHNKE, INLOW & GRECO

14 /s/ Eric K. Stryker

/s/ Linda K. Rurangirwa

15 ERIC K. STRYKER, ESQ.  
16 Nevada State Bar No. 005793  
17 300 South 4<sup>th</sup> Street, 11<sup>th</sup> floor  
18 Las Vegas, Nevada 89101  
19 Attorney for Frank DeLee, M.D. and  
20 Frank DeLee, M.D., PC's

LINDA K. RURANGIRWA, ESQ.  
Nevada State Bar No. 009172  
2110 E. Flamingo Road, Suite 212  
Las Vegas, Nevada 89119  
Attorney for Ali Kia, M.D.

18 DATED this 17th day of April, 2020.

19 LEWIS BRISBOIS BISGAARD & SMITH, LLP

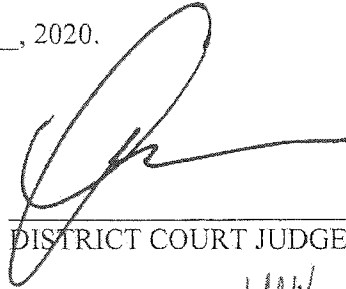
21 /s/ Erin E. Jordan

22 ERIN E. JORDAN, ESQ.  
23 Nevada State Bar No. 010018  
24 6385 S. Rainbow Blvd., Suite 600  
Las Vegas, Nevada 89118  
Attorney for Nevada Hospitalist Group, LLP

ORDER

IT IS SO ORDERED.

DATED this 28<sup>th</sup> day of April, 2020.



DISTRICT COURT JUDGE



Submitted by:  
LAW OFFICE OF DANIEL MARKS

/s/ Nicole M. Young

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

**Beltran, Jaye**

---

**From:** Nicole Young <NYoung@danielmarks.net>  
**Sent:** Friday, April 17, 2020 11:59 AM  
**To:** DC9Inbox  
**Cc:** Kelli N. Wightman; Whitbeck, Johana; Stryker, Eric K.; Jordan, Erin; Office; Laura Lucero; Linda K. Rurangirwa; Sherman Mayor; Tyson Dobbs; Brittany A. Lewis; Diana J. Samora; Camie DeVoge; Nicole M. Etienne; Vogel, Brent; Hannah Lockard; Grijalva, Trisha E.; Foley, Brigitte E.; Lord, Nicole N.; Patricia Daehnke; Bennett, Sharlei  
**Subject:** A-17-757722-C --- SAO to Extend --- Green v. Delee  
**Attachments:** SAO to Extend Discovery- 5th.doc; SAO to Extend Discovery- 5th.pdf  
  
**Follow Up Flag:** Follow up  
**Flag Status:** Flagged

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Attached is the Stipulation and Order to Extend Discovery in the above-referenced matter. Both a PDF and WORD version of this document are attached for your convenience.

All counsel have agreed to use of their electronic signature and have been copied on this email.

Please let me know if you have any questions.

Nicole M. Young, Esq.  
Associate Attorney  
Law Office of Daniel Marks  
610 South Ninth Street  
Las Vegas, Nevada 89101  
Telephone: (702) 386-0536  
Facsimile: (702) 386-6812



A-17-757722-C

**DISTRICT COURT  
CLARK COUNTY, NEVADA**

**Malpractice - Medical/Dental**

**COURT MINUTES**

**May 11, 2020**

---

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

---

May 11, 2020      3:00 AM      Decision:      **Third-Party Defendant Nevada Hospitalist Group, LLP's Motion for Judgment on the Pleadings & Joinder**

HEARD BY: Silva, Cristina D.

COURTROOM: RJC Courtroom 11B

COURT CLERK: Carol Donahoo

RECORDER:

**PARTIES  
PRESENT:**

**JOURNAL ENTRIES**

- The Decision on the Third-Party Defendant Nevada Hospitalist Group, LLP's Motion for Judgment on the Pleadings & Joinder came before this Court on its May 11, 2020, Chamber Calendar. The Court now rules as follows:

Similar to a motion to dismiss pursuant to NCRP 12(b)(5), when reviewing a judgment on the pleadings, the Court accepts the factual allegations in the complaint as true and draw all inferences in favor of the nonmoving party. Buzz Stew, LLC v. City of N. Las Vegas, 124 Nev. 224, 228, 181 P.3d 670, 672 (2008) (setting forth the standard of review for an order dismissing a complaint under NRCF 12(b)(5)). Judgment on the pleadings (or a motion to dismiss pursuant to NRCF 12(c)) is proper when, as determined from the pleadings, the material facts are not in dispute and the moving party is entitled to judgment as a matter of law. Bonicamp v. Vazquez, 120 Nev. 377, 379, 91 P.3d 584, 585 (2004).

When evaluating complaints that assert claims of medical negligence, a Plaintiff must comply with NRS 41A.071, which requires not only a complaint but also an accompanying affidavit setting forth the professional negligence allegations. The Supreme Court held "that courts should read the complaint and the plaintiff's NRS 41A.071 expert affidavit together when determining whether the expert affidavit meets the requirements of NRS 41A.071. Zobar v. Zbiegien, 130 Nev. 733, 739, 334 P.3d 402, 406 (2014) (citing Great Basin Water Network v. Taylor, 126 Nev. 187, 196, 234 P.3d 912, 918

PRINT DATE: 05/18/2020

Page 1 of 2

Minutes Date: May 11, 2020

APP2-0260



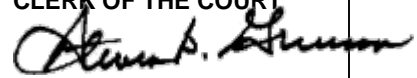
(2010); Washoe Med. Ctr. v. Second Judicial Dist. Court, 122 Nev. 1298, 1304, 148 P.3d 790, 794 (2006)). The same decision went on to hold that the NRS 41A.071 affidavit requirement is a preliminary procedural rule subject to the notice-pleading standard, and must be liberally construe[d] ... in a manner that is consistent with our NRC 12 jurisprudence." *Borger v. Eighth Judicial District Court*, 120 Nev. 1021, 1028, 102 P.3d 600, 605 (recognizing that "NRS 41A.071 governs the threshold requirements for initial pleadings in medical malpractice cases, not the ultimate trial of such matters") (emphasis added); see also *Baxter v. Dignity Health*, 131 Nev. 759, 763 64, 357 P.3d 927, 930 (2015) (holding that NRS 41A.071 must be liberally construed). The affidavit must: (1) support the allegations contained in the action; (2) be 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) identify 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. A complaint that does not comply with NRS 41A.071 is void ab initio, it does not legally exist and thus it cannot be amended. *Washoe Medical Center v. Second Judicial Dist. Court of State of Nevada ex rel. County of Washoe*, 122 Nev. 1298, 148 P.3d 790 (2006). Dismissal applies even when only some of the claims violate the requirements of NRS 41A.071 affidavit requirement.

Here, Third-Party Plaintiff incorporated Plaintiff's affidavit in the filing of their Third-Party Complaint. Plaintiff's complaint and affidavit do not identify Dr. Kia or Nevada Hospital Group ("NHG"). Nor does either document identify any John Doe, "unknown," or "unidentified" potential defendants that could arguably be Dr. Kia and/or NHG. Because neither Dr. Kia nor NHG are identified in the complaint or the affidavit, there is no identified specific act or specific acts of alleged professional negligence by Dr. Kia and NHG. Instead, the complaint and affidavit only identifies Sunrise Hospital and Dr. DeLee when laying the facts and circumstances that form the cause of action involving the alleged professional negligence. Because the Plaintiff's affidavit fails to meet the third and fourth prongs of the NRS 41A.071 affidavit requirements, so does Third-Party Complaint, rendering it void ab initio. The Court recognizes that the opposition argues that this Third-Party Complaint is brought only for the purposes of contribution and indemnity. But, the Court is unaware of any authority that would relieve a party of meeting the requirements set forth in NRS 41A.071 in circumstances where a Third-Party Plaintiff is only seeking indemnity and/or contribution. Consequently, COURT ORDERED, the Third-Party Defendant's Motion for Judgment on the Pleadings is GRANTED.

Finally, the Court declines to address Third-Party Plaintiff's argument that the granting of this motion renders the Court's prior ruling regarding the applicability of ostensible agency theory erroneous. Assuming arguendo that that is true, there is no motion, or requested relief, related to that issue pending before the Court.

CLERK S NOTE: Counsel is to ensure a copy of the foregoing minute order is distributed to all interested parties; additionally, a copy of the foregoing minute order was distributed to the listed Service Recipients in the Odyssey eFileNV system.

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



MPSJ

MICHAEL E. PRANGLE, ESQ.  
Nevada Bar No.: 8619  
TYSON J. DOBBS, ESQ.  
Nevada Bar No.: 11953  
SHERMAN B. MAYOR, ESQ.  
Nevada Bar No. 1491  
T. CHARLOTTE BUYS, ESQ.  
Nevada Bar No.: 14845  
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](mailto:efile@hpslaw.com)  
*Attorneys for Defendant / Third-Party Plaintiff*  
*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.: IX

**DEFENDANT SUNRISE HOSPITAL'S  
RENEWED MOTION FOR PARTIAL  
SUMMARY JUDGMENT TO DISMISS  
ANY CLAIM OF "OSTENSIBLE  
AGENCY" FOR ALI KIA, M.D.**

**HEARING REQUESTED**

COMES NOW, Defendant, SUNRISE HOSPITAL AND MEDICAL CENTER, LLC  
("Sunrise Hospital" or "Defendant") by and through its counsel of record, HALL PRANGLE &  
SCHOONVELD, LLC and hereby renews its Motion for Partial Summary Judgment to seek  
dismissal of any potential claim that Ali Kia, M.D. is an ostensible agent of the Hospital.

This Motion 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.

**MEMORANDUM OF POINTS AND AUTHORITIES**

**I.**

**STATEMENT OF FACTS**

**A. The Pleading**

The Plaintiff, Choloe Green, filed a “Complaint for Medical Malpractice” on June 30, 2017. In her Complaint, the Plaintiff explained that she delivered her fourth child, Israel Hank, via caesarean section at Sunrise Hospital on July 9, 2016. One day later, Ms. Green was formally discharged from the hospital by her treating OB/GYN, Frank DeLee, M.D., (July 10, 2016). Ms. Green is critical of Dr. DeLee’s discharge order contending that it was premature and caused her injury. For this reason, Dr. DeLee is a named Defendant in this case.

On July 14, 2016, Ms. Green was readmitted to Sunrise Hospital with complaints of pain, nausea, and vomiting. Two days later, Ms. Green was discharged from Sunrise Hospital on July 16, 2016. Ms. Green was critical of this second hospital discharge, as well, contending that it was premature and breached the applicable standard of care. Somehow, the Plaintiff also attributed this second hospital discharge to Dr. DeLee. However, the medical records, the formal discharge order, and deposition and interrogatory discovery in the case demonstrate that it was Ali Kia, M.D., and not Frank J. DeLee, M.D., who formally discharged Ms. Green on July 16, 2016.

Ali Kia, M.D. is not a named defendant in this case. Dr. Kia’s name does not appear anywhere in Plaintiff’s 13 paragraph/ 2 ½ page Medical Malpractice Complaint. Dr. Kia’s name is not mentioned in the expert affidavit attached to Plaintiff’s Complaint (the affidavit of Dr. Lisa Karamardian). Not only does Plaintiff’s Complaint not identify Dr. Kia, but the Complaint also does not identify any John Doe, “unknown” or “unidentified” potential defendant who could arguably be Dr. Kia. Moreover, there is no identified “specific act or acts of alleged professional negligence by Dr. Kia” in the Complaint. Finally, Plaintiff makes no reference to “ostensible agency” anywhere in her Complaint.

**B. Sunrise Hospital’s Original Motion for Partial Summary Judgment**

The medical records reveal that Dr. DeLee discharged Ms. Green on July 10, 2016 from the Hospital and that Dr. Kia discharged Ms. Green on July 16, 2016, form the Hospital. As



such, at the beginning of discovery in this case, Sunrise Hospital filed a Motion for Partial Summary Judgment to determine that neither Drs. DeLee or Kia were agents or ostensible agents of the Hospital. The entire flow of discovery and the provisions set forth in expert affidavits would be different if the treating physicians were found to be agents of the hospital versus a finding that they were not hospital agents.

The Court (at the time, District Court Judge Douglas E. Smith), granted 3 of the 4 parts of Sunrise Hospital's Motion for Partial Summary Judgment. Specifically, the Court found that Dr. DeLee was not employed by Sunrise Hospital and therefore could not be an "agent" of the Hospital. The Court determined that Dr. DeLee was not an "ostensible agent" of the Hospital since the Hospital did not select him to treat Ms. Green.

Similarly, the Court found that Dr. Kia was not an employee of Sunrise Hospital and therefore could not be an "agent" of the hospital. The Court, however, denied the fourth part of the summary judgment motion, finding that there was a factual question as to whether Dr. Kia was an "ostensible agent" of the Hospital. The Court rendered this decision, even though there was no assertion of ostensible agency in Plaintiff's Complaint and Dr. Kia was not identified in Plaintiff's Complaint by name or act. Moreover, the discovery evidence in the case demonstrated that Dr. Kia was not selected by the Hospital to treat Ms. Green.

Since there was now a possibility that Dr. Kia could be an unnamed and unasserted agent of Sunrise Hospital, the Hospital sought leave of Court on May 1, 2019, to file a Third-Party Action for Indemnity and Contribution against Dr. Kia and his alleged actual employer, Nevada Hospitalist Group, in order to protect the Hospital with regard to Dr. Kia's July 16, 2016 discharge order.

**C. Dismissal of Sunrise Hospital's Third-Party Action for Indemnity and Contribution**

The Court granted Sunrise Hospital's Motion for Leave to file a Third-Party Action against Dr. Kia and his employer, Nevada Hospitalist Group. That action was filed on June 14, 2019. Eventually, Nevada Hospitalist Group (with Dr. Kia joining) filed a Motion for Judgment on the Pleadings to dismiss the Third-Party Complaint. The basis of the Motion. was that Sunrise

Hospital, as Third-Party Plaintiff, had not complied with NRS 41A.071 by providing an expert affidavit critical of the care of Dr. Kia and his employer, Nevada Hospitalist Group.

In an effort to comply with NRS 41A.071, the Hospital had attached Plaintiff's underlying Complaint and expert affidavit to its Third-Party Complaint. The Court (District Court Judge Cristina D. Silva), granted Dr. Kia and Nevada Hospitalist's Motion for Judgment on the Pleadings dismissing Sunrise Hospital's Third-Party Complaint for indemnity and contribution. In the Court's "Journal Entries," the Court found that Plaintiff's underlying Complaint and expert affidavit did not identify Dr. Kia (or NHG). The Court further found that the Plaintiff's underlying Complaint and affidavit did not identify any John Doe, "unknown," or "unidentified" potential defendants that could arguably be Dr. Kia and/or NHG. The Court further found that there were "... no identified specific act or specific acts of alleged professional negligence by Dr. Kia and NHG...". The Court found no basis for a medical malpractice action against either Dr. Kia or NHG.

Consequently, Sunrise Hospital now asks that the Court revisit the earlier ruling denying its Motion for Partial Summary Judgment to dismiss any potential claim that Dr. Kia can be or is an ostensible agent of the Hospital. If Dr. Kia's alleged actual employer, Nevada Hospitalist Group, is not subject to a Third-Party indemnity action for care rendered by Dr. Kia, Sunrise Hospital reasons that it also cannot be liable for Dr. Kia via the doctrine of "Ostensible Agency" which is a legal fiction for employment, since Dr. Kia is simply not identified by name or act in Plaintiff's original Complaint. Nor is ostensible agency even pled in Plaintiff's underlying Complaint.

**D. Sunrise Hospital Did Not "Select" Dr. Kia to Treat Choloe Green**

As the argument set forth below will demonstrate, the seminal cases in Nevada permitting "ostensible agency" require that at least 2 elements be satisfied before that doctrine can be considered for application to a case. To find "ostensible agency" a hospital has to have (1) "selected" the doctor and (2) it must be reasonable for the patient to assume that the doctor is an agent of the hospital. For example, in *McCrosky v. Carson Tahoe Regional Medical Center*, 133 Nev. Adv. Op 115 (Nev. 2017), the Nevada Supreme Court stated that an exception to the

1 general rule of vicarious liability (that an employer is not liable for a non-employee) is where  
2 “ostensible agency” is found. The exception of “ostensible agency” may exist:

3  
4 “...If the **hospital selects the doctor** and it is reasonable for the patient to assume  
5 that the doctor is an agent of the hospital.” (emphasis added). *See McCrosky v.*  
6 *Carson Tahoe Regional Medical Center*, 133 Nev. Adv. Op 115 (Nev. 2017); *see*  
7 *also Schlotfeldt v. Charter Hospital of Las Vegas*, 112 Nev. 42, 910 P.2d 271  
(Nev. 1996); *see also Renown Health Inc., v. Vanderford*, 126 Nev. 221, 228, 235  
P.3d 614, 618 (Nev. 2010).

8 In the seminal case applying ostensible agency in Nevada (*Schlotfeldt*, Note 3), the  
9 Nevada Supreme Court states that in order to conclude that agency exists, there must be “...an  
10 affirmative finding on all the elements of agency...”. *See Schlotfeldt v. Charter Hospital of Las*  
11 *Vegas*, 112 Nev. 42, 910 P.2d 271 (Nev. 1996). The key element in all of these cases is a finding  
12 that the hospital “selected” the doctor.<sup>1</sup>

13 In this case, Dr. Kia’s deposition was taken on November 14, 2018. On page 68 of his  
14 deposition, Dr. Kia explained that when the Plaintiff, Choloe Green, came to Sunrise Hospital,  
15 she provided information that she was insured with Health Plan of Nevada. A call was made to  
16 Health Plan of Nevada. That insurer indicated that their medical provider for patient admission  
17 was Nevada Hospitalist Group. Contact was then made with Nevada Hospitalist Group. Dr. Kia  
18 was next in line on the Group’s call schedule and because of that call schedule, he was assigned  
19 to treat Choloe Green.

20 On page 49 of his deposition, Dr. Kia testified in pertinent part as follows:

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

24 A. Yes, correct.

25  
26 <sup>1</sup> Plaintiff cannot prove that Sunrise Hospital “selected” Dr. Kia to treat Ms. Green. It did not.  
27 Another very high hurdle for Plaintiff would be to overcome the failure to identify Dr. Kia by  
28 name or act or even “Doe” or “unknown” pleading. A third very high hurdle would be for  
Plaintiff to demonstrate that Plaintiff even pled a claim for “Ostensible Agency” in this case.

1 Q. And who prepared that call schedule?

2 A. It would have been Nevada Hospitalist Group.

3 Q. And so—

4 A. They have a team that they set up the call schedule for the HPN or —

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

7 A. Yes.

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

10 A. I wasn't aware, no.” (Excerpt from the Deposition of Ali Kia, M.D. at 49:7-  
11 23).

12 So there could be no possible misunderstanding, Sunrise Hospital then sent Dr. Kia  
13 formal Requests for Admission on this same subject. In Request for Admission No. 2, Dr. Kia  
14 admitted that he is not now, nor has he ever been an employee of Sunrise Hospital. *See* Dr. Kia’s  
15 Response to Defendant’s First Set of Requests for Admission, attached hereto as “**Exhibit A.**” In  
16 Request for Admission No. 6, Dr. Kia provided the following admission:  
17

18 **“REQUEST NO. 6:**

19 Admit that Sunrise Hospital and Medical Center, LLC did not select Ali  
20 Kia, M.D. to treat Choloe Green during her July 14, 2016 – July 16, 2016 hospital  
admission.

21 **RESPONSE TO REQUEST NO. 6:**

22 Admit.” (*See* “**Exhibit A**” from Dr. Kia’s January 28, 2020 Responses to  
23 Sunrise Hospital’s First Set of Requests for Admission).

24 Further, in response to Request for Admission No. 5, Dr. Kia admitted that Nevada  
25 Hospitalist Group, LLP’s call schedule resulted in him becoming Choloe Green’s treating  
26 physician. *See* “**Exhibit A.**”

27 As the argument below will demonstrate, there is not now nor has there been a pleading  
28 in which a claim of ostensible agency was made. Dr. Kia has never been identified by name or



act or as a defendant in Plaintiff’s underlying Complaint. There are no “Doe” defendants or reference to “unknown” or “unidentified” potential defendants in Plaintiff’s Complaint. And finally, even if, somehow, Plaintiff’s underlying Complaint was found to state a claim that “Dr. Kia” was the “ostensible agent” of Sunrise Hospital, Dr. Kia still was not “selected by the Hospital to treat the Plaintiff. Under either basis, any potential such claim for “ostensible agency” should be precluded for the reasons stated below.

II.

ARGUMENT

**A. There Has Been No Identifiable Claim Against Dr. Kia Upon Which Ostensible Agency Could Be Based.**

The Court has granted Third-Party Defendants Dr. Kia and Nevada Hospital Group’s Motion for Judgment on the Pleadings. As a result, Sunrise Hospital’s Third-Party Complaint for indemnity for liability exposure for any of Dr. Kia’s care was dismissed.<sup>2</sup> Once that Order is reviewed and approved by the Court, the remaining parties in this action are Dr. DeLee, Sunrise Hospital, and Plaintiff Choloe Green. The only party of the 3 remaining parties that could possibly even attempt to assert that Dr. Kia was an “ostensible agent” of Sunrise Hospital is the Plaintiff, Choloe Green.

For the Plaintiff to assert that Dr. Kia is an “ostensible agent” of Sunrise Hospital, the Plaintiff would have had to plead that assertion. However, there is no mention of “ostensible agency” or even agency anywhere in Plaintiff’s Complaint. Even, *arguendo*, had such an assertion been pled, Plaintiff would have been required to have at least identified Dr. Kia or identify a specific act of care, which is attributed to Dr. Kia. This Court, respectfully, has found that no such identification of Dr. Kia or any specific act attributed to him was contained in Plaintiff’s Complaint or attached expert affidavit. *See* Court’s “Journal Entries” dated May 11, 2020.

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<sup>2</sup> The Court, respectfully, finding that no such care attributed to Dr. Kia was asserted in Plaintiff’s underlying Complaint or affidavit.

Further, there is no reference in Plaintiff's Complaint to any John Doe, "unknown," or "unidentified" potential defendants that could arguably be Dr. Kia and/or NHG. When Third-Party Plaintiff Sunrise Hospital filed a Complaint for Indemnity and contribution against Dr. Kia, attaching Plaintiff's underlying Complaint and affidavit, the Third-Party Complaint was dismissed. The Court found there was no basis for an indemnity claim arising from any unidentified care rendered by Dr. Kia to Choloe Green.

Under these circumstances, and given the circumstances of the dismissal of Sunrise Hospital's indemnification action, there is no identifiable basis to contend that Dr. Kia was an "ostensible agent" of Sunrise Hospital.

**B. Even if There Had Been an Identifiable Claim, Sunrise Hospital Did Not Select Dr. Kia – Negating Any Claim of "Ostensible Agency" in This Case.**

The general rule of vicarious liability in Nevada is that an employer is liable for the negligence of its employee, but not the negligence of an independent contractor. *McCrosky v. Carson Tahoe Regional Medical Center*, 133 Nev. Adv. Op 115 (Nev. 2017). However, an exception exists to the general rule "...if the hospital selects the doctor and it is reasonable for the patient to assume that the doctor is an agent of the hospital." *See McCrosky v. Carson Tahoe Regional Medical Center*, 133 Nev. Adv. Op 115 (Nev. 2017); *see also Schlotfeldt v. Charter Hospital of Las Vegas*, 112 Nev. 42, 910 P.2d 271 (Nev. 1996); *see also Renown Health Inc., v. Vanderford*, 126 Nev. 221, 228, 235 P.3d 614, 618 (Nev. 2010).

The seminal case in Nevada, which adopted the doctrine of "ostensible agency" is *Schlotfeldt*. In *Schlotfeldt*, the Court stated that a key element for application of the doctrine was that the hospital "selected" the doctor. In fact, in Note 3 of the *Schlotfeldt* opinion, the Nevada Supreme Court stated that agency (like "ostensible agency") requires an affirmative finding "...on all the elements of agency...". If Sunrise Hospital did not select Dr. Kia to treat Choloe Green, there cannot be application of the doctrine of "ostensible agency" to this case.

The requirement that the Hospital "select" the doctor to apply "ostensible agency" is adopted and then carried forward from *Schlotfeldt* to *Renown v. Vanderford*, and also to *McCrosky*. In *Schlotfeldt*, the Nevada Supreme Court stated that evidence that a doctor maintains

1 a private practice "...may tend to dispel any claim of an agency relationship between a doctor  
2 and a hospital...". "Exhibit A" to this Motion demonstrates that Dr. Kia maintained his own  
3 private practice, separate and apart from Sunrise Hospital (Request for Admission No. 10).

4 In *Schlotfeldt*, the Nevada Supreme Court stated that there is first, a "question of law" as  
5 to whether sufficient competent evidence is present to require that an agency issue be forwarded  
6 to a jury. Here, the entirety of the evidence is that Plaintiff's HPN insurance mandated use of the  
7 Nevada Hospitalist Group physicians and that Dr. Kia was on call for that group resulting in his  
8 care and treatment of Choloe Green. There is no other competent evidence. Therefore,  
9 respectfully, the issue of agency is a question of law in cases such as this where there is no  
10 competent opposing evidence on this issue.<sup>3</sup> (No genuine question of fact).

11 . . .

12 . . .

13 . . .

14 . . .

15 . . .

16 . . .

17 . . .

18 . . .

---

19 <sup>3</sup> Sunrise Hospital did not select HPN as Plaintiff's insurer. Sunrise Hospital did not select  
20 Nevada Hospitalist Group as the provider for HPN. Sunrise Hospital did not select Dr. Kia, who  
21 was on Nevada Hospitalist Group's call schedule. Sunrise Hospital did not select Dr. Kia. Dr.  
22 Kia merely having hospital privileges cannot form a basis for "ostensible agency." *See*  
23 *Schlotfeldt v. Charter Hospital of Las Vegas*, 112 Nev. 42, 910 P.2d 271 (Nev. 1996); *see also*  
24 *McCrosky v. Carson Tahoe Regional Medical Center*, 133 Nev. Adv. Op 115 (Nev. 2017).

**III.**

**CONCLUSION**

There is no viable claim that can be made by Plaintiff, under the facts of Plaintiff's Complaint and under the law, that Ali Kia, M.D. can be found to be an ostensible agent of Sunrise Hospital in this case. Sunrise Hospital cannot even ask for such a claim to be dismissed because it has never plead. Accordingly, Sunrise Hospital seeks an Order of this Court, respectfully, that no such claim or reference to such a claim be made at the time of the trial of this action.

DATED this 20<sup>th</sup> day of May, 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

T. CHARLOTTE BUYS, ESQ.

Nevada Bar No. 14845

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 20<sup>th</sup> day of May, 2020, I served a true and correct copy of the foregoing **DEFENDANT SUNRISE HOSPITAL'S RENEWED MOTION FOR PARTIAL SUMMARY JUDGMENT TO DISMISS ANY CLAIM OF "OSTENSIBLE AGENCY" FOR ALI KIA, M.D.** 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. 4<sup>th</sup> 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/: Reina Claus

An employee of HALL PRANGLE & SCHOONVELD, LLC

# **Exhibit A**

# **Exhibit A**

1 Patricia Egan Daehnke  
Nevada Bar No. 4976  
2 [Patricia.Daehnke@cdiglaw.com](mailto:Patricia.Daehnke@cdiglaw.com)  
3 Laura S. Lucero  
Nevada Bar No. 8843  
4 [Laura.Lucero@cdiglaw.com](mailto:Laura.Lucero@cdiglaw.com)  
COLLINSON, DAEHNKE, INLOW & GRECO  
5 2110 E. Flamingo Road, Suite 212  
Las Vegas, Nevada 89119  
6 (702) 979-2132 Telephone  
7 (702) 979-2133 Facsimile  
8 *Attorneys for Third- Party Defendant*  
*ALI KIA, M.D.*

9  
10 **DISTRICT COURT**  
11 **CLARK COUNTY, NEVEDA**

12 CHOLOE GREEN, an individual,  
13 Plaintiffs,

14 vs.

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

19 Defendants.

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

Third-Party Plaintiff,

23 vs

24 ALI KAI, M.D., Individually and his employer,  
25 NEW NEVADA HOSPIOTALIST GROUP,  
LLP; DOES 1-10; and ROE CORPORATION  
26 1-10; inclusive.

27 Third-Party Defendants.  
28

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

**THIRD-PARTY DEFENDANT ALI  
KIA, M.D.'S RESPONSE TO FIRST  
SET OF REQUESTS FOR  
ADMISSIONS PROPOUNDED BY  
THIRD-PARTY PLAINTIFF  
SUNRISE HOSPITAL AND  
MEDICAL CENTER, LLC**

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

APP2-0274

Pursuant to Rule 36 and Rule 26 of the Nevada Rules of Civil Procedure, Third-Party Defendant, Ali Kia, M.D., by and through his attorneys of record, Patricia Egan Daehnke and Laura S. Lucero, and the law firm Collinson, Daehnke, Inlow & Greco, hereby provides these responses to Requests for Admission propounded by Third-Party Plaintiff, as follows:

**RESPONSES TO REQUESTS FOR ADMISSIONS**

**REQUEST NO. 1:**

Admit that from July 14, 2016 to July 16, 2016 Ali Kia, M.D. was a Medical Doctor licensed in the State of Nevada.

**RESPONSE TO REQUEST NO. 1:**

Admit.

**REQUEST NO. 2:**

Admit that Ali Kia, M.D. is not now, and has never been, an employee of Sunrise Hospital and Medical Center, LLC.

**RESPONSE TO REQUEST NO. 2:**

Admit.

**REQUEST NO. 3:**

Admit that Ali Kia, M.D. was a treating physician of Choloe Green during her Sunrise Hospital Admission from July 14, 2016 through July 16, 2016.

**RESPONSE TO REQUEST NO. 3:**

Admit.

**REQUEST NO. 4:**

Admit that Ali Kia, M.D. wrote an order to discharge Choloe Green, from Sunrise Hospital and Medical Center, on July 16, 2016.

**RESPONSE TO REQUEST NO. 4:**

Admit.

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1 **REQUEST NO. 5:**

2 Admit that Ali Kia, M.D. was covering for Nevada Hospitalist Group, LLP, and that  
3 such group's call schedule resulted in him becoming a treating physician of Choloe Green  
4 during her admission to Sunrise Hospital and Medical Center commencing on July 14, 2016  
5 (and discharged on July 16, 2016).

6 **RESPONSE TO REQUEST NO. 5:**

7 Objection. This Request is vague and ambiguous as to "covering". Without waiving  
8 stated objection, Defendant responds as follows: Admit.

9 **REQUEST NO. 6:**

10 Admit that Sunrise Hospital and Medical Center, LLC did not select Ali Kia, M.D. to  
11 treat Choloe Green during her July 14, 2016 – July 16, 2016 hospital admission.

12 **RESPONSE TO REQUEST NO. 6:**

13 Admit.

14 **REQUEST NO. 7:**

15 Admit that Ali Kia, M.D. had hospital staff privileges at University Medical Center  
16 (U.M.C.) in Las Vegas, Nevada and had such privileges during July 2016.

17 **RESPONSE TO REQUEST NO. 7:**

18 Deny.

19 **REQUEST NO. 8:**

20 Admit that Ali Kia, M.D. had hospital staff privileges at other hospitals in Clark  
21 County, Nevada, in addition to Sunrise Hospital and U.M.C. during the month of July 2016.

22 **RESPONSE TO REQUEST NO. 8:**

23 Deny.

24 **REQUEST NO. 9:**

25 Admit that Ali Kia, M.D. has never received a W-2 income tax form from Sunrise  
26 Hospital and Medical Center, LLC.  
27  
28

**RESPONSE TO REQUEST NO. 9:**

Admit.

**REQUEST NO. 10:**

Admit that Ali Kia, M.D. maintained his own private medical practice during the month of July 2016.

**RESPONSE TO REQUEST NO. 10:**

Objection. This Response is vague and ambiguous as to “private medical practice”. Without waiving stated objection, Defendant responds as follows: Admit.

**REQUEST NO. 11:**

Admit that Ali Kia, M.D.’s professional liability insurance, applicable to Choloe Green’s July 14, 2016 – July 16, 2016 Sunrise Hospital stay was not provided by or through Sunrise Hospital and Medical Center, LLC.

**RESPONSE TO REQUEST NO. 11:**

Admit.

DATED: January 28, 2020

**COLLINSON, DAEHNKE, INLOW & GRECO**

BY: /s/ Laura S. Lucero

PATRICIA EGAN DAEHNKE

Nevada Bar No. 4976

LAURA S. LUCERO

Nevada Bar No.

2110 E. Flamingo Road, Suite 212

Las Vegas, Nevada 89119

Tel. (702) 979-2132

Fax (702) 979-2133

*Attorneys for Third-Party Defendant*

*ALI KIA, M.D.*

**CERTIFICATE OF SERVICE**

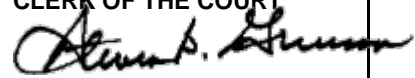
I hereby certify that on this 28<sup>th</sup> day of January 2020, a true and correct copy of  
**THIRD-PARTY DEFENDANT ALI KIA, M.D.'S RESPONSE TO FIRST SET  
OF REQUESTS FOR ADMISSIONS PROPOUNDED BY THIRD-PARTY  
PLAINTIFF SUNRISE HOSPITAL AND MEDICAL CENTER, LLC** was served  
by electronically filing with the Clerk of the Court using the Odyssey File & Serve 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 South Ninth Street  
Las Vegas, Nevada 89101  
(702) 386-0536  
*Attorneys for Plaintiff Choloe Green*

ERIC K. STRYKER, ESQ.  
Wilson Elser Moskowitz Edelman & Dicker LLP  
300 South Fourth Street  
11th Floor  
Las Vegas, Nevada 89101  
(702) 727-1400  
*Attorneys for Defendants  
Frank J. DeLee, M.D. and Frank J. DeLee, M.D., P.C.:*

MICHAEL E. PRANGLE, ESQ.  
TYSON J. DOBBS, ESQ.  
SHERMAN B. MAYOR, ESQ.  
Hall Prangle and Schoonveld LLC  
1140 N. Town Center Drive, Suite 350  
20 Las Vegas, Nevada 89144  
*Attorneys for Defendant and Third-Party Plaintiff  
Sunrise Hospital and Medical Center, LLC*

By /s/ Hannah C. Lockard  
An employee of COLLINSON, DAEHNKE,  
INLOW & GRECO



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

CHOLOE GREEN, an individual,  
  
Plaintiff,  
  
v.

Case No. A-17-757722-C  
Dept. No. IX  
  
Date: June 23, 2020  
Time: 8:30 a.m.

***ORAL ARGUMENT REQUESTED***

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,

v.

ALI KIA, M.D., Individually and his employer,  
NEVADA HOSPITALIST GROUP, LLP; Does  
1-10; and ROE CORPORATION1-10; inclusive

Third-Party Defendants.  
\_\_\_\_\_

**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**

COMES NOW the Plaintiff Choloe 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 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. The grounds for Plaintiff’s opposition and countermotion are set forth in the following Memorandum of Points and Authorities.

DATED this 3rd day of June, 2020.

LAW OFFICES OF DANIEL MARKS

/s/ Nicole M. Young

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

## **MEMORANDUM OF POINTS AND AUTHORITIES**

### **I. PROCEDURAL BACKGROUND**

On June 30, 2017, Plaintiff Choloe Green (“Choloe”) filed the instant Complaint for Medical Malpractice against Defendant Sunrise Hospital and Medical Center, LLC (“Sunrise”) and Defendants Frank J. Delee, M.D., and Frank J. Delee, MD, PC (“Delee”). Sunrise filed its Answer to Choloe’s complaint on July 20, 2017, and Delee filed his Answer on July 31, 2017. The parties then began discovery.

On November 14, 2018, Choloe took the deposition of Ali Kia, M.D. (*See* Excerpt of Deposition of Ali Kia, M.D, dated November 14, 2018, attached hereto as Ex. 1.) Sunrise then filed its Motion for Partial Summary Judgment to Dismiss Any Claim of “Ostensible Agency” for Dr. Kia and Dr. Delee on January 15, 2019. The hearing on that motion took place on March 12, 2019. In response to that motion, Choloe conceded no ostensible agency between Sunrise and Delee. This Court found the existence of ostensible agency between Sunrise and Dr. Kia, however, is an issue of fact.

In response to that decision, Sunrise sought leave of this Court to file a third-party complaint on May 1, 2019. That motion was granted and Sunrise filed its third-party complaint against Dr. Kia and his employer, Nevada Hospitalist Group (“NHG”), for contribution and indemnity on June 14, 2019. Dr. Kia filed his answer on August 2, 2019. For some reason, NHG did not file its answer until December 27, 2019, more than six months after the third-party complaint was filed.

1 NHG then filed its motion for judgment on the pleadings on March 19, 2020. This Court heard  
2 that motion on April 29, 2020, and took the matter under advisement. On May 11, 2020, this Court  
3 granted NHG's motion. Sunrise's instant renewed motion was then filed on May 20, 2020.

4 The renewed motion argues Choloe's complaint does not refer to Dr. Kia by name or as a DOE  
5 party. It also argues she did not claim ostensible agency. To alleviate any concerns regarding these  
6 issues, Choloe filed her Motion for Leave of Court to Amend Complaint, concurrently herewith, to add  
7 these items. NRCP 15(a) requires this Court to freely grant this amendment.

## 8 **II. FACTUAL BACKGROUND**

9 On July 9, 2016, Delee performed a cesarean section on Choloe at Sunrise. Choloe is an African-  
10 American female, who was about to turn 30 years old. She was discharged home on "post-operative day  
11 one" even though the standard of care for "a routine cesarean is a 3-4 night stay in the hospital." The  
12 standard of care was also breached relating to the first discharge because Choloe "had not even  
13 attempted to tolerate clear liquids and she had not passed flatus when she was released on post-operative  
14 day number one." (*See* Affidavit of Lisa Karamardian ("Karamardian Affidavit"), attached to Complaint  
15 for Medical Malpractice as Exhibit 1, filed on June 30, 2017, at ¶ 4.)

16 On July 14, 2016, Choloe was admitted into Sunrise's "medical/surgical unit because of the  
17 diagnosis of sepsis." She was five days post-partum and experiencing "severe abdominal pain and  
18 reports of nausea, vomiting, fever, and chills." (*See* Karamardian Affidavit, at ¶ 5.) She had various  
19 conversations with doctors arranged by Sunrise. She was assigned a doctor, Dr. Kia, who she did not  
20 know. She was treated by nurses of Sunrise and various other doctors called in by Sunrise. (*See* Affidavit  
21 of Choloe Green, attached hereto as Ex. 3, at ¶ 5.)

22 She was discharged two days later, on July 16, 2016. Choloe's discharge was discussed between  
23 Delee and the doctors treating her at Sunrise. As part of his OB-GYN care and delivering of the child,  
24 Delee was required to provide follow-up care for thirty (30) days. He breached this duty when he did not  
25 provide Choloe competent care during her second hospital stay even though he was paid, through  
26 Medicaid, to provide this care. (*See* Karamardian Affidavit, at ¶ 5; and *see* Excerpt of Deposition of  
27 Frank J. Delee, M.D., dated September 20, 2018, attached hereto as Ex. 4, at pp. 41-42.)

28 *////*

1 This discharge violated the standard of care because “[1] she was not able to tolerate a regular  
2 diet[,] . . . [2] her KUB showed multiple dilated loops of bowel, thought to be related to a small bowel  
3 obstruction, . . . [and] [3] [a]n intraperitoneal abscess was suspected on a CT scan.” Despite these  
4 issues both Sunrise and Delee agreed to discharge her home. (*See* Karamardian Affidavit, at ¶ 5.)

5 One day after her second discharge from Sunrise, July 17, 2017, Choloe was admitted into  
6 Centennial Hills Hospital (“Centennial”), again in severe pain and with no real bowel movement. The  
7 imaging studies at Centennial showed her condition had worsened in the one day since her discharge  
8 from Sunrise. (*See* Karamardian Affidavit, at ¶ 6.)

9 Dr. Karamardian opined that based on the above breaches to the standard of care by Delee and  
10 Sunrise, Choloe’s “hospital course was protracted with multiple complications and . . . [then]  
11 discharged to a step down facility once her antibiotic course was felt to be completed, still on a feeding  
12 tube and in need of rehabilitation.” (*See* Karamardian Affidavit, at ¶ 7.)

13 Choloe turned 30 years old during her second admission to Sunrise. After she was discharged  
14 from Centennial and then the rehabilitation facility, she had to undergo a huge change of lifestyle,  
15 especially for a 30-year-old with four children. During her time at Centennial and the rehabilitation  
16 facility she was diagnosed with Chronic Obstructive Pulmonary Disease (“COPD”) and now requires  
17 constant, 24-hour use of oxygen tanks. She also suffers other health issues related to COPD. These  
18 health issues caused by Delee and Sunrise burden the State of Nevada through Medicaid, her insurance  
19 provider. These health issues also prevent Choloe from obtaining meaningful employment to care for her  
20 family. (*See* Response to Defendant Frank J. Delee, M.D.’s First Set of Interrogatories to Plaintiff,  
21 attached hereto as Ex. 5, at Response to Interrogatory No.’s 1, 2, 4, and 11.)

## 22 **II. LEGAL ARGUMENT**

### 23 **A. Sunrise’s serial filing of the instant motion constitutes an abusive litigation tactic** 24 **that must be struck and sanctioned.**

25 The court may strike “any redundant, immaterial, impertinent, or scandalous matter.” NRC  
26 12(f). Once a motion is “heard and disposed of” it may not be “renewed in the same cause, nor may the  
27 same matters therein embraced be reheard, unless by leave of the court granted upon motion.” EDCR  
28 2.24(a). Reconsideration of a prior ruling must be requested within 14 days of notice of entry of the

1 order. EDCR 2.24(b). Res judicata prevents litigants who are dissatisfied with a decision from filing  
2 “serial motions until the right circumstances or the right judge allows them to achieve a different result,  
3 based on essentially the same facts.” *Ellis v. Carucci*, 123 Nev. 145, 151, 161 P.3d 239, 243 (2007).  
4 “Filing serial motions seeking the same relief only delays [] resolution.” *Warenback v. Neven*, 2018 WL  
5 834607, \*4 (D.Nev. Feb. 12, 2018). A serial motion is a redundant matter that this Court must strike.

6 In this case, Sunrise previously filed the instant motion approximately 1 ½ years ago. This Court  
7 already ruled the existence of ostensible agency between Sunrise and Dr. Kia was an issue of fact for the  
8 jury. (See Order from March 12, 2019 Hearing, filed on March 5, 2020.<sup>1</sup>) The facts and information  
9 relating to this issue have not changed since the original hearing in March of 2019. Just because Sunrise  
10 filed a third-party complaint that has since been dismissed does not change the facts relating to whether  
11 ostensible agency exists between Sunrise and Dr. Kia.

12 When the Nevada Legislature revised the several liability language of NRS 41A.045 in 2015, it  
13 discussed whether a defendant would bring a third-party complaint to address the liability of others. The  
14 testimony of John Cotton provides insight into Sunrise’s actions in this case:

15 Mr. Cotton: Correct. The ultimate judgment is never found against that  
16 person when it is allocated out that way for several liability.  
17 There will be no judgment entered against Doctor A. He  
18 may not be there, but there is not a judgment that he has to  
19 report to his insurance carrier or medical examiners  
20 board—or anyone else. This is just not done.

21 Senator Ford: **Can the defendant bring that person in as well?**

22 Mr. Cotton: **It is not likely that person can be brought in on a**  
23 **third-party action.**

24 Senator Ford: **It may not be likely, but is it possible?**

25 Mr. Cotton: **I do not have the burden of proving who was damaged**  
26 **or how much that person was damaged ...**

27 Senator Ford: That is true, but if you want to put that person on the  
28 verdict, you can bring the person in, correct?

Mr. Cotton: Yes. In theory, you can bring them in as a party.

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<sup>1</sup> The late filing of this order allowed Sunrise to file a motion for reconsideration as late as March 19, 2020, which interestingly enough is the same day NHG filed its Motion for Judgment on the Pleadings.



1 *See* Minutes of the Senate Committee on Judiciary, 78<sup>th</sup> Session, at pp. 39-40 (May 26, 2015) (emphasis  
2 added).

3         According to Mr. Cotton, who is an esteemed medical malpractice defense attorney, a defendant  
4 would not file a third-party complaint and burden itself with proving liability. The more likely reason  
5 that Sunrise sought leave to file the third-party complaint is because it knows ostensible agency between  
6 Sunrise and Dr. Kia is a question of fact that Choloe will likely prevail on in front of a jury.

7         Sunrise argues it had to file its third-party complaint because “[t]he entire flow of discovery and  
8 the provisions set forth in expert affidavits would be different if the treating physicians were found to be  
9 agents of the hospital versus a finding that they were not hospital agents.” (*See* Renewed Motion, at 3:3-  
10 5.) This argument is preposterous in light of the 2015 amendment that put in place a mechanism for  
11 defendants to argue several liability, under NRS 41A.045, the “empty chair” argument. Sunrise knows  
12 ostensible agency is an issue of fact. Why would it give Choloe the gift of submitting an expert affidavit  
13 stating Dr. Kia breached the standard of care?

14         That third-party complaint was only a circus sideshow that simply delayed discovery in this case.  
15 It did not make sense to move forward with discovery until all third-party defendants filed their answer  
16 to Sunrise’s complaint. Sunrise fooled around and allowed NHG to wait 6 months to file its answer to  
17 the third-party complaint. The reason for this delay is unknown.

18         Sunrise’s instant renewed motion is really a motion for reconsideration that is more than two (2)  
19 months late, in violation of EDCR 2.24. Sunrise comments on what it perceives as error in the original  
20 order when it states this “Court rendered this decision, even though there was no assertion of ostensible  
21 agency in Plaintiff’s Complaint and Dr. Kia was not identified in Plaintiff’s Complaint by name or act.”  
22 (*See* Renewed Motion, at 3:14-16.)

23         No new information was discovered after the filing of the third-party complaint that could allow  
24 this Court to reconsider its prior decision. Sunrise cites to a Request for Admission directed to Dr. Kia  
25 where he admits Sunrise did not select him to treat Choloe. That admission, however, is not within Dr.  
26 Kia’s personal knowledge. He cannot testify as to Sunrise’s “mind” when he was assigned to Choloe’s  
27 case. Only a jury can make that ultimate determination. This is a feeble attempt by Sunrise to correct Dr.

28 *////*

1 Kia's prior deposition testimony where he testified he was not aware of whether Sunrise selected him to  
2 provide care. This original answer was not as clear as Sunrise wanted, so it attempted to rehabilitate his  
3 response. That rehabilitation only puts Dr. Kia's credibility at issue.

4 It is likely that his response to that admission is based on the fact that NHG selected him to  
5 provide care through its contract with Sunrise. Sunrise chose Dr. Kia based on that contract. Sunrise  
6 never deposed the Person Most Knowledgeable at NHG to testify as to the selection process. This is  
7 significant. A jury must determine if a contractual relationship between Sunrise and NHG, which  
8 resulted in Dr. Kia providing care to Choloe, establishes ostensible agency. This Court already found  
9 ostensible agency based on that relationship is a question of fact for the jury in this case.

10 Sunrise violated EDCR 2.24 when it filed the instant renewed motion. Presumably, the only  
11 reason Sunrise renewed this motion is because this case now has a new judge.<sup>2</sup> EDCR 2.24(a), which is  
12 based on the theory of res judicata, does not allow serial motions based on the same facts. This renewed  
13 motion was brought based on the same facts, and as such, without reasonable ground. *See* NRS  
14 18.010(2)(b). This frivolous filing burdens this Court's limited resources (especially given the current  
15 state of affairs surrounding CoVid-19), hinders the timely resolution of this case, and unnecessarily  
16 increases the cost of litigation. *See* NRS 18.010(2)(b).

17 Accordingly, this Court should strike the instant motion, award Choloe attorney's fees, and  
18 impose sanctions under NRCP 11. *See* 18.010(2)(b).

19 **B. As this Court previously ruled, a genuine issue of material fact exists regarding the**  
20 **ostensible agency relationship between Sunrise and Dr. Kia.**

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

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25  
26 <sup>2</sup> Sunrise may argue this Court's comments in the May 11, 2020, Minute Order allowed renewal of  
27 the instant motion. Those comments, however, simply acknowledge the passing of the deadline to file a  
28 motion for reconsideration and that Sunrise's argument the prior decision was erroneous was not properly  
before the court.

1 A genuine issue of material fact exists when “the evidence is such that a reasonable jury could  
2 return a verdict for the non-moving party.” *Posadas v. City of Reno*, 109 Nev. 448, 452, 851 P.2d 438  
3 (1993). On summary judgment, all evidence, “and any reasonable inferences drawn from it, must be  
4 viewed in the light most favorable to the non-moving party.” *Woods v. Safeway, Inc.*, 121 Nev. 724, 729,  
5 121 P.3d 1026 (2005).

6 Although the Nevada Supreme Court abrogated the “slightest doubt” standard based on two U.S.  
7 Supreme Court decisions<sup>3</sup>, the standard now used only changed the amount of evidence necessary to  
8 oppose a motion for summary judgment; it did not change the manner in which the evidence must still  
9 be reviewed. *Wood v. Safeway, Inc.*, 121 Nev. 724, 730, 121 P.3d 1026 (2005). As the Court noted in  
10 *Anderson*, “credibility determinations, the weighing of evidence, and the drawing of legitimate  
11 inferences from the facts are jury functions, not those of a judge... the evidence of the non-movant is to  
12 be believed and all justifiable inferences are to be drawn in his favor.” 477 U.S., at 255; *see Pegasus v.*  
13 *Reno Newspaper, Inc.*, 118 Nev. 706, 714, 57 P.3d 82 (2002).

14 The Nevada Supreme Court more recently reiterated that “when an NRCP is modeled after its  
15 federal counterpart, cases interpreting the federal rule are strongly persuasive.” *FCHI v. Rodriguez*, 130  
16 Nev. 425, 433, 335 P.3d 183, 189 (2014) (internal quotations omitted). There is no dispute that the  
17 wording of NRCP 56 closely mirrors and was modeled after its federal counterpart. The U.S. Supreme  
18 Court recently interpreted FRCP 56 and found that “a judge’s function at summary judgment is not to  
19 weigh the evidence and determine the truth of the matter but to determine whether there is a genuine  
20 issue for trial.” *Tolan v. Cotton*, 572 U.S. 650, 656 134 S.Ct. 1861, 1866 (2014) (internal quotations  
21 omitted).

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

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27 <sup>3</sup> See *Celotex Corp. v. Catrett*, 477 U.S. 317, 106 S.Ct. 2548 (1986); and *see Anderson v. Liberty*  
28 *Lobby*, 477 U.S. 242, 106 S.Ct. 2505 (1986).

1 In *McCrosky v. Carson Tahoe Regional Medical Center* 133 Nev. 930, 408 P.3d 149 (2017), the  
2 Nevada Supreme Court reversed the district court’s erroneous finding of no vicarious liability or  
3 ostensible agency stating those issues may only be determined by a jury. *Id.* at 936.

4 Vicarious liability, *McCrosky* holds, is “[l]iability that a supervisory party ... bears for the  
5 actionable conduct of a subordinate ...based on the relationship between the two parties.” *Id.* at 932-33  
6 (quoting Black’s Law Dictionary 1055 (10<sup>th</sup> ed 2014)). The Court held the “supervisory party need not  
7 be directly at fault to be liable, because the subordinate’s negligence is imputed to the supervisor.” *Id.* at  
8 933 (citing Restatement (Third) of Torts: Apportionment of Liability § 13 (Am. Law Inst. 2000)). The  
9 Court reasoned that because “NRS 41A.045 is silent regarding vicarious liability, it leaves vicarious  
10 liability intact,” and survives the several liability issue created by NRS 41A.045. *Id.*

11 The Court further elaborated on the vicarious liability issue as it pertains to independent  
12 contractors and doctors chosen by the hospital for the patient. While the general rule is that an employer  
13 is not liable for the negligence of an independent contractor, “an exception exists if the hospital selects  
14 the doctor and it is reasonable for the patient to assume that the doctor is an agent of the hospital.” *Id.* at  
15 934 (internal quotations omitted). In such a scenario, it is reasonable for a patient to assume “the doctor  
16 has apparent authority to bind the hospital, making the hospital vicariously liable for the doctor’s actions  
17 under the doctrine of ostensible agency.” *Id.* (internal quotations omitted).

18 The Court held that “whether an ostensible agency relationship exists is generally a question of  
19 fact for the jury if the facts showing the existence of agency are disputed, or if conflicting inferences can  
20 be drawn from the facts.” *Id.* (internal quotations omitted). The questions of fact for the jury include:

- 21 (1) Whether a patient entrusted herself to the hospital;
- 22 (2) Whether the hospital selected the doctor to serve the patient;
- 23 (3) Whether a patient reasonably believed the doctor was an employee or agent of the  
24 hospital; and
- 25 (4) Whether the patient was put on notice that a doctor was an independent contractor.

26 *Id.* When the plaintiff asserts sufficient facts as to each of these elements, this Court must make the  
27 “affirmative finding” agency exists to send this issue of fact to a jury. *See Schlotfeldt v. Charter Hosp. of*  
28 *Las Vegas*, 112 Nev. 42, FN 3, 910 P.2d 271 (1996).

1 The hospital, in *McCrosky*, used a Conditions of Admission (“COA”) signed by the patient to  
2 argue the patient knew that all physicians are independent contractors and are not employees or agents of  
3 the hospital. *Id.* at 931. *McCrosky* held it was “debatable whether a typical patient would understand that  
4 statement to mean that the hospital is not liable for the physician’s negligence.” *Id.* at 935.

5 Here, Choloe has presented sufficient facts for a jury determination of ostensible agency. First,  
6 Choloe entrusted herself to Sunrise when she presented at its emergency room. (*See* Ex. 3, at ¶ 5.)  
7 Second, after Choloe sought care from Sunrise, it assigned Dr. Kia to provide her care through its  
8 contract with NHG. By contracting with NHG to provide care to emergency room patients, it “selected”  
9 Dr. Kia to provide Choloe care. Choloe was not involved in this decision. (*See* Ex. 3, at ¶ 5.) Third, it  
10 was reasonable for Choloe to believe Sunrise selected Dr. Kia because she believed all healthcare  
11 professionals that provided her care were employed by Sunrise. (*See* Ex. 3, at ¶ 5.) Fourth, she was never  
12 told Dr. Kia was not employed by Sunrise. (*See* Ex. 3, at ¶ 5.) The COA was also unclear regarding the  
13 employment status of physicians. (*See* Conditions of Admission and Consent for Outpatient Care,  
14 attached hereto as Ex. 2.) She was not involved in the decision regarding Dr. Kia’s assignment. (*See* Ex.  
15 3, at ¶ 5.)

16 Sunrise initially argued the COA in its original motion for partial summary judgment. It  
17 abandons this argument in its renewed motion likely because the COA at issue is not as strong as in  
18 *McCrosky* where the Court reversed summary judgment. The COA here states “Most or all of the  
19 physicians performing service in the hospital are independent and are not hospital agents or employees”.  
20 (*See* Ex. 2, at SH000795.) Additionally that section of the COA defines “Provider” as:

21 the hospital and may include healthcare professionals on the hospital’s  
22 staff and/or hospital-based physicians, which include but are not limited to  
23 emergency department physicians, pathologists, radiologists,  
24 anesthesiologists, hospitalists, certain other licensed independent  
practitioner and any authorized agents, contractors, successors or assignees  
acting on their behalf.

25 (*See* Ex. 2, at SH000795.) It was based on this language and Choloe’s affidavit that this Court originally  
26 found ostensible agency is an issue of fact.

27 ////

28 ////

1 This language, which includes healthcare professionals on the hospital's staff and/or hospital-  
2 based physicians including hospitalists, like Dr. Kia, is more favorable to Choloe than the language at  
3 issue in *McCrosky*. A hospitalist oversees "inpatient services and management including patient care and  
4 also [has a] **very close association with the medical staff and administration of the facility to see**  
5 **that we follow the hospital guidelines.**" (*See* Ex. 1, at 13:6-9 (emphasis added).)

6 How would a patient know what doctors are employed by the hospital? Dr. Kia, in his deposition,  
7 testified he was assigned to Sunrise by his hospital group and was there virtually every day. (*See* Ex. 1,  
8 at 12:1-24.) Sunrise ignores this admission and has latched onto the argument "Dr. Kia maintained his  
9 own private practice, separate and apart from Sunrise." (*See* Renewed Motion, at 9:2-2.) Is Dr. Kia's  
10 "private practice" really "separate and apart from Sunrise" if he is there every day using Sunrise's  
11 facilities, staff, equipment, and supplies?

12 Choloe did not choose Dr. Kia to be her doctor. (*See* Ex. 1, at 12:25 to 13:1-2.) Dr. Kia admits  
13 he was assigned to Choloe through the emergency department. (*See* Ex. 1, at 12:25 to 13:1-2 & 18:6-12.)  
14 His later admission, which creates inconsistencies with his prior testimony, regarding who selected care  
15 for Choloe does not change these facts. Sunrise would have this Court believe he miraculously appeared  
16 to provide care to Choloe without notice Choloe needed care from Sunrise. This makes no sense because  
17 Choloe requested care from Sunrise when she appeared at its emergency department. While Sunrise did  
18 not choose Choloe's insurer, it did choose to enter into a contractual relationship with NHG to provide  
19 care to patients admitted into its emergency department. When Sunrise admitted Choloe into its facility,  
20 it selected NHG to provide a doctor to Choloe. Sunrise did not notify Choloe of the pyramid scheme  
21 used to select a doctor to provide her care.

22 When Choloe was admitted to Sunrise, they ran various tests. She had various conversations with  
23 doctors, none of whom she chose, whom she thought were employed by Sunrise. (*See* Ex. 3, at ¶ 5.) The  
24 decision to discharge Choloe, while signed by Dr. Kia, is based on all the medical activity over her three  
25 (3) day admission. While Sunrise is liable for Dr. Kia's actions under an ostensible agency theory,  
26 Sunrise is also liable for the act of discharging Choloe from the hospital with a suspected small bowel  
27 obstruction and without actually treating Choloe for that illness. This Court must remember she sought  
28 care from Sunrise, not Dr. Kia who she had never met prior to her admission on

1 July 14<sup>th</sup>. Since Dr. Kia was assigned to Ms. Green through the emergency department, and she did not  
2 choose the doctors who treated her, the theory of ostensible agency against Sunrise applies, as stated in  
3 *McCrosky* and *Schlotfeldt*.

4 **III. CONCLUSION**

5 Based on the foregoing, this Court should grant Choloe's counter-motion to strike the renewed  
6 motion. This is necessary because this Court has already ruled on the instant motion and Sunrise's  
7 renewal of that motion was not brought in good faith. By renewing this motion, Sunrise has multiplied  
8 the proceedings unnecessarily and delayed this case, which necessitates sanctions in the form of an  
9 award of attorney's fees to Choloe.

10 In the event this Court does not wish to strike the instant renewed motion, then it should deny  
11 that motion because a genuine issue of material fact exists whether Dr. Kia was an ostensible agent of  
12 Sunrise. To rule otherwise would constitute an abuse of authority by this Court because all material  
13 inferences must be made in Choloe's favor, on summary judgment, and she has sufficient facts to allow  
14 this issue to go to a jury.

15 DATED this 3rd day of June, 2020.

16 LAW OFFICE OF DANIEL MARKS

17 /s/ Nicole M. Young

18 DANIEL MARKS, ESQ.  
19 Nevada State Bar No. 002003  
20 NICOLE M. YOUNG, ESQ.  
21 Nevada State Bar No. 12659  
22 610 South Ninth Street  
23 Las Vegas, Nevada 89101  
24 Attorneys for Plaintiff  
25  
26  
27  
28

**CERTIFICATE OF SERVICE**

I hereby certify that I am an employee of the Law Office of Daniel Marks and that on the 3rd day of June, 2020, pursuant to NRCP 5(b) and Administrative Order 14-2, I electronically transmitted a true and correct copy of the above and foregoing **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** by way of Notice of Electronic Filing provided by the court mandated E-file & Serve System, as follows:  
following:

Erik K. Stryker, Esq.  
WILSON, ELSER, MOSKOWITZ, EDELMAN & DICKER LLP  
300 South 4<sup>th</sup> Street, 11<sup>th</sup> 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.

Linda K. Rurangirwa, 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

/s/ Nicole M. Young  
\_\_\_\_\_  
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

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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

---

## **EXHIBIT 2**

---



### 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



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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.

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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

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("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 Provider(s) 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,

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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.

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**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
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**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: C. Green (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



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07/14/2016

SUNRISE HOSPITAL & MEDICAL CENTER

GREEN  
07/15/1966

CHLOE

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: SG (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.	Additional Witness Signature and Title: (required for Patients unable to sign without a representative or Patients who refuse to sign)
(Circle or mark relationship(s) from list below):	X _____
Spouse Parent Legal Guardian Neighbor/Friend Sibling Healthcare Power of Attorney Guarantor Other (please specify): _____	HCA Corporate Standard COA-COS 06.20.2016

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## **EXHIBIT 3**

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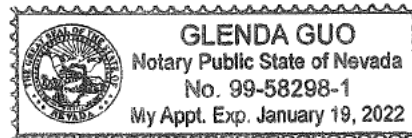


1 induced coma. I was eventually discharged from that hospital on September 2, 2016. I  
2 now suffer from COPD and require constant use of an oxygen tank. I also suffer from  
3 additional health issues relating to the COPD.

4 FURTHER YOUR AFFIANT SAYETH NAUGHT.

5  
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7   
8 CHOLOE GREEN

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



13   
14 NOTARY PUBLIC in and for said  
15 COUNTY and STATE  
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## **EXHIBIT 4**

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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. )  
\_\_\_\_\_ )

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

**CERTIFIED  
COPY**

DEPOSITION OF FRANK J. DeLEE, M.D.

Taken on Thursday, September 20, 2018

At 9:40 a.m.

Taken at 610 South Ninth Street  
Las Vegas, Nevada

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

1                   THE WITNESS: I'm not sure if there is anything  
2     written that says how long I'm responsible. As long as  
3     there are obstetrical problems, I will continue seeing the  
4     patient.

5     BY MR. MARKS:

6           Q. And there's no time frame as to a month, two  
7     months?

8           A. As far as I'm concerned, no.

9           Q. Okay. Now, in terms of billing, when you deliver  
10    a baby, you obviously get paid for the delivery, correct,  
11    by insurance or the government; right?

12          A. Yes.

13          Q. And is there any postpartum care that's included  
14    in that fee?

15          A. Yes.

16          Q. And how much postpartum care is included?

17          A. I believe it's up to six weeks.

18          Q. So as part of the delivery fee, the doctor, the OB  
19    that's delivering the baby would have an obligation to see  
20    the patient for six weeks as part of the delivery fee?

21                 MR. STRYKER: Form, incomplete hypothetical.

22                 THE WITNESS: I'm not sure I understand how  
23    you're asking.

24     BY MR. MARKS:

25           Q. Okay. You deliver a baby and you get a fee from

1 insurance or the government; correct?

2 A. Yes.

3 Q. All right. That fee includes postpartum care?

4 A. Yes.

5 Q. For up to six weeks?

6 A. Approximately. It depends on the doctor.

7 Q. Okay. Do you recall what date Ali Kia called you?

8 A. No.

9 Q. So you talked to Ali Kia. Is that a male?

10 A. I have no idea. I don't recall.

11 Q. You don't recall the conversation?

12 A. No, I do not.

13 Q. But I thought you just told me what the  
14 conversation was?

15 A. And that's from the interrogatories that I  
16 reviewed and other documents that I have seen.

17 MR. STRYKER: Counsel, his testimony is also  
18 based on discussions with the attorney, so I have to  
19 assert attorney-client privilege to the extent that his  
20 answers to your questions involve conversations with  
21 counsel.

22 BY MR. MARKS:

23 Q. All right. Let me just ask it another way.

24 You're sitting here today. Do you recall whether Ali Kia  
25 was a male or female?

## 1 CERTIFICATE OF REPORTER

2

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

6

7 I, Terri M. Hughes, CCR No. 619, do hereby  
8 certify: That I reported the deposition of FRANK J.  
9 DeLEE, M.D., commencing on Thursday, September 20, 2018,  
10 at 9:40 a.m.

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

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

25 IN WITNESS WHEREOF, I have set my hand in my  
office in the County of Clark, State of Nevada, this 3rd  
day of October, 2018.

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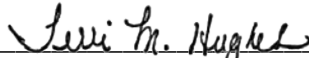
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Terri M. Hughes, CCR No. 619

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## **EXHIBIT 5**

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

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.

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

COMES NOW the Plaintiff Chloe 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;

////



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

**RESPONSE TO INTERROGATORY NO. 1:**

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

**INTERROGATORY NO. 2:**

Please identify your health care insurer and/or coordinator of benefits, any health insurance claim number (HICN), any Medicare number, and whether you have been diagnosed with end stage renal disease. (Your social security number from Interrogatory No. 1 will be provided to Medicare and/or Medicaid for 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.

1 Unfortunately, everything was not alright like Dr. Delee told her. Later that day, Plaintiff's pain  
2 became worse. She then went to Sunrise Hospital where she was admitted from July 14, 2016 through July  
3 16, 2016. Dr. Delee did not visit or speak with Plaintiff during this hospital stay. Even though Sunrise  
4 Hospital diagnosed Plaintiff with a small bowel obstruction, it discharged her on July 16, 2016. The notes  
5 from her discharge say that she would follow-up with Dr. Delee on Monday, July 18, 2016, in his office.

6 However, Plaintiff's condition continued to deteriorate after she was discharged on July 16, 2016.  
7 The following day Plaintiff was admitted to Centennial Hills Hospital where she underwent emergency  
8 surgery. She was admitted at Centennial Hills from July 17, 2016 through September 2, 2016. During the  
9 majority of that time Plaintiff was in a medically induced coma because her body became so weak from  
10 sepsis. Her lungs collapsed and a tracheotomy was performed.

11 After she was discharged from Centennial Hills Plaintiff then required rehabilitation to learn how  
12 to talk and perform everyday activities again. She now has COPD and requires an oxygen tank 24/7 to  
13 breathe.

14 **INTERROGATORY NO. 4:**

15 Please list each and every bodily injury (whether physical, emotional, or otherwise) you believe you  
16 sustained due to the incident that is the subject of this litigation, and the extent of your recovery from each.

17 **RESPONSE TO INTERROGATORY NO. 4:**

18 Since the incident at issue, Plaintiff now suffers from a variety of health issues that she did not have  
19 before. These health issues are abnormal for a woman in her early-30s. Plaintiff has severe lung issues. She  
20 has COPD, which requires that she carry an oxygen tank with her at all times to help her breathe and the use  
21 of inhalers as needed. She even needs the oxygen tank while she sleeps. Because of the weakened state of  
22 her lungs, Plaintiff now has heart issues and now requires blood pressure medication. Plaintiff also has  
23 issues with her memory. She is going to consult with a neurologist regarding this issue. She also has  
24 developed severe anxiety relating to doctors and hospitals based on the incident at issue in this case.

25 Plaintiff is still treating for the above issues. She would like to believe that the health issues  
26 described above are not permanent given her young age, but she has not seen any improvement with the  
27 function of her lungs since she was released from the hospital in September of 2016.

28 ////

1 **INTERROGATORY NO. 5:**

2 If you contend that your injuries at issue in this litigation were caused by the negligence of  
3 Defendants, please describe and explain all facts, without legal conclusions, that support your contention.

4 **RESPONSE TO INTERROGATORY NO. 5:**

5 Objection. This interrogatory calls for an expert medical opinion which Plaintiff is not qualified to  
6 form. Plaintiff reserves her right to submit her Initial Expert Disclosure in this case by the date such  
7 disclosures must be made.

8 See expert affidavit attached to Plaintiff's Complaint in this case.

9 **INTERROGATORY NO. 6:**

10 With regard to any hospital, medical provider, including but not limited to family practitioners,  
11 psychologists and therapists, who have provided treatment to you as a result if this incident:

- 12 (a) Identify each hospital, medical provider, psychologists, psychiatrists or therapist;  
13 (b) State the dates (beginning and end), description, and costs of each hospitalization or medical  
14 treatment;  
15 (c) The name of the individual who referred you to that treatment provider; and  
16 (d) IDENTIFY ANY TREATMENT WHICH WAS PAID FOR, REIMBURSED BY, OR  
17 SUBJECT TO A RIGHT OF RECOVERY BY MEDICARE OR MEDICAID, including the  
18 amount of each and every right of recovery.

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

- 20 1. Sunrise Hospital and Medical Center  
21 Date(s) of Treatment: July 9, 2016 and July 13, 2016 to July 16, 2016  
22 2. Valley Hospital  
23 Date(s) of Treatment: July 13, 2016  
24 3. Centennial Hills Hospital  
25 Date(s) of Treatment: July 17, 2016 to September 2, 2016  
26 4. Canyon Vista Post Acute  
27 Date(s) of Treatment: September/October 2016

28 ////

1           5.     Health South Rehabilitation

2                 Date(s) of Treatment: September/October 2016

3           6.     Axis Healthcare Clinic (Primary Care)

4                 Date(s) of Treatment: September/October 2016 through Present

5           7.     Dr. Leonard Parilak of Silver State Cardiology

6                 Date(s) of Treatment: September/October 2016 through Present

7           8.     Pulmonary Associates

8                 Date(s) of Treatment: September/October 2016 through Present

9           9.     Center for Wellness and Pain Care

10                Date(s) of Treatment: September/October 2016 through Present

11          10.    Dr. Skanker Dixit of Neurology Center of Nevada

12                Date(s) of Treatment: Has not been seen yet but has appointment scheduled

13          11.    Dignity Health ER on Blue Diamond and Decatur

14 All of Plaintiff's medical expenses/treatment was covered by Medicaid. Plaintiff believes she may have gone  
15 to an additional rehabilitation facility and will update this list once to discovers the name. Discovery is  
16 ongoing and Plaintiff reserves the right to supplement this list.

17 **INTERROGATORY NO. 7:**

18           Please list all health care providers with whom/which you have treated or consulted dating from five  
19 years prior to the incident that is the subject of this litigation to the present, **including all care provides**  
20 **with whom/which you treated for reasons not claimed to be due to the incident**, specifically listing:

21           (a)    The name of each care provider;

22           (b)    The address of each care provider;

23           (c)    The reason you obtained treatment from or consulted with each care provider; and

24           (d)    The inclusive dates you treated with each provider.

25 PLEASE IDENTIFY ANY TREATMENT WHICH IS SUBJECT TO A LIEN AS WELL AS ANY  
26 TREATMENT THAT WAS PAID FOR, REIMBURSED BY, OR SUBJECT TO A RIGHT OF  
27 RECOVERY BY MEDICARE OR MEDICAID, including the amount of each and every lien and/or right  
28 of recovery.

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

2 For the five years preceding the subject incident through the present date, Plaintiff was treated by  
3 Dr. Delee and would receive emergency care at UMC Quick Care located at Nellis and Charleston, Valley  
4 Hospital, and Sunrise Hospital. She also received treatment from Axis Healthcare Clinic, 6771 W.  
5 Charleston Blvd., Las Vegas, Nevada 89146, and Nevada Comprehensive Pain Center. In addition, Plaintiff  
6 saw Dr. Bernie Hanna regarding her lap band.

7 **INTERROGATORY NO. 8:**

8 Please identify each healthcare provider, including but not limited to physicians, psychologists, or  
9 therapists, who has advised you that you will in the future require further treatment or hospitalization for any  
10 injury or symptom wholly or partially resulting from the incident, including but not limited to the following  
11 information:

- 12 (a) The name and address of the healthcare provider;
- 13 (b) The purpose of the treatment;
- 14 (c) A description of the recommended future treatment in detail;
- 15 (d) The date(s) and location(s) the recommended future treatment is expected to occur;
- 16 (e) The estimated cost of the recommended future treatment; and
- 17 (f) Whether the healthcare provider has stated that such future medical treatment is reasonable  
18 and probable to occur as required above to a reasonable degree of medical probability.

19 **RESPONSE TO INTERROGATORY NO. 8:**

20 Plaintiff has been told by her cardiologist and pulmonologist that she will need future treatment  
21 because her lungs are not strong enough to allow her to breathe without use of an oxygen tank. She is going  
22 to consult with a neurologist regarding her memory issues. Discovery is still ongoing and Plaintiff is in the  
23 process of discovering whether her injuries from the incident at issue are permanent, including what her  
24 future treatment and the cost of the treatment will be.

25 **INTERROGATORY NO. 9:**

26 If you are claiming that any of the injuries you believe were caused or aggravated by the incident that  
27 is the subject of this litigation are permanent, please state:

28 ////



- 1 (a) Which injuries you are claiming are permanent;  
2 (b) What, if any, disabilities you contend such injuries will cause;  
3 (c) The nature of any future treatment that you claim will be necessary; and  
4 (d) The dollar amount of the cost of any future treatment that you claim will be necessary; and  
5 the name, address, and telephone number of the person or health care provider advising of  
6 such necessity.

7 **RESPONSE TO INTERROGATORY NO. 9:**

8 Plaintiff's pulmonologist has designated that Plaintiff is permanently disabled to the DMV.  
9 Discovery is ongoing and Plaintiff is still in the process of determining the full extent of her injuries and  
10 whether her injuries are permanent.

11 **INTERROGATORY NO. 10:**

12 If your responses to interrogatory number 9 are anything but an unequivocal "no," please identify  
13 each medical or health care provider from which you sought medical treatment for your injuries or  
14 conditions, including the name, address, date(s) of each treatment, including the last date of treatment for  
15 each provider.

16 **RESPONSE TO INTERROGATORY NO. 10:**

17 See Response to Interrogatory No. 6.

18 **INTERROGATORY NO. 11:**

19 Please state and describe in detail any ongoing physical limitations and/or handicaps hinder your  
20 performance of daily life activities, including but not limited to the specific activities of daily living  
21 (including household activities, personal hygiene activities, and recreational activities/hobbies) which you  
22 are now incapable of performing, or which your performance is now hindered as a result of your ongoing  
23 physical limitations and/or handicaps. Plaintiff also has issues with her memory, which she is going to  
24 consult with a neurologist about.

25 **RESPONSE TO INTERROGATORY NO. 11:**

26 Plaintiff is a woman who is in her early-30s. However, Plaintiff is unable to engage in ANY of the  
27 activities that a normal woman in her early-30s can perform because she requires constant use of an oxygen  
28 tank, including while she is sleeping. Most significant is that Plaintiff cannot care for her children by herself.

1 Where she once used to play with her children and take them to the park, she can no longer play with them  
2 because she gets fatigued very quickly. Plaintiff can no longer cook, clean, or do yard work. In addition, she  
3 needs assistance with her personal hygiene, including bathing and brushing her hair. Because she requires  
4 an oxygen tank at all times, it is difficult for her to walk, let alone run. She has extreme difficulty going up  
5 stairs and she is unable to drive unless someone is in the car with her.

6 **INTERROGATORY NO. 12:**

7 Please list all pharmacies (including the address of each pharmacy location) in which you have filled  
8 proscriptions for medication of any kind from five years prior to July 9, 2016, through the present. If you  
9 have used any online or mail order pharmacies during this time frame, please identify the same.

10 **RESPONSE TO INTERROGATORY NO. 12:**

- 11 1. CVS on Ann and Decatur
- 12 2. Walgreens on Windmill and Blue Diamond

13 **INTERROGATORY NO. 13:**

14 Please describe in detail all prescription and non-prescription medications, including all pills,  
15 patches, liquids, or medicines, that you took, ingested, consumed, or applied between your discharge from  
16 Sunrise Hospital on July 10, 2016 until your admission to Centennial Hills Hospital on July 17, 2016,  
17 excluding the medications administered during your treatment at Valley Hospital on July 13, 2016 and  
18 Sunrise Hospital from July 14, 2016 through July 16, 2016. Please include in your response the dosages,  
19 amounts, times (of ingestion, consumption, or application), types, nature, reasons, and the names of all  
20 prescribing physicians.

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

22 Plaintiff only took the medications prescribed by Dr. Delee, Sunrise Hospital and Valley Hospital.

23 **INTERROGATORY NO. 14:**

24 Please itemize all expenses that you claim you have incurred as a result of the incident that is the  
25 subject of this litigation, including medical expenses, specifically listing:

- 26 (a) A description of each expense claimed;
- 27 (b) The name of the person or entity to whom or which each expense was paid or is owing;
- 28 (c) Whether each expense is paid or unpaid;



- 1 (d) The dollar amount of each expense;
- 2 (e) The amount of each expense “payable as a benefit to the plaintiff as a result of the injury...
- 3 pursuant to the United States Social Security Act, any state or federal income disability or
- 4 worker’s compensation act, any health, sickness or income-disability coverage, and any
- 5 contract or agreement of any group, organization, partnership or corporation to provide, pay
- 6 for or reimburse the cost of medical, hospital, dental or other health care services.”

7 **RESPONSE TO INTERROGATORY NO. 14:**

8 The only expenses incurred by Plaintiff as the result of the incident at issue are the medical bills,

9 which were paid by Medicaid. Those bills have already been produced in this case.

10 **INTERROGATORY NO. 15:**

11 For each expense paid as a benefit, as defined in interrogatory 14(e) above, please state the identity

12 of each insurer, contract or agreement provider, disability agency or other office that made such payments

13 on your behalf, including the address, telephone number, policy number and group number sufficient to

14 allow service of a subpoena to obtain all records relating to same.

15 **RESPONSE TO INTERROGATORY NO. 15:**

16 All medical bills were paid by Medicaid.

17 **INTERROGATORY NO. 16:**

18 If you have incurred any out of pocket expenses for health care or other treatment which was not paid

19 by your insurance or other benefits (including medical expenses, pharmacy co-pays, travel costs for

20 treatment, etc.) that you claim to have incurred as a result of the incident, please itemize all out-of-pocket

21 expenses that you claim to have incurred as a result of the incident that is the subject of this litigation,

22 including medical expenses, specifically listing:

- 23 (a) A description of each expense claimed;
- 24 (b) The name of the person or entity to whom or which each expense was paid;
- 25 (c) Whether each expense is paid or unpaid; and
- 26 (d) The dollar amount of each expense.

27 **RESPONSE TO INTERROGATORY NO. 16:**

28 None.

1 **INTERROGATORY NO. 17:**

2 If you claim you missed time from your employment or some other enterprise in which you earned  
3 money as a result of the incident is that the subject of this litigation, for each job or other enterprise from  
4 which you claim you missed time, please list the following:

- 5 (a) The name, address and telephone number of the employer;
- 6 (b) The specific injuries, symptoms, illnesses or disabilities which you claim caused you to miss  
7 time;
- 8 (c) The total number of hours you claim you missed from the job or other enterprise;
- 9 (d) Your work schedule during the six months prior to the alleged incident;
- 10 (e) The dollar amount of income lost due to the missed time;
- 11 (f) The nature and amount of any benefit other than income you claim you lost due to the missed  
12 time;
- 13 (g) Any dollar amount that you were paid even though you did not work, specifically listing the  
14 inclusive dates you did not work, but for which you were paid;
- 15 (h) The date you returned to work; and
- 16 (i) Your gross income for the past five (5) years.

17 **RESPONSE TO INTERROGATORY NO. 17:**

18 Plaintiff planned on going back to work for Mind Body Solutions, after she gave birth to Israel. At  
19 that job, Plaintiff earned \$10/hour and worked approximately 50 hours per week. Plaintiff worked there for  
20 approximately one (1) year before she stopped working prior to the birth of Israel.

21 Prior to working at Mind Body Solutions, Plaintiff was a stay-at-home mother, and she worked over  
22 the years in various temporary and part-time positions. See Response to Interrogatory No. 18, below.

23 **INTERROGATORY NO. 18:**

24 If you claim loss of income as a result of this incident, state your business or occupation during the  
25 past ten (10) years and please state as to each employer:

- 26 (a) Name and address of the employer;
- 27 (b) The dates of employment;
- 28 (c) Your job title and the nature of the duties you performed;

- 1 (d) The reason you left or changed employment;  
2 (e) The name of your immediate supervisor;  
3 (f) The salary, wage or commission you received; and  
4 (g) For any employer who has terminated you in the past ten (10) years, identify employer by  
5 name and address, position, and the reason(s) for each instance of termination.

6 **RESPONSE TO INTERROGATORY NO. 18:**

- 7 1. Mind Body Solutions, 5120 S. Jones, Las Vegas, Nevada 89109  
8 Approximately 1 year prior to birth of Israel  
9 Medical transportation  
10 Maternity Leave  
11 Supervisor: Stacy Brown  
12 \$10/hour  
13 2. Willden and Willden, 1797 E. Cactus Ave, Las Vegas, Nevada 89183  
14 Employed in 2015  
15 Earned \$2,591  
16 3. HKM II, 1220 Melody Lane 180, Roseville, CA 95678  
17 Employed 2015  
18 Earned \$1,948  
19 4. Linden and Associates, 4900 Richmond Sq., Ste 102, Oklahoma City, OK 73118  
20 Employed 2015  
21 Earned \$2,759  
22 5. Freshco Specialty, 6229 Dara St., Las Vegas, North Las Vegas, NV 89081  
23 Employed 2014  
24 Earned \$2,640  
25 6. New World Associates, 3711 Lillo St., Las Vegas, NV 89103  
26 Employed 2012  
27 Earned \$170

28 ////

1 **INTERROGATORY NO. 19:**

2 Please list each and every educational institution you attended, beginning with high school. Please  
3 indicate the dates you attended each institution, your course of study, and whether you received a diploma.

4 **RESPONSE TO INTERROGATORY NO. 19:**

5 Plaintiff attended Western High School from approximately 2000 to 2001.

6 **INTERROGATORY NO. 20:**

7 If you have ever made any claim or filed any lawsuit against any person, group, organization,  
8 corporation, industrial commission or any other entity, please identify and describe in detail the following  
9 for each claim or lawsuit;

- 10 (a) The nature of the claim and/or lawsuit;  
11 (b) The date that the claim was made or the lawsuit was filed;  
12 (c) The person or entity against whom or which you made the claim or filed the lawsuit;  
13 (d) The entity to whom the claim was submitted and/or the court in which the lawsuit was filed;  
14 (e) The underlying facts that resulted in the claim being made or lawsuit being filed;  
15 (f) The claim number and/or case number of each claim and/or lawsuit;  
16 (g) The court in which any lawsuit was filed;  
17 (h) The current status of each claim and/or lawsuit; and  
18 (i) How each was resolved.

19 **RESPONSE TO INTERROGATORY NO. 20:**

20 Plaintiff was in two (2) car accidents, one in 2010 and one in 2015, which both settled for \$5,000  
21 and \$16,000. In those accidents Plaintiff's neck and back were injured.

22 **INTERROGATORY NO. 21:**

23 Have you ever filed for personal bankruptcy in any jurisdiction? If so, please identify the bankruptcy  
24 action by name, case number, jurisdiction, filing date, trustee in bankruptcy, and status of disposition.

25 **RESPONSE TO INTERROGATORY NO. 21:**

26 No.

27 ////

28 ////

1 **INTERROGATORY NO. 22:**

2 If you have ever been convicted of a felony or misdemeanor involving moral turpitude, please  
3 identify and describe the date of the conviction, the city and state of the conviction, the court in which you  
4 were convicted, the case number, and the offense for which you were convicted.

5 **RESPONSE TO INTERROGATORY NO. 22:**

6 Objection. The information requested is only admissible in court if the conviction is less than 10  
7 years old. Notwithstanding the forgoing objection, Plaintiff has not been convicted on any felonies or  
8 misdemeanors in the last 10 years.

9 **INTERROGATORY NO. 23:**

10 Please state the factual bases supporting the allegations in paragraph 6 of the complaint.

11 **RESPONSE TO INTERROGATORY NO. 23:**

12 The factual bases of paragraph 6 of Plaintiff's complaint is stated in that paragraph, which reads:  
13 "That on or about July 9, 2016, Dr. DeLee performed a cesarean section (C-Section) on Choloe at Sunrise  
14 Hospital. Choloe was discharged from the hospital the following day, on July 10, 2016, even though she did  
15 not have bowel movement prior to being discharged from the hospital."

16 It is not understood what additional information Defendant requests in this interrogatory.

17 **INTERROGATORY NO. 24:**

18 Please state the factual bases supporting the allegations in paragraph 7 of the complaint.

19 **RESPONSE TO INTERROGATORY NO. 24:**

20 The factual bases of paragraph 7 of Plaintiff's complaint is stated in that paragraph, which reads: "On  
21 July 13, 2016, Choloe had an appointment with Dr. DeLee. At that appointment, Choloe notified Dr. Delee  
22 that she had not had a bowel movement post C-section. He did not provide any care or treatment to Choloe  
23 regarding her lack of a bowel movement."

24 It is not understood what additional information Defendant requests in this interrogatory.

25 **INTERROGATORY NO. 25:**

26 With respect to your allegation in paragraph 8 of your complaint that "The discharge was discussed  
27 and confirmed by Dr. DeLee," please provide each fact on which you base his contention.

28 ////

1 **RESPONSE TO INTERROGATORY NO. 25:**

2 The medical records from Plaintiff's admission to Sunrise Hospital from July 14, 2016 through July  
3 16, 2016, document conversations the doctors at Sunrise Hospital had with Dr. Delee.

4 **INTERROGATORY NO. 26:**

5 Please state the factual bases supporting the allegations in paragraph 10 of the complaint.

6 **RESPONSE TO INTERROGATORY NO. 26:**

7 This interrogatory calls for an expert medical opinion, which Plaintiff is not qualified to form.  
8 Plaintiff reserves her right to disclose her initial expert disclosures in accordance with the deadline provided  
9 for such disclosures.

10 **INTERROGATORY NO. 27:**

11 Please state the date on which you first consulted with an attorney following the incident. (Please  
12 note that this interrogatory is not seeking privileged information. This interrogatory only inquires as to the  
13 timing of your contact with an attorney following incident, and is not inquiring as to the substance of any  
14 such attorney-client communications).

15 **RESPONSE TO INTERROGATORY NO. 27:**

16 Objection. This interrogatory seeks information that is protected by the attorney-client privilege,  
17 which also protects the timing of Plaintiff's contact with her attorney and/or any other attorneys she  
18 consulted with regarding this matter.

19 **INTERROGATORY NO. 28:**

20 List the name, address, and telephone number of all persons whom you expect to call as expert  
21 witnesses upon the trial of this action, and for each person, please list the subject matter on which the expert  
22 is expected to testify, and the title of the treatises and all other documents upon which the expert relied in  
23 making his or her opinion. For any non-retained expert witnesses, please: (a) state the subject matter on  
24 which the witness is expected to present evidence; (b) provide a summary of the facts and opinions to which  
25 the witness is expected to testify; (c) the qualifications of that witness to present evidence as an expert  
26 witness; and (d) the compensation the witness for providing testimony at deposition and trial.

27 ////

28 ////

1 **RESPONSE TO INTERROGATORY NO. 28:**

2 Discovery is ongoing, and Plaintiff reserves the right to disclose all expert and/or non-retained expert  
3 witnesses in accordance in NRCP 16.1.

4 **INTERROGATORY 29:**

5 Please identify by title, author, and publication date every source you contend supports your  
6 allegation that Defendants fell below the applicable standard of care, as alleged in paragraph 10 of the  
7 complaint.

8 **RESPONSE TO INTERROGATORY NO. 29:**

9 Discovery is ongoing and Plaintiff reserves the right to supplement this request.

10 **INTERROGATORY NO. 30:**

11 Please set forth a detailed account of every meeting and/or conversation you or anyone acting on your  
12 behalf had or overheard regarding this incident with Defendants or employees or persons purporting to be  
13 representatives of Defendants, related to the facts and circumstances giving rise to this action including, but  
14 not limited to:

- 15 (a) The date and time of each conversation;
- 16 (b) The parties and witnesses to each conversation;
- 17 (c) The location of each conversation;
- 18 (d) All statements made by you, or by anyone else on your behalf;
- 19 (e) If someone other than you made the contact, provide the name, address and telephone  
20 number of said individual(s) and his or her relationship to you;
- 21 (f) All statements made by Defendants or anyone else acting on your behalf;
- 22 (g) Name(s) and job title(s) of the individual(s) with whom the conversation(s) took place;
- 23 (h) Whether the conversation occurred in person or via another medium and identify the  
24 medium;
- 25 (i) If the conversation was via telephone, identify the telephone number(s) called and the  
26 telephone service carrier, if the call was placed by you; and
- 27 (j) Please designate which, if any, of the statements made by Defendants, or anyone else acting  
28 on their behalf, that you contend they knew to be false at the time the statement was made.

1 **RESPONSE TO INTERROGATORY NO. 30:**

2       Objection. This interrogatory seeks information that is outside of Plaintiff's personal knowledge.  
3 With regard to conversations that are within her personal knowledge, Plaintiff only remembers the  
4 conversation that she had with Dr. Delee on or about July 14, 2016. Plaintiff told Dr. Delee that she was in  
5 severe pain, had not had a bowel movement, and that something was not right. In response, Dr. Delee,  
6 prescribed her a stool softener, patted her on the back and said she would be fine. Plaintiff also remembers  
7 that Dr. Delee removed her staples that morning.

8 **INTERROGATORY NO. 31:**

9       Please set forth a detailed account of every meeting and/or conversation you or anyone acting on your  
10 behalf had or overheard regarding this incident with any other person(s), related to the facts and  
11 circumstances giving rise to this action including, but not limited to:

- 12       (a)    The date and time of each conversation;
- 13       (b)    The parties and witnesses to each conversation;
- 14       (c)    The locations of each conversation;
- 15       (d)    All statements made by you, or by anyone else on your behalf;
- 16       (e)    If someone other than you made the contact, provide the name, address and telephone  
17               number of said individual(s) and his or her relationship to you;
- 18       (f)    All statements made by any other person(s);
- 19       (g)    Name(s) and job title(s) of the individual(s) with whom the conversation(s) took place;
- 20       (h)    Whether the conversation occurred in person via another medium and identify the medium;  
21               and
- 22       (i)    If the conversation was via telephone, identify the telephone number(s) called and the  
23               telephone service carrier, if the call was placed by you.

24 **RESPONSE TO INTERROGATORY NO. 31:**

25       Objection. This interrogatory is unduly burdensome, overly broad, vague, and seeks information that  
26 is outside of Plaintiff's personal knowledge. Notwithstanding the foregoing objection, Plaintiff only  
27 remembers the one conversation she had with Dr. Delee on or about July 14, 2016.

28 ////



1 **INTERROGATORY NO. 32:**

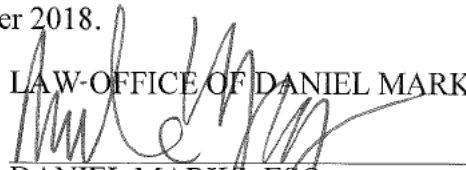
2 State the names, addresses, and telephone numbers of all persons, not previously identified, who  
3 witnessed the incident giving rise to the instant litigation, or who witnessed the events leading up to or  
4 immediately after said incident, known to you, your attorney, agent or any investigator or detective employed  
5 by you or your attorney or anyone acting on your behalf.

6 **RESPONSE TO INTERROGATORY NO. 32:**

7 See all disclosures made under NRCP 16.1 by Plaintiff and all Defendants.

8 DATED this 14 day of December 2018.

9 LAW OFFICE OF DANIEL MARKS

10   
11 DANIEL MARKS, ESQ.  
12 Nevada Bar No. 002003  
13 NICOLE M. YOUNG, ESQ.  
14 Nevada Bar No. 12659  
15 610 South Ninth Street  
16 Las Vegas, Nevada 89101  
17 Attorneys for Plaintiff  
18  
19  
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1 VERIFICATION

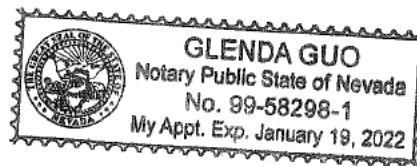
2 STATE OF NEVADA )  
3 COUNTY OF CLARK ) ss.

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

5 That CHLOE GREEN is the Plaintiff in the above-entitled matter; that he has read the above and  
6 foregoing, **RESPONSE TO DEFENDANT FRANK J. DELEE, M.D.'S FIRST SET OF**  
7 **INTERROGATORIES TO PLAINTIFF** and knows the contents thereof; that the same are true of his  
8 knowledge except for those matters stated upon information and belief, and as to those matters, he believes  
9 them to be true.

10  
11   
12 CHLOE GREEN

13  
14 SUBSCRIBED AND SWORN to before me  
15 this 14<sup>th</sup> day of December, 2018



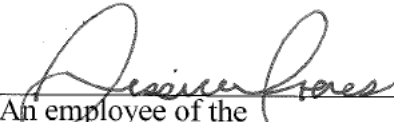
18   
19 NOTARY PUBLIC in and for said  
20 COUNTY and STATE  
21  
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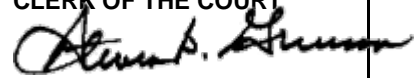
1                                    **CERTIFICATE OF SERVICE BY ELECTRONIC SERVICE**

2            I hereby certify that I am an employee of the Law Office of Daniel Marks and that on the 14 day  
3 of December, 2018, pursuant to NRCP 5(b) and Administrative Order 14-2, I electronically transmitted a  
4 true and correct copy of the above and foregoing **RESPONSE TO DEFENDANT FRANK J. DELEE,**  
5 **M.D.'S FIRST SET OF INTERROGATORIES TO PLAINTIFF** by way of Notice of Electronic Filing  
6 provided by the court mandated E-file & Serve system, to the e-mail address on file for the following:

7            Erik Stryker, Esq.  
8            WILSON, ELSER, MOSKOWITZ, EDELMAN & DICKER LLP  
9            300 South 4<sup>th</sup> Street, 11<sup>th</sup> floor  
10           Las Vegas, Nevada 89101  
11           Attorneys for Frank J. Delee M.D. and Frank J. Delee P.C.

12           Michael E. Prangle, Esq.  
13           HALL PRANGLE & SCHOONVELD, LLC.  
14           1160 N. Town Center Dr., Ste. 200  
15           Las Vegas, Nevada 89144  
16           Attorneys for Sunrise Hospital and Medical Center LLC.

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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

CHOLOE GREEN, an individual,  
Plaintiff,

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

v.

***ORAL ARGUMENT REQUESTED***

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,

v.

ALI KIA, M.D., Individually and his employer,  
NEVADA HOSPITALIST GROUP, LLP; Does  
1-10; and ROE CORPORATION1-10; inclusive

Third-Party Defendants.  
\_\_\_\_\_

**MOTION FOR LEAVE OF COURT TO AMEND COMPLAINT**

COMES NOW the Plaintiff, Choloe Green, by and through her counsel, Daniel Marks, Esq., of  
the Law Office of Daniel Marks, and hereby moves for leave of this Court to amend her complaint.

////

////

1 The grounds for Plaintiff's motion are set forth in the following Memorandum of Points and  
2 Authorities.

3 DATED this 3rd day of June, 2020.

4 LAW OFFICES OF DANIEL MARKS

5 /s/ Nicole M. Young

6 DANIEL MARKS, ESQ.

Nevada State Bar No. 002003

7 NICOLE M. YOUNG, ESQ.

Nevada State Bar No. 12659

8 610 South Ninth Street

Las Vegas, Nevada 89101

9 Attorneys for Plaintiff

10 **MEMORANDUM OF POINTS AND AUTHORITIES**

11 **I. FACTUAL BACKGROUND**

12 On July 9, 2016, Defendants Frank J. Delee, M.D., and Frank J. Delee, MD, PC ("Delee")  
13 performed a cesarean section on Plaintiff Choloe Green ("Choloe") at Defendant Sunrise Hospital and  
14 Medical Center, LLC ("Sunrise"). Choloe is an African-American female, who was about to turn 30  
15 years old. She was discharged home on "post-operative day one" even though the standard of care for "a  
16 routine cesarean is a 3-4 night stay in the hospital." The standard of care was also breached relating to  
17 the first discharge because Choloe "had not even attempted to tolerate clear liquids and she had not  
18 passed flatus when she was released on post-operative day number one." (See Affidavit of Lisa  
19 Karamardian ("Karamardian Affidavit"), attached to Complaint for Medical Malpractice as Exhibit 1,  
20 filed on June 30, 2017, at ¶ 4.)

21 On July 14, 2016, Choloe was admitted into Sunrise's "medical/surgical unit because of the  
22 diagnosis of sepsis." She was five days post-partum and experiencing "severe abdominal pain and  
23 reports of nausea, vomiting, fever, and chills." (See Karamardian Affidavit, at ¶ 5.) She had various  
24 conversations with doctors arranged by Sunrise. She was assigned a doctor, Dr. Kia, who she did not  
25 know. She was treated by nurses of Sunrise and various other doctors called in by Sunrise.

26 ////

27 ////

28 ////

1 She was discharged two days later, on July 16, 2016. Choloe’s discharge was discussed between  
2 Delee and the doctors treating her at Sunrise. As part of his OB-GYN care and delivering of the child,  
3 Delee was required to provide follow-up care for thirty (30) days. He breached this duty when he did not  
4 provide Choloe competent care during her second hospital stay even though he was paid, through  
5 Medicaid, to provide this care. (See Karamardian Affidavit, at ¶ 5.)

6 This discharge violated the standard of care because “[1] she was not able to tolerate a regular  
7 diet[,] . . . [2] her KUB showed multiple dilated loops of bowel, thought to be related to a small bowel  
8 obstruction, . . . [and] [3] [a]n intraperitoneal abscess was suspected on a CT scan.” Despite these  
9 issues both Sunrise and Delee agreed to discharge her home. (See Karamardian Affidavit, at ¶ 5.)

10 One day after her second discharge from Sunrise, July 17, 2017, Choloe was admitted into  
11 Centennial Hills Hospital (“Centennial”), again in severe pain and with no real bowel movement. The  
12 imaging studies at Centennial showed her condition had worsened in the one day since her discharge  
13 from Sunrise. (See Karamardian Affidavit, at ¶ 6.)

14 Dr. Karamardian opined that based on the above breaches to the standard of care by Delee and  
15 Sunrise, Choloe’s “hospital course was protracted with multiple complications and . . . [then]  
16 discharged to a step down facility once her antibiotic course was felt to be completed, still on a feeding  
17 tube and in need of rehabilitation.” (See Karamardian Affidavit, at ¶ 7.)

18 The instant complaint was filed on June 30, 2017.

19 Choloe turned 30 years old during her second admission to Sunrise. After she was discharged  
20 from Centennial and then the rehabilitation facility, she had to undergo a huge change of lifestyle,  
21 especially for a 30-year-old with four children. During her time at Centennial and the rehabilitation  
22 facility she was diagnosed with Chronic Obstructive Pulmonary Disease (“COPD”) and now requires  
23 constant, 24-hour use of oxygen tanks. She also suffers other health issues related to COPD. These  
24 health issues caused by Delee and Sunrise burden the State of Nevada through Medicaid, her insurance  
25 provider. These health issues also prevent Choloe from obtaining meaningful employment to care for her  
26 family.

27 ////

28 ////

1 **II. LEGAL ARGUMENT**

2 Pursuant to the Nevada Rules of Civil Procedure, a party may only amend her pleadings by leave  
3 of the court after a responsive pleading is filed. NRCP 15(a). The Court must freely grant leave to amend  
4 when justice so requires. NRCP 15(a). It is in the sound discretion of the court to grant leave to amend a  
5 complaint. *Stephens v. S. Nev. Music Co.*, 89 Nev. 104, 105, 507 P.2d 138, 139 (1973). Absent “any  
6 apparent or declared reason- such as undue delay, bad faith or dilatory motive on the part of the movant-  
7 the leave sought should be freely given.” *Id.*

8 In this case, Chloe seeks to amend her complaint to add DOE and ROE defendants and claims  
9 of ostensible agency and corporate negligence/negligent supervision against Sunrise. These amendments  
10 are necessary based on information discovered during this case and Sunrise’s recent renewal of its  
11 motion for partial summary judgment on the issue of ostensible agency.

12 Chloe’s request for leave to amend is not made to delay this case. Defendants are aware Chloe  
13 seeks damages for the medical malpractice that occurred during two admissions to Sunrise in July of  
14 2016. The parties have completed some discovery relating to this issue. Discovery is still ongoing. The  
15 current initial expert disclosure deadline is September 1, 2020, and discovery closes on December 30,  
16 2020. With this amendment, Defendants would still have plenty of time to conduct discovery as to the  
17 proposed amendment to Chloe’s complaint.

18 This Court cannot find the proposed amendment is made in bad faith or for any dilatory motive.  
19 On January 15, 2019, Sunrise filed its first motion for partial summary judgment relating to ostensible  
20 agency. As that motion related to Ali Kia, M.D., this Court ordered as follows:

21 Defendant's motion is DENIED as it relates to Plaintiffs claims against the  
22 hospital for any of Dr. Kia's actions under the theory of ostensible agency.  
23 As such, Plaintiff may argue that Defendant Sunrise Hospital and Medical  
24 Center, LLC, is vicariously liable for Dr. Kia's actions under the doctrine  
25 of ostensible agency. "Whether an ostensible agency relationship exists is  
26 ... a question of fact for the jury." *McCrosky v. Carson Tahoe Regional  
27 Medical Center*, 133 Nev. Adv. Op. 115,408 P.3d 149 (2017).

28 (See Order From March 12, 2019 Hearing, filed on March 5, 2020<sup>1</sup>.)

---

27 <sup>1</sup> While this motion was heard by the Honorable Doug Smith, he did not file that order with the  
28 Court. This Court, the Honorable Cristina Silva, signed Judge Smith’s order from the March 12, 2019  
hearing.

Then, on May 11, 2020, this Court issued its Minute Order relating to Third-Part Defendant Nevada Hospitalist Group's Motion for Judgment on the Pleadings. That minute order also comments on the ostensible agency issue. After that minute order was issued, Sunrise renewed its motion for partial summary judgment relating to its ostensible agency with Ali Kia, M.D.

Based on these orders, it has become apparent that Choloe must protect her rights and ensure that she is able to recover for the malpractice at issue.

This Court should grant Choloe leave to amend her complaint adding DOE and ROE defendants and claims of ostensible agency and corporate negligence/negligent supervision. A copy of Plaintiff's proposed Amended Complaint is attached hereto as Exhibit 1, in accordance with EDCR 2.30.

### III. CONCLUSION

Based on the foregoing, this Court should grant Choloe leave to amend her complaint in this case.

DATED this 3rd day of June, 2020.

LAW OFFICES OF DANIEL MARKS

/s/ Nicole M. Young

---

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 **CERTIFICATE OF SERVICE**

2 I hereby certify that I am an employee of the Law Office of Daniel Marks and that on the 3rd  
3 day of June, 2020, pursuant to NRCP 5(b) and Administrative Order 14-2, I electronically transmitted a  
4 true and correct copy of the above and foregoing **MOTION FOR LEAVE OF COURT TO AMEND**  
5 **COMPLAINT** by way of Notice of Electronic Filing provided by the court mandated E-file & Serve  
6 System, as follows:  
7 following:

8 Erik K. Stryker, Esq.  
9 WILSON, ELSER, MOSKOWITZ, EDELMAN & DICKER LLP  
10 300 South 4<sup>th</sup> Street, 11<sup>th</sup> floor  
Las Vegas, Nevada 89101  
Attorneys for Frank J. Delee M.D. and Frank J. Delee P.C.

11 Sherman Mayor, Esq.  
12 HALL PRANGLE & SCHOONVELD, LLC.  
13 1160 N. Town Center Dr., Ste. 200  
Las Vegas, Nevada 89144  
Attorneys for Sunrise Hospital and Medical Center LLC.

14 Linda K. Rurangirwa, Esq.  
15 Collinson, Daehnck, Inlow & Greco  
2110 E. Flamingo Road, Suite 212  
16 Las Vegas, Nevada 89119  
Attorney for Ali Kia, M.D.

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

20  
21  
22 /s/ Nicole M. Young

23 An employee of the  
24 LAW OFFICE OF DANIEL MARKS  
25  
26  
27  
28

---

# **EXHIBIT 1**

---

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

7 DISTRICT COURT  
8 CLARK COUNTY, NEVADA

9 CHOLOE GREEN, an individual,

Case No. A-17-757722-C  
10 Dept. No. IX

11 Plaintiff,

12 v.

13 FRANK J. DELEE, M.D., an individual;  
FRANK J. DELEE MD, PC, a Domestic  
14 Professional Corporation, SUNRISE HOSPITAL  
AND MEDICAL CENTER, LLC, a Foreign  
15 Limited-Liability Company; JOHN DOE  
DOCTORS I-X, inclusive; and ROE  
16 CORPORATIONS I-X, inclusive.

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

17 Defendants.  
18 \_\_\_\_\_/

19 **AMENDED COMPLAINT FOR MEDICAL MALPRACTICE**

20 COMES NOW Plaintiff Choloe 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 Choloe Green (hereinafter "Choloe") 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.     At all relevant times the Defendants, DOES I-X, inclusive, were and are now physicians,  
10          surgeons, registered nurses, licensed occasional nurses, practical nurses, registered  
11          technicians, aides, technicians, attendants, and/or physician assistants holding themselves out  
12          as duly licensed to practice their professions under and by virtue of laws of the State of  
13          Nevada and are now engaged in the practice of their professions in the State of Nevada; the  
14          true names and capacities, whether individual, corporate, associate, or otherwise of  
15          Defendants JANE DOE NURSES I-X, inclusive, DOES I-X, inclusive, and ROE  
16          CORPORATIONS I-X, inclusive, are presently unknown to the Plaintiffs, who therefore sues  
17          those Defendants by such fictitious names; the Plaintiffs are informed and do believe, and  
18          thereon allege that each of the Defendants sued herein as JANE DOE NURSES I-X,  
19          inclusive, DOES I-X, inclusive, and ROE CORPORATIONS I-X are responsible in some  
20          manner for the events and happenings herein referred to, which thereby proximately caused  
21          the injuries and damages to the Plaintiffs as alleged herein; that when the true names and  
22          capacities of such Defendants become known, Plaintiffs will ask leave to amend this  
23          Complaint to insert the true names, identities and capacities, together with proper charges  
24          and allegations.
- 25          7.     At all relevant times, Defendants, ROE CORPORATIONS I-X, were and now are  
26          corporations, firms, partnerships, associations, other legal entities involving the care,  
27          treatment, diagnosis, surgery and/ or other provision of medical care to the Plaintiffs herein;  
28          that the true names, identities or capacities whether individual, corporate, associate or

otherwise of the Defendants, ROE CORPORATIONS I-X, inclusive are presently unknown to Plaintiffs, who therefore sues said Defendants by such fictitious names; that the Plaintiffs are informed and do believe and thereon allege that each of the Defendants sued herein as ROE CORPORATIONS I-X are responsible in some manner for the events and happenings herein referred to, which thereby proximately caused the injuries and damages to the Plaintiffs alleged herein; that when their true names and capacities of such Defendants become known, Plaintiffs will ask leave of this Court to amend this Complaint to insert the true names, identities and capacities, together with proper charges and allegations.

8. At all relevant times, Defendants, and each of them, were the agents, ostensible agents, servants, employees, employers, partners, co-owners and/or joint venturers of each other and of their co-defendants, and were acting within the color, purpose and scope of their employment, agency, ownership and/or joint ventures and by reason of such relationships the Defendants, and each of them, are vicariously and jointly and severally responsible and liable for the acts and/or omissions of their co-Defendants.

9. 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.

10. 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.

11. 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.

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1 12. That Choloe presented at Sunrise Hospital on July 14, 2016, seeking treatment from the  
2 hospital, not a specific doctor. Upon her admission, Sunrise Hospital provided various  
3 healthcare professionals, including doctors and nurses to provide emergency care/treatment  
4 to Choloe. Throughout her stay from July 14-16, 2016, Choloe believed all healthcare  
5 professionals that provided her care/treatment were employees and/or agents of the hospital.  
6 She was never provided the opportunity to affirmatively chose who provided her  
7 care/treatment. She was never informed the doctors or nurses providing care/treatment were  
8 not employees and/or agents of the hospital.

9 13. On July 17, 2016, Choloe went to the emergency room at Centennial Hills Hospital where  
10 she was admitted until she was finally discharged on September 2, 2016. Centennial Hills  
11 admitted Choloe with the diagnosis of small bowel obstruction. She had an NG Tube placed,  
12 underwent surgery, had diffuse pulmonary infiltrates, suggestive of pulmonary edema or ARDS,  
13 and eventually needed a tracheostomy and PEG tube placement.

14 **COUNT I**

15 **(Professional Negligence Against All Defendants)**

16 14. Plaintiff restates and incorporates the allegations set forth in Paragraphs 1 through 13 herein  
17 by reference.

18 15. That Defendant Dr. DeLee and Sunrise Hospital breached the standard of care in their  
19 treatment of Choloe and as a direct and proximate result of that breach, Choloe has been  
20 damaged.

21 16. That as a direct and proximate result of all of the Defendants' negligence, Choloe has been  
22 damaged in an amount in excess of \$15,000.00.

23 17. This Complaint is supported by the Affidavit of Lisa Karamardian, M.D., a copy of which  
24 is attached hereto as Exhibit "A".

25 18. Choloe has been forced to retain counsel to bring this action and should be awarded his  
26 reasonable attorneys fees and costs.

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1 **COUNT II**

2 **(Vicarious Liability- Against Defendant Sunrise Hospital)**

- 3 19. Plaintiff restates and incorporates the allegations set forth in Paragraphs 1 through 18 herein  
4 by reference.
- 5 20. That a hospital cannot avoid liability by claiming a secret or undisclosed independent  
6 contractor relationship with doctors providing healthcare services on its premises because  
7 that relationship is unknown to a patient seeking emergency services from a hospital.
- 8 21. Defendant Sunrise Hospital's employees, agents and/or servants were acting in the scope of  
9 their employment, under Defendant's control, and in furtherance of Defendant's interest at  
10 the time their actions fell below the standard of care causing injuries to Plaintiff.
- 11 22. Defendant Sunrise Hospital is vicariously liable for damages resulting from its agents' and/or  
12 employees' and/or servants' negligent actions and omissions regarding the injuries to Plaintiff  
13 to include, but not are not limited to, conduct in failing to supervise and/or correct the  
14 negligence of their employees demonstrated disregard for the safety of the Plaintiff.
- 15 23. That as a direct and proximate result of all of the Defendant's negligence, Choloe has been  
16 damaged in an amount in excess of \$15,000.00.
- 17 24. Choloe has been forced to retain counsel to bring this action and should be awarded his  
18 reasonable attorneys fees and costs.

19 **COUNT III**

20 **(Corporate Negligence- Against Defendant Sunrise Hospital)**

- 21 25. Plaintiff restates and incorporates the allegations set forth in Paragraphs 1 through 24  
22 herein by reference.
- 23 26. That Defendant Sunrise Hospital was negligent in its hiring, granting and retention of  
24 privileges, and supervision of Frank Delee, M.D. and Ali Kia, M.D., two (2)  
25 nonemployee doctors, that provided care to Choloe at Sunrise Hospital in July of 2016.
- 26 27. The care/treatment provided by both Dr. Delee and Dr. Kia was within the knowledge of  
27 Sunrise Hospital at the time the care/treatment was provided. This knowledge is based on  
28 Sunrise Hospital's aid and assistance to those doctors for both hospital stays.

- 1 28. That Defendant Sunrise Hospital was aware of Dr. Delee's extensive history of failing to  
2 adhere to the standard of care. Prior to July of 2016, he had eight (8) instances of  
3 malpractice reported to the Nevada Medical Board. The settlements for those malpractice  
4 cases totals almost \$3 million. Additionally, on May 13, 2016, two months before the  
5 subject incident, Sunrise Hospital was sued because Dr. Delee breached the standard of  
6 care when he delivered a baby at Sunrise Hospital while under the influence of alcohol  
7 causing permanent damage to the baby. (See Complaint, filed on May 13, 2016, in the  
8 Eighth Judicial District Court, in Sims v. Delee, Case No. A-16-736708-C.) His  
9 intoxication while providing medical care was video-recorded where he made statements  
10 confirming his intoxication. (See Complaint, filed on May 13, 2016, in the Eighth  
11 Judicial District Court, in Sims v. Delee, Case No. A-16-736708-C, at ¶¶ 15-16.) Sunrise  
12 Hospital settled that case on January 5, 2018. (See Motion for Good Faith Settlement and  
13 Dismissal of Claims Against Sunrise Hospital, filed on August 22, 2018, in the Eighth  
14 Judicial District Court, in Sims v. Delee, Case No. A-16-736708-C.)
- 15 29. Based on Sunrise Hospital's knowledge that Dr. Delee was providing medical treatment  
16 on its premises while under the influence of alcohol, it should have immediately  
17 suspended his privileges and/or provided additional supervision of Dr. Delee while caring  
18 for patients on its premises.
- 19 30. That Sunrise Hospital, after having held itself out to be competent to render care for  
20 patients, negligently failed to provide medical staff competent to diagnose and treat the  
21 complications known to occur post-cesarean section to Plaintiff.
- 22 31. That as a direct and proximate result of all of the Defendant Sunrise Hospital's  
23 negligence, Choloe has been damaged in an amount in excess of \$15,000.00.
- 24 32. Choloe has been forced to retain counsel to bring this action and should be awarded his  
25 reasonable attorneys fees and costs.

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

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

6 DATED this \_\_\_\_\_ day of June, 2020.

7 LAW OFFICE OF DANIEL MARKS

8

9 \_\_\_\_\_

10 DANIEL MARKS, ESQ.  
Nevada State Bar No. 002003  
11 NICOLE M. YOUNG, ESQ.  
Nevada State Bar No. 012659  
12 610 South Ninth Street  
Las Vegas, Nevada 89101  
13 Attorneys for Plaintiff

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1 VERIFICATION

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

4 CHOLOE 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 \_\_\_\_\_  
10 CHOLOE GREEN

11 SUBSCRIBED AND SWORN to before me  
12 this \_\_\_\_ day of June, 2020.

13 \_\_\_\_\_  
14 NOTARY PUBLIC in and for said  
15 COUNTY and STATE  
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## **EXHIBIT A**

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AFFIDAVIT OF DR. LISA KARAMARDIAN


STATE OF California  
COUNTY OF Orange ) s.

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

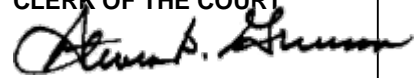
1. That I am a medical doctor licensed in the State of California and am board certified in the field of Obstetrics and Gynecology.
2. This affidavit is executed pursuant to NRS 41A.071 in support of a Complaint for Medical Malpractice against Dr. Frank DeLee and Sunrise Hospital and Medical Center.
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.



1 S. BRENT VOGEL  
Nevada Bar No. 6858  
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 Plaintiff,

13 vs.

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

17 Defendants.

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

CASE NO. A-17-757722-C  
Dept. No.: IX

**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**

27 PLEASE TAKE NOTICE that the ORDER REGARDING THIRD-PARTY  
28 DEFENDANT NEVADA HOSPITALIST GROUP, LLP'S MOTION FOR JUDGMENT ON

1 THE PLEADINGS AND THIRD-PARTY DEFENDANT ALI KIA, M.D.'S JOINDER  
2 THERETO was entered with the Court in the above-captioned matter on the 2nd day of June,  
3 2020, a copy of which is attached hereto.

4 DATED this 3rd day of June, 2020

5 LEWIS BRISBOIS BISGAARD & SMITH LLP  
6  
7

8 By /s/ Erin E. Jordan

9 S. BRENT VOGEL

10 Nevada Bar No. 6858

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*  
17 *Hospitalist Group, LLP*  
18  
19  
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22  
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1 **CERTIFICATE OF SERVICE**

2 I hereby certify that on this 3rd day of June, 2020, a true and correct copy of **NOTICE OF**  
3 **ENTRY OF ORDER REGARDING THIRD-PARTY DEFENDANT NEVADA**  
4 **HOSPITALIST GROUP, LLP'S MOTION FOR JUDGMENT ON THE PLEADINGS AND**  
5 **THIRD-PARTY DEFENDANT ALI KIA, M.D.'S JOINDER THERETO** was served by  
6 electronically filing with the Clerk of the Court using the Electronic Service system and serving all  
7 parties with an email-address on record, who have agreed to receive Electronic Service in this  
8 action.

9 Daniel Marks, Esq.  
10 Nicole M. Young, Esq.  
11 LAW OFFICE OF DANIEL MARKS  
12 610 S. 9<sup>th</sup> St.  
13 Las Vegas, NV 89101  
14 Tel: 702.386.0536  
15 Fax: 702.386.6812  
16 [nyoung@danielmarks.net](mailto:nyoung@danielmarks.net)  
17 *Attorneys for Plaintiff*

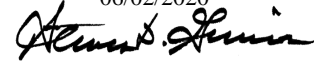
Erik Stryker, Esq.  
WILSON ELSEER MOSKOWITZ EDELMAN  
& DICKER LLP  
6689 Las Vegas Blvd., Suite 200  
Las Vegas, NV 89119  
Tel: 702.727.1400  
Fax: 702.727.1401  
[eric.stryker@wilsonelser.com](mailto:eric.stryker@wilsonelser.com)  
*Attorneys for Defendants Frank J. Delee, M.D.  
and Frank J. Delee, M.D., PC*

15 Michael E. Prangle, Esq.  
16 Sherman B. Mayor, Esq.  
17 HALL PRANGLE & SCHOONVELD, LLC  
18 1160 N. Town Center Dr., Suite 200  
19 Las Vegas, NV 89144  
20 Tel: 702.889.6400  
21 Fax: 702.384.6025  
22 [smayor@hpslaw.com](mailto:smayor@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](mailto:patricia.daehnke@cdiglaw.com)  
[linda.rurangirwa@cdiglaw.com](mailto:linda.rurangirwa@cdiglaw.com)  
*Attorneys for Third-Party Defendant Ali Kia,  
M.D.*

25 By /s/ Johana Whitbeck  
26 An Employee of  
27 LEWIS BRISBOIS BISGAARD & SMITH LLP  
28





CLERK OF THE COURT

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  
16 HOSPITAL AND MEDICAL CENTER, LLC,  
a foreign Limited-Liability Company, ,

17 Defendants.

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

CASE NO. A-17-757722-C  
Dept. No.: IX

**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**

27 The above-entitled matter having come before the Court for decision upon Third-Party  
28 Defendant Nevada Hospitalist Group, LLP's Motion for Judgment on the Pleadings and Third-

1 Party Defendant Ali Kia, M.D.'s Joinder there-to, and oral argument being held on April 29, 2020,  
2 Erin E. Jordan, Esq. appearing on behalf of Third-Party Defendant Nevada Hospitalist Group,  
3 LLP, Sherman Mayor, Esq. appearing on behalf of Third-Party Plaintiff Sunrise Hospital and  
4 Medical Center, LLC, Linda Rurangirwa, Esq. appearing on behalf of Third-Party Defendant Ali  
5 Kia, M.D., Eric Stryker, Esq. appearing on behalf of the DeLee Defendants and Nicole Young,  
6 Esq. appearing on behalf of the Plaintiff, this Court, having considered the pleadings and papers  
7 on file, and then taken the matter under advisement, and for other good cause appearing finds as  
8 follows:

9         Similar to a motion to dismiss pursuant to NCRP 12(b)(5), when reviewing a judgment on  
10 the pleadings, the Court accepts the factual allegations in the complaint as true and draws all  
11 inferences in favor of the nonmoving party. *Buzz Stew, LLC v. City of N. Las Vegas*, 124 Nev. 224,  
12 228, 181 P.3d 670, 672 (2008) (setting forth the standard of review for an order dismissing a  
13 complaint under NRCPP 12(b)(5)). Judgment on the pleadings (or a motion to dismiss pursuant to  
14 NRCPP 12(c)) is proper when as determined from the pleadings, the material facts are not in  
15 dispute and the moving party is entitled to judgment as a matter of law. *Bonicamp v. Vazquez*, 120  
16 Nev. 377, 379, 91 P.3d 584, 585 (2004).

17         When evaluating complaints that assert claims of medical negligence, a Plaintiff must  
18 comply with NRS 41A.071, which requires not only a complaint but also an accompanying  
19 affidavit setting forth the professional negligence allegations. The Supreme Court held "that courts  
20 should read the complaint and the plaintiff's NRS 41A.071 expert affidavit together when  
21 determining whether the expert affidavit meets the requirements of NRS 41A.071." *Zohar v.*  
22 *Zbiegien*, 130 Nev. 733, 739, 334 P.3d 402, 406 (2014) (citing *Great Basin Water Network v.*  
23 *Taylor*, 126 Nev. 187, 196, 234 P.3d 912, 918 (2010); *Washoe Med. Ctr. v. Second Judicial Dist.*  
24 *Court*, 122 Nev. 1298, 1304, 148 P.3d 790, 794 (2006)). The same decision went on to hold that  
25 the NRS 41A.071 affidavit requirement is a preliminary procedural rule subject to the notice-  
26 pleading standard, and must be liberally construe[d] ... in a manner that is consistent with our  
27 NRCPP 12 jurisprudence." *Borger v. Eighth Judicial District Court*, 120 Nev. 1021, 1028, 102 P.3d  
28 600, 605 (recognizing that "NRS 47A.071 governs the threshold requirements for initial pleadings

1 in medical malpractice cases, not the ultimate trial of such matters") (emphasis added); *see also*  
2 *Baxter v. Dignity Health*, 131 Nev. 759, 763-64, 357 P.3d 927, 930 (2015) (holding that NRS  
3 41A.071 must be liberally construed). The affidavit must (1) support the allegations contained in  
4 the action; (2) be submitted by a medical expert who practices or has practiced in an area that is  
5 substantially similar to the type of practice engaged in at the time of the alleged professional  
6 negligence; (3) identify by name, or describe by conduct, each provider of health care who is  
7 alleged to be negligent; and (4) set forth factually a specific act or acts of alleged negligence  
8 separately as to each defendant in simple, concise and direct terms. A complaint that does not  
9 comply with NRS 41A.071 is void ab initio, it does not legally exist and thus it cannot be  
10 amended. *Washoe Medical Center v. Second Judicial Dist. Court of State of Nevada ex rel. County*  
11 *of Washoe*, 122 Nev. 1298, 148 P.3d 790 (2006). Dismissal applies even when only some of the  
12 claims violate the requirements of NRS 41A.071 affidavit requirement.

13       Here, Third-Party Plaintiff Sunrise Hospital incorporated Plaintiff's affidavit in the filing of  
14 their Third-Party Complaint. Plaintiff's complaint and affidavit do not identify Dr. Kia or Nevada  
15 Hospitalist Group ("NHG"). Nor does either document identify any John Doe, "unknown" or  
16 "unidentified" potential defendants that could arguably be Dr. Kia and/or NHG. Because neither  
17 Dr. Kia nor NHG are identified in the complaint or the affidavit there is no identified specific act  
18 or specific acts of alleged professional negligence by Dr. Kia and NHG. Instead, the complaint and  
19 affidavit only identifies Sunrise Hospital and Dr. DeLee when laying the facts and circumstances  
20 that form the cause of action involving the alleged professional negligence. Because the Plaintiff's  
21 affidavit fails to meet the third and fourth prongs of the NRS 41A.071 affidavit requirements  
22 regarding professional negligence claims against Defendants Dr. Kia and NHG, so does the Third-  
23 Party Complaint, rendering it void ab initio. The Court recognizes that the opposition argues that  
24 this Third-Party Complaint is brought only for the purposes of contribution and indemnity. But the  
25 Court is unaware of any authority that would relieve a party of meeting the requirements set forth  
26 in NRS 41A.071 in circumstances where a Third-Party Plaintiff is only seeking indemnity and/or  
27 contribution.

28       Finally, the Court declines to address Third-Party Plaintiff's argument that the granting of

1 this motion renders the Court's prior ruling regarding the applicability of ostensible agency theory  
2 erroneous. Assuming arguendo that that is true, there is no motion, or requested relief, related to  
3 that issue pending before the Court.

4 Consequently, and based upon the foregoing, IT IS HEREBY ORDERED, ADJUDGED  
5 AND DECREED that Third-Party Defendant Nevada Hospitalist Group, LLP's Motion for  
6 Judgment on the Pleadings and Third-Party Defendant Ali Kia, M.D.'s Joinder there-to are  
7 GRANTED. Dated this 2nd day of June, 2020

8 Dated this \_\_\_\_\_ day of May, 2020.

  
DISTRICT COURT JUDGE

MK  
28B 6D1 A711 ED7D  
Cristina D. Silva

11 Submitted by:

12 LEWIS BRISBOIS BISGAARD & SMITH LLP

13 /s/ Erin E. Jordan  
14 S. BRENT VOGEL  
15 Nevada Bar No. 6858  
16 ERIN E. JORDAN  
17 Nevada Bar No. 10018  
18 LEWIS BRISBOIS BISGAARD & SMITH LLP  
19 6385 S. Rainbow Boulevard, Suite 600  
20 Las Vegas, Nevada 89118  
21 [Brent.Vogel@lewisbrisbois.com](mailto:Brent.Vogel@lewisbrisbois.com)  
22 [Erin.Jordan@lewisbrisbois.com](mailto:Erin.Jordan@lewisbrisbois.com)  
23 *Attorneys for Third-Party Defendant Nevada*  
24 *Hospitalist Group, LLP*

25 Approved as to Form:

26 LAW OFFICE OF DANIEL MARKS

HALL PRANGLE & SCHOONVELD, LLC

27 /s/ Nicole M. Young  
28 Daniel Marks, Esq.  
Nicole M. Young, Esq.  
610 S. 9<sup>th</sup> St.  
Las Vegas, NV 89101  
[nyoung@danielmarks.net](mailto:nyoung@danielmarks.net)  
*Attorneys for Plaintiff*

/s/ Sherman B. Mayor  
Michael E. Prangle, Esq.  
Sherman B. Mayor, Esq.  
1160 N. Town Center Dr., Suite 200  
Las Vegas, NV 89144  
[smayor@hpslaw.com](mailto:smayor@hpslaw.com)  
[tdobbs@hpslaw.com](mailto:tdobbs@hpslaw.com)  
*Attorneys for Defendant/Third-Party Plaintiff*  
*Sunrise Hospital and Medical Center, LLC*

*Green v. Delee, et al.*  
*Case No. A-17-757722-C*  
*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*

WILSON ELSEER MOSKOWITZ EDELMAN  
& DICKER LLP

COLLINSON, DAEHNKE, INLOW,  
GRECO

*Approved, did not specifically grant  
permission for e-signature*

*/s/ Linda K. Rurangirwa*

Erik Stryker, Esq.  
6689 Las Vegas Blvd., Suite 200  
Las Vegas, NV 89119  
[eric.stryker@wilsonelser.com](mailto:eric.stryker@wilsonelser.com)  
*Attorneys for Defendants Frank J. Delee, M.D.*  
*and Frank J. Delee, M.D., PC*

Patricia E. Daehnke, Esq.  
Linda K. Rurangirwa, Esq.  
COLLINSON, DAEHNKE, INLOW,  
GRECO  
2110 E. Flamingo Road, Suite 212  
Las Vegas, NV 89119  
[patricia.daehnke@cdiglaw.com](mailto:patricia.daehnke@cdiglaw.com)  
[linda.rurangirwa@cdiglaw.com](mailto:linda.rurangirwa@cdiglaw.com)  
*Attorneys for Third-Party Defendant Ali Kia,*  
*M.D.*

## Whitbeck, Johana

---

**From:** Linda K. Rurangirwa <Linda.Rurangirwa@cdiglaw.com>  
**Sent:** Tuesday, May 26, 2020 4:35 PM  
**To:** Jordan, Erin; Nicole Young; Kelli N. Wightman; Stryker, Eric K.; Sherman Mayor; Grijalva, Trisha E.; Patricia Daehnke; Laura Lucero; Lord, Nicole N.  
**Cc:** Vogel, Brent; Whitbeck, Johana  
**Subject:** [EXT] RE: Green v. Sunrise and DeLee; Sunrise v. Kia and NHG; proposed Order

You may use my electronic signature. Thanks.

Linda K. Rurangirwa  
Collinson, Daehnke, Inlow & Greco

---

**From:** Jordan, Erin <Erin.Jordan@lewisbrisbois.com>  
**Sent:** Tuesday, May 26, 2020 3:51 PM  
**To:** Nicole Young <NYoung@danielmarks.net>; Kelli N. Wightman <kwightman@HPSLAW.COM>; Stryker, Eric K. <Eric.Stryker@wilsonelser.com>; Sherman Mayor <smayor@HPSLAW.COM>; Grijalva, Trisha E. <Trisha.Grijalva@wilsonelser.com>; Linda K. Rurangirwa <Linda.Rurangirwa@cdiglaw.com>; Patricia Daehnke <Patricia.Daehnke@cdiglaw.com>; Laura Lucero <Laura.Lucero@cdiglaw.com>; Lord, Nicole N. <Nicole.Lord@wilsonelser.com>  
**Cc:** Vogel, Brent <Brent.Vogel@lewisbrisbois.com>; Whitbeck, Johana <Johana.Whitbeck@lewisbrisbois.com>  
**Subject:** RE: Green v. Sunrise and DeLee; Sunrise v. Kia and NHG; proposed Order

Great, thanks! I think we've heard from everyone, but can Linda and Eric please confirm that we may use their e-signature on this chain? I'd appreciate it.

Thanks,  
Erin

---

**From:** Nicole Young <[NYoung@danielmarks.net](mailto:NYoung@danielmarks.net)>  
**Sent:** Tuesday, May 26, 2020 11:07 AM  
**To:** Kelli N. Wightman <[kwightman@HPSLAW.COM](mailto:kwightman@HPSLAW.COM)>; Jordan, Erin <[Erin.Jordan@lewisbrisbois.com](mailto:Erin.Jordan@lewisbrisbois.com)>; Stryker, Eric K. <[Eric.Stryker@wilsonelser.com](mailto:Eric.Stryker@wilsonelser.com)>; Sherman Mayor <[smayor@HPSLAW.COM](mailto:smayor@HPSLAW.COM)>; Grijalva, Trisha E. <[Trisha.Grijalva@wilsonelser.com](mailto:Trisha.Grijalva@wilsonelser.com)>; 'linda.rurangirwa@cdiglaw.com' <[linda.rurangirwa@cdiglaw.com](mailto:linda.rurangirwa@cdiglaw.com)>; [Patricia.Daehnke@cdiglaw.com](mailto:Patricia.Daehnke@cdiglaw.com); Laura Lucero ([Laura.Lucero@cdiglaw.com](mailto:Laura.Lucero@cdiglaw.com)) <[Laura.Lucero@cdiglaw.com](mailto:Laura.Lucero@cdiglaw.com)>; Lord, Nicole N. <[Nicole.Lord@wilsonelser.com](mailto:Nicole.Lord@wilsonelser.com)>  
**Cc:** Vogel, Brent <[Brent.Vogel@lewisbrisbois.com](mailto:Brent.Vogel@lewisbrisbois.com)>; Whitbeck, Johana <[Johana.Whitbeck@lewisbrisbois.com](mailto:Johana.Whitbeck@lewisbrisbois.com)>  
**Subject:** [EXT] RE: Green v. Sunrise and DeLee; Sunrise v. Kia and NHG; proposed Order

Hi Erin:

I approve the proposed order as to form. You may use my e-signature.

Nicole M. Young, Esq.  
Associate Attorney

Law Office of Daniel Marks  
610 South Ninth Street  
Las Vegas, Nevada 89101  
Telephone: (702) 386-0536  
Facsimile: (702) 386-6812

---

**From:** Kelli N. Wightman [<mailto:kwightman@HPSLAW.COM>]  
**Sent:** Thursday, May 21, 2020 2:27 PM  
**To:** Jordan, Erin <[Erin.Jordan@lewisbrisbois.com](mailto:Erin.Jordan@lewisbrisbois.com)>; Stryker, Eric K. <[Eric.Stryker@wilsonelser.com](mailto:Eric.Stryker@wilsonelser.com)>; Nicole Young <[NYoung@danielmarks.net](mailto:NYoung@danielmarks.net)>; Sherman Mayor <[smayor@HPSLAW.COM](mailto:smayor@HPSLAW.COM)>; Grijalva, Trisha E. <[Trisha.Grijalva@wilsonelser.com](mailto:Trisha.Grijalva@wilsonelser.com)>; 'linda.rurangirwa@cdiglaw.com' <[linda.rurangirwa@cdiglaw.com](mailto:linda.rurangirwa@cdiglaw.com)>; [Patricia.Daehnke@cdiglaw.com](mailto:Patricia.Daehnke@cdiglaw.com); Laura Lucero ([Laura.Lucero@cdiglaw.com](mailto:Laura.Lucero@cdiglaw.com)) <[Laura.Lucero@cdiglaw.com](mailto:Laura.Lucero@cdiglaw.com)>; Lord, Nicole N. <[Nicole.Lord@wilsonelser.com](mailto:Nicole.Lord@wilsonelser.com)>  
**Cc:** Vogel, Brent <[Brent.Vogel@lewisbrisbois.com](mailto:Brent.Vogel@lewisbrisbois.com)>; Whitbeck, Johana <[Johana.Whitbeck@lewisbrisbois.com](mailto:Johana.Whitbeck@lewisbrisbois.com)>  
**Subject:** RE: Green v. Sunrise and DeLee; Sunrise v. Kia and NHG; proposed Order

Erin:

Regarding the proposed Order on the Motion for Judgment on the Pleadings, you may apply the e-signature of Sherman B. Mayor, Esq. as approved as to form.



**Kelli Wightman**  
*Legal Assistant*  
O: 702.212.1445  
Email: [kwightman@HPSLAW.COM](mailto:kwightman@HPSLAW.COM)

**Legal Assistant to:**  
Mari Schaan  
Sherman Mayor

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---

**From:** Jordan, Erin <[Erin.Jordan@lewisbrisbois.com](mailto:Erin.Jordan@lewisbrisbois.com)>  
**Sent:** Thursday, May 21, 2020 12:46 PM  
**To:** Stryker, Eric K. <[Eric.Stryker@wilsonelser.com](mailto:Eric.Stryker@wilsonelser.com)>; Nicole Young <[NYoung@danielmarks.net](mailto:NYoung@danielmarks.net)>; Sherman Mayor <[smayor@HPSLAW.COM](mailto:smayor@HPSLAW.COM)>; Kelli N. Wightman <[kwightman@HPSLAW.COM](mailto:kwightman@HPSLAW.COM)>; Grijalva, Trisha E. <[Trisha.Grijalva@wilsonelser.com](mailto:Trisha.Grijalva@wilsonelser.com)>; 'linda.rurangirwa@cdiglaw.com' <[linda.rurangirwa@cdiglaw.com](mailto:linda.rurangirwa@cdiglaw.com)>; [Patricia.Daehnke@cdiglaw.com](mailto:Patricia.Daehnke@cdiglaw.com); Laura Lucero ([Laura.Lucero@cdiglaw.com](mailto:Laura.Lucero@cdiglaw.com)) <[Laura.Lucero@cdiglaw.com](mailto:Laura.Lucero@cdiglaw.com)>; Lord, Nicole N. <[Nicole.Lord@wilsonelser.com](mailto:Nicole.Lord@wilsonelser.com)>  
**Cc:** Vogel, Brent <[Brent.Vogel@lewisbrisbois.com](mailto:Brent.Vogel@lewisbrisbois.com)>; Whitbeck, Johana <[Johana.Whitbeck@lewisbrisbois.com](mailto:Johana.Whitbeck@lewisbrisbois.com)>  
**Subject:** RE: Green v. Sunrise and DeLee; Sunrise v. Kia and NHG; proposed Order

[External Email] CAUTION!.

All,

Here is the version with Linda's requested addition to the title. Please let us know if we may use your e-signature when we submit the Order to the Court.

Thanks,

Erin

---

**From:** Stryker, Eric K. <[Eric.Stryker@wilsonelser.com](mailto:Eric.Stryker@wilsonelser.com)>

**Sent:** Tuesday, May 19, 2020 4:40 PM

**To:** Jordan, Erin <[Erin.Jordan@lewisbrisbois.com](mailto:Erin.Jordan@lewisbrisbois.com)>; Nicole Young <[NYoung@danielmarks.net](mailto:NYoung@danielmarks.net)>; [smayor@HPSLAW.COM](mailto:smayor@HPSLAW.COM); Kelli N. Wightman <[kwightman@HPSLAW.COM](mailto:kwightman@HPSLAW.COM)>; Grijalva, Trisha E. <[Trisha.Grijalva@wilsonelser.com](mailto:Trisha.Grijalva@wilsonelser.com)>;

'linda.rurangirwa@cdiglaw.com' <[linda.rurangirwa@cdiglaw.com](mailto:linda.rurangirwa@cdiglaw.com)>; [Patricia.Daehnke@cdiglaw.com](mailto:Patricia.Daehnke@cdiglaw.com); Laura Lucero ([Laura.Lucero@cdiglaw.com](mailto:Laura.Lucero@cdiglaw.com)) <[Laura.Lucero@cdiglaw.com](mailto:Laura.Lucero@cdiglaw.com)>; Lord, Nicole N. <[Nicole.Lord@wilsonelser.com](mailto:Nicole.Lord@wilsonelser.com)>

**Cc:** Vogel, Brent <[Brent.Vogel@lewisbrisbois.com](mailto:Brent.Vogel@lewisbrisbois.com)>; Whitbeck, Johana <[Johana.Whitbeck@lewisbrisbois.com](mailto:Johana.Whitbeck@lewisbrisbois.com)>

**Subject:** [EXT] RE: Green v. Sunrise and DeLee; Sunrise v. Kia and NHG; proposed Order

No changes from me – thanks for sending.

Eric K. Stryker

Attorney at Law

Wilson Elser Moskowitz Edelman & Dicker LLP

Attorney at Law

Wilson Elser Moskowitz Edelman & Dicker LLP

6689 Las Vegas Blvd. South, Suite 200

Las Vegas, NV 89119

702.727.1242 (Direct)

702.727.1400 (Main)

702.727.1401 (Fax)

[eric.stryker@wilsonelser.com](mailto:eric.stryker@wilsonelser.com)

**PLEASE NOTE OUR NEW ADDRESS**

---

**From:** Jordan, Erin [<mailto:Erin.Jordan@lewisbrisbois.com>]

**Sent:** Tuesday, May 19, 2020 4:29 PM

**To:** Nicole Young <[NYoung@danielmarks.net](mailto:NYoung@danielmarks.net)>; [smayor@HPSLAW.COM](mailto:smayor@HPSLAW.COM); Kelli N. Wightman <[kwightman@HPSLAW.COM](mailto:kwightman@HPSLAW.COM)>; Stryker, Eric K. <[Eric.Stryker@wilsonelser.com](mailto:Eric.Stryker@wilsonelser.com)>; Grijalva, Trisha E. <[Trisha.Grijalva@wilsonelser.com](mailto:Trisha.Grijalva@wilsonelser.com)>; 'linda.rurangirwa@cdiglaw.com' <[linda.rurangirwa@cdiglaw.com](mailto:linda.rurangirwa@cdiglaw.com)>;

[Patricia.Daehnke@cdiglaw.com](mailto:Patricia.Daehnke@cdiglaw.com); Laura Lucero ([Laura.Lucero@cdiglaw.com](mailto:Laura.Lucero@cdiglaw.com)) <[Laura.Lucero@cdiglaw.com](mailto:Laura.Lucero@cdiglaw.com)>

**Cc:** Vogel, Brent <[Brent.Vogel@lewisbrisbois.com](mailto:Brent.Vogel@lewisbrisbois.com)>; Whitbeck, Johana <[Johana.Whitbeck@lewisbrisbois.com](mailto:Johana.Whitbeck@lewisbrisbois.com)>

**Subject:** Green v. Sunrise and DeLee; Sunrise v. Kia and NHG; proposed Order

[EXTERNAL EMAIL]

All,

Attached please find a draft Order regarding the Motion for Judgment on the Pleadings for your review. Please let me know if you have any requested changes or if we may use your e-signature to approve as to form.



Thanks,  
Erin



**Erin E. Jordan**

**Partner**

[Erin.Jordan@lewisbrisbois.com](mailto:Erin.Jordan@lewisbrisbois.com)

**T: 702.693.4354 F: 702.893.3789**

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

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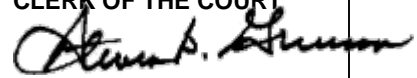
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For further information about Wilson, Elser, Moskowitz, Edelman & Dicker LLP, please see our website at [www.wilsonelser.com](http://www.wilsonelser.com) or refer to any of our offices.

Thank you.

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

Electronically Filed  
6/15/2020 12:06 PM  
Steven D. Grierson  
CLERK OF THE COURT



RIS

MICHAEL E. PRANGLE, ESQ.  
Nevada Bar No.: 8619  
TYSON J. DOBBS, ESQ.  
Nevada Bar No.: 11953  
SHERMAN B. MAYOR, ESQ.  
Nevada Bar No. 1491  
T. CHARLOTTE BUYS, ESQ.  
Nevada Bar No.: 14845  
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](mailto: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.

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

**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**

**Hearing Date: July 7, 2020  
Hearing Time: 9:00 a.m.**

COMES NOW, Defendant, 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 Reply in Support of its "Renewed" Motion for Partial  
Summary Judgment to seek dismissal of any potential claim that Ali Kia, M.D. is an ostensible

agent of the Hospital and Opposition to Plaintiff's Countermotion to Strike Sunrise's Renewed Motion, For Attorney's Fees, and Sanctions.

This Reply and 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.

DATED this 15<sup>th</sup> day of June, 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

T. CHARLOTTE BUYS, ESQ.

Nevada Bar No. 14845

1140 N. Town Center Dr., Ste. 350

Las Vegas, NV 89144

*Attorneys for Defendant*

*Sunrise Hospital and Medical Center, LLC*

## **REPLY POINTS AND AUTHORITIES**

### **I.**

### **STATEMENT OF FACTS**

#### ***A. Brief Case History***

The Plaintiff, Choloe Green, underwent a c-section at Sunrise Hospital on 07/09/2016. Ms. Green's delivering OBGYN, Frank J. DeLee, M.D. discharged her from the hospital on 07/10/2016. Because of complaints of pain and nausea, Ms. Green was readmitted to Sunrise Hospital on 07/14/2016. Dr. Ali Kia, M.D., a private practitioner, was Ms. Green's admitting and attending physician. Dr. Kia discharged Ms. Green from Sunrise Hospital on 07/16/2016. The Plaintiff, Choloe Green, contends that each of her hospital discharges were premature and

1 resulted in the injuries and damages that she claims in this case. The discharge orders issued by  
2 Dr. DeLee and Dr. Kia are attached hereto as Defendant's "***Exhibit A.***"

3 On **06/30/2017**, the Plaintiff, Choloe Green, filed her medical malpractice Complaint  
4 against Frank J. DeLee, M.D. (and his corporation) and Sunrise Hospital. Plaintiff attached an  
5 expert affidavit to her Complaint of Lisa Karamardian, M.D. There was no mention by name of  
6 Dr. Kia in Plaintiff's Complaint, expert affidavit, or caption of the case. Plaintiff did not plead  
7 any "does," "roes," "John Does," "unknown," or "unidentified" defendants. No act or provision  
8 of medical care was linked to Dr. Kia's name in either Plaintiff's Complaint or attached expert  
9 affidavit. Plaintiff did not allege or plead any claim for agency or ostensible agency. Plaintiffs  
10 did not assert that any healthcare provider was an agent of Sunrise Hospital.

11 On **08/09/2017**, Plaintiff, Choloe Green, served her List of Witnesses and Production of  
12 Documents Pursuant to NRCP 16.1. Included in that production were the medical records from  
13 Sunrise Hospital, which contained and included Dr. Kia's Discharge Order of **07/16/2016**.  
14 (Batestamped CG653).

15 On **12/04/2017**, Defendant Sunrise Hospital provided answers to Plaintiff's 2<sup>nd</sup> Set of  
16 Interrogatories to the Hospital. The 1<sup>st</sup> Interrogatory sent by Plaintiff to Sunrise Hospital was  
17 "who made the decision to discharge Plaintiff from Sunrise Hospital, **July 16, 2016**." In  
18 response, Sunrise Hospital advised Plaintiff that Ali Kia, M.D. issued the discharge order.  
19 Sunrise Hospital, further, provided Plaintiffs with the bates number "SH000652-653" identifying  
20 precisely where Dr. Kia's Order could be located.

21 Subsequently on **04/18/2018**, Plaintiff sent another set of Interrogatories to Sunrise  
22 Hospital. Question Number 1 of that 3<sup>rd</sup> Set inquired as to whether Ali Kia, M.D. "...the doctor  
23 who discharged Plaintiff from Sunrise Hospital on **July 16, 2016**...." was an employee and/or  
24 independent contractor of the hospital. Sunrise Hospital answered that Dr. Kia "...is not an  
25 employee or agent of Sunrise Hospital..." Plaintiff was further advised that Dr. Kia was an  
26 independent contractor who merely had staff privileges at the hospital.

27 In subsequent discovery, Plaintiffs asked Sunrise Hospital to produce a copy of the  
28 contract between Ali Kia, M.D. and Sunrise Hospital. Plaintiff was advised that there was no

such contract. Then, Plaintiff, Choloe Green, took the deposition of Dr. Kia on 11/14/2018. In that deposition, Dr. Kia explained that he was a private physician and was not now or ever employed by Sunrise Hospital. Dr. Kia was on a call schedule for an independent hospitalist group (NHG). When it was determined that the Plaintiff did not have a primary care physician, contact was made with Plaintiff's insurer Amerigroup – Medicaid. That group indicated that they utilized an independent hospitalist group to admit their patients. Such is how Nevada Hospitalist Group was contacted and Dr. Kia selected through that independent hospitalist group's call schedule to treat Choloe Green. Sunrise Hospital did not select Dr. Kia to treat Choloe Green.

On 01/15/2019, Defendant Sunrise Hospital filed a Motion for Partial Summary Judgment. The sole purpose of the motion was to dismiss any claim that Drs. DeLee and Kia were either agents or ostensible agents of the hospital. The Court found that neither physician was employed by the Hospital and that Dr. DeLee was not an ostensible agent of the Hospital. The Court denied the Motion to dismiss the claim of ostensible agency as to Dr. Kia.

It is important to note the arguments that were made by Plaintiffs' counsel to obtain the denial of the Motion seeking dismissal of ostensible agency claim as to Dr. Kia. First, Plaintiff's counsel argued that the Motion should be denied because it sounded more in declaratory relief than summary judgment. Plaintiff's counsel actually argued that the Summary Judgment Motion should be denied because Plaintiff had not pled Ostensible Agency as to Dr. Kia and therefore a Motion to dismiss ostensible agency could not be granted because the claim did not exist.

(Please see "*Exhibit B*" which are the Court's Minutes --District Court Judge Douglas E. Smith - Hearing Date March 12, 2019). Plaintiff, then, should be precluded here, in the instant motion, from arguing that the denial of the Summary Judgment Motion was a ruling on the merits of the issue. It was not.

To the extent Plaintiff also argued as to the merits of the Summary Judgment Motion, Plaintiff did so by misstating the record. That is, even if somehow, Plaintiff was found to have pled an ostensible agency claim (or even mention Dr. Kia), such a claim must satisfy the 2 key elements needed for ostensible agency. The most important element required by the Nevada Supreme Court is that Plaintiff prove that the hospital "selected" Dr. Kia to treat Choloe Green.

Plaintiff argued then to Judge Smith and argues now to this Court (Judge Silva) that the Hospital “selected” Dr. Kia pursuant to “contract” between the Hospital and Dr. Kia or “contract” between the Hospital and NHG.<sup>1</sup>

Although Sunrise Hospital believed Judge Smith’s ruling to be erroneous, the Hospital had to abide by the ruling. In reaction to the ruling, Sunrise Hospital requested leave of Judge Smith to file a Third-Party Complaint for Indemnity and/or Contribution to provide the Hospital protection from any liability it might encounter because of Dr. Kia’s negligence. The Motion for Leave was granted by Judge Smith on 06/14/2019.

The Third-Party Defendants, Dr. Kia and NHG, eventually filed a Motion for Judgment on the Pleadings contending that there was no claim and no basis for a claim of ostensible agency against Dr. Kia. The evidence that Sunrise Hospital had utilized to support the Third-Party Complaint was necessarily Plaintiff’s underlying Complaint and Expert Affidavit.

Sunrise Hospital reasons that the basis for Judge Smith’s denial of the ostensible agency motion had to be found somewhere in the underlying documents since that is what the Court had before it when the Court issued its decision. This Court, however, subsequently, when deciding upon Dr. Kia and NHG’s Motion for Judgment on the Pleadings specifically found that Plaintiff’s underlying Complaint and Expert Report failed to identify Dr. Kia or name him as a Defendant in the case. The underlying documents also failed to identify any John Doe, “unknown,” or “unidentified” potential defendants that could arguably be Dr. Kia and/or NHG. This Court (District Court Judge Silva) also found that Plaintiff failed to link any specific act or acts of alleged professional negligence to Dr. Kia or NHG. Moreover, there is no allegation of any kind of agency pled in Plaintiffs’ underlying Complaint.

Sunrise Hospital, during the course of the hearing on Dr. Kia and NHG’s Motion for Judgment on the Pleadings argued to the Court that if that Motion were granted, it would render

---

<sup>1</sup> Attached as “**Exhibit C**” is a Declaration of Florian Barbu, who is the Director of Contracts, Ethics, and Compliance of Sunrise Hospital. The Declaration demonstrates that there is not now nor was there a contract between Sunrise Hospital and Dr. Kia and/or NHG. The entire basis for Plaintiffs’ contention that the Hospital “selected” Dr. Kia to treat Plaintiff, is that it did so pursuant to contract. Plaintiff should produce the contract. This is a Summary Judgment Motion.

1 the earlier decision by Judge Smith erroneous as the 2 decisions, in Sunrise Hospital's view,  
2 would be inconsistent.

3 This Court, in its opinion and order granting Dr. Kia and NHG's Motion for Judgment on  
4 the Pleadings stated in pertinent part as follows:

5  
6 "... Finally, the Court declines to address Third-Party Plaintiff's argument that the  
7 granting of this Motion renders the Court's prior ruling regarding the applicability  
8 of ostensible agency theory erroneous. Assuming *arguendo* that is true, there is no  
9 motion, or requested relief, related to that issue pending before the Court..."  
(Excerpt from Minute Order of May 18, 2020 of District Court Judge Cristina Silva).

10 This Court's ruling dismissing Sunrise Hospital's Third-Party Complaint for indemnity  
11 and contribution was issued long after the time had expired to seek a rehearing of the earlier  
12 Motion for Partial Summary Judgment before Judge Smith. Hence, Sunrise Hospital has filed  
13 this "renewed" Motion for Partial Summary Judgment to place this matter at issue before this  
14 Court with the recent ruling on its Third-Party Complaint in-hand.

## 15 II.

### 16 LEGAL ARGUMENT

#### 17 A. "Renewed" Motion for Summary Judgment / Motion to Strike

18  
19 In summary, Plaintiff seeks to strike this Defendant's "Renewed" Summary Judgment  
20 Motion, contending the matter has already been resolved by the Court. The "Renewed"  
21 Summary Judgment filed by Sunrise Hospital was entitled with the word "Renewed" to assure  
22 that the Court was aware of the earlier Motion and ruling.

23 Judge Smith heard the initial Motion for Summary Judgment on 03/12/2019. He then  
24 deferred ruling and subsequently issued his ruling by email to the parties. By 06/14/2019, shortly  
25 after Judge Smith issued his decision, the Court granted Sunrise Hospital's Motion for Leave to  
26 bring a Third-Party Complaint against Dr. Kia and NHG. Sunrise Hospital was in a somewhat  
27 unique position, in that it was being called upon to defend a claim that was not pled or even  
28 described, but in order to protect itself, filed a Third-Party quasi-contractual action for indemnity

1 and contribution in the event the non-existent claim generated liability exposure for the Hospital.  
2 When this Court dismissed Sunrise Hospital's Third-Party Complaint, Sunrise Hospital has then  
3 been placed in the position of defending a claim that does not exist, has not been pled,  
4 concerning a physician who has not been identified or linked to any specific act or actions in the  
5 Plaintiff's Complaint documents. The Hospital now would be placed in the position of being  
6 unable to seek redress against the unidentified physician and his employer. Sunrise Hospital has  
7 been placed in this position by Plaintiff's pleading failures.

8 At the time Sunrise Hospital obtained leave of court to file the Third-Party Complaint  
9 (which was granted), the time for rehearing the initial Summary Judgment Motion per Rule 2.24  
10 had expired. When this Court then dismissed the Third-Party Complaint, Sunrise Hospital filed a  
11 Motion to "Renew" the Summary Judgment Motion since a rehearing of the original motion  
12 could not be done and circumstances had changed. This Court indicated that it could not address  
13 this issue without a pending motion. Since Sunrise Hospital wanted the issue addressed, it filed  
14 the Renewed Motion.

15 In *Masonry and Tile Contractors Ass'n of So. Nev. v. Jolley Urga and Wirth*, 113 Nev.  
16 737, 941 P.2d 486 (Nev. 1997), the Nevada Supreme Court stated that a District Court may  
17 reconsider a previously decided issue if substantially different evidence is subsequently  
18 introduced or the decision is clearly erroneous. In the *Masonry* case, the Supreme Court  
19 concluded that Judge Breen properly reconsidered (and reversed) an earlier summary judgment  
20 decision by Judge Handelsman and granted a "renewed" summary judgment motion in the same  
21 case on the same issue. *Id.*

22 For these reasons, respectfully, Plaintiff's Countermotion to Strike Sunrise Hospital's  
23 "Renewed" Motion for Summary Judgment and for Sanctions should be denied.

24 ///

25 ///

26 ///

27 ///

28 ///



**B. There is No Basis to Claim that Ali Kia, M.D. is the Ostensible Agent of Sunrise Hospital.**

***1. Nevada is a “Notice” Pleading State Requiring that a Claim/Facts be Pled in the Complaint***

NRCP Rule 8(a)(2) (General Rules of Pleading) requires a short and plain statement of a claim showing that the pleader is entitled to relief. In the event the Plaintiff wanted to assert a claim for “agency” or “ostensible agency” or even vicarious liability, Plaintiff must have pled such claim in her Complaint to comply with NRCP 8(a)(2). In Nevada, even assuming that a Plaintiff failed to identify a claim for relief, since Nevada is a “notice” pleading jurisdiction, Plaintiff must, at an absolute minimum, provide a statement of facts which would support an untitled claim. *See Hay v. Hay*, 678 P.2d 672 (Nev. 1984); *see also Liston v. Las Vegas Metro. Police Dep’t*, 111 Nev. 1575, 1578 908 P.2d 720, 723 (1995); *see also Lopez v. One Reverse Mortg., LLC*, No. 77084-COA, 2020 WL 2843232, at \*3 (Nev. App. May 29, 2020).

In this case, Plaintiff failed to set forth or plead a claim for agency, ostensible agency, or vicarious liability with regard to Sunrise Hospital. Moreover, Plaintiffs’ underlying Complaint and expert affidavit do not identify Dr. Kia or Nevada Hospitalist Group. Neither document identifies any John Doe, “unknown,” or “unidentified” potential defendants that could arguably be Dr. Kia and/or NHG. Because neither Dr. Kia or NHG are identified in the Complaint or expert affidavit, there is no identified specific act or specific acts of alleged professional negligence for Dr. Kia or NHG. (*See Minute Order of May 18, 2020 of District Court Judge Cristina Silva*).

As such, the Plaintiff is precluded from obtaining relief for failure to plead or even factually describe an ostensible agency claim in the underlying Complaint.

***2. Plaintiff is Barred by the Professional Negligence Statute of Limitations from Pursuing an Ostensible Agency Claim.***

NRS 41A.097 (Limitations of Actions) provides a statute of limitations for professional negligence actions against a provider of healthcare. This is a professional negligence action for medical malpractice against Sunrise Hospital, which is a statutory provider of healthcare. Such

actions that occur after October 1, 2002, may not be commenced more than "...1 year after the Plaintiff discovers or through the use of reasonable diligence should have discovered the injury..." See NRS 41A.097.

The Nevada Supreme Court has stated that the 1-year statute of limitation commences to run at least as of the date that the Plaintiff obtained the medical records pertinent to his/her claim. See *Dignity Health v. Eighth Judicial Dist. Court of State, ex rel. Cty. of Clark*, 130 Nev. 1171 (2014)(unpublished disposition).

"...Having considered the parties' briefs and appendices, we conclude that Baxter's one-year statute of limitations began to run against petitioners when he received the medical records from St. Rose..." *Id.* (an unpublished disposition citing to *Winn v. Sunrise Hosp. & Med. Ctr.*, 128 Nev. 277 P.3d 458, 462 (Nev. 2012), which is published).

In this case, Plaintiff's alleged injuries occurred on or about 07/10/2016 and 07/16/2016. Plaintiff retained counsel, who filed an action for medical malpractice against Sunrise Hospital on 06/30/2017. Counsel for Plaintiff then obtained the medical records from Sunrise Hospital and disclosed a set of those records to all parties as part of Plaintiff's NRCP 16.1 Disclosure on 08/09/2017. Contained within those records disclosed by Plaintiff was the order discharging Choloe Green from Sunrise Hospital issued by Ali Kia, M.D. See "*Exhibit A.*" As such, the statute of limitations to bring claims and causes of actions expired no later than 08/10/2018.

In this case, in addition to not bringing or even describing, factually, a claim for ostensible agency, Plaintiff did not plead "Doe" or "Roe" defendants and did not plead any "known" or "unknown" parties in the Complaint. In *Sunrise MountainView Hospital v. Eighth Judicial Dist. Court of State*, 128 Nev. 938 (Nev. 2012) (unpublished opinion which cites to published Nevada Supreme Court decisions), the Nevada Supreme Court stated that a court can dismiss a Complaint for failure to state a claim upon which relief can be granted if the action is barred by the statute of limitations. Here, Plaintiff has failed to state a claim for ostensible agency and such claim is now time-barred.

///

**C. Even Assuming *arguendo* that Plaintiff had Timely Pled a Claim for  
Ostensible Agency, Summary Judgment Would Still be Warranted  
Since Sunrise Hospital Did Not “Select” Dr. Kia**

The general rule of vicarious liability is that an employer is liable for the negligence of its employee, but not the negligence of an independent contractor. *See Oehler v. Humana Inc.*, 105 Nev. 348, 775 P.2d 1271 (Nev. 1989); *see also Schlotfeldt v. Charter Hosp. of Las Vegas*, 112 Nev. 42, 910 P.2d 271 (Nev. 1996); and *see McCrosky v. Carson Tahoe Reg’l Med. Center*, 133 Nev. 930, 408 P.3d 149 (Nev. 2017).

However, an exception to the general rule exists if the hospital “selects” the doctor **and** it is reasonable for the patient to assume that the doctor is an agent of the hospital. *See Schlotfeldt v. Charter Hosp. of Las Vegas*, 112 Nev. 42, 910 P.2d 271 (Nev. 1996); *see also McCrosky v. Carson Tahoe Reg’l Med. Center*, 133 Nev. 930, 408 P.3d 149 (Nev. 2017); *see also Renown Health Inc. v. Vanderford*, 126 Nev. 221, 235 P.3d 614 (Nev. 2010). In such a scenario (where the hospital “selects” the doctor), the hospital can be vicariously liable for the doctor’s actions under the doctrine of ostensible agency. *Schlotfeldt, supra*.

The seminal case for ostensible agency regarding hospitals and physicians is *Schlotfeldt v. Charter Hosp. of Las Vegas*, 112 Nev. 42, 910 P.2d 271 (Nev. 1996). *Schlotfeldt* is the first Nevada case to state that one of the necessary elements to establish that ostensible agency is applicable, is the element requiring that the hospital “select” the doctor. *Id.* at 275-276. That required element has been repeated in subsequent decisions in *Renown* and *McCrosky*. In adopting the doctrine of ostensible agency in *Schlotfeldt*, the Nevada Supreme Court explained that to find that such agency exists “...requires an affirmative finding on **all** the elements of agency...”. (Note 3, *Schlotfeldt* opinion)(emphasis added).

While there are a number of elements that must be satisfied, if a Plaintiff cannot demonstrate that a doctor was “selected” by the hospital, ostensible agency cannot be found as a matter of law. Moreover, in *Schlotfeldt*, the Nevada Supreme Court went further and stated that while existence of an agency relationship is generally a question of fact, a “...question of law exists as to whether sufficient competent evidence is present to require that the agency question

1 be forwarded to a jury...” *Id.* at 274. In this case, the physician in question is Ali Kia, M.D. Dr.  
2 Kia has testified in deposition and answered interrogatories (as a Third-Party Defendant) that  
3 Sunrise Hospital did not select him to treat Choloe Green.

4 In this case, Dr. Kia’s deposition was taken on November 14, 2018. On page 68 of his  
5 deposition, Dr. Kia explained that when the Plaintiff, Choloe Green, came to Sunrise Hospital,  
6 she provided information that she was insured with Health Plan of Nevada. A call was made to  
7 Health Plan of Nevada. That insurer indicated that their medical provider for patient admission  
8 was Nevada Hospitalist Group. Contact was then made with Nevada Hospitalist Group. Dr. Kia  
9 was next in line on the Group’s call schedule and because of that call schedule, he was assigned  
10 to treat Choloe Green.

11 On page 49 of his deposition, Dr. Kia testified in pertinent part as follows:

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

15 A. Yes, correct.

16 Q. And who prepared that call schedule?

17 A. It would have been Nevada Hospitalist Group.

18 Q. And so—

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

20  
21 Q. So Nevada Hospitalist Group per that schedule is the one who selected you to  
22 be at Sunrise on July 14th?

23 A. Yes.

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

26 A. I wasn't aware, no.” (Excerpt from the Deposition of Ali Kia, M.D. at 49:7-  
27 23).

28 ///

1 So there could be no possible misunderstanding, Sunrise Hospital then sent Dr. Kia  
2 formal Requests for Admission on this same subject. In Request for Admission No. 2, Dr. Kia  
3 admitted that he is not now, nor has he ever been an employee of Sunrise Hospital. *See* Dr. Kia's  
4 Response to Defendant's First Set of Requests for Admission, attached previously to  
5 Defendant's underlying "Renewed" Motion for Summary Judgment as "*Exhibit A*." In Request  
6 for Admission No. 6, Dr. Kia provided the following admission:

7  
8 **"REQUEST NO. 6:**

9 Admit that Sunrise Hospital and Medical Center, LLC did not select Ali  
10 Kia, M.D. to treat Choloe Green during her July 14, 2016 – July 16, 2016 hospital  
admission.

11 **RESPONSE TO REQUEST NO. 6:**

12 Admit." (*See* Dr. Kia's January 28, 2020 Responses to Sunrise Hospital's  
13 First Set of Requests for Admission, previously attached to Defendant's  
underlying Motion as "*Exhibit A*").

14 Further, in response to Request for Admission No. 5, Dr. Kia admitted that Nevada  
15 Hospitalist Group, LLP's call schedule resulted in him becoming Choloe Green's treating  
16 physician. *See* Dr. Kia's January 28, 2020 Responses to Sunrise Hospital's First Set of Requests  
17 for Admission, previously attached to Defendant's underlying Motion as "*Exhibit A*."

18 In *Schlotfeldt*, the Nevada Supreme Court stated that determining whether an issue of fact  
19 exists that requires the issue of ostensible agency to be decided by a jury is "similar" to  
20 determining whether a "genuine" issue of fact is present to preclude summary judgment. *Id.* at  
21 274. So even presuming *arguendo* that the Court gets to the stage of even determining that the  
22 elements of ostensible agency are satisfied, Plaintiff must present a "genuine" issue of material  
23 fact to avoid summary judgment. The word "genuine" would mean real.

24 Here, in opposing the sworn testimony of Dr. Kia as to how he was selected to treat his  
25 own patient, Plaintiff merely asserts in her Opposition that "Sunrise chose Dr. Kia based" on a  
26 contract between the Hospital and Dr. Kia and/or NHG. (Page 7:4 of Plaintiff's Opposition).  
27 Plaintiff then argues that a "jury" must determine if a contractual relationship existed.

28 ///

Merely, “alleging” that a contract exists does not make that a “genuine” fact sufficient to oppose summary judgment on an ostensible agency issue. The word “genuine” has meaning. Plaintiff has provided no evidence, whatsoever, of such a contract. Sunrise Hospital has attached as “*Exhibit C*” to this Reply brief, a Declaration from the Director of Contracts, Ethics, and Compliance at Sunrise Hospital stating there is no such contract. There is no contract between NHG and Sunrise Hospital. There is no contract between Dr. Kia and Sunrise Hospital. There is no “genuine” fact opposing Sunrise Hospital’s Summary Judgment Motion. Merely alleging an argument is not the same as presenting “a genuine issue of fact” requiring a matter to be decided by a jury. *See* NRCP 56 and *Schlotfeldt, supra*. Absent a “genuine” fact, the issue is one of law. *See Schlotfeldt*.

### III. CONCLUSION

Plaintiff has not pled a claim for ostensible agency. Plaintiff is too late to amend her Complaint to plead such a claim after the expiration of the statute of limitations. Even if Plaintiff were permitted to amend her Complaint, she cannot satisfy the necessary elements of proof that Sunrise Hospital “selected” Dr. Kia to treat Choloe Green. It did not. As such, summary judgment is, respectfully, warranted and should be granted dismissing any claim that Dr. Kia is an ostensible agent of Sunrise Hospital.

DATED this 15<sup>th</sup> day of June, 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  
T. CHARLOTTE BUYS, ESQ.  
Nevada Bar No. 14845  
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 15<sup>th</sup> day of June, 2020, I served a true and correct copy of the foregoing **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** 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. 4<sup>th</sup> 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/: Reina Claus  
An employee of HALL PRANGLE & SCHOONVELD, LLC

# **Exhibit A**

# **Exhibit A**



**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 \_\_\_\_\_

DATE	TIME		DO NOT USE!
7/10/16	1:15	Found the wife	AD
			AS
			AU
			W
			U
			QB
			QS
			QU
			QB
			QDD
			MS
			MSA
			MSB
			TWV
			HB
			LABORATORY

DIAGNOSIS: \_\_\_\_\_ CONDITION: \_\_\_\_\_

HEIGHT: \_\_\_\_\_ Ft/in \_\_\_\_\_ M/cm WEIGHT: \_\_\_\_\_ lbs. or \_\_\_\_\_ kg DRUG & FOOD ALLERGIES \_\_\_\_\_



**PHYSICIAN ORDERS**

**GREEN, CHLOE S**  
 Acc D00113776996 MedRec D001315049  
 DOB 07/15/86 F 29  
 Attend Delee, Frank J MD  
 Admit/Serv 07/09/16



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

MEDITECH FACILITY: COCSZ  
IDEV - Discharge Report

PAGE 42

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

hospital services prior to the transfer to the extended care facility.

Order's Audit Trail of Events

1 07/15/16 1524 DR.KIAAL Order ENTER in POM  
2 07/15/16 1524 DR.KIAAL Ordering Doctor: Kia, Ali MD  
3 07/15/16 1524 DR.KIAAL Order Source: EPOM  
4 07/15/16 1524 DR.KIAAL Signed by Kia, Ali MD  
5 07/15/16 1548 DNURNP order acknowledged  
6 07/15/16 1817 DR.KIAAL Order DC in POM  
7 07/15/16 1817 DR.KIAAL Ordering Doctor: Kia, Ali MD  
8 07/15/16 1817 DR.KIAAL Order Source: EPOM  
9 07/15/16 1817 DR.KIAAL Signed by Kia, Ali MD  
10 07/15/16 1817 DR.KIAAL order cancelled  
11 07/15/16 1905 DNURNP Cancelled order acknowledged

Cancel comment: Change Order

Electronically signed by Kia, Ali MD on 07/15/16 at 1907

Order Date: 07/15/16		—Service—									
Category	Procedure Name	Order Number	Date	Time	Pri	Qty	Ord	Source	Status	Ordered By	
DISCHG	DISCHARGE ORDER	20160715-0090	07/15/16		R		E		CNC	KIAAL	
Other Provider :		Sig Lvl Provider :									

Discharge order written date: 07/15/16  
Discharge order written time: 1523  
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:

PERMANENT MEDICAL RECORD COPY

# **Exhibit B**

# **Exhibit B**

**DISTRICT COURT  
CLARK COUNTY, NEVADA**

**Malpractice - Medical/Dental**

**COURT MINUTES**

**March 12, 2019**

---

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

---

<b>March 12, 2019</b>	<b>8:00 AM</b>	<b>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</b>
-----------------------	----------------	--

**HEARD BY:** Smith, Douglas E.

**COURTROOM:** RJC Courtroom 11B

**COURT CLERK:** Carol Donahoo

**RECORDER:** Gina Villani

**REPORTER:**

**PARTIES**

<b>PRESENT:</b>	Marks, Daniel	Attorney
	Mayor, Sherman Bennett	Attorney
	Najjar, Alia A	Attorney
	Young, Nicole M.	Attorney

**JOURNAL ENTRIES**

- This is the time set for hearing on 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.

Mr. Mayor advised that the hospital is not seeking its dismissal from the case, it is only seeking dismissal of any potential claims for agency or ostensible agency for either Dr. DeLee or Dr. Kia. This case concerns a baby delivery on July 9, 2016. The relevant law starts with the Schlottfeldt case and Oehler v. Humanna. Additionally, there is no evidence in this case that either Dr. DeLee or Dr. Kia were agents or employees of the hospital. Dr. DeLee is an obstetrician and is not employed by Sunrise hospital; he has a private office and was the treating obstetrician of the Plaintiff prior to her entering the hospital. The Plaintiff selected Dr. DeLee not the hospital Dr. DeLee discharged the Plaintiff from Sunrise hospital. Sunrise cannot be vicariously liable for Dr. DeLee because he is not an employee of the hospital and he cannot be an ostensible agent of the hospital because the Plaintiff choose him.

PRINT DATE: 04/12/2019

Page 1 of 2

Minutes Date: March 12, 2019

The other physician, Dr. Ali Kia is an internist and is self-employed and an independent contractor; he worked with a private group called Nevada Hospitalist. Dr. Kia covers other hospitals besides Sunrise and billed separately for his bills for the services rendered to the Plaintiff. The way the Plaintiff became a patient of Dr. Kia, was she came to Sunrise hospital 's Emergency Room, the Emergency Room called her health insurance plan (Health Plan of Nevada ), and Health Plan of Nevada advised that they wanted to use the Nevada Hospitalist Group for an internist for the Plaintiff. When Health Plan of Nevada called Nevada Hospitalist Group, Dr. Kia happened to be on call and was assigned to the case. Under those facts, Sunrise Hospital did not select Dr. Kia, the Plaintiff's insurance company did.

The controlling case is McCroskey v. Carson, which Mr. Mayor discussed along with the two issues of law that apply. In this case Dr. DeLee was selected by the Plaintiff and Dr. Kia was selected through the Plaintiff's Health Care Plan not the hospital. Neither of the physicians were employees of the hospital and neither were selected by the hospital. They were just doctors who had privileges at the hospital. Defendant is not seeking to have the hospital dismissed from the case they are only seeking to have any claim from agency dismissed from the case. The ostensible agents issue has not been pled; Defendant is just asking the Court to dismiss the potential claim and that is why they are seeking a Partial Summary Judgment to dismiss the agency claims for those two doctors.

Ms. Najjar is adopting Mr. Mayor's arguments.

Mr. Marks advised that although Defendant has filed a Motion for Summary Judgment, it is not a Summary Judgment Motion because they are not asking for dismissal of any claims; therefore, the Motion is really a request for Declaratory Judgment and it may be premature. Dr. DeLee is an independent obstetrician; Plaintiff never claimed that Dr. DeLee was an agent of Sunrise. Mr. Marks discussed the four part test under McCroskey and the Schlotfeldt case. For the record, Mr. Marks advised that the Plaintiff has a baby on July 9; Dr. DeLee delivered her baby and is being sued independently and is an independent doctor. Due to some problems the Plaintiff was having, she untimely went back to the Sunrise Emergency Room a second time and was admitted through the Emergency Service for three (3) days. During that time the Plaintiff sees a bunch of doctors; they showed up at her bedside and treated her. Since Dr. Kia was assigned to the Plaintiff through the emergency department and she did not choose the doctors who treated her, the theory of ostensible agency against Sunrise Hospital applies. Court advised that it would like to review the McCroskey case again. Therefore, COURT ORDERED, decision DEFERRED.

# Exhibit C

# Exhibit C

**DECLARATION OF FLORIAN BARBU**

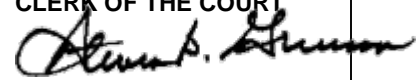
STATE OF NEVADA       )  
                                  )  
COUNTY OF CLARK     )

I, FLORIAN BARBU, declare under penalty of perjury pursuant to NRCP 43(c) and NRS 53.045 as follows:

1. I am over the age of eighteen. I am competent to testify on the matters set forth herein. I make this declaration based upon personal knowledge.
2. I am the Director of Contracts, Ethics, and Compliance at Sunrise Hospital and Medical Center and have knowledge regarding the contracts in place between Sunrise Hospital and hospitalist groups and physicians from 2015 to present.
3. There was no contract between Sunrise Hospital and Nevada Hospitalist Group and no contract between Sunrise Hospital and Ali Kia, M.D. in the years 2016 to present.
4. I declare under penalty of perjury under the laws of the State of Nevada that the foregoing is true and correct.

DATED this 11<sup>th</sup> day of June, 2020.

  
\_\_\_\_\_  
FLORIAN BARBU



**OPP**

MICHAEL E. PRANGLE, ESQ.  
Nevada Bar No.: 8619  
TYSON J. DOBBS, ESQ.  
Nevada Bar No.: 11953  
SHERMAN B. MAYOR, ESQ.  
Nevada Bar No. 1491  
T. CHARLOTTE BUYS, ESQ.  
Nevada Bar No.: 14845  
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](mailto:efile@hpslaw.com)  
*Attorneys for Defendant / Third-Party Plaintiff*  
*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.: IX

**DEFENDANT SUNRISE HOSPITAL'S  
OPPOSITION TO PLAINTIFF'S  
"MOTION FOR LEAVE OF COURT TO  
AMEND COMPLAINT"**

**Hearing Date: July 7, 2020  
Hearing Time: 9:00 a.m.**

COMES NOW, Defendant, 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 Plaintiff's Motion for Leave of Court to  
Amend Complaint.

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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.

DATED this 15<sup>th</sup> day of June, 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

T. CHARLOTTE BUYS, ESQ.

Nevada Bar No. 14845

1140 N. Town Center Dr., Ste. 350

Las Vegas, NV 89144

*Attorneys for Defendant*

*Sunrise Hospital and Medical Center, LLC*

## **MEMORANDUM OF POINTS AND AUTHORITIES**

### **I.**

#### **PREFATORY NOTE**

There are numerous independent reasons why Plaintiff's Motion for Leave of Court to Amend Complaint, respectfully, must not be granted. At the top of the list of such reasons is the fact that the statute of limitations for this medical malpractice action has expired years ago. In Nevada, a proposed amended complaint may not be utilized to allow addition of a new party or claim to relate back to the original complaint "...after a limitation period had run...". *See Badger v. Eighth Jud. Dist. Court*, 132 Nev. 396, 373 P.3d 89 (Nev. 2016).

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II.  
**STATEMENT OF FACTS**

***A. Medical Malpractice Statute of Limitations Chronology***

The Plaintiff, Choloe Green, underwent a c-section at Sunrise Hospital on 07/09/2016. Ms. Green's delivering OBGYN, Frank J. DeLee, M.D. discharged her from the hospital on 07/10/2016. Because of complaints of pain and nausea, Ms. Green was readmitted to Sunrise Hospital on 07/14/2016. Dr. Ali Kia, M.D., a private practitioner, was Ms. Green's admitting and attending physician. Dr. Kia discharged Ms. Green from Sunrise Hospital on 07/16/2016. The Plaintiff, Choloe Green, contends that each of her hospital discharges were premature and resulted in the injuries and damages that she claims in this case. The discharge orders issued by Dr. DeLee and Dr. Kia are attached hereto as Defendant's "***Exhibit A.***"

On 06/30/2017, the Plaintiff, Choloe Green, filed her medical malpractice Complaint against Frank J. DeLee, M.D. (and his corporation) and Sunrise Hospital. Plaintiff attached an expert affidavit to her Complaint of Lisa Karamardian, M.D. There was no mention by name of Dr. Kia in Plaintiff's Complaint, expert affidavit, or caption of the case. Plaintiff did not plead any "does," "roes," "John Does," "unknown," or "unidentified" defendants. No act or provision of medical care was linked to Dr. Kia's name in either Plaintiff's Complaint or attached expert affidavit. Plaintiff did not allege or plead any claim for agency or ostensible agency. Plaintiffs did not assert that any healthcare provider was an agent of Sunrise Hospital.

On 08/09/2017, Plaintiff, Choloe Green, served her List of Witnesses and Production of Documents Pursuant to NRCP 16.1. Included in that production were the medical records from Sunrise Hospital, which contained and included Dr. Kia's Discharge Order of 07/16/2016. See Discharge Order produced in Plaintiff's Initial List of Witnesses and Production of Documents, Batestamped CG653, attached hereto as "***Exhibit A.***"

On 12/04/2017, Defendant Sunrise Hospital provided answers to Plaintiff's 2<sup>nd</sup> Set of Interrogatories to the Hospital. The 1<sup>st</sup> Interrogatory sent by Plaintiff to Sunrise Hospital was "who made the decision to discharge Plaintiff from Sunrise Hospital, July 16, 2016." In

1 response, Sunrise Hospital advised Plaintiff that Ali Kia, M.D. issued the discharge order.  
2 Sunrise Hospital, further, provided Plaintiffs with the bates number "SH000652-653" identifying  
3 precisely where Dr. Kia's Order could be located.

4 Subsequently on 04/18/2018, Plaintiff sent another set of Interrogatories to Sunrise  
5 Hospital. Question Number 1 of that 3<sup>rd</sup> Set inquired as to whether Ali Kia, M.D. "...the doctor  
6 who discharged Plaintiff from Sunrise Hospital on July 16, 2016...." was an employee and/or  
7 independent contractor of the hospital. Sunrise Hospital answered that Dr. Kia "...is not an  
8 employee or agent of Sunrise Hospital..." Plaintiff was further advised that Dr. Kia was an  
9 independent contractor who merely had staff privileges at the hospital.

10 In subsequent discovery, Plaintiffs asked Sunrise Hospital to produce a copy of the  
11 contract between Ali Kia, M.D. and Sunrise Hospital. Plaintiff was advised that there was no  
12 such contract. Then, Plaintiff, Choloe Green, took the deposition of Dr. Kia on 11/14/2018. In  
13 that deposition, Dr. Kia explained that he was a private physician and was not now or ever  
14 employed by Sunrise Hospital. Dr. Kia was on a call schedule for an independent hospitalist  
15 group (NHG). When it was determined that the Plaintiff did not have a primary care physician,  
16 contact was made with Plaintiff's insurer Amerigroup – Medicaid. That group indicated that they  
17 utilized an independent hospitalist group to admit their patients. Such is how Nevada Hospitalist  
18 Group was contacted and Dr. Kia selected through that independent hospitalist group's call  
19 schedule to treat Choloe Green. Sunrise Hospital did not select Dr. Kia to treat Choloe Green.

20 ***B. Plaintiff's Original Complaint Makes No Reference to (1) Dr. Kia, (2) Ostensible***  
21 ***Agency, (3) Relation Back, or (4) Corporate Negligence.***

22 Plaintiff's original Complaint and Affidavit (the same Affidavit Plaintiff attached to the  
23 proposed Amended Complaint) do not identify Dr. Kia. Nor does either document identify any  
24 John Doe, "unknown," or "unidentified" potential defendants that could arguably be Dr. Kia.  
25 Because Dr. Kia was not identified in the Complaint, or the Affidavit there is no identified  
26 specific act or specific acts of alleged professional negligence by Dr. Kia. Moreover, there is no  
27 reference to "agent" or "agency" or "vicarious liability" or "ostensible agency" anywhere in  
28 Plaintiff's original Complaint or Affidavit.

III.

**LEGAL ARGUMENT**

**A. Plaintiff Cannot Bring A New Claim Based Upon a New Theory of Liability in a Proposed Amended Complaint After the Statute of Limitations Has Expired.**

In *Badger v. Eighth Jud. Dist. Court*, 132 Nev. 396, 373 P.3d 89 (Nev. 2016), the Nevada Supreme Court granted a writ and reversed a trial court decision to allow an amended complaint to relate back to an original complaint after the expiration of the limitation period. Stated succinctly, the Nevada Supreme Court refused to allow an amended complaint to an original complaint to add a new claim based upon a new theory of liability after the expiration of a limitation period. The Court stated as follows:

“...Similarly, we have refused to allow a new claim based upon a new theory of liability asserted in an amended pleading to relate back under NRCP 15(c) after the statute of limitations had run.” *See Badger*, 373 P.3d 89,95 (Nev. 2016).

If Plaintiff’s Motion for Leave to file a Proposed Amended Complaint with new theories of liability (ostensible agency and corporate negligence) was filed after the expiration of the medical malpractice statute of limitations, then the proposed Amended Complaint must not be allowed per *Badger*. In this case, the statute of limitations for bringing medical malpractice claims arises out of Plaintiff’s care at Sunrise Hospital in July of 2016, and expired **at the latest on August 9, 2018 (or almost 2 years ago).**

NRS 41A.097 (Limitations of Actions) provides a statute of limitations for professional negligence actions against a provider of healthcare. This is a professional negligence action for medical malpractice against Sunrise Hospital, which is a statutory provider of healthcare. Such actions that occur after October 1, 2002, may not be commenced more than “...1 year after the Plaintiff discovers or through the use of reasonable diligence should have discovered the injury...” *See* NRS 41A.097.

The Nevada Supreme Court has stated that the 1-year statute of limitation commences to run at least as of the date that the Plaintiff obtained the medical records pertinent to his/her claim.

1 *See Dignity Health v. Eighth Judicial Dist. Court of State, ex rel. Cty. of Clark*, 130 Nev. 1171  
2 (2014)(unpublished disposition).

3  
4 “...Having considered the parties’ briefs and appendices, we conclude that  
5 Baxter’s one-year statute of limitations began to run against petitioners when he  
6 received the medical records from St. Rose...” *Id.* (an unpublished disposition  
citing to *Winn v. Sunrise Hosp. & Med. Ctr.*, 128 Nev. 277 P.3d 458, 462 (Nev.  
2012), which is published).

7  
8 Providing further clarity regarding the 1-year statute of limitations, in a medical  
9 malpractice action, the Nevada Supreme Court stated that the 1-year period begins to run  
10 “...when the patient has before him facts that would put a reasonable person on inquiry notice of  
11 his possible causes of action whether or not it has occurred for the particular patient to seek  
12 further medical advice.” *See Massey v. Linton*, 99 Nev. 723 (Nev. 1983).

13 In this case, Plaintiff’s alleged injuries occurred on or about 07/10/2016 and 07/16/2016.  
14 Plaintiff retained counsel, who filed an action for medical malpractice against Sunrise Hospital  
15 on 06/30/2017. Counsel for Plaintiff then obtained the medical records from Sunrise Hospital  
16 and disclosed a set of those records to all parties as part of Plaintiff’s NRCP 16.1 Disclosure on  
17 08/09/2017. Contained within those records disclosed by Plaintiff was the order discharging  
18 Choloe Green from Sunrise Hospital issued by Ali Kia, M.D. *See “Exhibit A.”* As such, the  
19 statute of limitations to bring claims and causes of actions expired no more than 1-year later on  
20 08/10/2018. When the Plaintiff, through her counsel, disclosed the Sunrise Hospital records,  
21 including Dr. Kia’s July 16, 2016, discharge order, the 1-year discovery statute of limitations  
22 began to run and expired 1-year and 1-day later on 08/10/2018.

23 Applying *Badger*, then, Plaintiff’s proposed Amended Complaint with new theories of  
24 liability (ostensible agency) and (corporate negligence) may not, respectfully, be permitted.<sup>1</sup>

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26 ///

27  
28 <sup>1</sup> And in this case, there is no doe/roe “unknown” relation back pleading in the original complaint filed on  
06/30/2017.

**B. Plaintiff's New Proposed Claims of New Theories of Liability Cannot be Maintained Even if, Arguendo, They Were Not Already Time-Barred.**

Plaintiff attempts to bring new claims based on new theories of liability in her proposed Amended Complaint. All of such new claims in the proposed Amended Complaint are barred by **Badger v. Eighth Jud. Dist. Court, 132 Nev. 396, 373 P.3d 89 (Nev. 2016)** because the medical malpractice statute of limitations has expired.

***1. Negligent Credentialing***

Even had the statute of limitations not expired (and *Badger* did not apply), each of the new claims still could not be maintained. For instance, in Plaintiff's proposed Amended Complaint at ¶¶25-32, Plaintiff attempts to allege that under the doctrine of "corporate negligence" Sunrise Hospital was negligent in hiring, granting, and retention of privileges of Frank DeLee, M.D. and Ali Kia, M.D. The principle problem with this new theory of liability is that it does not exist in the State of Nevada.

In *Nogle v. Beech Street Corp.*, No. 2:10-CV-01092-KJD, 2013 WL 1182680, at \*3 (D. Nev. Mar. 20, 2013), aff'd 619 F. App'x 639 (9<sup>th</sup> Cir. 2015), the United States District Court of Nevada specifically found that there is no cause of action in Nevada for "negligent credentialing." As such, Plaintiff's proposed negligent credentialing claim, if it existed, would be time-barred. However, such claim does not exist in Nevada.

***2. Corporate Negligence/Negligent Supervision***

In a 1989 decision, *Oehler v. Humana Inc.*, 105 Nev. 348, 350, 775 P.2d 1271, 1272 (Nev. 1989), the Nevada Supreme Court did seem to permit an action against Sunrise Hospital for alleged negligent supervision of a physician, who only had staff privileges. However, two important subsequent opinions by the Nevada Supreme Court replaced and/or rejected the imposition against Nevada hospitals of the theory of corporate negligence.

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1 The first important case was *Schlotfeldt v. Charter Hosp. of Las Vegas*, 112 Nev. 42, 49,  
2 910 P.2d 271, 275 (1996). For the first time in Nevada, in *Schlotfeldt*, the doctrine of “ostensible  
3 agency” was adopted. *Id.* at 275.<sup>2</sup> The second important decision was rendered by the Nevada  
4 Supreme Court in *Renown Health Inc. v. Vanderford*, 126 Nev. 221, 235 P.3d 614 (Nev. 2010).

5 In the *Renown* case, the Nevada Supreme Court recognized that as a general rule,  
6 hospitals are not vicariously liable for the negligent acts of independent contractor physicians. *Id.*  
7 at 224. The Court in *Renown* recognized an exception to that general rule, which was the newly  
8 adopted theory of “ostensible agency.” *Id.* at 226. For that reason, the Nevada Supreme Court in  
9 *Renown* refused to impose a non-delegable duty on the medical center with respect to care  
10 rendered to hospital patients by independent contractors. *Id.* at 226-227. In essence, the Nevada  
11 Supreme Court rejected the non-delegable duty of corporate negligence/supervision, which was  
12 replaced by the newly adopted “ostensible agency.”

13 Second, the Nevada Supreme Court found that NRS 439B.410 contemplated a hospital’s  
14 delegation of medical care to qualified healthcare professionals, including independent  
15 contractor physicians (like Dr. DeLee and Dr. Kia). *Id.* at 225.

16 Third, the *Renown* Court referenced Joint Commission Hospital Accreditation services,  
17 standards, which emphasized the hospital’s role as a healthcare policy center as opposed to a  
18 direct care provider. *Id.*

19 Lastly, in rejecting the imposition of a non-delegable duty for care rendered by  
20 independent contractors in the hospital, the *Renown* Court said such a policy (non-delegable  
21 duty) was better left to the Nevada Legislature than the Court. *Id.* As such, there is no non-  
22 delegable corporate negligence duty to supervise physicians in Nevada. The duty has been  
23 replaced by the doctrine of “ostensible agency.”<sup>3</sup>

24  
25  
26 <sup>2</sup> Moreover, if one sherardizes *Oehler v. Humana*, one will find that the *Schlotfeldt* case (where ostensible  
27 agency was adopted) is described as negatively treating the earlier *Oehler* decision. Typically, “negative  
28 treatment” can imply that the earlier case has been superseded, distinguished, or reversed.

<sup>3</sup> In fact, in the 2010 *Renown* decision, the Court referenced the 1989 *Oehler* decision.

Following Nevada’s adoption of the doctrine of “ostensible agency” in 1996 (*Schlotfeldt*) there have been repeated Nevada Supreme Court cases repeating the adoption of ostensible agency (*Renown*, 2010, and *McCrosky*, 2017). A Plaintiff would be hard pressed to find a medical malpractice decision in Nevada more recent than 1996 in which the Nevada Supreme Court confirmed the continuation of corporate negligence/negligent supervision in a medical malpractice action. The reason is because the doctrine of “ostensible agency” would be rendered meaningless if the Court still allowed a general claim of corporate negligence/negligent supervision whereby a hospital would have a non-delegable duty for the negligent acts of independent contractors.

### 3. *Ostensible Agency*

The doctrine of Ostensible Agency is a viable theory by which negligence can be imposed upon a hospital for the care of an independent contractor. *See Schlotfeldt v. Charter Hosp. of Las Vegas*, 112 Nev. 42, 49, 910 P.2d 271, 275 (1996); see also *Renown Health v. Vanderford*, 126 Nev. 221, 224, 235 P.3d 614, 616 (2010); see also *McCrosky v. Carson Tahoe Reg'l Med. Ctr.*, 133 Nev. 930, 934, 408 P.3d 149, 153 (2017).

However, in this case, Plaintiff did not plead any form of agency, vicarious liability, or ostensible agency in her original Complaint. The statute of limitations has expired disallowing an effort at this late date to add such a claim as a new theory of liability at this time. In addition, in Plaintiff’s proposed amended Complaint, Plaintiff offered the same affidavit of the same expert as was used in the original Complaint. As was noted by this Court (such Complaint and Expert Affidavit contained no reference, whatsoever, identifying Dr. Kia’s care), and therefore the proposed Amended Complaint still fails.

Finally, to maintain an action for “ostensible agency” Plaintiff has to provide genuine evidence that the Hospital “selected” the physician (such is an essential element of ostensible agency). Here, all of the evidence is that the Hospital did not select Dr. Kia to treat Choloe Green. The sworn testimony in this case on at least 4 occasions is that there is either no hospital contract between Sunrise Hospital or Dr. Kia was selected off the NHG call schedule (an independent group with no contract with Sunrise Hospital).



Specifically, when Dr. Kia was deposed on November 14, 2018, he testified that he was “selected” from the call list of Nevada Hospitalist Group. Dr. Kia answered Interrogatories as a Third-Party Defendant that he was “selected” by being on Nevada Hospitalist’s call schedule. He further answered that he was not an employee of Sunrise Hospital. On April 20, 2018, Sunrise Hospital responded to a request for any contract between Dr. Kia and the Hospital by advising there was no such contract. Fourthly, attached as “*Exhibit B*” is the Declaration of Florian Barbu, which states there is no contract between Sunrise Hospital and NHG and/or Dr. Kia.

Plaintiff **does not** demonstrate that there was a genuine material issue of fact to avoid summary judgment by alleging that Sunrise Hospital “...cannot avoid liability by claiming a secret or undisclosed independent contractor relationship to doctors...” (Paragraph 20 of Plaintiff’s Proposed Amended Complaint). <sup>4</sup>A genuine issue of material “fact” requires some showing of evidence when responding to a summary judgment supported by a declaration or affidavit. Plaintiff has offered nothing. This case has been in litigation for 3 years. Sunrise Hospital did not select Dr. Kia to treat Choloe Green and there is no evidence, none, to the contrary.

The issue of the viability of Plaintiff’s ostensible agency claim is fully addressed in the companion Motion that this Court will be hearing on July 7, 2020, along with this Motion to Amend. However, Plaintiff has no genuine facts only assertions or allegations.

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<sup>4</sup> Sunrise Hospital hardly contends that there is any “secret or undisclosed contractor relationship to doctors.”

**IV.**

**CONCLUSION**

Plaintiff's proposed Amended Complaint should be denied.

DATED this 15<sup>th</sup> day of June, 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

T. CHARLOTTE BUYS, ESQ.

Nevada Bar No. 14845

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 15<sup>th</sup> day of June, 2020, I served a true and correct copy of the foregoing

**DEFENDANT SUNRISE HOSPITAL'S OPPOSITION TO PLAINTIFF'S "MOTION FOR LEAVE OF COURT TO AMEND COMPLAINT"** 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. 4<sup>th</sup> 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/: Reina Claus

An employee of HALL PRANGLE & SCHOONVELD, LLC

# **Exhibit A**

# **Exhibit A**



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

MEDITECH FACILITY: COCSZ  
IDEV - Discharge Report

PAGE 42

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

hospital services prior to the transfer to the extended care facility.

Order's Audit Trail of Events

1 07/15/16 1524 DR.KIAAL Order ENTER in POM  
2 07/15/16 1524 DR.KIAAL Ordering Doctor: Kia, Ali MD  
3 07/15/16 1524 DR.KIAAL Order Source: EPOM  
4 07/15/16 1524 DR.KIAAL Signed by Kia, Ali MD  
5 07/15/16 1548 DNURNPS order acknowledged  
6 07/15/16 1817 DR.KIAAL Order DC in POM  
7 07/15/16 1817 DR.KIAAL Ordering Doctor: Kia, Ali MD  
8 07/15/16 1817 DR.KIAAL Order Source: EPOM  
9 07/15/16 1817 DR.KIAAL Signed by Kia, Ali MD  
10 07/15/16 1817 DR.KIAAL order cancelled  
11 07/15/16 1905 DNURNPS Cancelled order acknowledged

Cancel comment: Change Order

Electronically signed by Kia, Ali MD on 07/15/16 at 1907

Order Date: 07/15/16

—Service—

Category	Procedure Name	Order Number	Date	Time	Pri	Qty	Ord	Source	Status	Ordered By
DISCHG	DISCHARGE ORDER	20160715-0090	07/15/16		R		E		CNC	KIAAL

Other Provider : Sig Lvl Provider :

Discharge order written date: 07/15/16  
Discharge order written time: 1523  
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:

PERMANENT MEDICAL RECORD COPY

# **Exhibit B**

# **Exhibit B**


**DECLARATION OF FLORIAN BARBU**

STATE OF NEVADA       )  
                                  )  
COUNTY OF CLARK     )

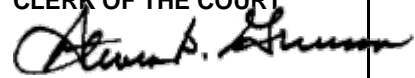
I, FLORIAN BARBU, declare under penalty of perjury pursuant to NRCP 43(c) and NRS 53.045 as follows:

1. I am over the age of eighteen. I am competent to testify on the matters set forth herein. I make this declaration based upon personal knowledge.
2. I am the Director of Contracts, Ethics, and Compliance at Sunrise Hospital and Medical Center and have knowledge regarding the contracts in place between Sunrise Hospital and hospitalist groups and physicians from 2015 to present.
3. There was no contract between Sunrise Hospital and Nevada Hospitalist Group and no contract between Sunrise Hospital and Ali Kia, M.D. in the years 2016 to present.
4. I declare under penalty of perjury under the laws of the State of Nevada that the foregoing is true and correct.

DATED this 11<sup>th</sup> day of June, 2020.

  
\_\_\_\_\_  
FLORIAN BARBU





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. IX

v.

**ORAL ARGUMENT REQUESTED**

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.

**REPLY IN SUPPORT OF MOTION FOR LEAVE OF COURT TO AMEND COMPLAINT**

COMES NOW the Plaintiff, Choloe Green, by and through her counsel, Daniel Marks, Esq., of the Law Office of Daniel Marks, and hereby submits her Reply in Support of Motion for Leave of Court to Amend Complaint. The grounds for Plaintiff's reply are set forth in the following Memorandum of Points and Authorities.

DATED this 30th day of June, 2020.

LAW OFFICES OF DANIEL MARKS

/s/ Nicole M. Young

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. INTRODUCTION**

3 The claims Plaintiff Choloe Green (“Choloe”) seeks to add to her complaint are based on the  
4 same conduct, transaction, and/or occurrence she complains of against Defendant Sunrise Hospital and  
5 Medical Center, LLC (“Sunrise”). Sunrise’s opposition to the instant motion ignores the clear law  
6 regarding NRCP 15’s relation back doctrine and the availability of a corporate negligence claim in a  
7 medical malpractice suit.

8 **II. LEGAL ARGUMENT**

9 This Court must freely grant leave to amend a complaint when justice so requires. NRCP  
10 15(a)(2). “An amendment to a pleading relates back to the date of the original pleading when . . . the  
11 amendment asserts a claim or defense that arose out of the conduct, transaction, or occurrence set  
12 out—or attempted to be set out—in the original pleading.” NRCP 15(c)(1). The Nevada Supreme Court  
13 has held the district courts must “liberally construe” NRCP 15(c) “to allow relation back of the amended  
14 pleading where the opposing party will be put to no disadvantage.” *Costello v. Casler*, 127 Nev. 436,  
15 441, 254 P.3d 631, 634 (2011). The liberal construction of this rule is based on how “[m]odern rules of  
16 procedure are intended to allow the court to reach the merits, as opposed to disposition on technical  
17 niceties.” *Id.*

18 Based on the liberal construction of NRCP 15, this Court should grant Choloe leave to amend her  
19 complaint, as proposed.

20 **A. The relation-back doctrine cures any alleged statute of limitations issues.**

21 Sunrise relies on *Badger v. Eighth Jud. Dist. Ct.*, to imply the relation back doctrine does not  
22 apply to the instant case. 132 Nev. 396, 373 P.3d 89 (2016). Sunrise’s interpretation and analysis of  
23 *Badger*, based on the facts of this case, is simply incorrect. *Badger* did not allow the amendment because  
24 it sought to add a new defendant, an unnamed guarantor, not a new claim or theory of liability. 132 Nev.  
25 at 400, 373 P.3d at 92. *Badger* relies on the Court’s holding in *Costello* to analyze NRCP 15. *Costello* is  
26 the applicable law regarding the interpretation of NRCP 15.

27 ////

28 ////

1 The difference between *Costello* and *Badger* is based on the type of amendment sought and the  
2 underlying law of each action. *Badger* sought to add a new defendant, an unnamed guarantor. The Court  
3 emphasized the rigid six-month statutory deadline relating to Nevada’s anti deficiency laws for  
4 foreclosures to justify why the relation back doctrine does not apply. *Badger*, 132 Nev. at 404, 373 P.3d  
5 at 95. *Badger* is a unique case because its decision was influenced by this State’s public policy relating  
6 to foreclosures. This case is not a foreclosure case seeking a deficiency judgment.

7 The standard this Court must apply is *Costello*. Based on the liberal construction of NRCP 15,  
8 and the new claims are against an original defendant, Sunrise, the relation back doctrine applies to  
9 resolve any statute of limitations issues. The new claims all relate back to the same conduct, transaction,  
10 and occurrence set forth in Choloe’s original complaint against Sunrise. In addition, these new claims do  
11 not put Sunrise at a disadvantage because Sunrise was aware of the vicarious liability issue in 2019 when  
12 it filed its original motion for partial summary judgment regarding ostensible agency. The corporate  
13 negligence claim relates to Sunrise’s conduct that Choloe attempted to set forth in her original  
14 complaint. Through discovery and the current motion practice before this Court, Choloe realized she  
15 needed to amend her complaint to add corporate negligence against Sunrise to protect her rights.

16 Because the “new” claims relate to Sunrise, who is an original defendant to this action, the  
17 relation back doctrine squarely applies to negate any statute of limitations issues relating to the vicarious  
18 liability and corporate negligence claims.

19 **B. Justice requires this Court allow Choloe’s proposed Amended Complaint.**

20 Sunrise opposes Choloe’s proposed amendment based on an incorrect interpretation of the law  
21 that allows a plaintiff to conduct discovery on a claim versus the standard of evidence required on  
22 summary judgment or directed verdict.

23 **1. Nevada law supports the addition of corporate negligence against Sunrise.**

24 “[A] hospital may be liable for the negligent supervision of a nonemployee physician who has  
25 staff privileges under the corporate negligence theory of liability.” *Oehler v. Humana, Inc.*, 105 Nev.  
26 348, 350-51, 775 P.2d 1271, 1272 (1989). This assertion by the Nevada Supreme Court cannot be any  
27 more clear. Sunrise argues this claim no longer exists in Nevada citing various cases that do not even  
28 comment on this claim.

1 First, neither *Schlotfeldt v. Charter Hosp. of Las Vegas*, 112 Nev. 42, 910 P.2d 271 (1996), nor  
2 *Renown Health, Inc. v. Vanderford*, 126 Nev. 221, 235 P.3d 614 (2010), overrule *Oehler's* holding  
3 regarding the availability of a corporate negligence claim in a medical malpractice action. *Schlotfeldt*  
4 does not comment on corporate negligence. 112 Nev. at 47. Its citation to *Oehler* only relates to the  
5 amount of evidence needed at the summary judgment stage to prove an agency relationship exists. *Id.*  
6 Those comments do not overrule *Oehler's* holding allowing corporate negligence claims.

7 *Renown* does not comment on *Oehler* or a corporate negligence claim. It only holds there is no  
8 “absolute nondelegable duty” of a hospital to ensure a patient receives competent medical care. 126 Nev.  
9 at 222. That type of duty is a strict liability concept. *Id.* at 224. Choloe’s proposed corporate negligence  
10 claim does not assert strict liability based on an “absolute nondelegable duty.” Nothing in *Renown*  
11 prevents this Court from allowing Choloe to amend her complaint to add a corporate negligence claim.

12 Second, Sunrise cites *Nogle v. Beech Street, Corp.*, an unpublished federal district court case,  
13 that acknowledges the Nevada recognized tort of corporate negligence. 2013 WL 1182680, \*3 (D. Nev.  
14 2013). *Nogle* is one of the various cases that came out of the hepatitis C outbreak in 2008 relating to the  
15 Endoscopy Center of Nevada’s failure to use proper aseptic techniques to prevent contamination  
16 between patients. This was a countywide scandal. The court in *Nogle* was hesitant to use the corporate  
17 negligence claim as a basis for a negligent credentialing theory of liability relating to an insurance  
18 company being sued for the negligence of the Endoscopy Center of Nevada. Those are not the facts of  
19 this case and a federal court’s unpublished decision commenting on Nevada law is not a binding  
20 authority on this Court.

21 Here, the “negligent credentialing” issue relates to Dr. Delee and the various malpractice issues  
22 he has had in the past. These issues are stated with specificity in paragraphs 28 and 29 of Choloe’s  
23 proposed Amended Complaint, which state:

24 28. That Defendant Sunrise Hospital was aware of Dr. Delee’s extensive history of  
25 failing to adhere to the standard of care. Prior to July of 2016, he had eight (8)  
26 instances of malpractice reported to the Nevada Medical Board. The settlements  
27 for those malpractice cases totals almost \$3 million. Additionally, on May 13,  
28 2016, two months before the subject incident, Sunrise Hospital was sued because  
Dr. Delee breached the standard of care when he delivered a baby at Sunrise  
Hospital while under the influence of alcohol causing permanent damage to the  
baby. (See Complaint, filed on May 13, 2016, in the Eighth Judicial District  
Court, in *Sims v. Delee*, Case No. A-16-736708-C.) His intoxication while

1 providing medical care was video-recorded where he made statements  
2 confirming his intoxication. (See Complaint, filed on May 13, 2016, in the  
3 Eighth Judicial District Court, in Sims v. Delee, Case No. A-16-736708-C,  
4 at ¶¶ 15-16.) Sunrise Hospital settled that case on January 5, 2018. (See  
5 Motion for Good Faith Settlement and Dismissal of Claims Against  
6 Sunrise Hospital, filed on August 22, 2018, in the Eighth Judicial District  
7 Court, in Sims v. Delee, Case No. A-16-736708-C.)

- 8 29. Based on Sunrise Hospital's knowledge that Dr. Delee was providing medical  
9 treatment on its premises while under the influence of alcohol, it should have  
10 immediately suspended his privileges and/or provided additional supervision of  
11 Dr. Delee while caring for patients on its premises.

12 These actions by Dr. Delee, and Sunrise's liability, is based on the proximity of Dr. Delee to Sunrise and  
13 Sunrise's knowledge of Dr. Delee's past "bad acts." Unlike *Nogle*, Sunrise had direct, prior knowledge  
14 (approximately two months) of Dr. Delee's issues with alcohol before Choloe received care at Sunrise in  
15 July of 2016.

16 Because Sunrise has failed to provide any reason, such as undue delay, bad faith or dilatory  
17 motive on behalf of Choloe in asserting corporate negligence, justice requires this Court grant her leave  
18 to amend her complaint.

19 **2. *Sunrise has known about Choloe's vicarious liability theory based on ostensible***  
20 ***agency since 2019.***

21 Since Sunrise filed its original motion for partial summary judgment based on ostensible agency  
22 in Spring of 2019, all parties to this suit have been on notice that Choloe is relying on this theory of  
23 liability. She has sought leave to amend her complaint to add this theory based on Sunrise's repeated  
24 attempts to dismiss this claim. Each time, Sunrise has asserted she did not properly plead this theory,  
25 even though Sunrise is on proper notice. Justice requires this theory be added to her complaint so that  
26 Sunrise will stop making arguments that put technical niceties before this State's policy to hear all cases  
27 on the merits. *See Costello*, 127 Nev. at 441.

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1 **III. CONCLUSION**

2 Based on the foregoing, this Court should grant Choloé leave to amend her complaint in this  
3 case.

4 DATED this 30th day of June, 2020.

5 LAW OFFICES OF DANIEL MARKS

6 /s/ Nicole M. Young

7 \_\_\_\_\_  
8 DANIEL MARKS, ESQ.  
9 Nevada State Bar No. 002003  
10 NICOLE M. YOUNG, ESQ.  
11 Nevada State Bar No. 12659  
12 610 South Ninth Street  
13 Las Vegas, Nevada 89101  
14 Attorneys for Plaintiff  
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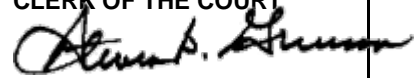
1 **CERTIFICATE OF SERVICE**

2 I hereby certify that I am an employee of the Law Office of Daniel Marks and that on the 30th  
3 day of June, 2020, pursuant to NRCP 5(b) and Administrative Order 14-2, I electronically transmitted a  
4 true and correct copy of the above and foregoing **REPLY IN SUPPORT OF MOTION FOR LEAVE**  
5 **OF COURT TO AMEND COMPLAINT** by way of Notice of Electronic Filing provided by the court  
6 mandated E-file & Serve System, as follows:  
7 following:

8 Erik K. Stryker, Esq.  
9 WILSON, ELSE, MOSKOWITZ, EDELMAN & DICKER LLP  
10 300 South 4<sup>th</sup> Street, 11<sup>th</sup> floor  
Las Vegas, Nevada 89101  
Attorneys for Frank J. Delee M.D. and Frank J. Delee P.C.

11 Sherman Mayor, Esq.  
12 HALL PRANGLE & SCHOONVELD, LLC.  
13 1160 N. Town Center Dr., Ste. 200  
Las Vegas, Nevada 89144  
Attorneys for Sunrise Hospital and Medical Center LLC.

14  
15  
16 /s/ Nicole M. Young  
17 An employee of the  
LAW OFFICE OF DANIEL MARKS  
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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

CHOLOE GREEN, an individual,  
  
Plaintiff,  
  
v.

Case No. A-17-757722-C  
Dept. No. IX  
  
Date: June 23, 2020  
Time: 8:30 a.m.

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.

***ORAL ARGUMENT REQUESTED***

**REPLY IN SUPPORT OF COUNTERMOTION TO STRIKE SUNRISE'S RENEWED  
MOTION, FOR ATTORNEY'S FEES, AND SANCTIONS**

COMES NOW the Plaintiff Choloe 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 Reply in Support of Countermotion to Strike Sunrise's Renewed Motion, for Attorney's Fees, and Sanctions. The grounds for Plaintiff's Reply are set forth in the following Memorandum of Points and Authorities.

DATED this 30th day of June, 2020.

LAW OFFICES OF DANIEL MARKS

/s/ Nicole M. Young

\_\_\_\_\_  
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. INTRODUCTION**

3 Defendant Sunrise Hospital and Medical Center, LLC (“Sunrise”) fails to provide this Court with  
4 any authority or new evidence that would allow it to reconsider its prior ruling on Sunrise’s original  
5 motion for partial summary judgment relating to ostensible agency.

6 It is unknown why Sunrise thought it had to file a third-party complaint in this action. Sunrise  
7 tries to argue that it did so to protect itself from some unknown claim. This argument flies in face of how  
8 defendants in medical malpractice cases defend these suits. As John Cotton, Esq., testified before the  
9 Nevada legislature regarding the revised several liability language of NRS 41A.045 in 2015, “I do not  
10 have the burden of proving who was damaged or how much that person was damaged.” *See* Minutes of  
11 the Senate Committee on Judiciary, 78<sup>th</sup> Session, at pp. 39-40 (May 26, 2015). Mr. Cotton provided that  
12 response to a question of whether a doctor/hospital defendant would file a third-party complaint in a  
13 malpractice suit as it relates to several liability.

14 The filing of the third-party complaint, and this court’s dismissal of that complaint, does not  
15 affect this Court’s prior order denying Sunrise’s motion for partial summary judgment relating to  
16 ostensible agency. Plaintiff Choloe Green’s (“Choloe”) ability to prove ostensible agency has not  
17 changed since this Court first considered Sunrise’s original motion. Based on the evidence, the  
18 ostensible agency between Dr. Kia and Sunrise is still an issue of fact for the jury.

19 **II. LEGAL ARGUMENT**

20 NRCP 12(f) allows this Court to strike redundant matters. A renewed motion is a redundant  
21 matter if the moving party does not seek rehearing/reconsideration in accordance with EDCR 2.24 or  
22 seek leave of this court. EDCR 2.24(a). Res judicata prevents litigants who are dissatisfied with a  
23 decision from filing “serial motions until the right circumstances or the right judge allows them to  
24 achieve a different result, based on essentially the same facts.” *Ellis v. Carucci*, 123 Nev. 145, 151, 161  
25 P.3d 239, 243 (2007). “Filing serial motions seeking the same relief only delays [] resolution.”  
26 *Warenback v. Neven*, 2018 WL 834607, \*4 (D.Nev. Feb. 12, 2018). A serial motion is a redundant  
27 matter that this Court must strike.

28 *///*

1 In this case, Sunrise glosses over the year long delay it caused this case when it filed its third-  
2 party complaint. It also ignores how the late filing of the “Order from March 12, 2019 Hearing” actually  
3 did not start the clock for rehearing under EDCR 2.24 until March 19, 2020, which interestingly enough  
4 is the same day former Third-Party Defendant NHG filed its Motion for Judgment on the Pleadings.

5 The instant motion does not provide any new information or evidence that would force a jury to  
6 find no ostensible agency. In fact, Dr. Kia reported to the Medical Board of California that his medical  
7 practice in Las Vegas is at Sunrise on nine different occasions. (*See Exhibit 1.*) No where in that  
8 decision does the Board reference Dr. Kia reporting any affiliation with NHG or another hospital in Las  
9 Vegas. (*See Exhibit 1.*) The Board also references a letter of recommendation provided by Prashant  
10 Gundre, M.D., Chairman of Medicine at Sunrise Hospital, who commented Dr. Kia is “well-liked at the  
11 hospital.” (*See Exhibit 1.*) The findings and evidence considered by the Board show Dr. Kia viewed his  
12 role at Sunrise more akin to an employer/employee relationship rather than him being in private practice  
13 as Sunrise would suggest.

14 Sunrise violated EDCR 2.24 when it filed the instant renewed motion. Presumably, the only  
15 reason Sunrise renewed this motion is because this case now has a new judge.<sup>1</sup> EDCR 2.24(a), which is  
16 based on the theory of res judicata, does not allow serial motions based on the same facts. This renewed  
17 motion was brought based on the same facts, and as such, without reasonable ground. *See NRS*  
18 *18.010(2)(b)*; and *see Ellis v. Carucci*, 123 Nev. 145, 151, 161 P.3d 239, 243 (2007). This frivolous  
19 filing burdens this Court’s limited resources (especially given the current state of affairs surrounding  
20 CoVid-19), hinders the timely resolution of this case, and unnecessarily increases the cost of litigation.  
21 *See NRS 18.010(2)(b)*.

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26 <sup>1</sup> Sunrise may argue this Court’s comments in the May 11, 2020, Minute Order allowed renewal of  
27 the instant motion. Those comments, however, simply acknowledge the passing of the deadline to file a  
28 motion for reconsideration and that Sunrise’s argument the prior decision was erroneous was not properly  
before the court.

1 Because Sunrise failed to timely and properly seek rehearing/ reconsideration within the EDCR  
2 2.24 deadline, and has provided no new evidence, this Court should strike the instant motion.  
3 Accordingly, this Court should strike the instant motion, award Choloe attorney's fees, and impose  
4 sanctions under NRCP 11. *See* 18.010(2)(b).

5 **III. CONCLUSION**

6 Based on the foregoing, this Court should strike Sunrise's renewed motion and sanction Sunrise  
7 for bringing the instant motion in violation of the court rules, especially since it presented no new  
8 evidence of such overwhelming force to take this issue out of a jury's hands.

9 DATED this 30th day of June, 2020.

10 LAW OFFICE OF DANIEL MARKS

11 /s/ Nicole M. Young

12 DANIEL MARKS, ESQ.  
13 Nevada State Bar No. 002003  
14 NICOLE M. YOUNG, ESQ.  
15 Nevada State Bar No. 12659  
16 610 South Ninth Street  
17 Las Vegas, Nevada 89101  
18 Attorneys for Plaintiff  
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1 **CERTIFICATE OF SERVICE**

2 I hereby certify that I am an employee of the Law Office of Daniel Marks and that on the 30th  
3 day of June, 2020, pursuant to NRCP 5(b) and Administrative Order 14-2, I electronically transmitted a  
4 true and correct copy of the above and foregoing **REPLY IN SUPPORT OF COUNTERMOTION**  
5 **TO STRIKE SUNRISE’S RENEWED MOTION, FOR ATTORNEY’S FEES, AND SANCTIONS**  
6 by way of Notice of Electronic Filing provided by the court mandated E-file & Serve System, as follows:  
7 following:

8 Erik K. Stryker, Esq.  
9 WILSON, ELSE, MOSKOWITZ, EDELMAN & DICKER LLP  
10 300 South 4<sup>th</sup> Street, 11<sup>th</sup> floor  
Las Vegas, Nevada 89101  
Attorneys for Frank J. Delee M.D. and Frank J. Delee P.C.

11 Sherman Mayor, Esq.  
12 HALL PRANGLE & SCHOONVELD, LLC.  
13 1160 N. Town Center Dr., Ste. 200  
Las Vegas, Nevada 89144  
Attorneys for Sunrise Hospital and Medical Center LLC.

14  
15 /s/ Nicole M. Young  
16 \_\_\_\_\_  
An employee of the  
17 LAW OFFICE OF DANIEL MARKS  
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# **EXHIBIT 1**

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**BEFORE THE  
MEDICAL BOARD OF CALIFORNIA  
DEPARTMENT OF CONSUMER AFFAIRS  
STATE OF CALIFORNIA**

**In the Matter of the Petition to Revoke )  
Probation Against: )**

**ALI KIA, M.D. )**

**Case No. 800-2018-049798**

**Physician's and Surgeon's )  
Certificate No. C145549 )**

**OAH No. 2019061183**

**Respondent )  
\_\_\_\_\_ )**

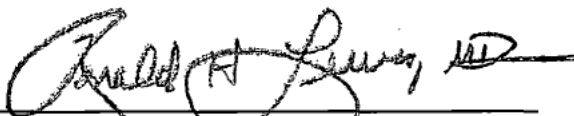
**DECISION**

**The attached Proposed Decision is hereby adopted as the Decision and Order of the Medical Board of California, Department of Consumer Affairs, State of California.**

**This Decision shall become effective at 5:00 p.m. on January 3, 2020.**

**IT IS SO ORDERED: December 4, 2019.**

**MEDICAL BOARD OF CALIFORNIA**



**Ronald H. Lewis, M.D., Chair  
Panel A**

**BEFORE THE  
MEDICAL BOARD OF CALIFORNIA  
DEPARTMENT OF CONSUMER AFFAIRS  
STATE OF CALIFORNIA**

**In the Matter of the Petition to Revoke Probation Against:**

**ALI KIA, M.D., Respondent.**

**Physician's and Surgeon's Certificate No. C 145549**

**Case No. 800-2018-049798**

**OAH No. 2019061183**

**PROPOSED DECISION**

Administrative Law Judge Jill Schlichtmann, State of California, Office of Administrative Hearings, heard this matter on September 16, 2019, in Oakland, California.

Deputy Attorney General Lynne Dombrowski represented complainant Kimberly Kirchmeyer, Executive Director, Medical Board of California, Department of Consumer Affairs.

Linda Rurangirwa, Attorney at Law, represented respondent Ali Kia, M.D., who was present.

The record was held open for receipt of character references from respondent, and for a response thereto from complainant. Respondent timely submitted his

character references which were marked jointly as Exhibit B. Complainant filed an objection to the letters, which was marked as Exhibit 9 and considered. Exhibit B was received in evidence as administrative hearsay.

After the hearing, complainant requested that official notice be taken of a procedural change in the University of California, San Diego, Physician Assessment and Clinical Education Program (PACE), as described in a document printed from the PACE website. Respondent filed no objection to the request. The document was marked as Exhibit 10, and official notice is taken of the information contained therein.

The matter was submitted for decision on October 7, 2019.

## **FACTUAL FINDINGS**

### **License History and Background**

1. In a Decision and Order dated October 3, 2016, and effective October 10, 2016, the Medical Board of California (Board) issued Physician's and Surgeon's Certificate No. C 145549 to Ali Kia, M.D. (respondent). The certificate was issued based on a Stipulation for a Probationary License signed by respondent on September 2, 2016. The parties agreed in the stipulation that respondent had failed to disclose required information in response to questions about his criminal history and medical education in the application for licensure.

2. The probationary license included the standard terms of probation and required respondent to complete a professionalism program (ethics course). The duration of probation was three years.



3. Condition No. 9 required respondent to practice for at least 40 hours per month in California. If he did not do so, his probation status would be tolled and would not apply to the reduction of the probationary term. During periods of non-practice, respondent was not required to comply with the terms of probation with the exception of obeying all laws, keeping the Board apprised of his contact information and travel plans, and filing Quarterly or Semi-Annual Reports.

Pursuant to Condition No. 9, if respondent failed to practice in California for at least 40 hours per month for 18 calendar months, he was required to complete a clinical training program prior to resuming the practice of medicine. A period of non-practice in California exceeding two years constituted a probation violation.

### **Respondent's Compliance with Probation Terms**

4. While on probation, respondent has resided in Nevada. Respondent has been licensed to practice medicine in Nevada since completing his residency in internal medicine at the University of Nevada, Las Vegas (UNLV) School of Medicine, in 2006. Respondent is board certified in internal medicine.

5. Respondent and Inspector Cajetan Onu spoke over the telephone to discuss the terms of probation on October 21, 2016. On November 3, 2016, the case was reassigned to probation monitor Maggie Lee.

6. On January 4, 2017, Lee advised respondent that because he was residing and practicing in Nevada, his probation was in tolled status. Lee reminded respondent to advise her of any address changes in writing, and to notify her in writing at least 30 days before resuming practice in California.

7. On January 5, 2017, respondent filed a semi-annual declaration at Lee's direction. He reported he was practicing at Sunrise Hospital and Medical Center (Sunrise Hospital) in Las Vegas.

8. On June 9, 2017, Lee wrote to respondent, advising him that if he decided to practice medicine in California, he was required to notify her in writing at least 15 days before returning to practice. Lee reminded respondent of this requirement every quarter.

9. On July 5, 2017, respondent filed a quarterly declaration with the Board. He reported that he was continuing to practice at Sunrise Hospital. He also advised Lee that he had passed the American Board of Internal Medicine examination on April 26, 2017, but his board certification was being held up due to his California probation.

10. Respondent filed a quarterly declaration on October 16, 2017. Respondent expressed difficulty he was having while working long hours at Sunrise Hospital and looking for employment in California to satisfy Condition No. 9.

11. Respondent filed a quarterly declaration on January 8, 2018. He notified his probation monitor that in December 2017 he had passed the oral and written board examinations in functional/metabolic medicine given by the American Academy of Anti-Aging and Regenerative Medicine. Respondent continued to practice at Sunrise Hospital in Nevada.

12. Respondent filed a quarterly declaration on March 26, 2018. He advised his probation monitor that he continued to work at Sunrise Hospital in Nevada, and search for employment in California in order to comply with Condition No. 9.

13. On April 16, 2018, Lee wrote to respondent notifying him that his non-practice in California had exceeded 18 months. Lee further informed respondent that on October 10, 2018, his period of non-practice would exceed two years, constituting a probation violation. Lee inquired as to whether respondent had secured employment in California.

14. Respondent filed a quarterly declaration on July 5, 2018. He reported continuing to work at Sunrise Hospital while searching for employment in California.

15. Respondent filed a quarterly declaration on October 4, 2018. Respondent advised his probation monitor that in addition to working full time at Sunrise Hospital, he was working at the University Medical Center, at UNLV.

16. On October 12, 2018, Lee sent a non-compliance letter to respondent, advising him that he was in violation of Condition No. 9 of his probation because his period of non-practice in California had exceeded two years.

17. Respondent filed a quarterly declaration on January 7, 2019, in which he reported that he continued to work full time at Sunrise Hospital and at the University Medical Center at UNLV.

18. On January 30, 2019, the petition to revoke probation was filed.

19. In April 2019, respondent accepted a part-time position working at an urgent care clinic in Woodland Hills, California. Respondent notified Lee the day before he began working at the clinic. Respondent violated his probation terms by failing to complete a clinical training program before returning to practice in California after 18 months of non-practice in California had elapsed. Several days later, a Board representative instructed respondent to stop working at the clinic; he did so.

20. In May 2019, respondent began the application process to attend the clinical training program at PACE.

21. On July 3, 2019, respondent filed a quarterly report. He was continuing to work at Sunrise Hospital. He reported that he had completed the initial portion of the application to attend PACE and had paid the initial fee.

22. Respondent has not completed the ethics course or paid probation monitoring costs while his probation has been tolled.

### **Evidence of Rehabilitation**

23. Respondent was originally placed on probation by the Board because he failed to disclose a speeding ticket he had received in 2002, and failed to disclose that in 2000 he had had to repeat a semester in medical school. Respondent graduated from Ross University School of Medicine in Dominica. Respondent repeated the semester due to his inability to complete work following a hurricane that flooded his apartment and caused damage throughout the island. Respondent graduated from medical school in 2002. Respondent reports that both occurrences had slipped his mind when he applied for licensure in California in 2016.

24. After explaining the basis for his probationary status in California, the American Board of Internal Medicine permitted him to retain his board certification. The Nevada Board issued a public reprimand and assessed a fine as a result of the disciplinary action taken by California. Respondent has paid the fine. His license in Nevada is unrestricted. His certificate in Functional/Metabolic Medicine is being withheld while he is on probation.

25. As of July 31, 2019, respondent completed the PACE application process (which included submitting 16 redacted patient charts for review) and was scheduled to attend the program September 24 through 27, 2019. Respondent has paid the full fee for the program, approximately \$15,000.

26. Respondent will complete an approved professionalism (ethics) course if allowed to remain on probation. He took an ethics course in Nevada, which did not meet the criteria for his California probation.

27. Respondent is originally from California and has family here. He would like to practice in this state. Respondent worked 65 to 75 hours per week in Las Vegas and was studying for the board examinations given by the American Board of Anti-Aging and Regenerative Medicine. Due to his busy schedule, he was unable to find the time to secure employment in California.

Respondent now has offers to practice part time at the Woodland Hills urgent care clinic, at Lompoc Hospital and at an outpatient clinic in Riverside County. Respondent is confident that he can work more than 40 hours per month in California after completing the PACE program if given the opportunity by the Board.

28. Respondent provided character references from four physicians with whom he has worked in Nevada. Prashant Gundre, M.D., is the Chairman of Medicine at Sunrise Hospital. Dr. Gundre wrote a letter dated September 18, 2019, for the Board's consideration. Dr. Gundre first met respondent in 2012. Dr. Gundre describes respondent as compassionate, dedicated to patient care, and well-liked at the hospital.

Esteban Hennings, M.D., has worked with respondent at Sunrise Hospital since 2009. Dr. Hennings commends respondent for his service to the community and his

involvement in hospital committees. Dr. Hennings considers respondent to be an asset to any organization.

Bashir Rashid, M.D., first met respondent in 1992 during their undergraduate studies at the University of California, Riverside. They also attended medical school together at Ross University School of Medicine. Dr. Rashid and respondent have worked together managing patients and covering on-call services at Sunrise Hospital since 2008. Dr. Rashid recommends respondent as a compassionate and caring hospitalist.

Ronald Shockley, M.D., met respondent during residency training between 2003 and 2006 at UNLV School of Medicine. Dr. Shockley served as respondent's attending physician on rotations in infectious diseases. Dr. Shockley has also worked with respondent at Sunrise Hospital. Dr. Shockley describes respondent as knowledgeable, skillful and humble, and commends him for serving as an adjunct professor of medicine at UNLV, to mentor medical students and residents.

## **LEGAL CONCLUSIONS**

1. The burden of proof in this matter is on the Board and the standard of proof is a preponderance of the evidence. (*Sandarg v. Dental Bd. of California* (2010) 184 Cal.App.4th 1434, 1441; *Owen v. Sands* (2009) 176 Cal.App.4th 985.)

2. The purpose of the Medical Practice Act is to assure the high quality of medical practice; in other words, to keep unqualified persons and those guilty of unprofessional conduct out of the medical profession. (*Shea v. Board of Medical Examiners* (1978) 81 Cal.App.3d 564, 574.) The purpose of physician discipline is to

protect the public and to aid in the rehabilitation of licensees. (Bus. & Prof. Code, § 2229.)

3. Complainant seeks to revoke respondent's certificate based on his failure to comply with Condition No. 9 of his probation. Complainant has established that respondent violated his probation by failing to practice in California for 40 hours per month within two years of being placed on probation. Respondent also violated Condition No. 9 by practicing in California after 18 months had elapsed without completing a clinical training program. (Factual Findings 16 and 19.) Cause to revoke respondent's probation exists.

4. Cause to revoke probation having been established, the issue is whether revocation is necessary to protect the public. Respondent has practiced successfully in Nevada since 2003. The circumstances underlying his probationary status in California involved forgetting to disclose a speeding ticket in 2002 and having had to repeat a semester of medical school due to a flood in 2000. Respondent was scheduled to complete the PACE program in September, and is committed to abiding by the terms of his probation in California. He has several offers of employment here, in his home state, near his family. Respondent is held in high regard by physicians with whom he has practiced in Nevada for over 10 years. Based on the totality of the circumstances, the evidence supports revoking and reinstating respondent's probation on the same terms and conditions. Because his probation has been tolled since it was imposed, it is unnecessary to extend the probationary period.

## ORDER

The petition to revoke Physician's and Surgeon's Certificate No. C 145549, issued to respondent Ali Kia, is granted; however, the revocation is stayed and the probation is reinstated under the same terms and conditions.

DATE: October 31, 2019

DocuSigned by:  
*Jill Schlichtmann*  
D0097D940B484D9...

JILL SCHLICHTMANN

Administrative Law Judge

Office of Administrative Hearings



1 XAVIER BECERRA  
Attorney General of California  
2 JANE ZACK SIMON  
Supervising Deputy Attorney General  
3 LYNNE K. DOMBROWSKI  
Deputy Attorney General  
4 State Bar No. 128080  
455 Golden Gate Avenue, Suite 11000  
5 San Francisco, CA 94102-7004  
Telephone: (415) 510-3439  
6 Facsimile: (415) 703-5480  
E-mail: Lynne.Dombrowski@doj.ca.gov  
7 *Attorneys for Complainant*

FILED  
STATE OF CALIFORNIA  
MEDICAL BOARD OF CALIFORNIA  
SACRAMENTO January 30 20 19  
BY: 2:11 PM ANALYST

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BEFORE THE  
MEDICAL BOARD OF CALIFORNIA  
DEPARTMENT OF CONSUMER AFFAIRS  
STATE OF CALIFORNIA

In the Matter of the Petition to Revoke Probation Against:

**ALI KIA, M.D.**  
3022 S. Durango Dr.  
Las Vegas, NV 89117-4439

Physician's and Surgeon's Certificate No. C 145549

Respondent.

Case No. 800-2018-049798

**PETITION TO REVOKE  
PROBATION**

Complainant alleges:

PARTIES

1. Kimberly Kirchmeyer (Complainant) brings this Petition to Revoke Probation solely in her official capacity as the Executive Director of the Medical Board of California, Department of Consumer Affairs.

2. On October 3, 2016, the Medical Board of California issued a Decision and Order in a disciplinary action entitled "In the Matter of the Application of Ali Kia," Case No. 800-2016-025954 (the "Decision"). The Decision, which became effective at 5:00 p.m. on October 10, 2016, adopted a stipulation for a probationary license in which Respondent was issued a Physician's and Surgeon's Certificate that was placed on probation for a period of three (3) years with certain terms and conditions. A copy of that Decision is attached as Exhibit A and is incorporated herein by reference.



6. Section 2228 of the Code states:

“The authority of the board or the California Board of Podiatric Medicine to discipline a licensee by placing him or her on probation includes, but is not limited to, the following:

“(a) Requiring the licensee to obtain additional professional training and to pass an examination upon the completion of the training. The examination may be written or oral, or both, and may be a practical or clinical examination, or both, at the option of the board or the administrative law judge.

“(b) Requiring the licensee to submit to a complete diagnostic examination by one or more physicians and surgeons appointed by the board. If an examination is ordered, the board shall receive and consider any other report of a complete diagnostic examination given by one or more physicians and surgeons of the licensee's choice.

“(c) Restricting or limiting the extent, scope, or type of practice of the licensee, including requiring notice to applicable patients that the licensee is unable to perform the indicated treatment, where appropriate.

“(d) Providing the option of alternative community service in cases other than violations relating to quality of care.”

## CAUSE TO REVOKE PROBATION

(Non-practice in excess of two years during probation)

7. At all times after October 10, 2016, the effective date of Respondent's probation, Probation Condition No. 9 stated:

“Applicant shall notify the Board or its designee in writing within fifteen (15) calendar days of any periods of non-practice lasting more than thirty (30) calendar days and within fifteen (15) calendar days of applicant's return to practice. **Non-practice is defined as any period of time applicant is not practicing medicine in California as defined in Business and Professions Code sections 2051 and 2052 for at least forty (40) hours in a calendar month in direct patient care, clinical activity or teaching, or other activity as approved by the Board.** All time spent in an intensive training program which has been approved by the Board or its designee shall not be considered non-practice. Practicing

1 medicine in another state of the United States or Federal jurisdiction while on probation  
2 with the medical licensing authority of that state of jurisdiction shall not be considered non-  
3 practice. A Board-ordered suspension of practice shall not be considered as a period of  
4 non-practice.

5 **In the event applicant's period of non-practice while on probation exceeds eighteen**  
6 **(18) calendar months, applicant shall successfully complete a clinical training**  
7 **program that meets the criteria of Condition 18 of the current version of the Board's**  
8 **Manual of Model Disciplinary Orders and Disciplinary Guidelines prior to resuming**  
9 **the practice of medicine.**

10 **Applicant's period of non-practice while on probation shall not exceed two (2) years.**

11 Periods of non-practice will not apply to the reduction of the probationary term.

12 Periods of non-practice will relieve applicant of the responsibility to comply with the  
13 probationary terms and conditions with the exception of this condition and the following  
14 terms and conditions of probations: Obey All Laws; and General Probation Requirements.”  
15 (Emphasis added.)

16 8. At all times after October 10, 2016, the effective date of Respondent’s probation,  
17 Probation Condition No. 11 stated:

18 “Failure to fully comply with any term or condition of probation is a violation of probation.  
19 If applicant violates probation in any respect, the Board, after giving applicant notice and  
20 the opportunity to be heard, may revoke probation and terminate the probationary license.  
21 If an Accusation or Petition to Revoke Probation is filed against applicant during probation,  
22 the Board or its designee shall have continuing jurisdiction until the matter is final, and the  
23 period of probation shall be extended until the matter is final.”

24 9. Respondent’s Physician’s and Surgeon’s Certificate No. C 145549 is subject to  
25 revocation because Respondent has failed to comply with Probation Condition No. 9 in that his  
26 period of non-practice exceeded two years as of October 11, 2018. The facts and circumstances  
27 regarding this violation are as follows:

28 a. At all times during probation, Respondent has not practiced medicine in California.

- 1           b.     At all times during probation, Respondent has resided in Nevada.
- 2           c.     At all times during probation, Respondent has not been subject to a probation with  
3 Nevada's, or any other state's, medical licensing authority.
- 4           d.     On or about January 4, 2017, the Board's Probation Unit sent Respondent a letter  
5 informing him that his probation was in a Non-Practice and Out-of-State (tolled) status, pursuant  
6 to Probation Condition No. 9.
- 7           e.     On or about January 5, 2017, the Board received Respondent's signed Semi-Annual  
8 Declaration (Out-of-State Probationer) for the reporting period covering July through December  
9 2016.
- 10          f.     On or about January 8, 2018, the Board received Respondent's signed Fourth Quarter  
11 Quarterly Declaration for the period of October through December 2017. In his Attachment  
12 explaining his "No" response to Question #13: "Have you complied with each term and condition  
13 of probation?", Respondent stated: "I have not worked the 40 hours per month as required by The  
14 Medical Board of California due to scheduling conflicts with my current on-call schedules at  
15 Sunrise Hospital & Medical Center . . . ."
- 16          g.     On or about March 26, 2018 the Board received Respondent's signed First Quarter  
17 Quarterly Declaration for the period of January through March, 2018. Respondent's non-practice  
18 status remained unchanged.
- 19          h.     On or about April 16, 2018, the Board's Probation Unit sent Respondent a letter that,  
20 notified him that he exceeded 18 months of non-practice on April 10, 2018 and that, should he  
21 resume the practice of medicine in California after that date, he would be required to successfully  
22 complete a Board-approved Clinical Training Program. The letter also notified Respondent that,  
23 on October 10, 2018, his period of non-practice while on probation will exceed two years and his  
24 probationary license will be subject to revocation.
- 25          i.     On or about July 5, 2018 the Board received Respondent's signed Second Quarter  
26 Quarterly Declaration for the period of April through June, 2018. Respondent's non-practice  
27 status remained unchanged.
- 28

1 j. On or about October 12, 2018, the Board's Probation Unit sent a "Non-Compliance  
2 Letter" to Respondent that notified him of his violation of Probation Condition No. 9 in that he  
3 had exceeded two years of non-practice on October 10, 2018.

4 10. As of October 11, 2018, Respondent's period of non-practice while on probation  
5 exceeded two years and he continues to be in non-practice. Respondent, therefore, is in violation  
6 of the terms of probation and cause exists for the carrying out of the disciplinary Decision and  
7 Order, Probation Condition No. 11, which provides for a revocation of the probation and  
8 termination of the probationary license for failure to fully comply with any term or condition of  
9 probation, after giving applicant notice and the opportunity to be heard.

10 PRAYER

11 WHEREFORE, Complainant requests that a hearing be held on the matters herein alleged  
12 and that, following the hearing, the Medical Board of California issue a decision:

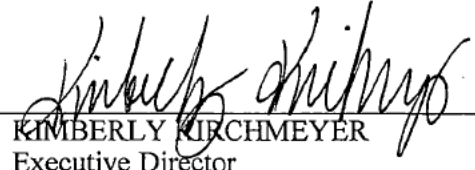
13 1. Revoking the probation that was granted by the Medical Board of California in Case  
14 No. 800-2016-025954 and terminating the probationary license, Physician's and Surgeon's  
15 Certificate No. C 145549 issued to Ali Kia, M.D.;

16 2. Revoking, suspending or denying approval of Ali Kia, M.D.'s authority to supervise  
17 physician's assistants and advanced practice nurses;

18 3. Ordering Ali Kia, M.D., if placed on probation, to pay the Medical Board of  
19 California the costs of probation monitoring; and,

20 4. Taking such other and further action as deemed necessary and proper.

21  
22 DATED: January 30, 2019

  
KIMBERLY KIRCHMEYER  
Executive Director  
Medical Board of California  
Department of Consumer Affairs  
State of California  
Complainant

# **Exhibit A**

## **Decision and Order**

**Medical Board of California Case No. 800-2016-025954**

**BEFORE THE  
MEDICAL BOARD OF CALIFORNIA  
DEPARTMENT OF CONSUMER AFFAIRS  
STATE OF CALIFORNIA**

In the Matter of the Application of:

File No. 800-2016-025954

Ali Kia

Applicant.

**DECISION AND ORDER**

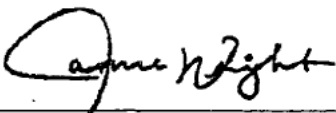
The attached Stipulation for a Probationary License is hereby accepted and adopted as the Decision and Order of the Medical Board of California, Department of Consumer Affairs, State of California.

This Decision shall become effective at 5:00 p.m. on **October 10, 2016**, although the probation will not commence until the applicant completes any remaining requirements for licensure and the license is issued.

**ORDERED:** October 3, 2016

MEDICAL BOARD OF CALIFORNIA

By:

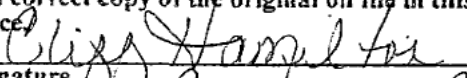
  
Jamie Wright, J.D., Chair  
Panel A

MEDICAL BOARD OF CALIFORNIA

I do hereby certify that this document is a true  
and correct copy of the original on file in this  
office.

Signature

Title

  
Elizabeth Hampel  
For the Custodian of Records  
November 05, 2018  
Date



BEFORE THE  
MEDICAL BOARD OF CALIFORNIA  
DEPARTMENT OF CONSUMER AFFAIRS  
STATE OF CALIFORNIA

In the Matter of the Application of:	)	Case No. 800-2016-025954
	)	
ALI KIA	)	
	)	
	)	STIPULATION FOR A
	)	PROBATIONARY LICENSE
For a Physician's and Surgeon's License )	)	
_____ )	)	

1) Ali Kia, applicant for a physician's and surgeon's license (hereinafter "applicant"), and Curtis J. Worden, Chief of Licensing of the Medical Board of California (Board), hereby stipulate as follows:

2) Applicant is eligible for medical licensure in California upon meeting all licensure requirements.

3) On March 3, 2016, applicant submitted an application for a Physician's and Surgeon's License in the State of California. Applicant failed to disclose required information in response to the criminal record history and medical education questions on the Physician's and Surgeon's application.

4) Section 480(a) of the Business and Professions Code states that a board may deny a license on the grounds that the applicant has one of the following: Section 480(a)(2) Done any act involving dishonesty, fraud, or deceit with the intent to substantially benefit himself or herself or another, or substantially injure another; Section 480(a)(3)(A) Done any act that if done by a licentiate of the business or profession in question, would be grounds for suspension or revocation of license; and Section 480(d) of the Business and Professions Code states a board may deny a license regulated by this code on the ground that the applicant knowingly made a false statement of fact required to be revealed in the application for the license. Section 2234 of the Business and Professions Code states that the board may take action for unprofessional conduct including, but is not limited to the following: Section 2234(e) The commission of any act involving dishonesty or corruption which is substantially related to the qualifications, functions, or duties of a physician and surgeon.

The above support a conclusion that grounds exist for denial pursuant to Sections 480(a)(2), 480(a)(3)(A), 480(d), 2234, and 2234(e) of the Business and Professions Code.

5) Under Section 2221 of the Business and Professions Code, the Board may deny a license to an applicant because of unprofessional conduct.

Alternatively, the Board has the discretionary authority to issue a probationary license with terms and conditions.

6) Applicant acknowledges he has a right to request a Statement of Issues and a hearing upon denial of license for cause. Applicant waives notice of hearing and judicial review in favor of this Stipulation for a Probationary License, which is subject to approval by the Board. If not approved, this Stipulation is null and void and may not be used for any purpose.

7) This Stipulation for a Probationary License shall be subject to approval by the Board. Applicant understands and agrees that counsel for the staff of the Board may communicate directly with the Board regarding this proposed Stipulation, without notice to or participation by applicant or his counsel. By signing the Stipulation, applicant understands and agrees that he may not withdraw this agreement or seek to rescind the Stipulation prior to the time the Board considers and acts upon it. If the Board fails to adopt this Stipulation, the offer of a Stipulation for a Probationary License shall be of no force or effect; except for this paragraph, it shall be inadmissible in any legal action between the parties, and the Board shall not be disqualified from further action by having considered this matter.

The staff recommends to the Board that a Probationary License be issued as follows:

#### ORDER

IT IS ORDERED THAT ALI KIA, applicant, be issued a Physician's and Surgeon's License on a probationary basis, subject to the following terms and conditions:

- 1) Applicant is placed on probation for a period of three (3) years. Probation shall begin on the date the applicant is issued a probationary license.
- 2) PROFESSIONALISM PROGRAM (ETHICS COURSE). Within sixty (60) calendar days of the effective date of this decision, applicant shall enroll in a professionalism program, that meets the requirements of Title 16, California Code of Regulations (CCR) section 1358.1. Applicant shall participate in and successfully complete that program. Applicant shall provide any information and documents that the program may deem pertinent. Applicant shall successfully complete the classroom component of the program not later than (6) six months after applicant's initial enrollment, and the longitudinal component of the program not later than the time specified by the program, but no later than one (1) year after attending the classroom component. The professionalism program shall be at applicant's expense and shall be in addition to the Continuing Medical Education (CME) requirements for renewal of licensure.

A professionalism program taken after the acts that gave rise to the charges in the Decision, but prior to the effective date of the Decision may, in the sole discretion of the Board or its designee, be accepted towards the fulfillment of this condition if the program would have been approved by the Board or its designee had the program been taken after the effective date of this Decision.

Applicant shall submit a certification of successful completion to the Board or its designee no later than fifteen (15) calendar days after successfully completing the program, or not later than fifteen (15) calendar days after the effective date of the Decision, whichever is later.

3) NOTIFICATION. Prior to engaging in the practice of medicine, applicant shall provide a true copy of the Stipulation to the Chief of Staff or the Chief Executive Officer at every hospital where privileges or membership are extended to applicant, at any other facility where applicant engages in the practice of medicine, including all physician and locum tenens registries or other similar agencies, and to the Chief Executive Officer at every insurance carrier which extends malpractice insurance coverage to applicant. Applicant shall submit proof of compliance to the Board or its designee within fifteen (15) calendar days.

4) SUPERVISION OF PHYSICIAN ASSISTANTS. During probation, applicant is prohibited from supervising physician assistants.

5) OBEY ALL LAWS. Applicant shall obey all federal, state and local laws, and all rules governing the practice of medicine in California and remain in full compliance with any court ordered criminal probation, payments, and other orders.

6) QUARTERLY DECLARATIONS. Applicant shall submit quarterly declarations under penalty of perjury on forms provided by the Board, stating whether there has been compliance with all conditions of probation.

Applicant shall submit quarterly declarations not later than ten (10) calendar days after the end of the preceding quarter.

7) GENERAL PROBATION REQUIREMENTS. Applicant shall comply with the Board's probation unit and all terms and conditions of this decision.

Applicant shall, at all times, keep the Board informed of his business and residence addresses, email address (if available), and telephone number. Changes of such addresses shall be immediately communicated in writing to the Board or its designee. Under no circumstances shall a post office box serve as an address of record, except as allowed by Business and Professions Code Section 2021(b).

Applicant shall not engage in the practice of medicine in applicant's or patient's place of residence, unless the patient resides in a skilled nursing facility or other similar licensed facility.

Applicant shall maintain a current and renewed California physician's and surgeon's probationary license.

Applicant shall immediately inform the Board or its designee, in writing, of travel to any areas outside the jurisdiction of California which lasts, or is contemplated to last, more than thirty (30) calendar days.

In the event applicant should leave the State of California to reside or to practice, applicant shall notify the Board or its designee in writing thirty (30) calendar days prior to the dates of departure and return.

8) INTERVIEW WITH BOARD OR ITS DESIGNEE. Applicant shall be available in person upon request for interviews either at applicant's place of business or at the probation unit office, with or without prior notice throughout the term of probation.

9) NON-PRACTICE WHILE ON PROBATION. Applicant shall notify the Board or its designee in writing within fifteen (15) calendar days of any periods of non-practice lasting more than thirty (30) calendar days and within fifteen (15) calendar days of applicant's return to practice. Non-practice is defined as any period of time applicant is not practicing medicine in California as defined in Business and Professions Code sections 2051 and 2052 for at least forty (40) hours in a calendar month in direct patient care, clinical activity or teaching, or other activity as approved by the Board. All time spent in an intensive training program which has been approved by the Board or its designee shall not be considered non-practice. Practicing medicine in another state of the United States or Federal jurisdiction while on probation with the medical licensing authority of that state or jurisdiction shall not be considered non-practice. A Board-ordered suspension of practice shall not be considered as a period of non-practice.

In the event applicant's period of non-practice while on probation exceeds eighteen (18) calendar months, applicant shall successfully complete a clinical training program that meets the criteria of Condition 18 of the current version of the Board's Manual of Model Disciplinary Orders and Disciplinary Guidelines' prior to resuming the practice of medicine.

Applicant's period of non-practice while on probation shall not exceed two (2) years.

Periods of non-practice will not apply to the reduction of the probationary term.

Periods of non-practice will relieve applicant of the responsibility to comply with the probationary terms and conditions with the exception of this condition and the following terms and conditions of probation: Obey All Laws; and General Probation Requirements.

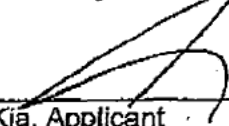
10) COMPLETION OF PROBATION. Applicant shall comply with all financial obligations (e.g. restitution, probation costs) not later than 120 calendar days prior to the completion of probation. Upon successful completion of probation, applicant's certificate shall be fully restored.

11) VIOLATION OF PROBATION. Failure to fully comply with any term or condition of probation is a violation of probation. If applicant violates probation in any respect, the Board, after giving applicant notice and the opportunity to be heard, may revoke probation and terminate the probationary license. If an Accusation or Petition to Revoke Probation is filed against applicant during probation, the Board or its designee shall have continuing jurisdiction until the matter is final, and the period of probation shall be extended until the matter is final.

12) LICENSE SURRENDER. Following the effective date of this Stipulation, if applicant ceases practicing due to retirement or health reasons or is otherwise unable to satisfy the terms and conditions of probation, applicant may request to surrender his or her license. The Board reserves the right to evaluate respondent's request and to exercise its discretion in determining whether or not to grant the request, or to take any other action deemed appropriate and reasonable under the circumstances. Upon formal acceptance of the surrender, applicant shall within fifteen (15) calendar days deliver applicant's wallet and wall certificate to the Board or its designee and applicant shall no longer practice medicine. Applicant will no longer be subject to the terms and conditions of probation. If respondent re-applies for a medical license, the application shall be treated as a petition for reinstatement of a revoked certificate.

13) PROBATION MONITORING COSTS. Applicant shall pay all costs associated with probation monitoring each and every year of probation, as designated by the Board, which may be adjusted on an annual basis. Such costs shall be payable to the Board and delivered to the Board or its designee no later than January 31 of each calendar year.

Applicant agrees to comply with the terms and conditions of the above Order.

  
Ali Kia, Applicant

9/2/16.  
Date

  
Curtis J. Worden, Chief of Licensing

09/15/2016  
Date

A-17-757722-C

**DISTRICT COURT  
CLARK COUNTY, NEVADA**

**Malpractice - Medical/Dental**

**COURT MINUTES**

**July 23, 2020**

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

---

**July 23, 2020      3:00 AM      Decision**

**HEARD BY:** Silva, Cristina D.

**COURTROOM:** RJC Courtroom 11B

**COURT CLERK:** Kathryn Hansen-McDowell

**RECORDER:**

**REPORTER:**

**PARTIES  
PRESENT:**

**JOURNAL ENTRIES**

- Pending before the Court are Plaintiff's Motion for Leave of Court to Amend Complaint, Defendant's Motion for Partial Summary Judgment, and Plaintiff's Countermotion to Strike Sunrise's Renewed Motion to Dismiss Claim of Ostensible Agency and Countermotion for Sanctions. Having reviewed the moving papers, the Court rules as follows:

**I. Defendant s Motion for Partial Summary Judgment**

For the reasons set forth in Defendant s Motion for Partial Summary Judgment, the motion is granted. The Court agrees with Plaintiff in that, generally, questions of liability based on the theory of ostensible agency are left to the finder of fact. But, in order for that issue to be placed before the jury, a complaint at a minimum must meet the requirements to support the underlying cause of action. The existence of an agency relationship is generally a question of fact for the jury if the facts showing the existence of agency are disputed, or if conflicting inferences can be drawn from the facts. Schlotfeldt v. Charter Hosp. of Las Vegas, 112 Nev. 42, 47, 910 P.2d 271, 274 (1996), citing Latin American Shipping Co. Inc., v. Pan American Trading Corp., 363 So.2d 578, 579 80 (Fla. Dist. Ct. App. 1978). The Schlotfeldt court went on to state that it is a question of law exists as to whether sufficient competent evidence is present to require that the agency question be forwarded to a jury. Id., citing In

PRINT DATE: 08/06/2020

Page 1 of 3

Minutes Date: July 23, 2020

APP2-0441

re *Cliquot's Champagne*, 70 U.S. 114, 140, 18 L.Ed. 116 (1865) and 3 Am.Jur.2D Agency 362 (1986). Herein lies the issue. The complaint, and the required accompanying affidavit, lack any reference to an agent or agency, or vicarious liability or ostensible agency. The requirements of NRS 41A.071, including the affidavit requirement, are preliminary procedural rules subject to the notice-pleading standard, and must be liberally construe[d] ... in a manner that is consistent with our NRCP 12 jurisprudence. *Borger v. Eighth Judicial District Court*, 120 Nev. 1021, 1028, 102 P.3d 600, 605 (recognizing that NRS 41A.071 governs the threshold requirements for initial pleadings in medical malpractice cases, not the ultimate trial of such matters ) (emphasis added); see also *Baxter v. Dignity Health*, 357 P.3d 927, 131 Nev. Adv. Rep. 76 (2015) (holding that NRS 41A.071 must be liberally construed). Without reference to an agent, Dr. Kia, or a theory of vicarious or ostensible agency, the Court is obligated to GRANT Defendant s Motion for Partial Summary Judgment.

The Court denies Plaintiff s Motion for Sanctions. While it recognizes the reason why Plaintiff moved this Court to strike Defendant s motion and request for sanctions, given the Court s recent decision, and its oral pronouncement during argument on the recent motion involving third party plaintiff (that the issue of ostensible agency was not before the Court), the Court declines to grant the Motion to Strike and the request for the imposition of sanctions.

## II. Plaintiff s Motion to Amend the Complaint

When a motion seeking leave to amend a pleading is filed after the expiration of the deadline for filing such motions, the district court must first determine whether good cause exists for missing the deadline under NRCP 16(b) before the court can consider the merits of the motion under the standards of NRCP 15(a). *Nutton v. Sunset Station, Inc.*, 131 Nev. 279, 281, 357 P.3d 966, 968 (Nev. App. 2015).

Amended pleadings arising out of the same transaction or occurrence set forth in the original pleadings may relate back to the date of the original filing. See NRCP 15(c). The same remains true when an amended pleading adds a defendant that is filed after the statute of limitations so long as the proper defendant (1) receives actual notice of the action; (2) knows that it is the proper party; and (3) has not been misled to its prejudice by the amendment. *Echols v. Summa Corp.*, 95 Nev. 720, 722, 601 P.2d 716, 717 (1979). NRCP 15(c) is to be liberally construed to allow relation back of the amended pleading where the opposing party will be put to no disadvantage. See *E.W. French & Sons, Inc. v. General Portland Inc.*, 885 F.2d 1392, 1396 (9th Cir.1989) (discussing Federal Rule of Civil Procedure 15).

As a threshold matter, the Court finds good cause to allow for the filing of an amended complaint to allow for adding potential DOE/ROE defendants, and to assert ostensible agency, given its recent decision regarding dismissal of the third party plaintiff. But, the Court does not find good cause to add a new cause of action, that is corporate negligence/negligent supervision. As the Nevada Court of Appeals noted in *Nutton v. Sunset Station, Inc.*, the liberality reflected in NRCP 15(a) recognizes

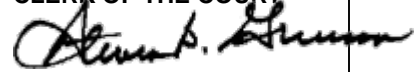
that discovery is a fluid process through which unexpected and surprising evidence is uncovered with regularity (particularly when important evidence was solely in the possession of one party when the case was initiated), and parties should have some ability to tailor their pleadings and reframe the case around what they might have learned after the initial pleadings were filed. 131 Nev. 279, 284, 357 P.3d 966, 970 (Nev. App. 2015). But, [u]nlike Rule 15(a)'s liberal amendment policy which focuses on the bad faith of the party seeking to interpose an amendment and the prejudice to the opposing party, Rule 16(b)'s good cause standard primarily considers the diligence of the party seeking the amendment. Id. at 286. While discovery is not yet closed in this case, the pleadings fail to set forth good cause for seeking to add a new cause of action three years after the original complaint was filed.

Despite finding good cause to amend the complaint as noted above, the Court cannot grant the motion to amend at this time because the complaint and affidavit, when read together, fail to comply with NRS 41A.071. While the plaintiff has complied with NRS 41A.071 in filing an affidavit along with the complaint, the affidavit does not meet the four, specific affidavit requirements. The affidavit must: (1) support the allegations contained in the action; (2) be 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) identify 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. The attached affidavit does not meet the third and fourth prongs of the affidavit requirements. The affidavit fails to identify by name (even as John or Jane Doe/Roe) the healthcare professional who was allegedly negligent, and fails to set forth the specific act or acts of negligence as to each defendant. Instead, the affidavit only identifies and discusses Dr. Delee and Sunrise Hospital. Accordingly, Plaintiff's Motion to Amend Complaint is denied without prejudice.

The parties shall meet and confer and submit for review a draft of Findings of Facts and Conclusions of Law to DC9Inbox@clarkcountycourts.us, which includes electronic signatures and is consistent with this Order.



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



MICHAEL E. PRANGLE, ESQ.  
Nevada Bar No. 8619  
TYSON J. DOBBS, ESQ.  
Nevada Bar No. 11953  
SHERMAN B. MAYOR, ESQ.  
Nevada Bar No. 1491  
T. CHARLOTTE BUYS, ESQ.  
Nevada Bar No. 14845  
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](mailto: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.: IX

**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**

...

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...

PLEASE TAKE NOTICE that a Three Part Order: (1) Granting Partial Summary Judgement Dismissing Ostensible Agency; (2) Denying Sanctions; and (3) Denying Plaintiff's Motion to Amend Complaint in part with prejudice, and in part without prejudice was entered in the above entitled matter on the 25<sup>th</sup> day of September, 2020, a copy of which is attached hereto.

DATED this 28<sup>th</sup> day of September, 2020.

HALL PRANGLE & SCHOONVELD, LLC

/s/ Charlotte Buys, Esq.  
MICHAEL E. PRANGLE, ESQ.  
Nevada Bar No. 8619  
TYSON J. DOBBS, ESQ.  
Nevada Bar No. 11953  
SHERMAN B. MAYOR, ESQ.  
Nevada Bar No. 1491  
T. CHARLOTTE BUYS, ESQ.  
Nevada Bar No. 14845  
1140 N. Town Center Dr., Ste. 350  
Las Vegas, NV 89144  
*Attorneys for Defendant*  
*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 28<sup>th</sup> day of September, 2020, I served a true and correct copy of the foregoing **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** as follows:

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

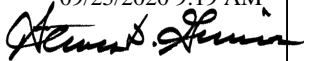
\_\_\_\_\_ U.S. Mail, first class postage pre-paid to the following parties at their last known address;

\_\_\_\_\_ Receipt of Copy at their last known address:

DANIEL MARKS, ESQ.  
Nevada Bar No. 2003  
NICOLE M. YOUNG, ESQ.  
Nevada Bar No. 12659  
610 South Ninth Street  
Las Vegas, NV 89101  
*Attorneys for Plaintiff*

ERIC K. STRYKER, ESQ.  
Nevada Bar No. 5793  
BRIGETTE E. FOLEY, ESQ.  
Nevada Bar No. 12965  
300 S. 4<sup>th</sup> Street  
Las Vegas, NV 89101  
*Attorneys for Defendants*  
*Frank J. Deelee, M.D. and Frank J. Deelee, M.D., PC*

/s/: Casey Henley  
An employee of HALL PRANGLE & SCHOONVELD, LLC

  
CLERK OF THE COURT

**ORDR**

MICHAEL E. PRANGLE, ESQ.  
Nevada Bar No. 8619  
TYSON J. DOBBS, ESQ.  
Nevada Bar No. 11953  
SHERMAN B. MAYOR, ESQ.  
Nevada Bar No. 1491  
T. CHARLOTTE BUYS, ESQ.  
Nevada Bar No. 14845  
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](mailto: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.: IX

**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**

**Date of Hearing: July 7, 2020**  
**Time of Hearing: 9:00 A.M.**

This cause having come on to be heard on July 7, 2020, upon Defendant, Sunrise Hospital and Medical Center's ("Sunrise Hospital") "Renewed" Motion for Partial Summary Judgment to Dismiss Any Claim of "Ostensible Agency" for Ali Kia, M.D; Plaintiff's Countermotion to Strike Sunrise's Renewed Motion, for Attorney's Fees, and Sanctions; and Plaintiff's Motion to

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

Amend Complaint; and SUNRISE HOSPITAL being represented by SHERMAN BENNETT MAYOR, ESQ. of the law firm HALL PRANGLE & SCHOONVELD, LLC; and PLAINTIFF being represented by DANIEL MARKS, ESQ. and NICOLE M. YOUNG, ESQ. of the LAW OFFICE OF DANIEL MARKS; and Defendants FRANK DELEE, M.D. and FRANK J. DELEE MD, PC being represented by ERIC K. STRYKER, ESQ. the law firm of WILSON ELSEER MOSKOWITZ EDELMAN & DICKER LLP; and the Court having reviewed the papers and pleadings on file herein; and having heard argument of counsel; and being otherwise duly advised in the premises, the Court makes the following Findings of Fact, Conclusions of Law and Orders:

**I. DEFENDANT’S MOTION FOR PARTIAL SUMMARY JUDGMENT**

**FINDINGS**

1. Defendant Sunrise Hospital filed a “renewed” Motion for Partial Summary Judgment seeking dismissal of any claim or potential claim by Plaintiff that non-party, Ali Kia, M.D. is an ostensible agent of Sunrise Hospital.

2. Sunrise Hospital had previously filed a similar Partial Summary Judgment Motion, which was denied by then District Court Judge Doug Smith (heard on March 12, 2019). Following that decision, Sunrise Hospital was given Leave of Court by Judge Smith to file a Third-Party Complaint to assert claims of contribution and indemnity against Dr. Kia and his alleged employer, Nevada Hospitalist Group. That Third-Party Complaint was filed utilizing Plaintiff’s underlying Complaint and affidavit as exhibits to comply with any necessary requirements to satisfy NRS § 41A.071.

3. Third-Party Defendants Ali Kia, M.D. and Nevada Hospitalist Group then moved for Judgment on the Pleadings, per NRS § 41A.071, seeking dismissal of the Third-Party Complaint. This Court (District Court Judge Cristina Silva) granted that Motion for Judgment on the Pleadings on June 2, 2020. In granting that Motion, the Court found that there was no reference (in Plaintiff Choloe Green’s underlying Complaint and affidavit which were attached as exhibits to the Third-Party Complaint) to Dr. Kia or Nevada Hospitalist Group. Nor did either document identify any John Doe, “unknown” or “unidentified” potential defendants that could

1 arguably be Dr. Kia and/or Nevada Hospitalist Group. Further, there was no reference to any  
2 agent or agency, or vicarious liability or ostensible agency.

3 4. Subsequent to Sunrise Hospital's Third-Party Complaint having been dismissed,  
4 Sunrise Hospital then "renewed" its Motion for Partial Summary Judgment seeking dismissal of  
5 any claim or potential claim of ostensible agency for Ali Kia, M.D., contending that no basis for  
6 such claim could be found in Plaintiff's underlying Complaint or expert affidavit.

7 5. In reviewing Sunrise Hospital's "Renewed" Partial Summary Judgment Motion,  
8 the Court also reviewed Plaintiff's Countermotion for Sanctions and Plaintiff's Motion to  
9 Amend Complaint since all three motions were scheduled for hearing on the same date, July 7,  
10 2020. In reviewing Plaintiff's Motion to Amend Complaint, the Court noted that the proposed  
11 Amended Complaint and attached expert affidavit still made no direct reference to Ali Kia, M.D.  
12 or reference to Dr. Kia via Doe/Roe or "unknown" defendant.

13 6. Without reference to an agent, Dr. Kia, or a theory or vicarious or ostensible  
14 agency, the Court is obligated to grant Defendant's "renewed" Motion for Partial Summary  
15 Judgment per NRCP Rule 56 and NRS § 41A.071. The Court, based upon the "Conclusions of  
16 Law" set forth below, dismisses Plaintiffs' claim for ostensible agency, if any such claim be  
17 made.

18 **CONCLUSIONS OF LAW**

19 7. The existence of an agency relationship is generally a question of fact for the jury  
20 if facts showing the existence of agency are disputed, or if conflicting inferences can be drawn  
21 from the facts. *See Schlotfeldt v. Charter Hosp. of Las Vegas*, 112 Nev. 42, 47, 910 P.2d 271,  
22 274 (Nev. 1996) (citing *Latin American Shipping Co. Inc., v. Pan American Trading Corp.*, 363  
23 So.2d 578, 5679 80 (Fla. Dist. Ct. App. 1978)).

24 8. However, the *Schlotfeldt* court went on to state that a question of law exists as to  
25 whether there exists sufficient competent evidence to require that the agency question be  
26 forwarded to a jury. *Id. (citing In Re Cliquot's Champagne*, 70 U.S. 114, 140, 18 L.Ed. 116  
27 (1865) and 3 Am.Jur.2D Agency 362 (1986)).

28 . . .

9. Determining whether such an issue of fact exists for a jury to decide is similar to determining whether a genuine issue of fact is present to preclude summary judgment. *See Oehler v. Humana Inc.*, 103 Nev. 348, 775 P.2d 1271 (Nev. 1989).

10. Even liberally construing Plaintiff's underlying Complaint and expert affidavit of Lisa Karamardian, M.D. per *Baxter v. Dignity Health*, 357 P.3d 927, 131 Nev. Adv. Rep. 76 (2015), there simply is no factual dispute here that can be forwarded to a jury. That is, there is no reference to an agent, to Dr. Kia, or to a theory of vicarious or ostensible agency found in Plaintiff Choloe Green's underlying Complaint and expert affidavit.

11. Sunrise Hospital is a statutory provider of healthcare per NRS § 41A.015. As a statutory provider of healthcare, the Hospital is entitled to protections offered per NRS 41A. One of such protections is the requirement that Plaintiff, in pursuing a professional negligence action against the Hospital, comply with NRS § 41A.071. To comply, Plaintiff must have provided an expert affidavit that identifies by name or describes by conduct, each provider of healthcare who is alleged to be negligent, sets forth factually by a specific act or acts, separately, in simple, concise and direct terms. Plaintiff's proposed Amended Complaint with the attached expert affidavit of Lisa Karamardian, M.D., failed to satisfy such requirements with regard to a claim that Dr. Ali Kia is an ostensible agent of Sunrise Hospital

12. Having failed to reference an agent, Dr. Kia, or a theory of vicarious or ostensible agency in Plaintiff's underlying Complaint or expert affidavit attached thereto, Plaintiffs' renewed Motion for Partial Summary Judgment per NRCP 56 is Granted dismissing Plaintiffs' claim, if any, of ostensible agency regarding Ali Kia, M.D.

## **II. DENIAL OF COUNTERMOTION FOR SANCTIONS**

13. Plaintiff, Choloe Green, in responding to Sunrise Hospital's "Renewed" Motion for Partial Summary Judgment also filed a Countermotion for Sanctions. Plaintiff contended that the "Renewed" Motion for Partial Summary Judgment filed by Sunrise Hospital constituted an abusive litigation tactic.

14. However, given the Court's recent decision dismissing Sunrise Hospital's Third-Party Complaint, and oral pronouncements made during the course of oral argument for same, the Court declines to grant the Motion to Strike and the request for the imposition of sanctions. Such decision is also consistent with this Court permitting a renewed hearing on Defendant Sunrise Hospital's "renewed" Motion for Partial Summary Judgment and granting that "renewed" Motion for Partial Summary Judgment.

III. **DENIAL OF PLAINTIFF'S MOTION TO AMEND COMPLAINT IN PART WITH PREJUDICE, AND IN PART WITHOUT PREJUDICE.**

**FINDINGS**

15. Plaintiff Choloe Green filed a Motion to Amend Complaint, which was heard by the Court at the same time as the aforementioned Motion for Partial Summary Judgment and Countermotion for Sanctions. In furtherance of Plaintiff's Motion to Amend Complaint, Plaintiff enclosed a proposed Amended Complaint with attached expert affidavit.

16. The proposed Amended Complaint attached to Plaintiff's Motion to Amend attached a single affidavit of Lisa Karamardian, M.D. as an exhibit. The affidavit was the same affidavit from Dr. Karamardian that was provided with Plaintiff's original Complaint. Again, the expert affidavit failed to identify by name "even as John or Jane Doe/Roe" the healthcare professional that was negligent and fails to set forth the specific act or acts as to each Defendant. Instead, the affidavit only identifies and discusses Dr. Delee and Sunrise Hospital.

17. In addition, in Plaintiff's proposed Amended Complaint, Plaintiff asserts a new "Count III" which is entitled "Corporate Negligence – Against Defendant Sunrise Hospital." In that new claim, Plaintiff newly asserts that Sunrise Hospital was negligent in its hiring, granting and retention of privileges, and supervision of Frank Delee, M.D. and Ali Kia, M.D.

18. Plaintiff did not seek to add Ali Kia, M.D. as an additional party Defendant in her proposed Amended Complaint provided with her Motion to Amend.

19. Defendant Sunrise Hospital, in opposition to Plaintiff's Motion to Amend Complaint, contends, inter alia, that the Motion to Amend is untimely since the professional



negligence statute of limitations governing this medical malpractice action expired no later than August 10, 2018 (or about 2 years ago).

20. In considering Plaintiff's Motion to Amend Complaint filed after the expiration of the deadline for filing such motions, and after the expiration of the professional negligence statute of limitations, the Court must first determine whether good cause exists for missing such deadline under NRCP Rule 16(b) so the Court can consider the merits of the Motion under the standard of NRCP 15(a).

21. As explained in the Conclusions of Law set forth below, the Court finds good cause to allow for the filing of an amended Complaint to add potential Doe/Roe defendants and to assert ostensible agency. But the Court does not find good cause to add a new cause of action as described and set forth in Plaintiff's "Count III" for Corporate Negligence/Negligent Supervision. Finally, and for the reasons described below, although the Court finds good cause to allow Plaintiff to seek to amend her Complaint, the Court cannot grant the Motion to Amend at this time because the proposed Amended Complaint and affidavit attached to the Motion to Amend failed to comply with NRS § 41A.071.

**CONCLUSIONS OF LAW**

22. When a motion seeking leave to amend a pleading is filed after the expiration of the deadline for filing such motions, the district court must first determine whether good cause exists for missing the deadline under NRCP 16(b) before the court can consider the merits of the motion under the standards of NRCP 15(a). *Nutton v. Sunset Station, Inc.*, 131 Nev. 279, 281, 357 P.3d 966, 968 (Nev. App. 2015).

23. Amended pleadings arising out of the same transaction or occurrence set forth in the original pleadings may relate back to the date of the original filing. *See* NRCP 15(c). The same remains true when an amended pleading adds a defendant that is filed after the statute of limitations so long as the proper defendant (1) receives actual notice of the action; (2) knows that it is the proper party; and (3) has not been misled to its prejudice by the amendment. *Echols v. Summa Corp.*, 95 Nev. 720, 722, 601 P.2d 716, 717 (1979).

24. NRCP 15(c) is to be liberally construed to allow relation back of the amended pleading where the opposing party will be put to no disadvantage. *See E.W. French & Sons, Inc. v. General Portland Inc.*, 885 F.2d 1392, 1396 (9th Cir.1989) (discussing Federal Rule of Civil Procedure 15).

25. As a threshold matter, the Court finds good cause to allow for the filing of an amended complaint to allow for adding potential Doe/Roe defendants, and to assert ostensible agency. As the Nevada Court of Appeals noted in *Nutton v. Sunset Station, Inc.*, the liberality reflected in NRCP 15(a) recognizes that discovery is a fluid process through which unexpected and surprising evidence is uncovered with regularity (particularly when important evidence was solely in the possession of one party when the case was initiated), and parties should have some ability to tailor their pleadings and reframe the case around what they might have learned after the initial pleadings were filed. 131 Nev. 279, 284, 357 P.3d 966, 970 (Nev. App. 2015).

26. However, the Court does not find good cause to add a new cause of action set forth in Plaintiff's "Count III" and described as Corporate Negligence/Negligent Supervision. Unlike Rule 15(a)'s liberal amendment policy which focuses on the bad faith of the party seeking to interpose an amendment and the prejudice to the opposing party, Rule 16(b)'s good cause standard primarily considers the diligence of the party seeking the amendment. *Id.* at 286. While discovery is not yet closed in this case, the pleadings fail to set forth good cause for seeking to add a new cause of action three years after the original complaint was filed.

27. Despite finding good cause to amend the complaint as noted above, the Court cannot grant the motion to amend at this time because the complaint and affidavit, when read together, fail to comply with NRS § 41A.071. While the plaintiff has complied with NRS § 41A.071 in filing an affidavit along with the Amended Complaint, the affidavit does not meet the four, specific affidavit requirements of the statute.

28. The affidavit attached to the proposed Amended Complaint must: (1) support the allegations contained in the action; (2) be 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) identify by name, or describes by conduct, each provider

1 of health care who is alleged to be negligent; and (4) sets forth factually a specific act or acts of  
2 alleged negligence separately as to each defendant in simple, concise and direct terms. *See* NRS  
3 § 41A.071. The attached affidavit does not meet the third and fourth prongs of the affidavit  
4 requirements. The affidavit fails to identify by name (even as John or Jane Doe/Roe) the  
5 healthcare professional who was allegedly negligent, and fails to set forth the specific act or acts  
6 of negligence as to each defendant. Instead, the affidavit only identifies and discusses Dr. Delee  
7 and Sunrise Hospital. Accordingly, Plaintiff s Motion to Amend Complaint is denied without  
8 prejudice in accordance with the Findings and Conclusions of Law set forth herein.

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

Green v. Frank Delee, M.D., et al.  
Case No. A-17-757722-C

**ORDER**

ACCORDINGLY, IT IS HEREBY ORDERED, ADJUDGED AND DECREED.

Dated this 25th day of September, 2020

DATED \_\_\_\_\_.

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

2C9 960 2BD5 FD72  
Cristina D. Silva  
District Court Judge

Respectfully Submitted by and  
Approved as to Form and Content:

Approved as to Form and Content:

DATED this 18<sup>th</sup> day of September, 2020.

DATED this 18<sup>th</sup> day of September, 2020.

HALL PRANGLE & SCHOONVELD, LLC

LAW OFFICE OF DANIEL MARKS

/s/ Charlotte Buys, Esq.  
MICHAEL E. PRANGLE, ESQ.  
Nevada Bar No. 8619  
TYSON J. DOBBS, ESQ.  
Nevada Bar No. 11953  
SHERMAN B. MAYOR, ESQ.  
Nevada Bar No. 1491  
T. CHARLOTTE BUYS, ESQ.  
Nevada Bar No. 14845  
1140 N. Town Center Dr., Ste. 350  
Las Vegas, NV 89144  
*Attorneys for Defendant*  
*Sunrise Hospital and Medical Center, LLC*

/s/ Nicole Young, Esq.  
DANIEL MARKS, ESQ.  
Nevada Bar No. 2003  
NICOLE M. YOUNG, ESQ.  
Nevada Bar No. 12659  
610 South Ninth Street  
Las Vegas, NV 89101  
*Attorneys for Plaintiff*

...

...

...

1 Approved as to Form and Content:

2 DATED this 18<sup>th</sup> day of September, 2020.

3 WILSON ELSER MOSKOWITZ  
4 EDELMAN & DICKER LLP

5 /s/ Eric Stryker, Esq.

6 ERIC K. STRYKER, ESQ.

7 Nevada Bar No. 5793

8 BRIGETTE E. FOLEY, ESQ.

9 Nevada Bar No. 12965

10 300 S. 4<sup>th</sup> Street

11 Las Vegas, NV 89101

12 *Attorneys for Defendants*

13 *Frank J. Deelee, M.D. and Frank J. Deelee,*

14 *M.D., PC*

## Casey Henley

---

**From:** Stryker, Eric K. <Eric.Stryker@wilsonelser.com>  
**Sent:** Friday, September 18, 2020 2:51 PM  
**To:** Nicole Young; Charlotte Buys; Casey Henley; Daniel Marks  
**Cc:** Lord, Nicole N.; Sherman Mayor  
**Subject:** RE: Green v. Sunrise Hospital et al.

[External Email] CAUTION!.

You may use my e-signature to submit to the court.

Have a good weekend,

Eric K. Stryker  
Attorney at Law  
Wilson Elser Moskowitz Edelman & Dicker LLP  
6689 Las Vegas Blvd. South, Suite 200  
Las Vegas, NV 89119  
702.727.1242 (Direct)  
702.727.1400 (Main)  
702.727.1401 (Fax)  
[eric.stryker@wilsonelser.com](mailto:eric.stryker@wilsonelser.com)

---

**From:** Nicole Young [mailto:NYoung@danielmarks.net]  
**Sent:** Friday, September 18, 2020 1:51 PM  
**To:** Charlotte Buys <cbuys@HPSLAW.COM>; Casey Henley <CHenley@HPSLaw.com>; Daniel Marks <DMarks@danielmarks.net>; Stryker, Eric K. <Eric.Stryker@wilsonelser.com>  
**Cc:** Lord, Nicole N. <Nicole.Lord@wilsonelser.com>; Sherman Mayor <smayor@HPSLAW.COM>  
**Subject:** RE: Green v. Sunrise Hospital et al.

### [EXTERNAL EMAIL]

Thank you! You may use my e-signature to submit to the court.

Nicole M. Young, Esq.  
Associate Attorney  
Law Office of Daniel Marks  
610 South Ninth Street  
Las Vegas, Nevada 89101  
Telephone: (702) 386-0536  
Facsimile: (702) 386-6812

---

**From:** Charlotte Buys [mailto:cbuys@HPSLAW.COM]  
**Sent:** Friday, September 18, 2020 11:52 AM  
**To:** Nicole Young <NYoung@danielmarks.net>; Casey Henley <CHenley@HPSLaw.com>; Daniel Marks <DMarks@danielmarks.net>; [Eric.Stryker@wilsonelser.com](mailto:Eric.Stryker@wilsonelser.com)  
**Cc:** [Nicole.Lord@wilsonelser.com](mailto:Nicole.Lord@wilsonelser.com); Sherman Mayor <[smayor@HPSLAW.COM](mailto:smayor@HPSLAW.COM)>  
**Subject:** RE: Green v. Sunrise Hospital et al.

Good Afternoon Counsel,

I just wanted to follow up on this matter as we intend to submit this Order to the Court today, September 18, 2020. Please advise if we may use your electronic signatures.

Very truly yours,

Charlotte Buys



**Charlotte Buys**  
*Associate*  
O: 702.212.1478  
Email: [cbuys@HPSLAW.COM](mailto:cbuys@HPSLAW.COM)

**Legal Assistant: Casey Henley**  
O: 702.212.1449  
Email: [chenley@hpslaw.com](mailto:chenley@hpslaw.com)

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---

**From:** Charlotte Buys

**Sent:** Thursday, September 17, 2020 2:18 PM

**To:** Nicole Young <[NYoung@danielmarks.net](mailto:NYoung@danielmarks.net)>; Casey Henley <[CHenley@HPSLaw.com](mailto:CHenley@HPSLaw.com)>; Daniel Marks <[DMarks@danielmarks.net](mailto:DMarks@danielmarks.net)>; [Eric.Stryker@wilsonelser.com](mailto:Eric.Stryker@wilsonelser.com)

**Cc:** [Nicole.Lord@wilsonelser.com](mailto:Nicole.Lord@wilsonelser.com); Sherman Mayor <[smayor@HPSLAW.COM](mailto:smayor@HPSLAW.COM)>

**Subject:** RE: Green v. Sunrise Hospital et al.

Dear Nicole,

We have attempted to address each of the proposed changes you have requested in the proposed Order as follows:

- We have referenced to NRCP 56 and NRS 41A.071 in the "Conclusions of Law" section in the granting of the "renewed" Motion for Partial Summary Judgment."
- We have placed language in the Countermotion section indicating that the Court permitted the hearing of the "renewed" Motion for Partial Summary Judgment and then granted it.
- Rather than delete sentence 2 in paragraph 15, we have chosen to delete the entire paragraph 15.

Enclosed please find the revised proposed Order. We would like to file this Order no later than tomorrow, as it may be overdue even now. Please advise if the recent revisions are acceptable.

Very truly yours,

Sherman B. Mayor and Charlotte Buys

---

**From:** Nicole Young <[NYoung@danielmarks.net](mailto:NYoung@danielmarks.net)>

**Sent:** Wednesday, September 16, 2020 5:07 PM

**To:** Casey Henley <[CHenley@HPSLaw.com](mailto:CHenley@HPSLaw.com)>; Daniel Marks <[DMarks@danielmarks.net](mailto:DMarks@danielmarks.net)>; [Eric.Stryker@wilsonelser.com](mailto:Eric.Stryker@wilsonelser.com)

**Cc:** [Nicole.Lord@wilsonelser.com](mailto:Nicole.Lord@wilsonelser.com); Sherman Mayor <[smayor@HPSLAW.COM](mailto:smayor@HPSLAW.COM)>; Charlotte Buys <[cbuys@HPSLAW.COM](mailto:cbuys@HPSLAW.COM)>

**Subject:** RE: Green v. Sunrise Hospital et al.

[External Email] CAUTION!.

Hi Casey:

Sorry for the delay. We have a few minor changes, as follows:

1. In the Conclusions of Law regarding the Partial MSJ, please add the affidavit requirement and statute as why the motion is granted.
2. In the Countermotion for Sanctions section, Dan and I were thinking it may be helpful to add the judge granted Sunrise reconsideration even though no formal motion granted.
3. Please delete sentence 2 of paragraph 15 on page 5.

Please let me know if you have any questions.

Thank you!

Nicole

Nicole M. Young, Esq.  
Associate Attorney  
Law Office of Daniel Marks  
610 South Ninth Street  
Las Vegas, Nevada 89101  
Telephone: (702) 386-0536  
Facsimile: (702) 386-6812

---

**From:** Casey Henley [<mailto:CHenley@HPSLaw.com>]

**Sent:** Tuesday, September 15, 2020 9:51 AM

**To:** Daniel Marks <[DMarks@danielmarks.net](mailto:DMarks@danielmarks.net)>; Nicole Young <[NYoung@danielmarks.net](mailto:NYoung@danielmarks.net)>; [Eric.Stryker@wilsonelser.com](mailto:Eric.Stryker@wilsonelser.com)

**Cc:** [Nicole.Lord@wilsonelser.com](mailto:Nicole.Lord@wilsonelser.com); Sherman Mayor <[smayor@HPSLAW.COM](mailto:smayor@HPSLAW.COM)>; Charlotte Buys <[cbuys@HPSLAW.COM](mailto:cbuys@HPSLAW.COM)>

**Subject:** RE: Green v. Sunrise Hospital et al.

Good Morning,

Just following up on the proposed Order below. We are hoping to get this filed today.

Thank you,

**Casey Henley**  
*Legal Assistant*





1140 North Town Center Dr.  
Suite 350  
Las Vegas, NV 89144  
F: 702.384.6025

O: 702.212.1449  
Email: [CHenley@HPSLaw.com](mailto:CHenley@HPSLaw.com)

**Legal Assistant to:**  
Charlotte Buys  
Mari Schaan  
Vanessa Turley

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**From:** Casey Henley  
**Sent:** Wednesday, September 9, 2020 10:21 AM  
**To:** [DMarks@danielmarks.net](mailto:DMarks@danielmarks.net); [NYoung@danielmarks.net](mailto:NYoung@danielmarks.net); [Eric.Stryker@wilsonelser.com](mailto:Eric.Stryker@wilsonelser.com)  
**Cc:** [Nicole.Lord@wilsonelser.com](mailto:Nicole.Lord@wilsonelser.com); Sherman Mayor <[smayor@HPSLAW.COM](mailto:smayor@HPSLAW.COM)>; Charlotte Buys <[cbuys@HPSLAW.COM](mailto:cbuys@HPSLAW.COM)>  
**Subject:** Green v. Sunrise Hospital et al.

Good Morning Counsel,

Enclosed please find the proposed Order regarding Judge Silva's Minute Order Decision. We would like to provide the proposed Order to the Court by Thursday, 09/10/2020. If you have any questions or proposed revisions, please text or call. However, the substance of the proposed Order was generally extracted by the Court's Minute Order. Otherwise, please advise if we may use your electronic signatures.

Very truly yours,

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For further information about Wilson, Elser, Moskowitz, Edelman & Dicker LLP, please see our website at [www.wilsonelser.com](http://www.wilsonelser.com) or refer to any of our offices.

Thank you.

## Casey Henley

---

**From:** Nicole Young <NYoung@danielmarks.net>  
**Sent:** Friday, September 18, 2020 1:51 PM  
**To:** Charlotte Buys; Casey Henley; Daniel Marks; Eric.Stryker@wilsonelser.com  
**Cc:** Nicole.Lord@wilsonelser.com; Sherman Mayor  
**Subject:** RE: Green v. Sunrise Hospital et al.

[External Email] CAUTION!.

Thank you! You may use my e-signature to submit to the court.

Nicole M. Young, Esq.  
Associate Attorney  
Law Office of Daniel Marks  
610 South Ninth Street  
Las Vegas, Nevada 89101  
Telephone: (702) 386-0536  
Facsimile: (702) 386-6812

---

**From:** Charlotte Buys [mailto:cbuys@HPSLAW.COM]  
**Sent:** Friday, September 18, 2020 11:52 AM  
**To:** Nicole Young <NYoung@danielmarks.net>; Casey Henley <CHenley@HPSLaw.com>; Daniel Marks <DMarks@danielmarks.net>; Eric.Stryker@wilsonelser.com  
**Cc:** Nicole.Lord@wilsonelser.com; Sherman Mayor <smayor@HPSLAW.COM>  
**Subject:** RE: Green v. Sunrise Hospital et al.

Good Afternoon Counsel,

I just wanted to follow up on this matter as we intend to submit this Order to the Court today, September 18, 2020. Please advise if we may use your electronic signatures.

Very truly yours,

Charlotte Buys



1140 North Town Center Dr.  
Suite 350  
Las Vegas, NV 89144  
F: 702.384.6025

**Charlotte Buys**  
*Associate*  
O: 702.212.1478  
Email: [cbuys@HPSLAW.COM](mailto:cbuys@HPSLAW.COM)

**Legal Assistant:** Casey Henley  
O: 702.212.1449  
Email: [chenley@hpslaw.com](mailto:chenley@hpslaw.com)

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Thank you!

Nicole

1 **CSERV**

2  
3 DISTRICT COURT  
4 CLARK COUNTY, NEVADA

5  
6 Choloe Green, Plaintiff(s)

CASE NO: A-17-757722-C

7 vs.

DEPT. NO. Department 9

8 Frank Delee, M.D., Defendant(s)

9  
10 **AUTOMATED CERTIFICATE OF SERVICE**

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

14 Service Date: 9/25/2020

15 E-File Admin

efile@hpslaw.com

16 S. Vogel

brent.vogel@lewisbrisbois.com

17 Eric Stryker

eric.stryker@wilsonelser.com

18 Johana Whitbeck

johana.whitbeck@lewisbrisbois.com

19 Erin Jordan

erin.jordan@lewisbrisbois.com

20 Efile LasVegas

efilelasvegas@wilsonelser.com

21 Angela Clark

angela.clark@wilsonelser.com

22 Daniel Marks

office@danielmarks.net

23 Tyson Dobbs

tdobbs@hpslaw.com

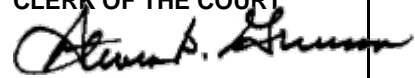
24 Alia Najjar

alia.najjar@wilsonelser.com

25 Charlotte Buys

cbuys@hpslaw.com

1	Patricia Daehnke	patricia.daehnke@cdiglaw.com
2	Nicolle Etienne	netienne@hpslaw.com
3	Sherman Mayor	smayor@hpslaw.com
4	Casey Henley	chenley@hpslaw.com
5	Nicole Lord	nicole.lord@wilsonelser.com
6	Linda Rurangirwa	linda.rurangirwa@cdiglaw.com
7	Amanda Rosenthal	amanda.rosenthal@cdiglaw.com
8	Laura Lucero	laura.lucero@cdiglaw.com
9	Nicole Young	nyoung@danielmarks.net
10	Reina Claus	rclaus@hpslaw.com
11	Deborah Rocha	deborah.rocha@cdiglaw.com
12	Brigette Foley	Brigette.Foley@wilsonelser.com
13	Richean Martin	richean.martin@cdiglaw.com
14	Joshua Daor	joshua.daor@lewisbrisbois.com
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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. IX

v.

***ORAL ARGUMENT REQUESTED***

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.

**MOTION FOR RECONSIDERATION**

COMES NOW the Plaintiff, Choloe Green, by and through her counsel, Daniel Marks, Esq., and Nicole M. Young, Esq., of the Law Office of Daniel Marks, and hereby submits her Motion for Reconsideration. The grounds for Plaintiff's motion are set forth in the attached Memorandum of Points and Authorities.

DATED this 12th day of October, 2020.

LAW OFFICE OF DANIEL MARKS

/s/ Nicole M. Young  
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 **MEMORANDUM OF POINTS AND AUTHORITIES**

2 **I. PROCEDURAL BACKGROUND**

3 On June 30, 2017, Plaintiff Choloe Green (“Choloe”) filed the instant Complaint for Medical  
4 Malpractice against Defendant Sunrise Hospital and Medical Center, LLC (“Sunrise”) and Defendants  
5 Frank J. Delee, M.D., and Frank J. Delee, MD, PC (“Delee”). Sunrise filed its Answer to Choloe’s  
6 complaint on July 20, 2017, and Delee filed his Answer on July 31, 2017. The parties then began  
7 discovery.

8 Sunrise filed its Motion for Partial Summary Judgment to Dismiss Any Claim of “Ostensible  
9 Agency” for Dr. Kia and Dr. Delee on January 15, 2019. The hearing on that motion took place on  
10 March 12, 2019. In response to that motion, Choloe conceded no ostensible agency between Sunrise and  
11 Delee. This Court found the existence of ostensible agency between Sunrise and Dr. Kia, however, is an  
12 issue of fact.

13 Sunrise was granted leave to file a third-party complaint against Dr. Kia and his employer,  
14 Nevada Hospitalist Group (“NHG”), for contribution and indemnity. Dr. Kia filed his answer on August  
15 2, 2019. For some reason, NHG did not file its answer until December 27, 2019, more than six months  
16 after the third-party complaint was filed.

17 NHG then filed its motion for judgment on the pleadings on March 19, 2020. This Court heard  
18 that motion on April 29, 2020, and took the matter under advisement. On May 11, 2020, this Court  
19 granted NHG’s motion. Sunrise then renewed its motion for partial summary judgment on May 20,  
20 2020.

21 The renewed motion argued Choloe’s complaint does not refer to Dr. Kia by name or as a DOE  
22 party. It also argued she did not claim ostensible agency. To alleviate any concerns regarding these  
23 issues, Choloe filed her Motion for Leave of Court to Amend Complaint, on June 3, 2020, to add these  
24 items. At that time, the deadline to file any motion to amend the complaint or add parties was September  
25 1, 2020. Because her motion was timely filed, NRCP 15(a) required this Court freely grant the  
26 amendment.

27 ////

28 ////

## II. FACTUAL BACKGROUND

On July 9, 2016, Delee performed a cesarean section on Choloe at Sunrise. Choloe is an African-American female, who was about to turn 30 years old. She was discharged home on “post-operative day one” even though the standard of care for “a routine cesarean is a 3-4 night stay in the hospital.” The standard of care was also breached relating to the first discharge because Choloe “had not even attempted to tolerate clear liquids and she had not passed flatus when she was released on post-operative day number one.” (*See* Affidavit of Lisa Karamardian (“Karamardian Affidavit”), attached to Complaint for Medical Malpractice as Exhibit 1, filed on June 30, 2017, at ¶ 4.)

On July 14, 2016, Choloe was admitted into Sunrise’s “medical/surgical unit because of the diagnosis of sepsis.” She was five days post-partum and experiencing “severe abdominal pain and reports of nausea, vomiting, fever, and chills.” (*See* Karamardian Affidavit, at ¶ 5.) She had various conversations with doctors arranged by Sunrise. She was assigned a doctor, Dr. Kia, who she did not know. She was treated by nurses of Sunrise and various other doctors called in by Sunrise. (*See* Affidavit of Choloe Green, attached hereto as Ex. 3, at ¶ 5.)

She was discharged two days later, on July 16, 2016. Choloe’s discharge was discussed between Delee and the doctors treating her at Sunrise. As part of his OB-GYN care and delivering of the child, Delee was required to provide follow-up care for thirty (30) days. He breached this duty when he did not provide Choloe competent care during her second hospital stay even though he was paid, through Medicaid, to provide this care. (*See* Karamardian Affidavit, at ¶ 5; and *see* Excerpt of Deposition of Frank J. Delee, M.D., dated September 20, 2018, attached hereto as Ex. 4, at pp. 41-42.)

This discharge violated the standard of care because “[1] she was not able to tolerate a regular diet[,] . . . [2] her KUB showed multiple dilated loops of bowel, thought to be related to a small bowel obstruction, . . . [and] [3] [a]n intraperitoneal abscess was suspected on a CT scan.” Despite these issues both Sunrise and Delee agreed to discharge her home. (*See* Karamardian Affidavit, at ¶ 5.)

One day after her second discharge from Sunrise, July 17, 2017, Choloe was admitted into Centennial Hills Hospital (“Centennial”), again in severe pain and with no real bowel movement. The imaging studies at Centennial showed her condition had worsened in the one day since her discharge from Sunrise. (*See* Karamardian Affidavit, at ¶ 6.)



1 Dr. Karamardian opined that based on the above breaches to the standard of care by Delee and  
2 Sunrise, Choloe’s “hospital course was protracted with multiple complications and . . . [then]  
3 discharged to a step down facility once her antibiotic course was felt to be completed, still on a feeding  
4 tube and in need of rehabilitation.” (See Karamardian Affidavit, at ¶ 7.)

5 Choloe turned 30 years old during her second admission to Sunrise. After she was discharged  
6 from Centennial and then the rehabilitation facility, she had to undergo a huge change of lifestyle,  
7 especially for a 30-year-old with four children. During her time at Centennial and the rehabilitation  
8 facility she was diagnosed with Chronic Obstructive Pulmonary Disease (“COPD”) and now requires  
9 constant, 24-hour use of oxygen tanks. She also suffers other health issues related to COPD. These  
10 health issues caused by Delee and Sunrise burden the State of Nevada through Medicaid, her insurance  
11 provider. These health issues also prevent Choloe from obtaining meaningful employment to care for her  
12 family.

### 13 **III. LEGAL ARGUMENT**

14 A motion for reconsideration must be filed within 14 days after notice of entry of the order.  
15 EDCR 2.24(b). Reconsideration may be granted if the decision is “clearly erroneous.” *Masonry and Tile*  
16 *Contractors Assoc. of S. Nev. v. Jolly, Urga & Wirth LTD.*, 113 Nev. 737, 741, 941 P.2d 486 (1997).

17 In this case, this Court’s sua sponte reconsideration of the renewed motion for partial summary  
18 judgment outside the deadline to request reconsideration and denial of Choloe’s request for leave to  
19 amend her complaint and were clearly erroneous. Each issue is discussed below.

#### 20 **A. This Court’s dismissal of the ostensible agency theory of liability based on its sua** 21 **sponte reconsideration of that motion is clearly erroneous.**

22 Once a motion is “heard and disposed of” it may not be “renewed in the same cause, nor may the  
23 same matters therein embraced be reheard, unless by leave of the court granted upon motion.” EDCR  
24 2.24(a). Reconsideration of a prior ruling must be requested within 14 days of notice of entry of the  
25 order. EDCR 2.24(b). Res judicata prevents litigants who are dissatisfied with a decision from filing  
26 “serial motions until the right circumstances or the right judge allows them to achieve a different result,

27 ////

28 ////

1 based on essentially the same facts.” *Ellis v. Carucci*, 123 Nev. 145, 151, 161 P.3d 239, 243 (2007).  
2 “Filing serial motions seeking the same relief only delays [] resolution.” *Warenback v. Neven*, 2018 WL  
3 834607, \*4 (D.Nev. Feb. 12, 2018). A serial motion is a redundant matter that this Court must strike.

4 Sunrise’s renewed motion was really a motion for reconsideration that was more than two (2)  
5 months late, in violation of EDCR 2.24. Sunrise comments on what it perceives as error in the original  
6 order when it states this “Court rendered this decision, even though there was no assertion of ostensible  
7 agency in Plaintiff’s Complaint and Dr. Kia was not identified in Plaintiff’s Complaint by name or act.”  
8 (See Renewed Motion, at 3:14-16.) It was required to comply with EDCR 2.24’s 14 day deadline to seek  
9 reconsideration. Sunrise violated EDCR 2.24 when it filed the renewed motion. EDCR 2.24(a), which is  
10 based on the theory of res judicata, does not allow serial motions based on the same facts.

11 The expert affidavit requirement of NRS 41A.071 only requires the affidavit contain the  
12 following:

- 13 1. Supports the allegations contained in the action;
- 14 2. Is submitted by a medical expert who practices or has practiced in  
15 an area that is substantially similar to the type of practice engaged  
in at the time of the alleged professional negligence;
- 16 3. Identifies by name, **or describes by conduct**, each provider of  
17 health care who is alleged to be negligent; and
- 18 4. Sets forth factually a specific act or acts of alleged negligence  
separately as to each defendant in simple, concise and direct terms.

19 (Emphasis added).

20 The legislative purpose behind NRS 41A.071 was not to require theories of liability within the  
21 expert affidavit, an issue of law, but rather to ensure a legitimate medical basis to proceed with a  
22 malpractice lawsuit. See *Zohar v. Zbiegien*, 130 Nev. 733, 737-38, 334 P.3d 402 (2014). This Court  
23 misapplied NRS 41A.071 when it granted Sunrise’s renewed motion for summary judgment on  
24 ostensible agency. In dismissing a theory of liability tied to the medical malpractice cause of action, this  
25 Court defied Nevada’s notice pleading standard and neglected to apply the *Schlotfeldt v. Charter Hosp.*  
26 *Of Las Vegas*, 112 Nev. 42, 910 P.2d 271 (1996), elements for ostensible agency, which the evidence of

27 ////

28 ////

1 this case supports. (*See* Opposition to Defendant Sunrise Hospital’s Renewed Motion for Partial  
2 Summary Judgment to Dismiss any Claim of “Ostensible Agency” for Ali Kia, M.D., filed on June 3,  
3 2020, incorporated herein by reference.)

4 In *Zohar*, the Nevada Supreme Court held a medical malpractice complaint and supporting  
5 affidavit must be read together. 130 Nev. at 735. It held that even if the healthcare provider names are  
6 omitted, the notice-pleading requirement is satisfied if the providers’ conduct is described. *Id.* at 737-40.

7 By misconstruing Nevada law, and confusing the applicable standard of review relative to NRS  
8 41A.071, this Court blocks the gates of justice even though Choloe’s complaint and expert witness  
9 affidavit, in their current form, confirm Choloe has a doctor-verified complaint for malpractice based on  
10 the conduct of the various individuals providing care at Sunrise. In relevant part, Choloe’s complaint  
11 alleges:

12 8. On July 14, 2016, after still not having a bowel movement post C-  
13 section, Choloe went to the emergency room at Sunrise Hospital,  
14 with severe abdominal pain and reports of nausea, vomiting, fever,  
15 and chills. She was admitted to the medical/surgical unit because  
16 of the diagnosis of sepsis. **Sunrise Hospital discharged Choloe  
on July 16, 2016, despite having a small bowel obstruction.** The  
17 discharge was discussed and confirmed by Dr. DeLee.

18 ...  
19 10. That Defendant Dr. DeLee and **Sunrise Hospital breached the  
standard of care in their treatment of Choloe** and as a direct and  
20 proximate result of that breach, Choloe has been damaged.

21 (*See* Complaint for Medical Malpractice, filed on June 30, 2017 (emphasis added).) These allegations  
22 are supported by the Affidavit of Dr. Lisa Karamardian, attached to the Complaint as Exhibit 1, which  
23 states in relevant part:

24 5. A review of the medical records also reveals that on July 14) 2016,  
25 Ms. Green presented again to Sunrise Hospital, now five (5) days  
26 post-partum, with severe abdominal pain and reports of nausea,  
27 vomiting, fever, and chills. She was admitted to the  
28 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 borne. 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. De Lee.**

1 (See Complaint for Medical Malpractice, filed on June 30, 2017 (emphasis added).)

2 Reading the relevant allegations with Dr. Karamardian's sworn statement, it is clear the  
3 individuals who provided Choloé care at Sunrise, as properly described by their conduct, sufficiently put  
4 Sunrise on notice of a claim of ostensible agency. Because Sunrise is a hospital, not an individual, it  
5 would be nonsensical and fly in the face of the English language to assume any other liability for the  
6 conduct described. That is why this Court originally denied Sunrise's motion for partial summary  
7 judgment. This Court originally concluded:

8 Defendant's motion is DENIED as it relates to Plaintiffs claims against the  
9 hospital for any of Dr. Kia's actions under the theory of ostensible agency.  
10 As such, Plaintiff may argue that Defendant Sunrise Hospital and Medical  
11 Center, LLC, is vicariously liable for Dr. Kia's actions under the doctrine  
of ostensible agency. "Whether an ostensible agency relationship exists is  
... a question of fact for the jury." *McCrosky v. Carson Tahoe Regional  
Medical Center*, 133 Nev. Adv. Op. 115,408 P.3d 149 (2017).

12 (See Order From March 12, 2019 Hearing, filed on March 5, 2020.)

13 However this Court's decision on the renewed motion concluded:

14 11. Sunrise Hospital is a statutory provider of healthcare per NRS §  
15 41A.015. As a statutory provider of healthcare, the Hospital is  
entitled to protections offered per NRS 41A. One of such  
16 protections is the requirement that Plaintiff, in pursuing a  
professional negligence action against the Hospital, comply with  
17 NRS § 41A.071. To comply, Plaintiff must have provided an  
expert affidavit that identifies by name or describes by conduct,  
18 each provider of healthcare who is alleged to be negligent, sets  
forth factually by a specific act or acts, separately, in simple,  
19 concise and direct terms. Plaintiff's proposed Amended Complaint  
with the attached expert affidavit of Lisa Karamardian, M.D.,  
20 failed to satisfy such requirements with regard to a claim that Dr.  
Ali Kia is an ostensible agent of Sunrise Hospital.

21 (See Three (3) Part Order: (1) Granting Partial Summary Judgment Dismissing Ostensible Agency; (2)  
22 Denying Sanctions; and (3) Denying Plaintiff's Motion to Amend Complaint in Part With Prejudice, and  
23 in Part Without Prejudice ("July 7<sup>th</sup> Order"), noticed on September 28, 2020.) This conclusion fails to  
24 consider that Choloé properly described the conduct at issue, as required by NRS 41A.071. This Court  
25 fails to explain why it applied a strict construction of NRS 41A.071, when its conclusions of law  
26 acknowledge the complaint and affidavit must be liberally construed. (See July 7<sup>th</sup> Order, at ¶ 10.)

27 This Court's original order on this motion correctly applies the liberal construction of NRS  
28 41A.071.

1           **B.       This Court had no legal basis to deny Choloe’s request to amend her complaint.**

2           On the outset, this Court improperly applied NRCP 16's deadline to seek leave to amend a  
3 pleading. The last day to amend the pleadings and add parties, under the applicable scheduling order,  
4 was September 1, 2020. (*See* Notice of Entry of Stipulation and Order to Extend the Discovery  
5 Deadlines and Trial Date (Fifth Request), filed on April 23, 2020.) Choloe did not miss this deadline, as  
6 this Court incorrectly concluded. (*See* July 7<sup>th</sup> Order, at ¶ 20.) It is unknown why this Court made this  
7 incorrect conclusion.

8           Pursuant to the Nevada Rules of Civil Procedure, a party may only amend her pleadings by leave  
9 of the court after a responsive pleading is filed. NRCP 15(a). The Court must freely grant leave to amend  
10 when justice so requires. NRCP 15(a). It is in the sound discretion of the court to grant leave to amend a  
11 complaint. *Stephens v. S. Nev. Music Co.*, 89 Nev. 104, 105, 507 P.2d 138, 139 (1973). Absent “any  
12 apparent or declared reason- such as undue delay, bad faith or dilatory motive on the part of the movant  
13 the leave sought should be freely given.” *Id.*

14           Choloe sought to amend her complaint to add DOE and ROE defendants and claims of  
15 ostensible agency and corporate negligence/negligent supervision against Sunrise. This Court’s incorrect  
16 analysis of NRCP 16 resulted in its incorrect application of the “good cause” standard to amend. She  
17 should not be precluded from adding claims of “corporate negligence/negligent supervision” because she  
18 was diligent in her requested amendment, well-within the scheduling order’s September 1, 2020,  
19 deadline to seek leave to amend.

20           These amendments are necessary based on information discovered during this case and Sunrise’s  
21 renewal of its motion for partial summary judgment on the issue of ostensible agency. Instead of  
22 granting her request for leave to amend her complaint, this Court incorrectly concluded leave could not  
23 be granted “because the proposed Amended Complaint and affidavit attached to the Motion to Amend  
24 failed to comply with NRS 41A.071.” Again it is unknown how the requested amendments do not  
25 comply with NRS 41A.071. This Court’s Minute Order caused massive confusion because its legal  
26 analysis of this issue supports Choloe’s requested amendment, but the conclusion does not. Choloe’s  
27 original affidavit when read in conjunction with the proposed Amended Complaint, supports her request  
28 for leave to amend. NRS 41A.071 is not meant to be used as a sword against plaintiff’s in this way. This

1 Court's strict reading of that statute does not allow for this case to be heard on the merits when all  
2 parties have been on notice, at least since 2019, that the claim against Sunrise involved ostensible agency  
3 related to the conduct of individuals providing care at Sunrise.

4 This Court incorrectly applies NRS 41A.071 when it requires any complaint and affidavit in a  
5 malpractice case to "identify by name (even as John or Jane Doe/Roe) the healthcare professional who  
6 was negligent." (See July 7<sup>th</sup> Order, at ¶ 28.) NRS 41A.071 does not require these individuals be  
7 identified by name, identification by conduct is sufficient. *See Zohar*, 130 Nev. At 737-40. It is the  
8 conduct requirement that this Court has continually neglected to consider when it utilizes such a strict  
9 interpretation.

#### 10 **IV. CONCLUSION**

11 Based on the foregoing, this Court should grant Choloe's Motion for Reconsideration by  
12 reversing its order dismissing ostensible agency and granting her request to amend her complaint.

13 DATED this 12th day of October, 2020.

14 LAW OFFICE OF DANIEL MARKS

15 /s/ Nicole M. Young

16 DANIEL MARKS, ESQ.

17 Nevada State Bar No. 002003

18 NICOLE M. YOUNG, ESQ.

19 Nevada State Bar No. 012659

20 610 South Ninth Street

21 Las Vegas, Nevada 89101

22 Attorneys for Plaintiff

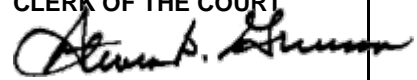
1 **CERTIFICATE OF SERVICE**

2 I hereby certify that I am an employee of the Law Office of Daniel Marks and that on the 12th  
3 day of October, 2020, pursuant to NRCP 5(b) and Administrative Order 14-2, I electronically transmitted  
4 a true and correct copy of the above and foregoing **MOTION FOR RECONSIDERATION** by way of  
5 Notice of Electronic Filing provided by the court mandated E-file & Serve System, as follows:  
6 following:

7 Erik K. Stryker, Esq.  
8 WILSON, ELSE, MOSKOWITZ, EDELMAN & DICKER LLP  
9 300 South 4<sup>th</sup> Street, 11<sup>th</sup> floor  
Las Vegas, Nevada 89101  
Attorneys for Frank J. Delee M.D. and Frank J. Delee P.C.

10 Sherman Mayor, Esq.  
11 HALL PRANGLE & SCHOONVELD, LLC.  
12 1160 N. Town Center Dr., Ste. 200  
Las Vegas, Nevada 89144  
Attorneys for Sunrise Hospital and Medical Center LLC.

13  
14 /s/ Nicole M. Young  
15 \_\_\_\_\_  
16 An employee of the  
17 LAW OFFICE OF DANIEL MARKS  
18  
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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. IX

v.

***ORAL ARGUMENT REQUESTED***

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.

**MOTION FOR LEAVE OF COURT TO AMEND COMPLAINT**

COMES NOW the Plaintiff, Choloe Green, by and through her counsel, Daniel Marks, Esq., of the Law Office of Daniel Marks, and hereby moves for leave of this Court to amend her complaint. The grounds for Plaintiff's motion are set forth in the following Memorandum of Points and Authorities.

DATED this 16th day of October, 2020.

LAW OFFICES OF DANIEL MARKS

/s/ Nicole M. Young  
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 On July 9, 2016, Defendants Frank J. Delee, M.D., and Frank J. Delee, MD, PC (“Delee”) performed a cesarean section on Plaintiff Choloe Green (“Choloe”) at Defendant Sunrise Hospital and Medical Center, LLC (“Sunrise”). Choloe is an African-American female, who was about to turn 30 years old. She was discharged home on “post-operative day one” even though the standard of care for “a routine cesarean is a 3-4 night stay in the hospital.” The standard of care was also breached relating to the first discharge because Choloe “had not even attempted to tolerate clear liquids and she had not passed flatus when she was released on post-operative day number one.” (See Affidavit of Lisa Karamardian (“Karamardian Affidavit”), attached to Complaint for Medical Malpractice as Exhibit 1, filed on June 30, 2017, at ¶ 4.)

12 On July 14, 2016, Choloe was admitted into Sunrise’s “medical/surgical unit because of the diagnosis of sepsis.” She was five days post-partum and experiencing “severe abdominal pain and reports of nausea, vomiting, fever, and chills.” (See Karamardian Affidavit, at ¶ 5.) She had various conversations with doctors arranged by Sunrise. She was assigned a doctor, Dr. Kia, who she did not know. She was treated by nurses of Sunrise and various other doctors called in by Sunrise.

17 She was discharged two days later, on July 16, 2016. Choloe’s discharge was discussed between Delee and the doctors treating her at Sunrise. As part of his OB-GYN care and delivering of the child, Delee was required to provide follow-up care for thirty (30) days. He breached this duty when he did not provide Choloe competent care during her second hospital stay even though he was paid, through Medicaid, to provide this care. (See Karamardian Affidavit, at ¶ 5.)

22 This discharge violated the standard of care because “[1] she was not able to tolerate a regular diet[,] . . . [2] her KUB showed multiple dilated loops of bowel, thought to be related to a small bowel obstruction, . . . [and] [3] [a]n intraperitoneal abscess was suspected on a CT scan.” Despite these issues both Sunrise and Delee agreed to discharge her home. (See Karamardian Affidavit, at ¶ 5.)

26 One day after her second discharge from Sunrise, July 17, 2017, Choloe was admitted into

27 ////

28 ////

1 Centennial Hills Hospital (“Centennial”), again in severe pain and with no real bowel movement. The  
2 imaging studies at Centennial showed her condition had worsened in the one day since her discharge  
3 from Sunrise. (See Karamardian Affidavit, at ¶ 6.)

4 Dr. Karamardian opined that based on the above breaches to the standard of care by Delee and  
5 Sunrise, Choloe’s “hospital course was protracted with multiple complications and . . . [then]  
6 discharged to a step down facility once her antibiotic course was felt to be completed, still on a feeding  
7 tube and in need of rehabilitation.” (See Karamardian Affidavit, at ¶ 7.) The instant complaint was filed  
8 on June 30, 2017.

9 Choloe turned 30 years old during her second admission to Sunrise. After she was discharged  
10 from Centennial and then the rehabilitation facility, she had to undergo a huge change of lifestyle,  
11 especially for a 30-year-old with four children. During her time at Centennial and the rehabilitation  
12 facility she was diagnosed with Chronic Obstructive Pulmonary Disease (“COPD”) and now requires  
13 constant, 24-hour use of oxygen tanks. She also suffers other health issues related to COPD. These  
14 health issues caused by Delee and Sunrise burden the State of Nevada through Medicaid, her insurance  
15 provider. These health issues also prevent Choloe from obtaining meaningful employment to care for her  
16 family.

## 17 **II. LEGAL ARGUMENT**

18 Pursuant to the Nevada Rules of Civil Procedure, a party may only amend her pleadings by leave  
19 of the court after a responsive pleading is filed. NRCP 15(a). The Court must freely grant leave to amend  
20 when justice so requires. NRCP 15(a). It is in the sound discretion of the court to grant leave to amend a  
21 complaint. *Stephens v. S. Nev. Music Co.*, 89 Nev. 104, 105, 507 P.2d 138, 139 (1973). Absent “any  
22 apparent or declared reason- such as undue delay, bad faith or dilatory motive on the part of the movant  
23 the leave sought should be freely given.” *Id.*

24 In this case, Choloe seeks to amend her complaint to add Ali Kia, M.D., and Nevada Hospitalist  
25 Group, LLP, his employer, as named parties to this complaint. This amendment is necessary based on  
26 information discovered during this case and this Court’s recent decision granting Sunrise’s motion for  
27 partial summary judgment on the issue of ostensible agency. As this Court is aware, Choloe filed a  
28 motion for reconsideration of that order, as well as its decision denying her previous motion for leave to

1 amend her complaint. In this Court's Order from the July 7, 2020, hearing it comments that it could not  
2 grant Choloe's first motion to amend because Dr. Karamardian's affidavit did not comply with NRS  
3 41A.071 to add additional parties. Choloe's instant motion to amend cures that issue with the affidavit of  
4 Dr. Savluk.

5 Choloe's request for leave to amend is not made to delay this case. This case has been wrapped  
6 up in motion practice for the better part of this year. This amendment seeks to resolve all pending issues  
7 so that the parties can focus on discovery. The current initial expert disclosure deadline is December 30,  
8 2020, and discovery closes on April 29, 2021. With this amendment, Defendants would still have time to  
9 conduct discovery as to the proposed amendment to Choloe's complaint. This does not cause any  
10 prejudice to Ali Kia, M.D., because he was already a party to this case and has been deposed.  
11 This Court cannot find the proposed amendment is made in bad faith or for any dilatory motive.

12 On January 15, 2019, Sunrise filed its first motion for partial summary judgment relating to  
13 ostensible agency. As that motion related to Ali Kia, M.D., this Court ordered as follows:

14 Defendant's motion is DENIED as it relates to Plaintiffs claims against the  
15 hospital for any of Dr. Kia's actions under the theory of ostensible agency.  
16 As such, Plaintiff may argue that Defendant Sunrise Hospital and Medical  
17 Center, LLC, is vicariously liable for Dr. Kia's actions under the doctrine  
18 of ostensible agency. "Whether an ostensible agency relationship exists is  
19 ... a question of fact for the jury." *McCrosky v. Carson Tahoe Regional  
20 Medical Center*, 133 Nev. Adv. Op. 115,408 P.3d 149 (2017).

21 (See Order From March 12, 2019 Hearing, filed on March 5, 2020.)

22 Then, on May 11, 2020, this Court issued its Minute Order relating to Third-Part Defendant  
23 Nevada Hospitalist Group's Motion for Judgment on the Pleadings. That minute order also comments on  
24 the ostensible agency issue. After that minute order was issued, Sunrise renewed its motion for partial  
25 summary judgment relating to its ostensible agency with Ali Kia. M.D.

26 Based on these orders, it has become apparent that Choloe must protect her rights and ensure that  
27 she is able to recover for the malpractice at issue. Justice demands this case be heard on the merits.

28 This Court should grant Choloe leave to amend her complaint adding Ali Kia, M.D., as a named  
party. A copy of Plaintiff's proposed Amended Complaint is attached hereto as Exhibit 1, in accordance  
with EDCR 2.30. That Amended Complaint contains the affidavit of Robert S. Savluk, M.D., who

////

1 reviewed Dr. Karamardian's affidavit, which attributes medical negligence to the conduct of Sunrise  
2 when it discharged Choloe on July 16, 2016. Dr. Savluk's affidavit complies with NRS 41A.071 because  
3 it expands on the conduct criticized by Dr. Karamardian and attributes that conduct to Ali Kia, M.D.

4 **III. CONCLUSION**

5 Based on the foregoing, this Court should grant Choloe leave to amend her complaint in this  
6 case.

7 DATED this 16th day of October, 2020.

8 LAW OFFICES OF DANIEL MARKS

9  
10 /s/ Nicole M. Young

11 DANIEL MARKS, ESQ.

12 Nevada State Bar No. 002003

13 NICOLE M. YOUNG, ESQ.

14 Nevada State Bar No. 12659

15 610 South Ninth Street

16 Las Vegas, Nevada 89101

17 Attorneys for Plaintiff  
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20  
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Erik K. Stryker, Esq.  
WILSON, ELSER, MOSKOWITZ, EDELMAN & DICKER LLP  
300 South 4<sup>th</sup> Street, 11<sup>th</sup> 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.

APP2-0480

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# **EXHIBIT 1**

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

7 DISTRICT COURT  
8 CLARK COUNTY, NEVADA

9 CHOLOE GREEN, an individual,

Case No. A-17-757722-C  
10 Dept. No. IX

11 Plaintiff,

12 v.

13 FRANK J. DELEE, M.D., an individual;  
FRANK J. DELEE MD, PC, a Domestic  
14 Professional Corporation, SUNRISE HOSPITAL  
AND MEDICAL CENTER, LLC, a Foreign  
15 Limited-Liability Company; ALI KIA, M.D. an  
individual; and NEVADA HOSPITALIST  
16 GROUP, LLP.

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

17 Defendants.  
18 \_\_\_\_\_/

19 **AMENDED COMPLAINT FOR MEDICAL MALPRACTICE**

20 COMES NOW Plaintiff Choloe 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 Choloe Green (hereinafter "Choloe") 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 at all times material hereto, Defendant ALI KIA, M.D., was a licensed medical doctor  
10 in the State of Nevada, and who practices through the limited-liability partnership entitled  
11 NEVADA HOSPITALIST GROUP, LLP.
- 12          7.     That Defendant NEVADA HOSPITALIST GROUP, LLP, was a limited-liability partnership,  
13 registered to do business and doing business in the State of Nevada in Clark County, Nevada.
- 14          8.     At all relevant times, Defendants, and each of them, were the agents, ostensible agents,  
15 servants, employees, employers, partners, co-owners and/or joint venturers of each other and  
16 of their co-defendants, and were acting within the color, purpose and scope of their  
17 employment, agency, ownership and/or joint ventures and by reason of such relationships the  
18 Defendants, and each of them, are vicariously and jointly and severally responsible and liable  
19 for the acts and/or omissions of their co-Defendants.
- 20          9.     That on or about July 9, 2016, Dr. DeLee performed a cesarean section (C-Section) on  
21 Choloe at Sunrise Hospital. Choloe was discharged from the hospital the following day, on  
22 July 10, 2016, even though she did not have bowel movement prior to being discharged from  
23 the hospital.
- 24          10.    On July 13, 2016, Choloe had an appointment with Dr. DeLee. At that appointment, Choloe  
25 notified Dr. Delee that she had not had a bowel movement post C-section. He did not provide  
26 any care or treatment to Choloe regarding her lack of a bowel movement.

27    ////

28    ////



- 1 11. On July 14, 2016, after still not having a bowel movement post C-section, Choloe went to  
2 the emergency room at Sunrise Hospital, with severe abdominal pain and reports of nausea,  
3 vomiting, fever, and chills. She was admitted to the medical/surgical unit because of the  
4 diagnosis of sepsis. Sunrise Hospital, through Ali Kia, M.D., discharged Choloe on July 16,  
5 2016, despite having a small bowel obstruction. The discharge was discussed and confirmed  
6 by Dr. DeLee.
- 7 12. That Choloe presented at Sunrise Hospital on July 14, 2016, seeking treatment from the  
8 hospital, not a specific doctor. Upon her admission, Sunrise Hospital provided various  
9 healthcare professionals, including doctors and nurses to provide emergency care/treatment  
10 to Choloe. Throughout her stay from July 14-16, 2016, Choloe believed all healthcare  
11 professionals that provided her care/treatment were employees and/or agents of the hospital.  
12 She was never provided the opportunity to affirmatively chose who provided her  
13 care/treatment. She was never informed the doctors or nurses providing care/treatment were  
14 not employees and/or agents of the hospital.
- 15 13. On July 17, 2016, Choloe went to the emergency room at Centennial Hills Hospital where  
16 she was admitted until she was finally discharged on September 2, 2016. Centennial Hills  
17 admitted Choloe with the diagnosis of small bowel obstruction. She had an NG Tube placed,  
18 underwent surgery, had diffuse pulmonary infiltrates, suggestive of pulmonary edema or ARDS,  
19 and eventually needed a tracheostomy and PEG tube placement.

## 20 **COUNT I**

### 21 **(Professional Negligence Against All Defendants)**

- 22 14. Plaintiff restates and incorporates the allegations set forth in Paragraphs 1 through 13 herein  
23 by reference.
- 24 15. That Defendant Dr. DeLee, Sunrise Hospital, Dr. Kia, and Nevada Hospitalist Group, LLP,  
25 breached the standard of care in their treatment of Choloe and as a direct and proximate  
26 result of that breach, Choloe has been damaged.
- 27 16. That as a direct and proximate result of all of the Defendants' negligence, Choloe has been  
28 damaged in an amount in excess of \$15,000.00.

1 17. This Complaint is supported by the Affidavit of Lisa Karamardian, M.D., a copy of which  
2 is attached hereto as Exhibit "A".

3 18. This Complaint is supported by the Affidavit of Robert Savluk, M.D., a copy of which is  
4 attached hereto as Exhibit "B".

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

7 **COUNT II**

8 **(Vicarious Liability- Against Defendants Sunrise Hospital and Nevada Hospitalist Group)**

9 20. Plaintiff restates and incorporates the allegations set forth in Paragraphs 1 through 18 herein  
10 by reference.

11 21. That a hospital and/or hospitalist group cannot avoid liability by claiming a secret or  
12 undisclosed independent contractor relationship with doctors providing healthcare services  
13 on its premises and/or through its scheduling service because that relationship is unknown  
14 to a patient seeking emergency services from a hospital.

15 22. Defendant Sunrise Hospital and Nevada Hospitalist Group's employees, agents and/or  
16 servants were acting in the scope of their employment, under Defendants' control, and in  
17 furtherance of Defendant' 'interest at the time their actions fell below the standard of care  
18 causing injuries to Plaintiff.

19 23. Defendant Sunrise Hospital and Nevada Hospitalist Group are vicariously liable for damages  
20 resulting from its agents' and/or employees' and/or servants' negligent actions and omissions  
21 regarding the injuries to Plaintiff to include, but not are not limited to, conduct in failing to  
22 supervise and/or correct the negligence of their employees demonstrated disregard for the  
23 safety of the Plaintiff.

24 24. That as a direct and proximate result of all of the Defendants' negligence, Choloe has been  
25 damaged in an amount in excess of \$15,000.00.

26 25. Choloe has been forced to retain counsel to bring this action and should be awarded his  
27 reasonable attorneys fees and costs.

28 ////

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

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

6 DATED this \_\_\_\_\_ day of October, 2020.

7 LAW OFFICE OF DANIEL MARKS

8

9 \_\_\_\_\_

10 DANIEL MARKS, ESQ.  
Nevada State Bar No. 002003  
11 NICOLE M. YOUNG, ESQ.  
Nevada State Bar No. 012659  
12 610 South Ninth Street  
Las Vegas, Nevada 89101  
13 Attorneys for Plaintiff

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1 VERIFICATION

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

4 CHOLOE 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 \_\_\_\_\_  
10 CHOLOE GREEN

11 SUBSCRIBED AND SWORN to before me  
12 this \_\_\_\_ day of June, 2020.

13 \_\_\_\_\_  
14 NOTARY PUBLIC in and for said  
15 COUNTY and STATE  
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## **EXHIBIT A**

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AFFIDAVIT OF DR. LISA KARAMARDIAN


STATE OF California }  
COUNTY OF Orange } s.

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

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## **EXHIBIT B**

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**AFFIDAVIT OF ROBERT S. SAVLUK, M.D.**

STATE OF CALIFORNIA                     )  
   )       ss:  
COUNTY OF SAN LUIS OBISPO        )

ROBERT S. SAVLUK, M.D., being first duly sworn under penalty of perjury, deposes and says:

1. That I have been asked to address issues relating to the care and treatment of patient Choloe Green provided at the Sunrise Hospital by Dr. Ali Kia (hospitalist).
2. That I practiced Internal Medicine (functioning as a hospitalist before the term was coined) and Critical Care Medicine for 36 years.
3. I graduated from the University of California at Los Angeles School of Medicine in 1977 with a doctor of medicine degree and completed my residency in Internal Medicine at University of Medical Center, Fresno, California.
4. That I am board certified in Internal Medicine and was boarded in Critical Care Medicine through 2018.
5. That I am familiar with the roles of hospitalist, and subspecialists in taking care of their patients in a hospital setting.
6. That I am particularly familiar with the case of a septic patient including but not limited to fluid resuscitation, antibiotics, and all manners of supporting medications and equipment.
7. That I am particularly familiar with the source identification and its importance in the treatment of a septic patient. In addition, I am very familiar with the coordination of the various physicians to treat that condition.

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- 1 8. In preparation for this affidavit, I have reviewed summaries of the two hospitalizations at  
2 Sunrise Hospital between August 9 and August 16, 2016 consisting of 33 pages plus an  
3 additional 45 pages of organized records related to medications and vital signs. I also  
4 reviewed 337 pages of Centennial Hills hospital records and the affidavit of Dr. Lisa  
5 Karamardian.  
6
- 7 9. That Choloe Green was a 29 year old G5 P3 obese individual at the time she was  
8 admitted to Sunrise Hospital on 7/09/2016 for repeat c-section for a transverse  
9 presentation. She underwent the procedure through the previous surgical scar (low  
10 transverse), under spinal anesthesia, delivering a 6 lb 7 oz male child.  
11
- 12 10. Post operatively she developed itching secondary to the spinal anesthetic. By the next day  
13 she was ambulatory and taking a regular diet. No mention of bowel activity or urination.  
14 She was deemed ready for discharge and sent home on Norco and Ibuprofen for pain.
- 15 11. That on July 14, 2016 she presented to the Sunrise Hospital ED with 2 days history of  
16 nausea, vomiting, and abdominal pain. She had 2 BM's that day. She was febrile and  
17 tachycardic with a marked leucocytosis. She met the criteria for sepsis and the sepsis  
18 bundle was initiated. She had blood cultures drawn, a fluid bolus given and a broad  
19 spectrum antibiotics initialed appropriately for an intra-abdominal source. An ultra sound  
20 of the pelvis and CT scan of the abdomen and pelvis were ordered. The ultra sound  
21 showed no retained products of conception but a moderate amount of complex free fluid  
22 in the cul-de-sac. The CT scan showed a gastric band in place, distention of doudenum  
23 and jejunum and free fluid with small amount of gas in the peritoneal cavity in the lower  
24 abdomen, anterior to an enlarged uterus. The impressions were 1) small bowel  
25 obstruction and 2) intraperitoneal abscess suspected.  
26  
27  
28

12. The patient was admitted to medicine at the request of Dr. DeLee (who was going to be out of town) by Dr. Ali Kia at 9:10 p.m. on July 14, 2016. Dr. Kim also consulted by ED but did not see patient stating "OB can manage care on an out-patient basis." On July 15, 2016, the WBC was 20,600 with left shift. No additional antibiotics were given outside the first dose. At 17:33 patient seen by case worker with plan that patient would go home with sister or mother on out patient antibiotics and follow up with Dr. DeLee.

13. At 22:31 on July 15, 2016, Dr. Ali Kia saw the patient and noted patient having abdominal pain with distention. Additionally she was agitated and having no flatus on bowel movements. The discharge was halted. On the morning of July 16, 2016 an x-ray of the abdomen was done which revealed multiple dilated small bowel loops, small bowel obstruction versus ileus. Despite this, patient discharged home at 20:26 on Norco, dilaudid, motrin iron, and prenatal vitamins but no antibiotics. She was to follow up with Dr. DeLee in two days.

14. The patient presented to Centennial Hills Hospital the next day with an acute abdomen and was taken to surgery on July 18, 2016 where she was noted to have more than a liter of foul smelling fluid in her abdomen, plus an omental infarct which was resected. She then went on to develop severe ARDS and severe physical deconditioning requiring 6 plus weeks in the ICU, a PEG, a trach and finally discharge to a sub-acute facility.

15. Dr. Ali Kia's care of his patient Choloe Green fell below the standard of care for a hospitalist for the following reasons:

1. Failure to continue appropriate antibiotics during the patients hospitalizations when she was clearly fighting an infection.
2. Failure to continue antibiotics post-discharge in a patient clearly not having

- 1 recovered from her infection.
- 2 3. Failure to follow up the radiographic studies which were clearly suspicious for an
- 3 intra-abdominal abscess.
- 4
- 5 4. Discharging a patient with evidence of a small bowel obstruction or ileus without
- 6 any explanation or resolution.
- 7
- 8 5. Pre maturely discharging the patient before she had adequately recovered from the
- 9 septic process.
- 10 16. Finally due to the failures noted above, Choloe Green went on to develop an acute
- 11 abdomen requiring surgery, intra-abdominal abscess requiring percutaneous drainage and
- 12 sepsis related ARDS (severe) which required 6 plus weeks in the ICU and resulted in
- 13 severe physical deconditioning and prolonged sub-acute care.
- 14 17. The conduct described in paragraph 5 of Dr. Karamardian's affidavit dated June 29, 2017
- 15 relating to Ms. Green's discharge from Sunrise Hospital relates to the care provided to
- 16 Ms. Green at Sunrise by Dr. Ali Kia and any other medical providers that were involved
- 17 in the decision to discharge Ms. Green on July 16, 2016, this decision to discharge her
- 18 violated the standard of care.
- 19
- 20 18. My opinions are expressed to a reasonable decree of medical probability and/or certainty
- 21 and are based on my education, training, experience, and review of the medical records
- 22 outlined previously which reflect the care given Choloe Green by the aforementioned
- 23 Physician.
- 24
- 25 19. This affidavit is intended as a summary of my opinion and there obviously may be further
- 26 explanation of these opinions at the time of trial and/or depositions, should I be asked
- 27 follow-up questions related to any opinions.
- 28

FURTHER YOUR AFFLIANT SAYETH NAUGHT.

ROBERT S. SAVLUK, M.D.

SUBSCRIBED and SWORN TO  
Before me this \_\_\_\_ day of October, 2020.

See attached

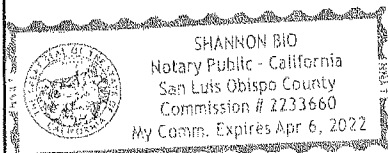
NOTARY PUBLIC in and for said  
COUNTY and STATE

A notary public or other officer completing this certificate verifies only the identity of the individual who signed the document to which this certificate is attached, and not the truthfulness, accuracy, or validity of that document.

State of California  
County of San Luis Obispo

Subscribed and sworn to (or affirmed) before me on this 16th  
day of October, 2020, by Robert S. Savluk

proved to me on the basis of satisfactory evidence to be the  
person(s) who appeared before me.



(Seal)

Signature

A handwritten signature in dark ink, appearing to read "Robert S. Savluk", written over a horizontal line.