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Clerk of Supreme Court

IN THE SUPREME COURT OF THE STATE OF NEVADA

CHOLOE GREEN,

Petitioner,

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

v.

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

Respondent,

and

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

APPENDIX TO PETITION FOR WRIT OF MANDAMUS

Volume III of III

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Plaintiff's Motion for Leave of Court to Amend Complaint, filed on October 16, 2020	II	APP2-0475-0497
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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
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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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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 III OF III** on the following:

Erik K. Stryker, Esq.
Wilson, Elser, Moskowitz, Edelman & Dicker LLP
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Attorney for Ali Kia, M.D.

Erin Jordan, Esq.
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Attorney for Nevada Hospitalist Group, LLP

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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 III

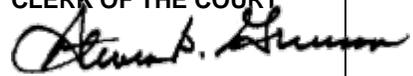
OF III to the addresses as follows:

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
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*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
AND MEDICAL CENTER'S
OPPOSITION TO PLAINTIFF'S
MOTION FOR RECONSIDERATION**

**Hearing Date: November 17, 2020
(In Chambers)**

COMES NOW, Defendant, SUNRISE HOSPITAL AND MEDICAL CENTER, LLC
("Sunrise Hospital") by and through its counsel of record, HALL PRANGLE &
SCHOONVELD, LLC and hereby submits its Opposition to Plaintiff's Motion for
Reconsideration as follows.

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.

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

1 DATED this 22nd day of October, 2020.

2 HALL PRANGLE & SCHOONVELD, LLC

3 By: /s/ Sherman B. Mayor
4 MICHAEL E. PRANGLE, ESQ.
5 Nevada Bar No.: 8619
6 TYSON J. DOBBS, ESQ.
7 Nevada Bar No.: 11953
8 SHERMAN B. MAYOR, ESQ.
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13 Las Vegas, NV 89144
14 *Attorneys for Defendant*
15 *Sunrise Hospital and Medical Center, LLC*

16 **POINTS AND AUTHORITES**

17 **I.**

18 **FACTS**

19 On July 10, 2016 and July 16, 2016, Plaintiff Choloe Green contends that she was
20 prematurely discharged from Sunrise Hospital resulting in injury and damage. So there is no
21 misunderstanding, the 1st hospital discharge was specifically and directly ordered by Frank J.
22 DeLee, M.D. The 2nd hospital discharge on July 16, 2016 was specifically, directly, and in
23 writing ordered by her treating physician, Ali Kia, M.D. There is no order issued by Sunrise
24 Hospital to discharge Choloe Green on either date.

25 About a year later, on June 30, 2017, Choloe Green filed a Complaint for medical
26 malpractice against Frank J. DeLee, M.D. (and his corporation) and Sunrise Hospital. Plaintiff
27 attached an expert affidavit to her original Complaint of Lisa Karamardian, M.D.

28 There was no mention by name of Dr. Ali 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 provision of medical care was separately linked to or attributed to
Ali Kia, M.D. in either Plaintiff's Complaint or attached expert affidavit. Plaintiff did not allege

1 or plead any claim for agency, ostensible agency, or even vicarious liability in Plaintiff’s original
2 Complaint.

3 On August 9, 2017, Plaintiff, Choloe Green, served her List of Witnesses and Production
4 of Documents Pursuant to NRCP 16.1. Included in that Plaintiff’s production are the medical
5 records from Sunrise Hospital. The records produced by Plaintiff contained and included Dr. Ali
6 Kia’s Discharge Order of July 16, 2016.

7 Eventually, on January 15, 2019, Sunrise Hospital filed a Motion for Partial Summary
8 Judgment. The Motion was filed before and heard by then-District Court Judge Douglas Smith.
9 Judge Smith granted 3 parts of the 4 part Motion for Partial Summary Judgment. That is, Judge
10 Smith granted partial Summary Judgment finding that neither Dr. DeLee or Ali Kia, M.D. were
11 employees of Sunrise Hospital. Judge Smith also granted the Motion for Partial Summary
12 Judgment finding that Dr. DeLee was not an agent of Sunrise Hospital.

13 Somehow, Judge Smith denied Sunrise Hospital’s Motion that Dr. Kia was not an
14 “ostensible agent” of Sunrise Hospital. Judge Smith denied the Motion even though Dr. Kia was
15 not referenced by name, by Doe/Roe pleading, or even by acts attributed to him. Perhaps, the
16 reason the Court, at least in part, may have denied the ostensible agency partial Summary
17 Judgment motion was due to the fact that the Plaintiff argued that the Motion should be denied
18 “...**because the claim did not exist**...” and therefore could not be subject to such an order.
19 (Please see attached as “**Exhibit A**,” hereto, which are the Court’s Minutes – Judge Douglas E.
20 Smith – Hearing Date March 12, 2019).

21 Since the Court denied Sunrise Hospitals’ Partial Summary Judgment on ostensible
22 agency, the Hospital, in a defensive move, requested and received court ordered Leave to file a
23 Third-Party Complaint against Dr. Kia in the event the unnamed and undesignated Dr. Kia was
24 found to be the ostensible agent of Sunrise and thereby cause liability to imposed upon the
25 Hospital.¹

26
27 ¹ Leave was also granted to add Nevada Hospitalist Group, LLP as a Third-Party Defendant. Plaintiff Choloe
28 Green’s insurer requested that the admitting hospitalist, who would be treating Choloe Green at Sunrise Hospital,
would be obtained from the private Nevada Hospitalist Group. Dr. Kia was on that group’s call schedule and was
thereby “selected” via the Group’s call-schedule to treat Choloe Green.

1 Later, Dr. Kia and Nevada Hospitalist Group moved to dismiss the Third-Party
2 Complaint, arguing that Dr. Kia was never named, never referenced by provision of care, or even
3 by the assertion of Doe/Roe pleading, or even by a claim for ostensible agency anywhere in the
4 original Complaint. There simply was no separate reference to Dr. Kia or his care.

5 This Court (District Court Judge Cristina Silva) then issued an Order on April 29, 2020,
6 dismissing Sunrise Hospital’s Third-Party Complaint for which Leave had been granted. Sunrise
7 Hospital **did not** seek reconsideration of this Court’s decision to dismiss the Third-Party
8 Complaint. Instead, and in light of the Court’s ruling, Sunrise Hospital moved for “renewed”
9 Partial Summary Judgment seeking dismissal of the ostensible agency claim (which had never
10 been pled) and which would have had to contend that Dr. Kia was an agent of the Hospital.

11 Now, Plaintiff has filed a Motion for Reconsideration, asking the Court to reconsider and
12 reverse its ruling dismissing the ostensible agency claim. Interestingly, Plaintiff seeks this
13 reconsideration regarding the ostensible agency claim at about the same time that Plaintiff has
14 sought to file a second Motion to Amend Complaint. In Plaintiff’s second Motion to Amend
15 Complaint, Plaintiff seeks to add Dr. Kia and Nevada Hospitalist Group as separate and
16 independent Defendants. Nevada Hospitalist Group is specifically alleged to be the employer of
17 Dr. Kia. (This pending Motion for Reconsideration is scheduled for hearing on November 17,
18 2020 and the second Motion for Leave to Amend Complaint is scheduled for hearing 2-days later
19 on November 19, 2020).

20 Finally, and for the first time in the history of this litigation (approximately 4-years after
21 the medical care at issue here took place, and approximately 2-years after the expiration of the
22 medical malpractice statute of limitations, and after the completion of numerous key depositions
23 already taken in this case), Plaintiff sought to add brand new theories of liability against Sunrise
24 Hospital described as “Corporate Negligence/Negligent Supervision.” This Court, in its Order of
25 September 25, 2020, did not find “good cause” to add such new causes of action to this case. The
26 Court determined that, unlike NRCR Rule 15’s liberal amendment policy, which focuses on the
27
28

1 bad faith of the party seeking to interpose an amendment along with the prejudice to the
2 opposing party, Rule 16(b)'s "good cause" standard primarily considers the diligence of the party
3 seeking the amendment.

4 This Court found that while discovery had not yet closed, the pleadings failed to set forth
5 "good cause" for seeking to add such new theories of liability ("corporate negligence/negligent
6 supervision") more than 3-years after the original Complaint was filed. Although Plaintiff seeks
7 reconsideration of this Court's September 25, 2020 decision in this regard, such decision should
8 not be reconsidered and should not be reversed since there is not "good cause" to do so and since
9 the request to add the theories comes about 2-years after the medical malpractice statute of
10 limitations.²

11 Lastly, Plaintiff seeks reconsideration of this Court's decision denying Plaintiff's Motion
12 to Amend Complaint to allow for adding potential Doe/Roe defendants. At the time of this
13 Court's decision on September 25, 2020, Plaintiff had still not provided an expert affidavit
14 separately identifying Dr. Kia or medical care directly attributed to him as is required by Nevada
15 statutes and case law. Since the Court's decision is consistent with the applicable Nevada
16 statutes, case law, and expert affidavit requirements, the decision by this Court was not "clearly
17 erroneous" (as is needed for Reconsideration) and should be affirmed.

18 It is acknowledged that Plaintiff has subsequently (subsequent to September 25, 2020)
19 filed a new Motion to Amend Complaint. The new and pending Motion to Amend Complaint,
20 for the first time, includes an expert affidavit separately naming Dr. Kia and criticizing care
21 directly attributed to him. With that new expert affidavit in hand, Plaintiff is now seeking to add
22 Dr. Kia and Nevada Hospitalist Group as new-party Defendants. Sunrise Hospital, in these
23 Points and Authorities, seeks a ruling of this Court affirming its September 25, 2020 decision,
24 which denied, *inter alia*, the addition of Doe/Roe defendants. In doing so, however, the Hospital
25 is not addressing and does not attempt to address in this pleading, Plaintiff's new and most recent
26 Motion to Amend Complaint.

27
28 ² Although repeatedly referenced, there has been no dispute raised that, in fact, the statute of limitations expired 2-
years ago. *See* NRS § 41A.097.

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II.
ARGUMENT

A. THIS COURT’S DECISION DISMISSING “OSTENSIBLE AGENCY” AGAINST SUNRISE HOSPITAL, IF ANY SUCH CLAIM EXISTED, SHOULD NOT BE RECONSIDERED.

In order to grant a Motion for Reconsideration, in Nevada, there must be “new facts” or “new law” or a showing that the Court’s decision was clearly erroneous. *See Moore v. City of Las Vegas*, 92 Nev. 402, 405, 551 P.2d 244, 246 (Nev. 1976); *see also Masonry and Tile Contractors Ass’n. of So. Nev. v. Jolley, Urga & Wirth, Ltd.*, 113 Nev. 737, 741 (Nev. 1997).

The Plaintiff’s Motion for Reconsideration did not present any new facts or law. Further, this Court’s decision granting Partial Summary Judgment dismissing ostensible agency and denying the addition of new theories of liability (“corporate negligence/negligent supervision”) was not “clearly erroneous.” Instead, such decisions were entirely consistent with the Nevada rules and case law mandating such dismissals. For instance:

1. *Plaintiff Never Pled a Claim for Ostensible Agency*

The existence of an agency relationship, like ostensible agency, is generally a question of fact for the jury **if** there are sufficient facts showing that the issue is genuinely disputed. *See Schlotfeldt v. Charter Hosp. of Las Vegas*, 112 Nev. 42, 47, 910 P.2d 271, 274 (Nev. 1996) (citing *Latin American Shipping Co. Inc., v. Pan American Trading Corp.*, 363 So. 2d 578, 579 (Fla. Dist. Ct. App. 1978)). (Emphasis added).

Importantly, the *Schlotfeldt* Court stated that **a question of law** exists as to whether there exists sufficient competent evidence to require that the agency question be forwarded to a jury. *Id.* (citing *In Re Cliquot’s Champagne*, 70 U.S. 114, 140 18 L.E.d. 116 (1965) and 3Am.Jur.2D Agency 362 (1986)). (Emphasis added).

In considering the Motion for Partial Summary Judgment to Dismiss Ostensible Agency, this Court found that there was no reference to agency, there was no separate reference to Dr. Ali Kia or care which was attributed to him anywhere to be found anywhere in Plaintiff’s underlying

1 Complaint or expert affidavit. There is not, then, any factual dispute about whether “ostensible
2 agency” was even pled (let alone a presentation of facts to support such a pleading).

3 **2. “Selection”**

4 In addition, and as part of the *Schlotfeldt* decision, a key and necessary element to finding
5 ostensible agency requires a demonstration that the alleged principal (in this case, Sunrise
6 Hospital) “selected” the alleged agent (Dr. Kia). If this element is missing, ostensible agency
7 cannot be found as a matter of law. (*See Schlotfeldt*, at Footnote 3).

8 The uncontested testimony and evidence in this case is that Dr. Kia, a hospitalist, was on
9 a call list for Nevada Hospitalist Group, a private medical entity, and came to see and treat
10 Choloe Green, the Plaintiff, having been selected through that Group’s call list. There is no
11 evidence that Dr. Kia was “selected” by Sunrise Hospital. To the contrary, and attached to the
12 Motion for Partial Summary, was testimony that Dr. Kia was selected via the Nevada Hospitalist
13 Group’s call list and an Affidavit of Florian Barbu (Director of Contracts, Ethics and
14 Compliance at Sunrise Hospital) attesting that Sunrise Hospital had no contract with Dr. Kia.
15 The Court’s decision dismissing ostensible agency cannot be found to have been “clearly
16 erroneous” when Plaintiff failed to plead ostensible agency or make any factual showing that
17 could support such a claim had it been made.

18 **3. *The Statute of Limitations Has Expired***

19 It is undisputed (and has not been disputed) that the medical malpractice statute of
20 limitations in this case expired on August 9, 2018. *See* NRS § 41A.097. The statute expired one
21 year after Plaintiff disclosed Dr. Kia’s discharge order of Choloe Green from Sunrise Hospital on
22 July 16, 2016. The Nevada Supreme Court in *Dignity Health v. Eighth Jud. Dist. Ct.*, 130 Nev.
23 731 (Nev. 2014), stated that the statute of limitations began to run when the Plaintiff received the
24 medical records for the claim. Having received and disclosed the Discharge Order of Dr. Kia on
25 August 8, 2017, the Plaintiff then had one year to bring an action thereafter. *See Massey v.*
26 *Linton*, 99 Nev. 723 (Nev. 1983).

27 Further, in *Badger v. Eighth Jud. Dist. Ct.*, 132 Nev. 396, 373 P.3d 89 (Nev. 2016), the
28 Nevada Supreme Court stated that it (the Supreme Court) has refused to allow a new claim based

1 upon a new theory of liability asserted in an amended pleading to relate back under NRCP 15(c)
2 **“after the statute of limitations had run.”** (Emphasis added). Here, the statute of limitations
3 ran, at the latest, on August 9, 2018. It is only now, almost 2-years later, that Plaintiff is actually
4 attempting to assert a new theory of liability against Sunrise Hospital based upon a new theory of
5 liability for ostensible agency. The claim of ostensible, which heretofore, has never been pled, is
6 too late.³

7 In summarizing, this Court’s decision granting Partial Summary Judgment to Dismiss
8 Ostensible Agency, if such a claim even existed, was not “clearly erroneous.” To the contrary,
9 the decision was consistent with the applicable rules and case law, and moreover, respectfully,
10 the decision was fair.

11 **B. THE COURT’S DECISION TO DENY PLAINTIFF’S MOTION TO ADD A CLAIM FOR**
12 **“CORPORATE NEGLIGENCE/NEGLIGENT SUPERVISION” SHOULD NOT BE**
13 **RECONSIDERED.**

14 ***1. There is No “Good Cause”***

15 In this Court’s Order on September 25, 2020, the Court addressed Plaintiff’s Motion to
16 amend to add a new cause of action in Plaintiff’s “Count III” described as “Corporate
17 Negligence/Negligent Supervision.” The Court denied the Motion.

18 In denying Plaintiff’s Motion to add a claim of “Corporate Negligence/Negligent
19 Supervision,” the Court stated that unlike Rule 15(a)’s liberal amendment policy that focuses on
20 the bad faith of the party seeking to interpose an amendment and the prejudice to the opposing
21 party, Rule 16(b)’s good cause standard primarily considers the diligence of the party seeking the
22 Amendment.

23 In this Court’s Order of September 25, 2020 (at paragraph 26), this Court specifically
24 found that although discovery had not yet closed, the pleadings failed to set forth good cause for
25 seeking to add a new cause of action 3-years after the original Complaint was filed.

26 _____
27 ³ To hold otherwise, respectfully, would be to render the statute of limitations meaningless with regard to the late
28 attempt to add a new theory of liability. This case has been in litigation since 2017 and a number of key depositions,
including the depositions of Plaintiff, Choloe Green, Dr. DeLee, Dr. Kia, and Plaintiff’s primary treating surgeon
Dr. Bhatnagar, have already been taken.

1 **2. Badger**

2 In addition to the Court having found that there was not “good cause” to permit such a
3 late and untimely new theory of liability, it is submitted that the Nevada Supreme Court decision
4 in *Badger v. Eighth Jud. Dist. Ct.*, 132 Nev. 396, 373 P.3d 89 (Nev. 2016), also would be
5 consistent with such decision. In *Badger*, the Nevada Supreme Court stated, in pertinent part, as
6 follows:

7
8 “...Similarly, we have refused to allow a new claim based upon a new theory of
9 liability asserted in an amended pleading to relate back **under NRCP 15(c) after**
10 **the statute of limitations had run.**” See *Badger*, 373 P.3d 89,95 (Nev. 2016).
11 (Emphasis added).

12 As such, the Court’s decision finding that there was not good cause to allow Plaintiff to
13 add new theories of liability this late in the litigation is not “clearly erroneous.” But to the
14 contrary, appears entirely consistent with the Nevada Supreme Court’s decision in *Badger* which
15 does not allow a Plaintiff to plead a new claim based upon a new theory of liability following the
16 expiration of the applicable statute of limitations.

17 **3. Failure to Comply with NRS § 41A.071**

18 Further, Plaintiff’s effort to add a new theory of liability (“corporate negligence/negligent
19 supervision”) is not only untimely and not made with “good cause” shown, but it is also offered
20 in direct violation of the requirements of NRS § 41A.071. Specifically, NRS § 41A.071, (as
21 amended effective June 9, 2015) requires an affidavit that:

22 “...4. Sets forth factually a specific act or acts of alleged negligence **separately**
23 as to **each** defendant in simple, concise, and direct terms...”. (Part 4 of NRS §
24 41A.071). (Emphasis added).

25 As of September 25, 2020, Plaintiff had never offered an expert affidavit that set forth a
26 specific act or acts of alleged “corporate negligence/negligent supervision” as to Sunrise
27 Hospital. As such, an effort to add such a claim, as stated, was not made with “good cause”
28 shown, was untimely and after the expiration of the medical malpractice statute of limitations. In

1 addition, the proposed new theory of liability was not supported, as required, by an expert
2 affidavit per NRS § 41A.071.

3 Plaintiff argues, somehow, in the face of the precise language of NRS § 41A.071(4) that
4 Plaintiff does not have to provide an affidavit in support of each “**claim**” made in a case against
5 each defendant. Plaintiff is wrong, and the Nevada Supreme Court does in fact insist on such
6 requirement:

7 “...NRS 41A.071 requires dismissal of any medical malpractice *claim* that is
8 unaccompanied by an affidavit of merit supporting the allegations contained in
9 the complaint and signed by a medical expert who practices or has practiced in an
10 area that is substantially similar to the type of practice engaged in at the time of
11 the alleged malpractice.” *See Dauksavage v. Hulka*, 67034, 2015 WL 9485180, at
12 *2 (Nev. App. Dec. 17, 2015) (unpublished) (citing to *Fierle v. Perez*, 125 Nev. at
13 736, 219 P.2d at 911). (Emphasis added).⁴

14 This Court’s decision, respectfully, to deny Plaintiff’s request to untimely add a claim for
15 “corporate negligence/negligent supervision” was not “clearly erroneous,” but instead, was
16 consistent with the applicable rules, statutes, and case law. The decision, then, should not be
17 reconsidered or reversed.

18 **C. THE COURT’S DECISION TO DENY PLAINTIFF’S REQUEST TO AMEND COMPLAINT**
19 **TO ADD DOE/ROE DEFENDANTS WAS NOT “CLEARLY ERRONEOUS.”**

20 In this Court’s Order of September 25, 2020, the Court found good cause to allow
21 Plaintiff to file an Amended Complaint to allow for adding potential Doe/Roe defendants
22 (Paragraph 25 of this Court’s September 25, 2020 Order). The Court did not permit such
23 amendment, however, because Plaintiff failed to comply with NRS § 41A.071 by filing an
24 appropriate expert affidavit along with the proposed Amended Complaint.

25 _____
26 ⁴ Please note that in the *Dauksavage* and *Fierle* cases, the Nevada Supreme Court did not state that one affidavit in
27 support of the “action” was all that was needed. Instead, the Court stated that NRS § 41A.071 required dismissal of
28 any medical malpractice “claim” that is unaccompanied by an affidavit of merit supporting the allegations in the
complaint. A “claim” for corporate negligence/negligent supervision required an expert affidavit. Having failed to
provide such an affidavit, or affidavit section, any such action would be *void ab initio* and cannot be renewed. *See*
Washoe Med. Ctr. v. Dist. Ct., 122 Nev. 1298, 1304, 148 P.3d 790, 794 (Nev. 2006).

1 The Court’s decision to not grant Plaintiff’s Motion to Amend to add Doe/Roe
2 Defendants was not “clearly erroneous,” but instead, appears entirely consistent with the
3 requirements of NRS 41A.071. NRS 41A.071 specifically requires:

4 “...4. Sets forth factually a specific act or acts of alleged negligence separately
5 as to each defendant in simple, concise, and direct terms...”. (See NRS §
6 41A.071(4)). (Emphasis added).

7 First, in Plaintiff’s original Complaint, Plaintiff did not plead any Doe/Roe Amendments
8 for the purpose of relation back. Separate and apart from that issue, and even assuming,
9 *arguendo*, that Plaintiff could amend to add such defendants, Plaintiff failed to attach an expert
10 affidavit that identified Dr. Kia, or attributed any care relevant to Dr. Kia, or asserted any
11 specific act or acts of alleged negligence by Dr. Kia.

12 Part (4) of NRS § 41A.071 requires that the affidavit set forth “factually” a “specific act
13 or acts” of alleged negligence “separately” as to each defendant. There was no delineation of
14 specific act or acts “separately” as to Dr. Kia, since Dr. Kia was never even mentioned in
15 Plaintiff’s underlying Complaint or expert affidavit. No act or acts was attributed to Dr. Kia. Had
16 the Court, respectfully, permitted Plaintiff to add Roe/Doe defendants and in furtherance of same
17 permitted Dr. Kia to be added as a Defendant, NRS § 41A.071 still necessarily required expert
18 affidavit compliance. Failure to provide that compliance mandates dismissal.

19 This Court’s September 25, 2020, decision finding that Plaintiff’s original Complaint and
20 attached Affidavit did not comply with NRS § 41A.071 with regard to the request to add
21 Doe/Roe defendants was consistent with the requirements of NRS § 41A and the case law
22 previously construing that statute, and therefore, was not “clearly erroneous” and should not be
23 reversed.

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III.

CONCLUSION

Plaintiff's Motion for Reconsideration should be denied as this this Court's order on September 25, 2020 was not "clearly erroneous." To the contrary, the Order, in each of the 3-parts therein, should be affirmed.

DATED this 22nd day of October, 2020.

HALL PRANGLE & SCHOONVELD, LLC

By: /s/ Sherman B. Mayor, Esq.
MICHAEL E. PRANGLE, ESQ.
Nevada Bar No.: 8619
TYSON J. DOBBS, ESQ.
Nevada Bar No.: 11953
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1140 N. Town Center Dr., Ste. 350
Las Vegas, NV 89144
*Attorneys for Defendant / Third-Party Plaintiff
Sunrise Hospital and Medical Center, LLC*

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that I am an employee of HALL PRANGLE & SCHOONVELD, LLC; that on the 22nd day of October, 2020, I served a true and correct copy of the foregoing **DEFENDANT SUNRISE HOSPITAL AND MEDICAL CENTER'S OPPOSITION TO PLAINTIFF'S MOTION FOR RECONSIDERATION** 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:

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/s/: Casey Henley

An employee of HALL PRANGLE & SCHOONVELD, LLC

EXHIBIT A

EXHIBIT A

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)

March 12, 2019 8:00 AM **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**

HEARD BY: Smith, Douglas E. COURTROOM: RJC Courtroom 11B

COURT CLERK: Carol Donahoo

RECORDER: Gina Villani

REPORTER:

PARTIES

PRESENT:	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 Schlotfeldt 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

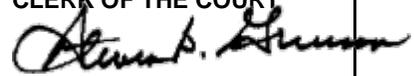
Minutes Date: March 12, 2019

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.



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and Frank J. DeLee M.D., P.C.

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

12 CHOLOE GREEN, an individual,
13
14 Plaintiff,

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

15 v.

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

DEFENDANTS FRANK J. DeLEE,
M.D. AND FRANK J. DeLEE, M.D.,
P.C.’S JOINDER TO PLAINTIFF’S (1)
MOTION FOR RECONSIDERATION,
AND (2) MOTION FOR LEAVE OF
COURT TO AMEND COMPLAINT

20 Defendants.

21 Defendants Frank J. DeLee, M.D. and Frank J. DeLee M.D., P.C. (collectively “DeLee
22 Defendants”), by and through their attorneys of record, Eric K. Stryker and Brigette E. Foley, of
23 the law firm of Wilson, Elser, Moskowitz, Edelman & Dicker, LLP, hereby join Plaintiff’s (1)
24 Motion for Reconsideration, and (2) Motion for Leave of Court to Amend Complaint and
25 incorporate all arguments and points and authorities thereto as though fully set forth herein.

26 ...

27 ...

28 ...

1 **STATEMENT OF RELEVANT FACTS**

2 Defendants Frank DeLee, M.D. and DeLee, P.C. (“DeLee Defendants”) respectively
3 provide the following additional facts and testimony to correct some factual misstatements in
4 Plaintiff’s motion, and so that the Court will have a clearer understanding of the timeline of care
5 and respective roles played by Defendant Dr. DeLee and former Third Party Defendant Ali Kia,
6 M.D. in Plaintiff’s care and treatment.
7

8 **1. Dr. DeLee Did Not Discharge Plaintiff From Sunrise Hospital on July 16, 2016,
9 as Alleged in Plaintiffs’ Complaint and Affidavit of Dr. Karamardian.**

10 Plaintiff misrepresented the actions of Dr. DeLee with regard to her return to Sunrise
11 Hospital on July 14, 2016. During that hospital admission Dr. DeLee was out of town, as also
12 confirmed by Plaintiff’s own expert witness Dr. Salvuk: “The patient was admitted to medicine at
13 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 14, 2016.” *Id.* at para. 12 (emphasis added).

15 In other words, Dr. Kia called Dr. DeLee to generally discuss the Plaintiff’s case *as a*
16 *courtesy*. Dr. DeLee informed the Sunrise Hospital staff that **he was going to be out of town**, and
17 therefore Dr. Kia ordered the admission of Plaintiff to Sunrise Hospital’s medical/surgical unit,
18 Dr. Kia was the admitting/attending physician during this admission, and **Dr. Kia discharged**
19 **later the patient.**¹ Dr. Kia never asked Dr. DeLee to come to Sunrise Hospital to formally consult
20 on the patient’s care, and never provided Dr. DeLee with any medical records or medical imaging
21 during Plaintiff’s July 14-16, 2016 admission at Sunrise Hospital. Up to the date of Dr. Kia’s order
22 discharging Plaintiff from the hospital on July 16, 2016, Dr. Kia agreed that he could have obtained
23 a physician consultation from any medical specialty he considered necessary for patient care.
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25

26 ¹ Plaintiff’s claim that Dr. DeLee breached a duty to provide 30 days of follow up care “when he did not
27 provide Choloe competent care during her second hospital stay even though he was paid, through Medicaid,
28 to provide the care” is unsupported by any expert testimony. Indeed, if that accusation were true, then no
physician would choose to practice Obstetrics, because they would never be allowed to leave town for a
vacation.

1 More importantly, if at any time Dr. Kia was concerned that Plaintiff's suspected small
2 bowel obstruction required surgical management, he would have called a General Surgeon for that
3 treatment, and not an Obstetrician like Dr. DeLee. A medical decision on whether a suspected
4 small bowel obstruction requires surgery is only made between the attending Hospitalist (Dr. Kia)
5 and the consulting non-party general surgeon (Kitae Kim, M.D.). None of these operative facts are
6 disputed by Dr. Kia, who testified:
7

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

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

11 ...

12 Q. ... What about **did you request a surgical consult?**

13 A. **I did.** On the 14th of July when the -- first night the patient came in, typically
14 with the small bowel obstruction I get general surgery on the case as well.

15 Q. ... And who -- did a surgeon see her?

16 A. **I consulted Dr. Kitae Kim who was the trauma surgeon/general surgeon on**
17 **for that night.**

18 ...

19 Q. I'm just asking, did the surgeon -- what did the surgeon tell you?

20 A. **His recommendation was to keep her NPO, so nothing by mouth,** no food,
21 no liquids, and if I recall, it was strict NPO, so no water, no ice chips. If she was to
22 get worse throughout the night, **my instruction was to order an NG tube, a**
23 **nasogastric tube,** which she did not require, **to give her IV fluids and repeat**
24 **imaging.** So that would have been a KUB, an x-ray of her abdomen within the next
25 24 to 48 hours, which we did obtain.

26 ...

27 Q. Okay. And there are times a small bowel obstruction doesn't resolve itself;
28 correct?

A. Correct.

Q. And then you need surgery?

A. It can be managed medically, but **it's really a clinical judgment from the**
29 **surgeon and the hospitalist.**

30 ...

31 Q. ... **Were you calling him formally to have [Dr. DeLee] come to the hospital**
32 **and walk into the room and treat the patient at the bedside?**

33 A. **Not necessarily.**

34 Q. Okay.

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A. Just a consult.

Q. And just a telephonic informal consult?

A. To initially notify him that his patient was admitted under my service at Sunrise Hospital on 7/14.

Q. **And you do that as a courtesy?**

A. **I typically do.**

...
Q. You never provided Dr. DeLee with copies of any medical records or copies of any medical imaging for this patient's admission to Sunrise Hospital during her July 14, 2016 admission?

A. No, I did not.

...
Q. And based on this chart entry, it would indicate that Dr. DeLee informed the treatment team that he was out of town; correct? ... Is that your interpretation of that note?

A. Yes.

Q. Okay. For he will be out of town you take to understand that the patient should be admitted to the medicine unit because Dr. DeLee would be out of town?

A. Yes, correct.

...
Q. Is it fair to say that you were in control over management of this patient's treatment while you were the attending physician for this patient from July 14th, 2016 until the time of discharge?

A. Control? I'm not quite understanding.

Q. For example, if you wanted her to see a consultant of any particular medical specialty, that's something that you could have made happen if you considered it to be necessary?

A. I felt I was, yes.

Q. And you maintained that control right up until the time of her discharge?

A. I did, yes.

...
Q. K-I-T-A-E Kim. Dr. Kim is a surgeon?

A. Yes, a general and trauma surgeon.

Q. ... And so in leaving this aside, **I believe you told us that on at least two occasions during the admission you had conversations with Dr. Kim, the surgeon, as to how to manage this patient; true?**

A. I consulted him for the patient, not -- and **I was looking for feedback from his**
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Q. Sure.

A. -- **point of view.**

Q. You were seeking the superior knowledge of a surgeon as to the best way to care for this patient?

A. **Correct.**

Q. And so you provided Dr. Kim information about this patient, and am I correct that Dr. Kim agreed with your plan?

A. **I believe so, yes.**

...
Q. If the suspected small bowel obstruction or ileus were to proceed to the point that you were concerned this patient would require surgery to address it, who would you call to perform surgery to address a small bowel obstruction or ileus that required surgical intervention?

A. **For small bowel obstruction, ileus, it's typically the general surgeon on call.**

Q. Okay.

A. And so **the general surgeon.**

Q. And of the doctors whose names have been discussed today, would that have been Dr. Kitae Kim?

A. **Yes.**

Deposition of Ali Kia, M.D., attached Exhibit A at 18, 31, 33-34, 52, 57, 69-70, 73 (objections omitted)(emphasis added).

The above testimony clarifies that: (1) Dr. DeLee was never asked to come to Sunrise Hospital to treat Plaintiff between July 14-16, 2016, because he clearly communicated to the treatment team that was out of town; and (2) the pivotal decision of whether to perform surgery on Plaintiff's suspected small bowel obstruction, or instead discharge the patient from the hospital, was a decision made between the non-party Hospitalist Dr. Kia and non-party General Surgeon Dr. Kim.

The DeLee Defendants join Plaintiff's motions for reconsideration and motion to amend her complaint because given the evidence above, reconsideration of the Court's prior order granting Dr. Kia's motion to dismiss is appropriate, and allowing the amendment of Plaintiff's

1 complaint to add Dr. Kia and his employer is the most appropriate relief under the circumstances.

2 **POINTS AND AUTHORITIES**

3 **I. NRS §41A.071 DOES NOT REQUIRE A PHYSICIAN DEFENDANT TO BE**
4 **IDENTIFIED BY NAME IN AN EXPERT AFFIDAVIT.**

5 The Court granted former defendant Nevada Hospitalist Group, LLP's Motion for
6 Judgment on the Pleadings and Third-Party Defendant Ali Kia, M.D.'S Joinder to same seeking
7 dismissal of Defendant Sunrise Hospital's Third Party Complaint against them apparently based
8 on an incorrect assumption that a physician must identified by name in the affidavit of the
9 Plaintiff's expert witness supportive of the complaint:

10
11 Plaintiff's complaint and affidavit **do not identify Dr. Kia or Nevada Hospitalist**
12 **Group ("NHG"). ... Because neither Dr. Kia nor NHG are identified in the**
13 **complaint or the affidavit** there is no identified specific act or specific acts of
14 alleged professional negligence by Dr. Kia and NHG. **Instead, the complaint and**
15 **affidavit only identifies Sunrise Hospital and Dr. DeLee** when laying the facts
16 and circumstances that form the cause of action involving the alleged professional
17 negligence.

18 *Order Regarding Third-Party Defendant Nevada Hospitalist Group, LLP's Motion for Judgment*
19 *on The Pleadings and Third-Party Defendant Ali Kia, M.D.'s Joinder Thereto*, at 3 lines 14-15,
20 and 16-18, on file and incorporated herein by reference.

21 The DeLee Defendants agree with Plaintiff that a plain reading of NRS §41A.071 allowed
22 the Plaintiff **two alternative means** to support her complaint with an expert witness affidavit, and
23 in turn, for Third Party Defendant Sunrise Hospital to have done so as well:

24 **NRS 41A.071 Dismissal of action filed without affidavit of medical expert.**
25 If an action for professional negligence is filed in the district court, the district court
26 shall dismiss the action, without prejudice, if the action is filed without an affidavit
27 that:

- 28 1. Supports the allegations contained in the action;
2. Is submitted by a medical expert who practices or has practiced in an area that is substantially similar to the type of practice engaged in at the time of the alleged professional negligence;
3. **Identifies by name, or describes by conduct**, each provider of health care who is alleged to be negligent; and

1 4. Sets forth factually a specific act or acts of alleged negligence separately
2 as to each defendant in simple, concise and direct terms.

3 (Emphasis added.)

4 This Nevada statute unambiguously allows a plaintiff to either “identify by name, **or**
5 **describe by conduct** each provider of healthcare who is alleged to be negligent.” Hence the Order
6 Regarding Third-Party Defendant Nevada Hospitalist Group, LLP’s Motion For Judgment on The
7 Pleadings and Third-Party Defendant Ali Kia, M.D.’S Joinder Thereto contained a misstatement
8 of Nevada law, for which reconsideration is appropriate.²

9 **II. NRS §41A.071 ALLOWS A PLAINTIFF TO DESCRIBE BY CONDUCT A**
10 **PHYSICIAN DEFENDANT’S ALLEGED PROFESSIONAL**
11 **NEGLIGENCE, WHICH WAS DONE.**

12 Dr. DeLee agrees with Plaintiff that the affidavit of her expert witness Lisa Kamardian,
13 M.D. did “describe by conduct” the alleged professional negligence claimed – to wit, discharge of
14 the patient from Sunrise Hospital:

15 She was **admitted to the medical/surgical unit** because of the diagnosis of sepsis.
16 **She was discharged on July 16, 2016.** The discharge was discussed and confirmed
17 by Dr. DeLee. **This discharge violated the standard of care. Ms, Green was**
18 **discharged despite the fact that she was not able to tolerate a regular diet.**
19 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,

20 *Affidavit of Lisa Kamardian, M.D.* at para. 5, attached Exhibit B to Plaintiff’s Complaint, on file
21 and incorporated herein by reference (emphasis added).

22 All of the boldfaced language in Dr. Kamardian’s affidavit “described by conduct” alleged
23 actions/inactions of Ali Kia, M.D. which Plaintiff claims fell below the standard of care. They
24

25 _____
26 ² If the Court is concerned that Plaintiff’s motion for reconsideration is somehow untimely, despite the
27 legal arguments addressing same in Plaintiff’s motion, Joining Defendants would add that the June 1, 2020
28 Administrative Order 20-17 pointed out: “This is not the time to press for unwarranted tactical
advantages...” To the extent that a deadline for reconsideration, Plaintiff’s motion for reconsideration may
also be interpreted as a request for an order extending time to submit a motion for reconsideration under
EDCR 5.513(a).

1 included multiple specific acts of alleged negligence attributable to Dr. Kia, albeit without naming
2 him directly. Again, however NRS 41A.071 did not require that he be identified by name directly,
3 as long as the specific acts of alleged negligent conduct was described. Therefore since the affidavit
4 sufficiently described multiple specific acts of Dr. Kia (considering small bowel obstruction,
5 ordering medical imaging, having thoughts about the findings shown on medical imaging, the
6 ordering patient discharge), Sunrise Hospital should have been entitled to utilize the affidavit to
7 pursue its third party claims against Dr. Kia and his employer, and Plaintiff should now be allowed
8 to do so in an amended complaint.
9

10 While Plaintiff’s expert witness erroneously attributed Dr. Kia’s hospital admission,
11 suspicion of a small bowel obstruction, orders for medical imaging, and ultimate order for patient
12 discharge to Defendant Dr. DeLee, (who was out of town), the evidence above clearly confirms
13 this was all “conduct” and “specific acts” of Dr. Kia that were described in Dr. Kamardian’s
14 affidavit. Reading the affidavit in combination with the affidavit, as the Court is required to do,
15 Plaintiff satisfied the low pleading threshold NRS §41A.071 was intended to provide. The error of
16 Plaintiff’s retained expert witness Dr. Kamardian should not befall the Plaintiff, who apparently
17 relied in good faith on her retained expert’s expertise in interpreting the complex medical chart,
18 which was hardly a model of clarity. For example, page one the Plaintiff’s discharge order did not
19 identify “Ali Kia, M.D.,” but instead cryptically identified only “KIAAL” in the upper right hand
20 corner below:
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1 physicians would not be able to identify other physicians involved in medical treatment to discuss
2 a patient's history or notify them of critical findings that arise during treatment.

3 If instead the Sunrise Hospital computer system was responsible for these confusing
4 entries, the fact remains that Plaintiff did not cause them. In either scenario, the above ambiguities
5 may easily explain why Plaintiff's expert misunderstood the Plaintiff's July 16, 2016 discharge to
6 have been ordered by Dr. DeLee, (when it clearly was not), because the face of the physician order
7 for discharge never once stated "Ali Kia, M.D." Further, Plaintiff or her counsel may have had
8 difficulty identifying and locating a "DR. KIAAL" - who does not exist.

10 **III. THE DELEE DEFENDANTS ALSO HAVE RIGHTS TO**
11 **INDEMNIFICATION AND CONTRIBUTION AGAINST DR. KIA, FOR**
12 **WHICH THE STATUTE OF LIMITATIONS HAS NOT YET BEGIN TO**
13 **RUN.**

14 As described above, Dr. Kia admitted Plaintiff to Sunrise Hospital on July 14, 2016, and
15 made the decision to discharge the patient on July 15, 2016. Whether or not that decision fell below
16 the standard of care or not may be an issue at trial. To the extent Plaintiff's claims against Dr.
17 DeLee involve a patient discharge ordered by another physician while he was out of town, the
18 DeLee Defendants still have the right to bring a third party claims against Dr. Kia for any alleged
19 "active negligence" in discharging the patient at a time her experts claim she was not stable for
20 discharge.

21 However the DeLee Defendants respectfully submit that this issue should not be their legal
22 battle to fight, and that they should not bear the fees and costs of such third party litigation. Judicial
23 economy favors allowing Plaintiff to present her case to the jury with all pertinent treating
24 physicians at trial, especially when she has already engaged two experts who have opined
25 regarding Dr. Kia's care. If the DeLee Defendants are forced to bring a third party action, then the
26 current trial date will unlikely be maintained, and additional discovery delays will ensue.

27 As a practical matter, given Plaintiff's substantial compliance with NRS §41A.071 in the
28

1 face of an ambiguous physician order above, the most expedient way to proceed is to grant the
2 Plaintiff's motion for reconsideration and motion to amend complaint, so that discovery may
3 proceed and the existing trial date hopefully maintained.

4 **CONCLUSION**

5 For the reasons set forth above, the DeLee Defendants respectfully join Plaintiff's motion
6 for reconsideration and motion to amend complaint to add Dr. Kia and his employer as additional
7 defendants to this action.
8

9 DATED: October 22, 2020

WILSON, ELSER, MOSKOWITZ,
EDELMAN & DICKER LLP

11 By: */s/Eric K. Stryker*

12 _____
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17 6689 Las Vegas Blvd., Suite 200
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20 *M.D. and Frank J. DeLee M.D., P.C.*
21
22
23
24
25
26
27
28

1 **CERTIFICATE OF SERVICE**

2 Pursuant to NRCp 5(b), I certify that I am an employee of WILSON ELSER
3 MOSKOWITZ EDELMAN & DICKER LLP, and that on this 22nd day of October, 2020, I served
4 a true and correct copy of the foregoing **DEFENDANTS FRANK J. DeLEE, M.D. AND**
5 **FRANK J. DeLEE, M.D., P.C.'S JOINDER TO PLAINTIFF'S (1) MOTION FOR**
6 **RECONSIDERATION, AND (2) MOTION FOR LEAVE OF COURT TO AMEND**
7 **COMPLAINT** as follows:

- 8 via electronic means by operation of the Court's electronic filing system, upon
9 each party in this case who is registered as an electronic case filing user with the
10 Clerk
- 11 by placing same to be deposited for mailing in the United States Mail, in a sealed
12 envelope upon which first class postage was prepaid in Las Vegas, Nevada

13
14
15 By: _____



An Employee of WILSON ELSER MOSKOWITZ
EDELMAN & DICKER LLP

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EXHIBIT A

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

**CONDENSED
TRANSCRIPT**

DEPOSITION OF ALI KIA, M.D.

Taken on Wednesday, November 14, 2018

At 1:35 p.m.

Taken at 610 South Ninth Street

Las Vegas, Nevada

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

1 DEPOSITION OF ALI KIA, M.D., taken at the Law Office of
2 Daniel Marks, 610 South Ninth Street, Las Vegas, Nevada,
3 on Wednesday, November 14, 2018, at 1:35 p.m., before
4 Terri M. Hughes, Certified Court Reporter, in and for the
5 State of Nevada.

6 APPEARANCES:
7 For the Plaintiff:

8 DANIEL MARKS, ESQ.
9 NICOLE M. YOUNG, ESQ.
10 Law Office of Daniel Marks
11 610 South Ninth Street
12 Las Vegas, Nevada 89101
13 (702) 386-0536

14 For the Defendants, Frank J. DeLee, M.D. and Frank J.
15 DeLee, M.D., P.C.:

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 For the Defendant, Sunrise Hospital and Medical Center,
23 LLC:

24 MICHAEL E. PRANGLE, ESQ.
25 Hall Prangle and Schoonveld LLC
1160 North Town Center Drive
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Las Vegas, Nevada 89144
(702) 212-1457

For the Deponent:

LAURA S. LUCERO, ESQ.
Collinson, Daehnke, Inlow & Greco
2110 East Flamingo Road
Suite 305
Las Vegas, Nevada 89119
(702) 979-2132

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

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

10 EXAMINATION

11 BY MR. MARKS:

12 Q. State your name, please.
13 A. Ali Kia.
14 Q. And what's your business address?
15 A. 3022 South Durango Drive, 89119.
16 Q. And who are --
17 A. Las Vegas.
18 Q. Who are you employed by?
19 A. I'm self-employed.
20 Q. Okay. Have you had your deposition taken before?
21 A. No, first time.
22 Q. Okay. So you had an opportunity to discuss the
23 rules of a deposition with your attorney?
24 A. I have.
25 Q. Okay. So just in addition to what she told you,

1 INDEX

2 Witness: ALI KIA, M.D.

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1 I'll just highlight. Everything is being taken down by
2 the court reporter, and you'll have an opportunity in a
3 couple of weeks to read your deposition. Under our rules
4 you can make changes if you think either the court
5 reporter got it wrong or if you when you reread it think
6 the answer is wrong, you can change your answer.

7 A. Okay.
8 Q. If the matter went to trial, we could read what
9 you said here today and then read your change to the court
10 or the jury and that could affect your credibility or
11 believability. Do you understand?

12 A. I do.
13 Q. The court reporter administered an oath. Even
14 though we're in informal surroundings, meaning there's no
15 judge, it's not a courthouse, the oath is exactly the same
16 oath as if we were in court, so it carries the same
17 obligation to tell the truth and the same penalties of
18 perjury for failing to tell the truth. Do you understand?

19 A. I do.
20 Q. Okay. I'll try to let you finish your question,
21 try to let me finish my -- my question, you finish your
22 answer, because the court reporter can only take down one
23 person at a time. Do you understand?

24 A. I do.
25 Q. All right. If you don't understand a question,

Page 6	Page 8
<p>1 tell me, I'll rephrase it. Your attorney could make 2 objections from time to time. Unless she would instruct 3 you not to answer a question, normally the objections are 4 preserved and you would answer. Do you understand? 5 A. I do. 6 Q. Okay. So when you say you're self-employed, do 7 you have your own professional practice? 8 A. I do. 9 Q. Can you give us the name? 10 A. Ali Kia, M.D., Inc., Incorporated. 11 Q. And how long have you had that? 12 A. Since 2008, February. 13 Q. Okay. And what's your -- do you have a specialty 14 in medicine? 15 A. Internal medicine. 16 Q. Okay. Are you board certified? 17 A. I am. 18 Q. And when did you become board certified? 19 A. 2006 and renewed in 2016. 20 Q. Okay. And I'm going to ask a little about your 21 educational background. Your attorney said she could 22 supplement with your CV, but I'll hit the highlights. 23 Where did you go to college? 24 A. UC -- University of California-Riverside. 25 Q. Okay. UNLV played them last night.</p>	<p>1 A. No, just the USMLE, the board exam. There's three 2 total, and I took and passed all of them on the first 3 attempt. 4 Q. Okay. And then did you -- after medical school 5 did you start your internship/residency? 6 A. I did. At UMC, University of Nevada School of 7 Medicine, which now it's UNLV as of this last year. 8 Q. Okay. So you started your residency I assume July 9 of '02 right after you graduated? 10 A. July of -- July of '03. 11 Q. Okay. 12 A. Uh-huh. I did a cardiology research fellowship in 13 Southern California prior to that. 14 Q. Okay. All right. We'll come back to that 15 fellowship. Well, why don't you explain that fellowship? 16 A. It was a research-based fellowship. 17 Q. At what school? 18 A. University of Southern California. 19 Q. USC? 20 A. The county, USC County. 21 Q. And was it in cardiology? 22 A. In the cardiology department. 23 Q. Okay. And then you went to -- you did your 24 internship/residency. Was it considered University of 25 Nevada-Reno at that point?</p>
Page 7	Page 9
<p>1 A. I missed that one. 2 Q. Right. And then what year did you graduate? 3 A. 1997. 4 Q. And I assume you got a Bachelor of Science in a 5 field? 6 A. In biology and minored in psychology. 7 Q. Okay. And then you went to -- did you go to 8 medical school right away? 9 A. In 1998 I did, yes. 10 Q. Okay. And what medical school did you go to? 11 A. Ross University. 12 Q. Which one? 13 A. Ross University. 14 Q. And where is that? 15 A. It's a Caribbean-based school. 16 Q. Which island? 17 A. Dominica. 18 Q. Okay. And how many years were you in Dominica? 19 A. Two years on the island and then two years 20 clinical rotations in Chicago and Southern California. 21 Q. Okay. And when did you get your -- you got an 22 M.D. degree; correct? 23 A. In June of 2002. 24 Q. Okay. And after that did you have to take any 25 sort of exam as an international student?</p>	<p>1 A. It was. 2 Q. Okay. But you were based here in Las Vegas at UMC 3 Hospital? 4 A. Yes, that's correct. 5 Q. And how long was that -- is your residency/ 6 internship combined four years? 7 A. Three years for internal medicine. 8 Q. Three years? 9 A. Uh-huh. 10 Q. Okay. And then after that you passed your boards? 11 A. I did. So I took my boards August of 2006 and got 12 the results, passed it in September and -- 13 Q. Sorry. Go ahead. 14 A. Yeah, and then started my practice October of 15 2006. 16 Q. And I was going to ask, did you do any other 17 training before you started your practice? 18 A. No. 19 Q. Okay. The fellowship that you did, how does that 20 relate to residency and internship? 21 A. It increases your credibility in trying to obtain 22 a specialty after residency. So I had the opportunity to 23 do approximately eight months. It was a research trial 24 that we did at USC through the cardiology department. 25 Q. Okay.</p>

1 A. So we were enrolling patients and randomizing
 2 them to do two different medications.
 3 Q. So then when you started your -- so in '06 did you
 4 then start your private practice?
 5 A. I did, yes.
 6 Q. And were you employed by anyone in private
 7 practice?
 8 A. At the time it was a group called Rancho Internal
 9 Medicine.
 10 Q. Okay. And did you see patients in the office as
 11 well as the hospital?
 12 A. Just in the hospital.
 13 Q. Okay. And for how long did you work at Rancho
 14 Internal Medicine?
 15 A. For one year.
 16 Q. And then where did you work?
 17 A. And then we were solo practitioners, so we were
 18 independent contractors helping out other groups.
 19 Q. Okay. What is your relationship then with Sunrise
 20 Hospital. Did you work as a hospitalist at Sunrise?
 21 A. Yes, I did. I started there in -- at the end of
 22 2007.
 23 Q. And are you still there?
 24 A. I am.
 25 Q. And is that the only hospital you generally work

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 at?
 2 A. It's not. I also cover University Medical Center.
 3 I'm on teaching staff at UNLV for the School of Medicine.
 4 Q. When did you get on teaching staff?
 5 A. July of 2017.
 6 Q. And what do you do as teaching staff?
 7 A. My title is an adjunct professor of medicine.
 8 Q. So adjunct means clinical?
 9 A. Clinical, teaching rounds with the residents and
 10 seeing patients, admitting and --
 11 Q. So how often do you do UMC versus Sunrise?
 12 A. I'm at UMC every day now, so not too many
 13 patients, but we break up our teaching weeks. Whenever
 14 they need, I help them out.
 15 Q. And how often are you at Sunrise?
 16 A. Every day.
 17 Q. So you're at both every day?
 18 A. I alternate a little. I cover the Pioneer Group,
 19 which is a group at UMC, and then Nevada Hospitalist Group
 20 at Sunrise Hospital.
 21 Q. Okay. So in terms of your interaction at Sunrise,
 22 calling your attention to the year 2016, is it the same
 23 now as it was in 2016, your interactions or working at
 24 Sunrise?
 25 A. I'm not quite sure I understand the question.

1 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 I'm a consulting physician.
 2 Q. And why would you be consulting versus attending?
 3 How do you explain the difference?
 4 A. Some of the times patients are in the intensive
 5 care unit, and Sunrise Hospital has a closed ICU. So the
 6 intensivist, the ICU physicians would consult me for
 7 medicine, and then I typically take over the case and
 8 discharge the patient from that point.
 9 Q. If it's not an ICU patient, then effectively you'd
 10 be the attending at Sunrise if the patient is assigned to
 11 you?
 12 A. No. The only other case is if I'm consulted by a
 13 surgeon that the patient is under their service, I'm still
 14 a consultant.
 15 Q. Okay. And you're paid directly Sunrise to you or
 16 through Nevada Hospitalist?
 17 A. Through Nevada Hospitalist Group.
 18 Q. So it goes Sunrise, Nevada Hospitalist to you?
 19 A. No. Sunrise is separate. I do my billing through
 20 Nevada Hospitalist Group.
 21 Q. Okay. And they bill Sunrise?
 22 A. No, they don't. They bill the insurance of the
 23 patient.
 24 Q. Okay. What about Medicare and Medicaid, how does
 25 that work?

1 A. I'll get those as my private patients, and then I
 2 bill through -- not through Nevada Hospitalist Group. I
 3 have a billing company, Management Solutions, that I bill
 4 through.
 5 Q. So if a patient has Medicare or Medicaid, you are
 6 their doctor, not through another agency, it's through
 7 your own private practice?
 8 A. Typically under the umbrella of another group.
 9 Q. Nevada Hospitalist?
 10 A. Nevada Hospitalist. Sometimes I cover for
 11 physicians that are out of town through Pioneer Group or
 12 there's also the other physicians that would round at
 13 Sunrise Hospital are primary physicians that have office
 14 outpatient, so they're not -- they do hospitalist type
 15 work but they ask me to follow their patients.
 16 Q. Okay. Let me ask -- you have records in front of
 17 you. Did you review some records?
 18 A. For?
 19 Q. In preparation for this deposition?
 20 A. For our case I have, yes.
 21 Q. Could you tell us what you reviewed?
 22 MS. LUCERO: And before we dive into that, I
 23 just want to put something on the record. I did request
 24 the hospital chart in preparation for the doctor to
 25 prepare for his deposition. I wasn't given those records.

1 I was supplied the records that he authored, and he did
 2 review those. However, as a hospitalist and seeing
 3 patients in the hospital, he has access generally while
 4 he's seeing the patient to all of the records. So his
 5 answers today to questions that you ask are going to be
 6 somewhat limited to the documents he's seeing in front of
 7 him because he doesn't have access to all of the records
 8 that I had requested.
 9 MR. MARKS: Okay.
 10 BY MR. MARKS:
 11 Q. Let's see -- Doctor, if there's something in a
 12 different record, let me know and we'll have to try to
 13 deal with it, but I intend to ask you questions about
 14 records that I thought you had signed off on so that you'd
 15 be familiar with. But my question was really, what did
 16 you review? Did someone provide you a stack of records?
 17 You have something in front of you?
 18 A. Yes.
 19 Q. So could I see what records you have?
 20 A. Sure.
 21 MR. STRYKER: Counsel, could you perhaps read
 22 the Bates numbers so all of us know what those documents
 23 are?
 24 MR. MARKS: Sure. I'm just trying to see if
 25 this is all in order.

1 MS. LUCERO: They're not in order I don't
 2 believe.
 3 MR. MARKS: They're not in order?
 4 MS. LUCERO: I don't believe so. I was only
 5 provided documents that he authored.
 6 MR. MARKS: Did you get them from Sunrise
 7 counsel?
 8 MS. LUCERO: Yes, and only the documents he
 9 authored.
 10 MR. MARKS: They're not in order. I can make
 11 copies and give them to everybody.
 12 MR. STRYKER: That'd be great. Thank you.
 13 MR. MARKS: Because --
 14 MS. LUCERO: I believe they're his orders as
 15 well.
 16 MR. MARKS: All right. Just so the record is
 17 clear, I guess we'll mark as Exhibit 1 records that Dr.
 18 Kia's counsel obtained from Sunrise.
 19 BY MR. MARKS:
 20 Q. And then, Doctor, if I ask you about records, I'll
 21 obviously give you a chance to read it. It's not going to
 22 be a closed book exam or anything like that, okay?
 23 So I'm just trying to see if these are the same
 24 that I copied so we don't duplicate everything. All
 25 right. So at a break we'll mark your set as Exhibit 1.

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?

1 A. She was.
 2 Q. Okay. So once she was assigned to you on July
 3 14th, 2016, could you give me an overview of what you did
 4 medically?
 5 A. Initially we did --
 6 MS. LUCERO: An overview just on July 14th or
 7 her whole hospitalization?
 8 BY MR. MARKS:
 9 Q. Well, start with July 14th.
 10 A. Uh-huh.
 11 Q. I don't want you to go for three days. Why don't
 12 you kind of start what you -- you saw her, you know, if
 13 you examined her, your plan, and then at some point I'll
 14 ask follow-up questions.
 15 A. Sure. So I was called through the emergency
 16 department around 20 hundred on the evening of the 14th of
 17 July, and I typically review the records, labs prior to
 18 seeing the patient.
 19 Q. Right.
 20 A. At that time they moved Ms. Green up to the floor,
 21 to the medical floor, and then I saw her that evening with
 22 her nurse present and asked her about her symptoms. So
 23 she came in with abdominal pain, and she did have a fever
 24 on admission, just a single temperature, and we admitted
 25 her, gave her IV fluids, pain medications and some nausea

1 medications in case she did have some nausea, vomiting.
 2 And in the emergency department what was ordered was a CAT
 3 scan, an ultrasound, and those were the two imaging
 4 studies that we had.
 5 MR. MARKS: All right. Let me mark some
 6 exhibits. So this, I guess, would be number 2, because
 7 we'll mark his as number 1.
 8 (Plaintiff's Exhibit 2 was marked for
 9 identification.)
 10 BY MR. MARKS:
 11 Q. So, Doctor, Exhibit 2, which is Bates stamped
 12 SH000706 may be part of what was produced to you, but it
 13 will be easier, I think, if we just go through this.
 14 MR. PRANGLE: What's the exhibit?
 15 MS. YOUNG: 2.
 16 MR. PRANGLE: This is 2?
 17 MS. YOUNG: Yes.
 18 BY MR. MARKS:
 19 Q. So this indicates 7/14 at 6:50 p.m. Would this be
 20 from the emergency room and then she was assigned to you?
 21 A. Yes, correct.
 22 Q. And Wayne Jacobs is in the emergency room?
 23 A. He's a radiologist that works at Sunrise Hospital.
 24 Q. And what about Dr. Lev?
 25 A. Dr. Lev is an interventional -- a

1 neurointerventional radiologist at Sunrise Hospital, works
 2 in the same group.
 3 Q. Okay. So she appeared increasing abdominal pain,
 4 nausea, vomiting and bloating for several days following
 5 cesarean section. Is that what you recall?
 6 A. I recalled abdominal pain.
 7 Q. Okay. And you recall being contacted at about
 8 8:00 p.m., which is 20 hundred hours --
 9 A. Yes.
 10 Q. -- or 20 hours?
 11 A. Around the time of 8:00 p.m. on the 14th of July.
 12 Q. Okay.
 13 A. Correct.
 14 Q. And the impression was gas and fluid distention of
 15 stomach and proximal small bowel compatible small bowel
 16 obstruction, moderate amount of free fluid in the abdomen
 17 and pelvis with several small gas bubbles anterior to the
 18 uterus, intraperitoneal abscess suspected. Was that
 19 communicated to you?
 20 A. Yes, it was.
 21 Q. Okay. So based on that did you undertake certain
 22 medical plans and treatment of Ms. Green?
 23 A. I did at the time.
 24 Q. Okay. And what did you do then?
 25 A. We kept her NPO, nothing by mouth.

1 Q. Right.
 2 A. Gave her IV fluids, IV antibiotics empirically,
 3 pain control, nausea control, admitted her to the medical
 4 floor.
 5 Q. Right.
 6 A. Initially she coded. She had a fever and elevated
 7 white blood cell count.
 8 Q. And what is that indicative of?
 9 A. It could be indicative of a sepsis and --
 10 although --
 11 Q. Do you recall -- I'm sorry. Do you recall her
 12 fever, how high it was?
 13 A. The highest throughout the entire three days was
 14 38.1 degrees Celsius.
 15 Q. What does that --
 16 A. That's a low grade fever.
 17 Q. Okay. All right. So did you -- what tests, if
 18 any, did you do?
 19 A. She had a CBC, complete blood count, she had a
 20 comprehensive metabolic panel. So it's basically a
 21 chemistry panel including liver enzymes and liver studies.
 22 She had a urinalysis, and the CAT scan ultrasound she had
 23 declined to have.
 24 Q. So did you reach a conclusion as to what her
 25 medical condition was?

1 A. She had post -- she was five days post C-section,
 2 abdominal pain. We thought -- we admitted her for a
 3 possible small bowel obstruction or ileus, and then there
 4 was fluid collection in her abdomen, so I kept her on
 5 antibiotics.
 6 Q. Okay.
 7 A. So sepsis possibly related to --
 8 Q. Small bowel obstruction?
 9 A. Or the fluid within her abdomen.
 10 Q. Okay.
 11 A. Abdominal pain, low grade fever and sepsis and
 12 leukocytosis, so elevated white blood cell count was also
 13 on my problem list.
 14 Q. Your what list, I'm sorry?
 15 A. My problem list.
 16 Q. Okay. So you go through a list of what it could
 17 be, you get the results of the tests. Did you reach a
 18 conclusion as to what was wrong with her?
 19 A. Not that night. We were -- we had just a working
 20 diagnosis.
 21 Q. What about later over the three days; did you ever
 22 reach a conclusion?
 23 A. We did. Abdominal pain was resolving, she had
 24 better pain. Small bowel obstruction I thought became an
 25 ileus. She was passing gas and had bowel movements, and

1 her white blood cell count stay elevated, but her fever
 2 resolved. She only had one episode of elevation in her
 3 temperature.
 4 Q. But you thought still that she -- at the time of
 5 discharge you thought she still had a small bowel
 6 obstruction?
 7 A. That --
 8 MR. STRYKER: Object to the form. Misstates
 9 the testimony. Go ahead.
 10 MR. MARKS: You can answer.
 11 BY MR. MARKS:
 12 Q. In other words, people can object.
 13 A. Okay.
 14 Q. There's no judge in the room. So I know it's
 15 distracting, but they're allowed to object.
 16 A. Okay.
 17 Q. And unless your attorney tells you, "Don't
 18 answer," we would say, "Please answer."
 19 A. Okay.
 20 Q. And that may happen from time to time.
 21 A. Okay. Sure.
 22 Q. All right. So I can repeat the question.
 23 A. Can you?
 24 Q. At the time of discharge she still had a small
 25 bowel obstruction?

1 MR. STRYKER: Same objection.
 2 THE WITNESS: She -- which seemed to be
 3 resolving.
 4 BY MR. MARKS:
 5 Q. Okay. Tell me about -- but -- so she did have it,
 6 you thought it was resolving?
 7 A. Yes. Sometimes an ileus type picture can -- a
 8 small bowel obstruction or ileus sometimes go hand-in-
 9 hand.
 10 Q. What's an ileus?
 11 A. Ileus, it's the intestinal wall, it's not
 12 contracting. It doesn't have the normal or typical
 13 peristalsis that we see for different reasons. Sometimes
 14 postoperative, sometimes medication related. And so
 15 sometimes what's an ileus is read or thought of as a small
 16 bowel obstruction.
 17 Q. Okay. Did you think there might be a perforation
 18 in the bowel?
 19 A. No, I had not.
 20 Q. Okay. Does small bowel obstructions not resolve
 21 where surgery is needed?
 22 A. Yes.
 23 Q. What did you base your opinion that this one was
 24 resolving?
 25 A. Clinically how the patient is doing, their level

1 of pain. She wasn't having any nausea or vomiting. Her
2 abdomen initially was slightly distended, but there's no
3 rigidity and no guarding, and within 24 hours she had a
4 soft abdomen with normal bowel sounds.

5 MR. MARKS: All right. Let me show you the
6 next exhibit.

7 (Plaintiff's Exhibit 3 was marked for
8 identification.)

9 BY MR. MARKS:

10 Q. I'm showing you Exhibit 3, Doctor. This is your
11 discharge summary; correct?

12 A. This is my discharge summary, correct.

13 Q. Okay. It lists you as the admitting physician;
14 correct?

15 A. Yes.

16 Q. And she's in the hospital from 7/14 to 7/16 of
17 2016; correct?

18 A. Yes, that's correct.

19 Q. Where it says, Condition: Fair, is that her
20 condition at discharge?

21 A. Yes, it was.

22 Q. Diet: Clear liquid diet as tolerated to advance as
23 per OB/GYN, Dr. DeLee. So she wasn't eating solid foods;
24 correct?

25 A. No, not at the time of discharge.

1 or --

2 A. Oh, no, it's electronic.

3 Q. So you're saying in the chart for the patient at
4 Sunrise you charted phone calls with Dr. DeLee?

5 A. I did.

6 Q. And are those part of the records you've had an
7 opportunity to review?

8 A. Not part of the records that I reviewed, no.

9 Q. So where in the records would they be so we can
10 look for them?

11 A. They may have been in the progress notes or --
12 mostly in the progress notes.

13 Q. And those are computerized?

14 A. Yes.

15 Q. Okay. So tell me, do you recall without looking
16 at your notes what you and Dr. DeLee discussed on the
17 15th?

18 A. I do.

19 Q. Okay. What do you recall?

20 A. I called Dr. DeLee and explained that Ms. Green
21 was in the hospital on the date and her presenting
22 symptoms and what we were treating and how we were
23 managing her. He agreed with what we were doing, and I
24 explained to him that we did have a CT scan, a CAT scan of
25 her abdomen on admission that did show a small bowel

1 Q. Okay. Now, did you have any phone calls with Dr.
2 DeLee?

3 A. I did.

4 Q. And do you recall how many calls?

5 A. I'm sorry?

6 Q. Do you recall how many phone calls during this
7 three-day period?

8 A. What I recall was three phone calls.

9 Q. Do you recall what days?

10 A. On 7/15 and twice on 7/16/2016, so the day of
11 discharge.

12 Q. Okay. And are those calls documented?

13 A. I believe so. I'd have to --

14 Q. Are they in the records that were provided by
15 Sunrise?

16 A. No.

17 Q. So where would they be?

18 A. I -- I had charted on the records that I did
19 discuss with Dr. DeLee.

20 Q. What do you mean you charted? You have to explain
21 that.

22 A. But as far as phone logs, I don't have phone logs,
23 no.

24 Q. Okay. I'm saying, are they in the Sunrise
25 records, the paper -- is it paper records in those days

1 obstruction and the fluid collection. He stated that was
2 typically post C-section type of findings that we do see
3 and that we can keep her overnight and see how her
4 symptoms are throughout the next 24 to 48 hours.

5 Q. Okay. Anything else about that call?

6 A. No.

7 Q. What about on the 16th, the first call you
8 remember on the 16th?

9 A. I gave Dr. DeLee updates as to her condition, her
10 vitals, her labs, any new imaging, which would have been a
11 KUB, it's an x-ray of the abdomen on the 16th, how she
12 felt, what our plans for discharge would be and that she
13 was ambulating or walking around and she was tolerating a
14 liquid diet okay and that she had passed gas one time and
15 had three small bowel movements as per the nurse's
16 documentation -- the patient's nurse's documentation.

17 Q. Okay. And what about -- and what did he say
18 relating to that?

19 A. He said, If she looks okay and stable, she can go
20 home and follow up with me.

21 Q. Did he come in to visit her at the hospital during
22 those three days?

23 A. I'm not aware.

24 Q. What about the third call?

25 A. I'm sorry, was that a question?

1 Q. Was there a third call? Do you recall the
 2 conversation, the second call on the 16th with Dr. DeLee?
 3 A. I believe I spoke with the patient, her sister and
 4 then called the patient's mother and then called Dr. DeLee
 5 to give him a second update on the 16th prior to her being
 6 discharged.
 7 Q. And do you recall any of the substance of that
 8 call?
 9 A. Not -- no, it's been quite a while. I don't.
 10 Q. Okay. Did you ever get an OB/G consult for
 11 Ms. Green?
 12 A. I'm sorry?
 13 Q. Did you ever obtain an OB/G consult, an OB/GYN
 14 consult?
 15 A. Dr. DeLee was consulted.
 16 Q. Okay. But anybody that actually in the hospital
 17 came to see her?
 18 A. He was her OB, so he was consulted.
 19 Q. So you're saying you consulted him by phone?
 20 A. Initially the emergency room physician who
 21 admitted the patient to me placed a call to Dr. DeLee as
 22 well.
 23 Q. Right.
 24 A. And then I placed a follow-up call on the 15th and
 25 16th.

1 surgical, but I did have surgery on the case as a
 2 consultant, but she did not require surgery, so there was
 3 no surgical report.
 4 Q. Okay.
 5 A. Or op note, is that what you're --
 6 Q. Let me rephrase it or just ask another question.
 7 Dr. Kim was the trauma surgeon on call in the emergency
 8 room or just on call?
 9 A. On call throughout the hospital.
 10 Q. Okay. So on the 14th you requested a surgical
 11 consult with Dr. Kim?
 12 A. I did, yes.
 13 Q. Do you know whether Dr. Kim ever saw the patient?
 14 A. I'm not aware.
 15 Q. Okay. Did you ever get any sort of report orally
 16 or in writing from Dr. Kim?
 17 A. Via telephone consultation.
 18 Q. And what was Dr. Kim's telephone call to you?
 19 What did he say?
 20 A. I gave him a brief history of Ms. Green to Dr. Kim
 21 stating that she came in, presented with abdominal pain
 22 and we had a CT scan that showed a small bowel
 23 obstruction, gave him her vitals, her history, she was
 24 C-section. And typically the way we manage medically with
 25 a small bowel obstruction or ileus is keep the patient NPO

1 Q. Okay. But all contact with Dr. DeLee was by
 2 phone?
 3 A. Yes.
 4 Q. Okay. So nobody -- there are no OB/Gs that saw
 5 the patient in the hospital between July 14th and July
 6 16th?
 7 A. I'm not aware.
 8 Q. Okay. What about did you request a surgical
 9 consult?
 10 A. I did. On the 14th of July when the -- first
 11 night the patient came in, typically with the small bowel
 12 obstruction I get general surgery on the case as well.
 13 Q. Okay. And who -- did a surgeon see her?
 14 A. I consulted Dr. Kitae Kim who was the trauma
 15 surgeon/general surgeon on for that night.
 16 Q. Did that person examine Ms. Green?
 17 A. I'm not aware.
 18 MS. LUCERO: Objection. Calls for speculation.
 19 Only answer if you know.
 20 THE WITNESS: Oh, okay.
 21 I'm not aware. Yeah, I don't know.
 22 BY MR. MARKS:
 23 Q. Did you ever get a report from Dr. Kim, a surgical
 24 report?
 25 A. We spoke on the -- well, there was nothing

1 or nothing by mouth, sometimes we place an NG tube that
 2 goes in through the nose into the stomach. She did not
 3 require that. IV fluid hydration, repleting her
 4 electrolytes, and sometimes we give IV antibiotics.
 5 Because she had a fever when she came in, we gave her IV
 6 antibiotics.
 7 Q. I'm just asking, did the surgeon -- what did the
 8 surgeon tell you?
 9 A. His recommendation was to keep her NPO, so nothing
 10 by mouth, no food, no liquids, and if I recall, it was
 11 strict NPO, so no water, no ice chips. If she was to get
 12 worse throughout the night, my instruction was to order an
 13 NG tube, a nasogastric tube, which she did not require, to
 14 give her IV fluids and repeat imaging. So that would have
 15 been a KUB, an x-ray of her abdomen within the next 24 to
 16 48 hours, which we did obtain.
 17 Q. Did you ever call the surgeon back after --
 18 A. I did. I spoke with Dr. Kim the following day,
 19 which was on 7/15 --
 20 Q. Right.
 21 A. -- and gave him updates as to how she was doing.
 22 Q. But you don't know if he ever saw her, saw Choloe
 23 Green?
 24 A. I'm not aware.
 25 Q. Okay. And there are times a small bowel

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1 obstruction doesn't resolve itself; correct?
 2 A. Correct.
 3 Q. And then you need surgery?
 4 A. It can be managed medically, but it's really a
 5 clinical judgment from the surgeon and the hospitalist.
 6 Q. Okay. And also if you don't get better, you can
 7 become septic, right, because there's a blockage?
 8 A. That's correct, that would be a complication.
 9 Q. And if you become septic, often you need emergency
 10 surgery; correct?
 11 A. If that's the true source, then, yes, you would
 12 need emergency surgery.
 13 Q. All right. Returning to Exhibit 3, to follow-up
 14 with Dr. DeLee by Monday, in two days. Do you know what
 15 day of the week 7/16 was?
 16 A. I would have to look at the calendar. I don't.
 17 Q. Okay. All right. So discharge diagnosis, she
 18 still had abdominal pain; correct?
 19 A. She -- yes, correct.
 20 Q. Everything in the discharge diagnosis is what you
 21 think she has at discharge; correct?
 22 A. Yes, correct.
 23 Q. So she had an ileus, possible partial small bowel
 24 obstruction you said resolving; correct?
 25 A. So my clinical judgment was that it was more an

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1 ileus rather than a small bowel obstruction.
 2 Q. Post C-section five days prior to admission. So
 3 we're now on seven or eight days?
 4 A. That would be correct.
 5 Q. Status post abscess, you're saying she came in
 6 septic?
 7 A. She came in with triggering sepsis parameters.
 8 Q. Okay. What's the leukocytosis?
 9 A. Leukocytosis is elevated white blood cell count.
 10 Q. So when she was discharged she still had that?
 11 A. That's correct.
 12 Q. And then what's the next thing, number 6?
 13 A. Number 6 is hypokalemia, so a low potassium level.
 14 Q. And what is the significance of that?
 15 A. Sometimes lack of fluid, dehydration, fluid
 16 shifts, a number of different causes. Medications can
 17 cause that.
 18 Q. And then you say possible narcotic dependence.
 19 What did you base that on?
 20 A. When the patient came in, she was requesting IV
 21 pain medication, specifically Dilaudid, and she was
 22 requesting increasing IV pain medications. However, in my
 23 clinical judgment I felt given her age and circumstance I
 24 thought it would be safe to cap her Dilaudid at one
 25 milligram IV every four hours, not scheduled PRN, meaning

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1 as needed.
 2 Q. But she was in pain?
 3 A. She was in pain.
 4 Q. Okay. So I'm going to look at the hospital
 5 course. The patient was claiming she was in pain and the
 6 medicine wasn't what, helping her pain?
 7 A. I believe it was. She was on two different pain
 8 medications. Dilaudid was the IV pain medication and then
 9 the -- she was also given an oral pain medication as well.
 10 Q. The white count was high; right?
 11 A. Yes.
 12 Q. So that was -- white count high is an indication
 13 of infection; right?
 14 A. It can be.
 15 MR. STRYKER: Object to the form.
 16 THE WITNESS: Not -- there are times where the
 17 white blood cell count is high in the setting of no
 18 infection.
 19 BY MR. MARKS:
 20 Q. Okay. But you said she does have ileus and small
 21 bowel obstruction in the narrative section at the bottom
 22 of the page of Exhibit 3; correct?
 23 A. She did have ileus and small bowel obstruction.
 24 Yes, correct, uh-huh.
 25 Q. Now, what was her creatine of 0.47, what is that

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1 significance?
 2 A. Oh, creatinine is -- it's a number of -- a measure
 3 of kidney function.
 4 Q. Right.
 5 A. And it's a substance that our body excretes.
 6 Q. Okay.
 7 A. Typically the normal creatinine would be around
 8 1.0.
 9 Q. So this is low?
 10 A. She was in the normal range.
 11 Q. Okay. And you say trace bacteria, what does that
 12 mean?
 13 A. She had a urinalysis on admission, only one that
 14 I'm aware, and the urinalysis give us a spectrum or a
 15 picture as to if a urinary tract infection could have been
 16 causing abdominal pain, which that's a possibility. So
 17 the urinalysis typically just looks at how much white
 18 blood cell counts there are, the cell counts, the red
 19 blood cells, and there's also two -- two additional
 20 components that would indicate a urine infection, a
 21 nitrite and leukocyte esterase, which were both negative,
 22 so that would not -- it did not indicate a urinary tract
 23 infection at the time.
 24 Q. Okay. If you go to page 2 of the exhibit,
 25 radiographic imaging, a KUB. That's a type of imaging?

1 A. Yes, it is.
 2 Q. On July 16th showed multiple dilated left small
 3 bowel abdominal loops related to a small bowel obstruction
 4 versus ileus, gastric banding. What does that mean?
 5 A. A KUB is a kidney ureter bladder. It's an x-ray
 6 of the abdomen. It's a very useful short study that we
 7 look at, and we typically do serial imaging. So it's a
 8 good, easy, quick test to assess whether her bowel
 9 obstruction was getting worse, was there more loops of
 10 bowel or another thing the KUB picks up is if there's any
 11 free air, that would indicate a perforation of bowel.
 12 Q. Okay. This is saying multiple dilated left small
 13 bowel abdominal loops related to small bowel obstruction?
 14 A. Which are typically seen with an ileus and/or a
 15 small bowel obstruction.
 16 Q. Okay. Then you say later on in that narrative, CT
 17 abdomen and pelvis showed a gas and fluid filled
 18 distention of the stomach and proximal small bowel
 19 compatible to a small bowel obstruction. Do you see that?
 20 A. I do.
 21 Q. Then you say, moderate amount of free fluid in the
 22 abdomen and pelvis with several small gas bubbles anterior
 23 to the uterus. What does that signify?
 24 A. The CT scan, it -- this was the CT scan on
 25 admission, so the small bowel loops are typically seen

1 with an ileus or a small bowel obstruction. And then the
 2 second component, bubbles anterior to the uterus, would be
 3 typical of post C-section.
 4 Q. What is intraperitoneal abscess suspected, what
 5 does that mean?
 6 A. I believe that was referring to fluid collection
 7 within the abdomen.
 8 Q. Okay. Which is a sign of what?
 9 A. Typically postoperative after a C-section or any
 10 type of abdominal surgery.
 11 Q. For how long would there be fluid in the abdomen?
 12 A. It varies per patient.
 13 Q. But would it be -- would you have fluid in the
 14 abdomen eight days after C-section?
 15 A. I can't --
 16 MR. STRYKER: Incomplete hypothetical. Go
 17 ahead.
 18 THE WITNESS: I can't comment from an OB
 19 standpoint, but from an internal medicine standpoint I've
 20 seen fluid collection one to two weeks after surgical
 21 intervention, yes.
 22 BY MR. MARKS:
 23 Q. So after she was discharged, your idea was she'd
 24 go back to Dr. DeLee two days later?
 25 A. That's correct.

1 Q. In terms of the treatment, you did all these
 2 tests, your conclusion was a small bowel obstruction
 3 was there but would resolve itself?
 4 A. Yes, correct.
 5 Q. Is that it?
 6 And you thought she wasn't -- even though she had
 7 an elevated white count, you thought she was no longer
 8 septic?
 9 A. No, she did not meet criteria for sepsis on
 10 discharge.
 11 Q. Okay. Let me show you -- is this the -- okay.
 12 MR. MARKS: Let's mark this next in order.
 13 (Plaintiff's Exhibit 4 was marked for
 14 identification.)
 15 THE REPORTER: Exhibit 4.
 16 BY MR. MARKS:
 17 Q. Doctor, I found some records from Sunrise that I
 18 think referenced one of your comments. Do you recognize
 19 these as computer-generated notes or chart notes?
 20 A. I do.
 21 Q. For this patient, Ms. Green?
 22 A. I do.
 23 Q. Okay. There's a Bates stamp at the bottom on the
 24 right-hand side, but if you go to 782, in the middle of
 25 the page under Re-Evaluation & MDM, is this you or was

1 this the emergency room or someone else? It says general
 2 surgeon called, stated to consult OB and then will be
 3 reconulted if needed. Dr. Frank DeLee will see patient,
 4 requested admission to OB?
 5 A. I believe this was emergency department.
 6 Q. Okay.
 7 MR. MARKS: Could you mark this next in order?
 8 (Plaintiff's Exhibit 5 was marked for
 9 identification.)
 10 THE REPORTER: Exhibit 5.
 11 BY MR. MARKS:
 12 Q. I'm showing you Exhibit 5. Are those additional
 13 chart notes for Choloe Green?
 14 Is that correct? I didn't hear an answer.
 15 A. Yes, this is -- this is my -- this would be my
 16 note.
 17 Q. And are these the chart notes for 7/15 of 2016?
 18 A. Yes, that's correct.
 19 Q. Okay. So on page 1 of the exhibit under patient
 20 reports, she was not passing gas and no bowel movement;
 21 correct?
 22 A. That's correct.
 23 Q. And then if you go to the last page, 7/15 where it
 24 says Plan, what does CPM mean?
 25 A. Continue present management.

1 Q. So hold discharge, meaning she wasn't going to be
 2 released on the 15th; correct?
 3 A. I'm sorry?
 4 Q. Hold discharge, meaning she wasn't going to be
 5 released on the 15th?
 6 A. That's correct, yes.
 7 Q. Then it says, patient not passing gas, no bowel
 8 movement; correct?
 9 A. That's correct.
 10 Q. Optimize symptom control. What does SUPP care
 11 mean?
 12 A. Supportive care. So with the IV fluids, pain
 13 management and keeping her on a medical floor and
 14 continuing ongoing nursing care that she required.
 15 Q. Then it says, trial of clears tonight to tomorrow.
 16 What does it mean, trial of clears tonight to tomorrow?
 17 A. We were going to see how she would tolerate a
 18 clear liquid diet. Typically we denote it as "clears".
 19 Q. Then it says DC home tomorrow. What does DC mean?
 20 A. Discharge.
 21 Q. Well, so you were planning on the 15th to
 22 discharge her on the 16th even though she still wasn't
 23 passing gas?
 24 A. We were anticipating a discharge within 24 hours.
 25 Q. I had lengthy -- what is DW?

1 Q. Well, look at a page 2. It looks like it was
 2 electronically signed by you on 7/17?
 3 A. That's correct.
 4 Q. So this is something you did after she was
 5 discharged?
 6 A. No.
 7 MR. PRANGLE: Just object.
 8 THE WITNESS: Yeah.
 9 MR. PRANGLE: It has a different date for the
 10 dictation.
 11 MS. LUCERO: Join.
 12 MR. MARKS: You can answer.
 13 THE WITNESS: Oh, yeah.
 14 My dictation was on 7/14/2016, and typically
 15 within 48 hours of discharge we have our patient's chart
 16 review for our history and physical, discharge summary
 17 that we do sign electronically.
 18 BY MR. MARKS;
 19 Q. Okay. But -- so the top part showing discharge
 20 date, that -- is that on a form that's automatically
 21 printed? In other words, you're saying you dictated this
 22 on the 14th, but it's showing the discharge date of the
 23 16th?
 24 MR. PRANGLE: Just object to foundation.
 25 MS. LUCERO: Objection. Join. Calls for

1 A. Discussion with.
 2 Q. Patient, patient sister at bedside. I also
 3 discussed with patient's OB, Dr. DeLee, recommends
 4 discharge when patient stable and to follow up in
 5 outpatient in Dr. DeLee's office. I explained this to
 6 patient. She is agreeable to trial clears, requesting
 7 Dilaudid for pain. So you're saying in this note she's
 8 going to be treated by Dr. DeLee in his office for this?
 9 A. Yes, we were anticipating that.
 10 Q. And what were you waiting for, just to see if she
 11 passed gas?
 12 A. I wanted to make sure she was stable as far as not
 13 requiring inpatient hospitalization any longer. So that
 14 would be waiting to pass gas, have a bowel movement, have
 15 better pain control and continue to have normal vital
 16 signs, which she did on 7/15.
 17 MR. MARKS: Can you mark this next in order?
 18 (Plaintiff's Exhibit 6 was marked for
 19 identification.)
 20 THE REPORTER: Exhibit 6.
 21 BY MR. MARKS:
 22 Q. So this is your history and physical?
 23 A. Yes, it is.
 24 Q. And do you know when you would have done this?
 25 A. On 7/14/2016.

1 speculation.
 2 MR. MARKS: Okay. I'm just asking him. He
 3 signed the document.
 4 BY MR. MARKS:
 5 Q. So can you explain it to me?
 6 A. Was there --
 7 Q. Is this a document --
 8 A. -- a question?
 9 Q. All right. Let me rephrase it. Did you draft
 10 this document on the 14th?
 11 A. On July 14th I did, yes, electronically.
 12 Q. And then it wasn't transcribed till the 17th?
 13 A. I'm not aware of when it was actually transcribed.
 14 However, typically they're transcribed much sooner than
 15 that.
 16 Q. Okay. So when you say review of symptoms under --
 17 towards the bottom of page 1 where it says review of
 18 systems --
 19 A. Correct.
 20 Q. -- it says she has severe abdominal pain. Is that
 21 as of the 14th?
 22 A. Yes, on admission. So my history, physical exam,
 23 one component would be the review of systems, and that was
 24 on the date of admission, which, yes, would have been July
 25 14th of 2016.

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1 Q. Okay. And under history, which is towards the
 2 top, you say she was found to have a partial small bowel
 3 obstruction?
 4 A. Yes, correct.
 5 MR. MARKS: Would you mark that, please?
 6 (Plaintiff's Exhibit 7 was marked for
 7 identification.)
 8 THE REPORTER: Exhibit 7.
 9 BY MR. MARKS:
 10 Q. This is another document. I think it was produced
 11 by Sunrise, SH638 Bates stamped at the bottom. Towards
 12 the top it says, Comment: Per Dr. Kia, do not call for KUB
 13 result. M.D. will follow up in a.m., 7/16/16. Can you
 14 explain that?
 15 A. I couldn't recall. I'm sorry.
 16 Q. Do you know what M.D. will follow up in a.m.?
 17 A. I'm not --
 18 Q. Okay. Did you see -- as the hospitalist you saw
 19 Choloe Green on the 14th, 15th and 16th?
 20 A. I did, yes.
 21 Q. And you agreed that she should be discharged?
 22 A. On the 16th of July, yes.
 23 Q. And she was discharged on the 16th; correct?
 24 A. I believe she was, yes.
 25 Q. All right.

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1 A. Uh-huh.
 2 Q. Did you -- just so I'm clear, so she came in with
 3 a small bowel obstruction, she left with a small bowel
 4 obstruction; is that right?
 5 MS. LUCERO: Objection. Mischaracterizes the
 6 testimony.
 7 MR. STRYKER: Join.
 8 BY MR. MARKS:
 9 Q. Didn't she leave with a small bowel obstruction?
 10 Isn't that in your discharge diagnosis?
 11 A. I stated that it had resolved.
 12 Q. Didn't it say resolving?
 13 A. Yes.
 14 Q. But she still had a small bowel obstruction;
 15 correct?
 16 If you go to Exhibit 3, she still had abdominal
 17 pain, she still had ileus, possible partial small bowel
 18 obstruction resolving; correct?
 19 A. Discharge summary. Yes, correct.
 20 Q. And she had a high white count?
 21 A. Yes, correct.
 22 Q. All right. Do you know what happened to her
 23 shortly thereafter she was released from Sunrise,
 24 discharged from Sunrise Hospital?
 25 A. I do not.

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1 Q. Did you ever review the records from Centennial
 2 Hospital?
 3 A. I was not aware she was at another hospital.
 4 Q. You know nothing about that?
 5 A. I had not followed up after this.
 6 Q. And you never saw her or saw any records of her?
 7 A. I'm sorry?
 8 Q. You never saw her or saw any records regarding
 9 what happened after?
 10 A. I don't understand.
 11 Q. After Sunrise, after she was discharged?
 12 A. After Sunrise I'm not aware of what transpired.
 13 MR. MARKS: Okay. I'll pass the witness.
 14 MR. STRYKER: Go ahead.
 15 EXAMINATION
 16 BY MR. PRANGLE:
 17 Q. Doctor, my name is Mike Prangle. I represent
 18 Sunrise. And I think you told us this earlier, but is it
 19 correct to say that you were not an employee of Sunrise
 20 Hospital while you cared for this patient?
 21 A. That's correct.
 22 Q. You were an independent contractor?
 23 A. Yes, correct.
 24 Q. The group that you were affiliated with was Nevada
 25 Hospitalist Group?

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1 A. That's correct.
 2 Q. When did you begin your affiliation with that
 3 group?
 4 A. Nevada Hospitalist Group?
 5 Q. Yes.
 6 A. That would have been January of 2016.
 7 Q. And in terms of how it was that you were at
 8 Sunrise Hospital on July 14th, the day that this patient
 9 was assigned to you, was that done pursuant to a call
 10 schedule?
 11 A. Yes, correct.
 12 Q. And who prepared that call schedule?
 13 A. It would have been Nevada Hospitalist Group.
 14 Q. And so --
 15 A. They have a team that they set up the call
 16 schedule for the HPN or --
 17 Q. So Nevada Hospitalist Group per that schedule is
 18 the one who selected you to be at Sunrise on July 14th?
 19 A. Yes.
 20 Q. Would you agree with me that Sunrise Hospital did
 21 not in any way select you to be the on-call physician for
 22 July 14th?
 23 A. I wasn't aware, no.
 24 Q. Okay. Because that scheduling -- that
 25 decision-making process was done by Nevada Hospitalist

1 Group; true?
 2 A. Yes, correct.
 3 Q. And then just lastly, with regard to -- it was
 4 your decision to discharge this patient?
 5 A. It was.
 6 Q. In your opinion was it reasonable within the
 7 standard of care to discharge this patient notwithstanding
 8 the fact that she still had symptoms consistent with
 9 either an ileus or a resolving small bowel obstruction?
 10 A. I felt at that point that she would -- was
 11 reasonably safe for discharge.
 12 Q. And, Doctor, considering all of your care over
 13 those three days, would you agree with me that all of your
 14 care fully complied with the standard of care?
 15 A. I do.
 16 MR. PRANGLE: Thank you, Doctor.
 17 I'm done.
 18 EXAMINATION
 19 BY MR. STRYKER:
 20 Q. Doctor, my name is Eric Stryker.
 21 A. Sure.
 22 Q. I represent defendant, Dr. DeLee. He's an
 23 obstetrician who I think you discussed some telephonic
 24 discussions with earlier in the course of your deposition.
 25 I'm going to have you, please, fish out of the stack of

1 exhibits in front of you what I believe has been marked
 2 for identification as Exhibit 5. And if I numbered it
 3 correctly, it would be the progress note from July 14th.
 4 It looks a little like this. I'll show you page 1 of my
 5 document, and you tell me if it matches page 1 of your
 6 document.
 7 A. It looks different.
 8 Q. I may have mismarked it. I apologize.
 9 MR. PRANGLE: This is our 5.
 10 MR. STRYKER: It's SH000775 is the Bates number
 11 on the bottom.
 12 MR. MARKS: That's 4, Counsel.
 13 MR. STRYKER: Oh, my apologies.
 14 MR. MARKS: It's our Exhibit 4.
 15 MR. STRYKER: Okay. If I can have you turn to
 16 Plaintiff's Exhibit 4, please.
 17 MS. LUCERO: This one.
 18 THE WITNESS: Oh, okay.
 19 BY MR. STRYKER:
 20 Q. And before I get too far into the document, during
 21 your discussion with Dr. DeLee, do you recall anything
 22 else that you told him that you haven't already described
 23 for us today?
 24 A. Not that I recall.
 25 Q. Were you calling him to keep him updated on his

1 patient?
 2 A. I was.
 3 Q. Because his patient had presented to Sunrise
 4 Hospital?
 5 A. Yes, correct.
 6 Q. Okay. Were you calling him formally to have him
 7 come to the hospital and walk into the room and treat the
 8 patient at the bedside?
 9 A. Not necessarily.
 10 Q. Okay.
 11 A. Just a consult.
 12 Q. And just a telephonic informal consult?
 13 A. To initially notify him that his patient was
 14 admitted under my service at Sunrise Hospital on 7/14.
 15 Q. And you do that as a courtesy?
 16 A. I typically do.
 17 Q. Okay. Could I have you direct your attention to
 18 Exhibit 4 again?
 19 A. Sure.
 20 Q. I apologize. I'm going to have you turn to page 9
 21 of 11. It's two pages from the end.
 22 A. Uh-huh. I got it.
 23 Q. I apologize, three pages from the end.
 24 A. Uh-huh.
 25 Q. But it's Bates stamped SH000783. Is it common

1 practice for practitioners at Sunrise Hospital to make a
 2 note of consultants that they call on a patient?
 3 A. I'm sorry. I didn't hear you. I apologize.
 4 Q. I apologize. Let me rephrase the question.
 5 A. Uh-huh.
 6 Q. Is it common for physicians at Sunrise Hospital to
 7 make a notation of consultants that they call on a
 8 patient?
 9 A. It varies based on the practitioner.
 10 Q. Okay. Looking at what we see under consultant at
 11 the bottom of the page, Consultation 1, it says
 12 Referral/Consultant Name, Frank -- DeLee, Frank J.M.D.?
 13 A. Yes, correct.
 14 Q. And it looks like a requested call time was at
 15 1920 hours or 7:20 p.m. That would be prior to your
 16 involvement with the patient care?
 17 A. Yes.
 18 Q. Because I think you testified earlier you came on
 19 board at approximately 2000 hours?
 20 A. Correct.
 21 Q. Okay. And it indicates at the bottom of the page,
 22 Call returned?
 23 A. Yes.
 24 Q. Would that indicate to you that Dr. DeLee returned
 25 the call?

1 A. Not to me. These are not --
 2 Q. But to whoever called him?
 3 A. Yes.
 4 Q. Okay. Next page. Top line of Bates SH000784
 5 would seem to indicate to me that the call was returned at
 6 1933 hours. Would that be in layperson's terms 7:33 p.m.?
 7 A. Yes.
 8 Q. So that's 13 minutes after he got the call?
 9 A. My math. Yes, it would.
 10 Q. Would you consider that to be a timely response if
 11 you had called an obstetrician?
 12 A. A reasonable response.
 13 Q. Okay. And then under Call Returned Date, it was
 14 returned the same date, July 14, 2016?
 15 A. I'm sorry?
 16 Q. I apologize. Right under the 1933, the Call
 17 Returned Date was July 14, 2016?
 18 A. Oh, okay. Correct.
 19 Q. Okay. And under Consultant it reads, and I'll
 20 read slowly, quote, Will see patient, agrees with eval,
 21 agrees with plan, says to admit to medicine, for he will
 22 be out of town, close quote.
 23 Did I read that correctly?
 24 A. You did, yes.
 25 Q. Would that indicate to you based on your

1 understanding of the Sunrise Hospital medical
 2 recordkeeping system that Dr. DeLee communicated to
 3 whoever it was that called him that the patient should be
 4 admitted to the medicine floor because he would be out of
 5 town?
 6 A. I don't understand the question.
 7 Q. Sure. Based on your review of that document,
 8 would that indicate to you that my client, Dr. DeLee, told
 9 whoever it was that called him that the patient should be
 10 admitted to the medicine floor because Dr. DeLee would be
 11 out of town?
 12 MR. MARKS: Calls for speculation.
 13 THE WITNESS: His -- that would tell me the
 14 instruction was to admit the patient to medicine, and I
 15 happened to be on call for this patient's insurance during
 16 that time, which she was admitted under my service,
 17 correct.
 18 BY MR. STRYKER:
 19 Q. And what is the medical floor?
 20 A. A non-ICU, a non-PACU or postanesthesia recovery
 21 floor. So typically if there's two tiers, there's a
 22 medical-surgical floor and a medical-telemetry floor.
 23 Telemetry we just monitor heart rate.
 24 Q. Is there an obstetrics unit?
 25 A. There is, yes.

1 Q. And the patient was not administered -- the
 2 patient was not admitted to the obstetrics unit?
 3 A. She would not require -- typically it's a labor
 4 and delivery. So she would not be -- they -- we typically
 5 don't admit patients to labor and delivery.
 6 Q. And based on this chart entry, it would indicate
 7 that Dr. DeLee informed the treatment team that he was out
 8 of town; correct?
 9 MR. MARKS: Calls for speculation.
 10 BY MR. STRYKER:
 11 Q. Is that your interpretation of that note?
 12 A. Yes.
 13 Q. Okay. For he will be out of town you take to
 14 understand that the patient should be admitted to the
 15 medicine unit because Dr. DeLee would be out of town?
 16 A. Yes, correct.
 17 Q. Okay. Thank you very much. Do you recall Dr.
 18 DeLee ever telling you that he would come in and see the
 19 patient at Sunrise Hospital?
 20 A. I don't recall.
 21 Q. Okay. If a small bowel obstruction does not --
 22 strike that.
 23 Sitting here today do you know for a fact whether
 24 or not this patient actually had a small bowel
 25 obstruction?

1 A. I don't.
 2 Q. For example, findings can appear on medical
 3 imaging that might be consistent with an ileus or a small
 4 bowel obstruction, but does that mean a hundred percent of
 5 the time that the patient always has a small bowel
 6 obstruction or an ileus?
 7 A. Medically in my expertise, no, not one hundred
 8 percent of the time.
 9 Q. Okay. Dr. DeLee never saw any medical records for
 10 this patient, did he, to your knowledge?
 11 A. I'm not aware.
 12 Q. Okay. You've never given him any?
 13 A. I have not provided Dr. DeLee any medical records.
 14 Q. And to clarify, you never gave him any of this
 15 patient's medical records during her July 14, 2016
 16 admission to Sunrise Hospital?
 17 A. I don't understand the question. I apologize.
 18 Q. You never provided Dr. DeLee with copies of any
 19 medical records or copies of any medical imaging for this
 20 patient's admission to Sunrise Hospital during her July
 21 14, 2016 admission?
 22 A. No, I did not.
 23 Q. Okay. He never issued any orders for this patient
 24 during her admission at Sunrise Hospital July 14th, 2016,
 25 did he?

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1 A. Telephonically?
 2 Q. In any way?
 3 A. I don't understand the question.
 4 Q. Did he write any orders or issue any orders for
 5 this patient's treatment?
 6 MS. LUCERO: I'm just going to object, because
 7 it may call for speculation, that he hasn't seen all of
 8 the records.
 9 MR. STRYKER: Fair enough.
 10 BY MR. STRYKER:
 11 Q. And that's a fair point. You have not seen all of
 12 the medical records from this patient's admission at
 13 Sunrise Hospital on July 14th, 2016, have you?
 14 A. I have not.
 15 Q. Okay. And you would reserve your right to offer
 16 additional testimony or opinions at trial if you were
 17 shown additional pages of the medical records you have not
 18 seen today, wouldn't you?
 19 A. Yes.
 20 MS. LUCERO: Yes.
 21 BY MR. STRYKER:
 22 Q. Okay. Given the documents that you have been
 23 shown regarding this patient's presentation at Sunrise
 24 Hospital on July 14 through her discharge in 2016, have
 25 you seen any orders that were issued by Dr. DeLee for

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1 patient treatment?
 2 A. I'm not aware. I -- the records I was provided, I
 3 did not have access to knowing that.
 4 Q. To your knowledge did Dr. DeLee have any direct
 5 communication with this patient during her admission at
 6 Sunrise Hospital from July 14, 2016 until her discharge?
 7 A. Uhm --
 8 Q. To your knowledge?
 9 A. Can you clarify that question?
 10 Q. Sure. Are you aware of any direct communications
 11 by telephone or e-mail or text message between this
 12 patient and my client, Dr. DeLee, during the time she was
 13 at Sunrise Hospital from July 14, 2016 until she was
 14 discharged?
 15 A. I'm not certain. I believe the patient did
 16 mention that she did speak with Dr. DeLee at some time
 17 during her hospital stay between July 14 to July 16.
 18 Q. And what did she tell you about that?
 19 A. She said she spoke with Dr. DeLee and gave him
 20 updates and that he was aware that she was in the
 21 hospital.
 22 Q. Did she say specifically what updates she gave
 23 him?
 24 A. No.
 25 Q. Did she say what day that phone call was made?

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1 A. No.
 2 Q. Did she say who called who, whether she called Dr.
 3 DeLee or whether Dr. DeLee called her?
 4 A. She did not specify, no.
 5 Q. Do you have any other information regarding any of
 6 those conversations that the patient may have had with my
 7 client?
 8 A. I don't.
 9 Q. Okay. Are you aware of any instance in which Dr.
 10 DeLee came to Sunrise Hospital during that admission of
 11 July 14, 2016 to discharge to physically examine this
 12 patient?
 13 A. I'm not aware.
 14 Q. Are you aware of any compensation or payment Dr.
 15 DeLee received to provide care and treatment to this
 16 patient during her admission at Sunrise Hospital from July
 17 14, 2016 to the date of her discharge?
 18 A. I'm not aware.
 19 Q. Is it fair to say that you were in control over
 20 management of this patient's treatment while you were the
 21 attending physician for this patient from July 14th, 2016
 22 until the time of discharge?
 23 A. Control? I'm not quite understanding.
 24 Q. For example, if you wanted her to see a consultant
 25 of any particular medical specialty, that's something that

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1 you could have made happen if you considered it to be
 2 necessary?
 3 A. I felt I was, yes.
 4 Q. And you maintained that control right up until the
 5 time of her discharge?
 6 A. I did, yes.
 7 Q. Okay. Do you recall any other conversations with
 8 my client, Dr. DeLee, that we have not already covered
 9 during the course of this deposition?
 10 A. No.
 11 Q. How many patients have you treated with a small
 12 bowel -- strike that.
 13 How many patients have you treated with a suspected
 14 small bowel obstruction or ileus prior to July 14, 2016?
 15 Hundreds?
 16 A. I don't know the number, but there's -- I've seen
 17 it quite a lot. I've been in practice since 2006, so...
 18 Q. Would it be over a hundred patients?
 19 A. Yes.
 20 Q. With that type of condition?
 21 A. Yes.
 22 Q. Have some of them done well after discharge when
 23 they've had a resolving small bowel -- suspected small
 24 bowel obstruction or ileus?
 25 A. Yes.

1 MR. STRYKER: No further questions. I thank
 2 you for your time.
 3 FURTHER EXAMINATION
 4 BY MR. MARKS:
 5 Q. I have a couple of follow-up.
 6 Doctor, did you ever tell Dr. DeLee not to show up?
 7 A. I'm sorry?
 8 Q. Did you ever tell Dr. DeLee not to show up --
 9 A. Not to show up?
 10 Q. -- at Sunrise Hospital from July 14th to July
 11 16th?
 12 A. No.
 13 Q. In fact, do you recall Dr. DeLee ever telling you
 14 he was going out of town --
 15 A. No.
 16 Q. -- personally?
 17 If Dr. DeLee was going out of town, wouldn't the
 18 normal practice be he would have coverage with another
 19 OB/G?
 20 MR. STRYKER: Foundation. Speculation.
 21 MR. MARKS: You can answer.
 22 BY MR. MARKS:
 23 Q. If he's a one-man OB/G and was going out of town,
 24 wouldn't he have coverage?
 25 MR. STRYKER: Same objection.

1 THE WITNESS: I'm not aware.
 2 BY MR. MARKS:
 3 Q. Okay. Regarding the medical records, you keep
 4 saying about you haven't seen all the records. The
 5 records that you were prevented from seeing, you were
 6 prevented from seeing by Sunrise Hospital; correct?
 7 A. No, that's not correct.
 8 Q. Who prevented you from seeing the records?
 9 MS. LUCERO: For the record, I requested them
 10 of plaintiff's counsel, of you, and I was provided a
 11 discharge summary was the only thing I was provided. And
 12 in light of that, Sunrise Hospital was kind enough to
 13 provide at least the medical records that he authored.
 14 But in light of the fact that you were unwilling to
 15 provide my office with medical records, Sunrise counsel
 16 was unwilling to provide the complete set of medical
 17 record.
 18 MR. MARKS: All right. I don't think that
 19 we're not willing to provide.
 20 MS. LUCERO: I spoke with Ms. Young.
 21 MR. MARKS: This is kind of an unfortunate
 22 process.
 23 MS. LUCERO: She refused to give them to me.
 24 MR. MARKS: All right.
 25 MS. YOUNG: No, incorrect statement, but that's

1 fine.
 2 BY MR. MARKS:
 3 Q. I mean, I think we -- I thought we got you
 4 everything that we were going to show you for the depo,
 5 but I think you got it from Sunrise or from someone
 6 anyway. This stuff that we gave that you had your name on
 7 it, you either authored or dealt with; correct?
 8 A. Just what I was provided.
 9 Q. Right. And I didn't ask you anything that you
 10 didn't author or sign or provide; correct?
 11 A. I don't --
 12 Q. We never asked you questions about anything that
 13 you didn't author or see, it all had your name on it?
 14 A. That's not correct.
 15 Q. We showed you things that you didn't -- that were
 16 not signed by you?
 17 A. Yes.
 18 Q. What did we show you that was not signed by you?
 19 A. Namely Exhibit --
 20 MS. LUCERO: This one.
 21 THE WITNESS: Oh, Exhibit 4, Exhibit 2.
 22 BY MR. MARKS:
 23 Q. Well, let's take Exhibit 4. Isn't Exhibit 4 we
 24 showed you because it related to a note of a conversation
 25 with Dr. DeLee that you referenced?

1 A. Is this a question?
 2 Q. Yeah. Exhibit 4 references a note of a phone call
 3 with Dr. DeLee.
 4 A. Where in my --
 5 MS. LUCERO: Objection. Mischaracterizes his
 6 testimony.
 7 BY MR. MARKS:
 8 Q. Exhibit 2 is something you would have had access
 9 to at the time you received the patient from the emergency
 10 room; correct?
 11 A. That's correct.
 12 Q. Okay. And I thought Exhibit 4 was your chart
 13 notes?
 14 A. No, not Exhibit 4.
 15 Q. Okay. It's the emergency room record that you
 16 would have seen on or about the 14th of July?
 17 A. I believe so.
 18 Q. Okay. Regarding how you got involved in the care
 19 of Ms. Green, I think you said you worked for Nevada
 20 Hospitalist?
 21 A. Yes.
 22 Q. Okay. They have a regular contract with Sunrise
 23 to provide hospitalist care in July of 2016; correct?
 24 A. For a particular insurance.
 25 MS. LUCERO: Objection. Calls for speculation.

1 BY MR. MARKS:
 2 Q. For particular insurance. And you regularly go to
 3 Sunrise and provide that care; correct?
 4 A. Can you rephrase?
 5 Q. In other words, I think you said earlier in the
 6 deposition you regularly go to Sunrise, provide
 7 hospitalist care pursuant to arrangements between Nevada
 8 Hospitalist and Sunrise?
 9 A. Correct.
 10 Q. And you're the attending for a certain amount of
 11 patients including Ms. Green in July of 2016?
 12 A. For some of the patients, correct.
 13 Q. But including Ms. Green, you were the attending
 14 physician for Ms. Green --
 15 A. That is correct.
 16 Q. -- in July of 2016?
 17 A. Yes.
 18 Q. Okay. And you're saying -- counsel asked you, do
 19 some people that have a small bowel obstruction, it
 20 resolves without surgery; correct?
 21 A. They're -- that can be an outcome of small bowel
 22 obstruction.
 23 Q. Others don't resolve without surgery and need
 24 surgery, can become septic and don't have a great recovery
 25 or a great outcome; correct?

1 A. Correct.
 2 MR. STRYKER: Incomplete hypothetical.
 3 BY MR. MARKS:
 4 Q. And you don't know what the outcome was for Ms.
 5 Green?
 6 MR. STRYKER: Compound.
 7 BY MR. MARKS:
 8 Q. You don't know what the outcome was because you
 9 didn't -- no one told you what happened?
 10 A. Not after July -- not after the patient was
 11 discharged.
 12 Q. And you never talked to Dr. DeLee about what
 13 happened?
 14 A. No, I have not.
 15 Q. Had you ever worked with Dr. DeLee before this
 16 patient?
 17 A. I believe so, yes.
 18 Q. Okay. And as far as you know, there was no OB/G,
 19 OB/GYN doctor who saw Ms. Green at Sunrise Hospital
 20 between the 14th and the 16th?
 21 A. I'm not aware.
 22 Q. Okay. And you're not aware of whether the surgeon
 23 actually examined Ms. Green between the 14th and the 16th;
 24 correct?
 25 A. I'm not aware. I was limited the medical records

1 I was provided.
 2 Q. I'm just saying, you're not aware sitting here
 3 today --
 4 A. I'm not aware.
 5 Q. -- whether the surgeon actually examined
 6 Ms. Green?
 7 A. I'm not aware.
 8 MR. MARKS: Okay. That's all I have.
 9 FURTHER EXAMINATION
 10 BY MR. PRANGLE:
 11 Q. Doctor, I have two quick things.
 12 A. Sure.
 13 Q. And I apologize. On this issue of why it was that
 14 you were called to care for this patient, earlier I asked
 15 you about the scheduling for call. Counsel raised an
 16 interesting point, and I think you did allude to this
 17 earlier, but that there were something to do with
 18 Ms. Green's insurance that dictated that you would become
 19 her attending physician; is that correct?
 20 A. Yes, correct.
 21 Q. And do you know what insurance she had?
 22 A. It's been a while. I believe it was Health Plan
 23 of Nevada, and it would have been a Medicaid product under
 24 Smart Choice.
 25 Q. Gotcha. So let's assume that you're correct, that

1 it was Health Plan of Nevada. There was some, and I'll
 2 call it requirement that because this patient had Health
 3 Plan of Nevada as insurance they had to pick you as the
 4 physician who would be her attending?
 5 A. Yes.
 6 Q. Lastly, you alluded earlier to a consultation you
 7 made with a surgeon, and I believe you told us it was Dr.
 8 Kim?
 9 A. Dr. Kitae Kim, yes.
 10 Q. And what prompted me to this is -- you still have
 11 Exhibit 4 in front of you?
 12 A. I do.
 13 Q. If you can turn to page 784, which is the third to
 14 last page or second to last page.
 15 A. Sure.
 16 Q. Do you see the reference to Dr. Kim on this?
 17 MS. LUCERO: (Indicating.)
 18 THE WITNESS: Yes, I do.
 19 BY MR. PRANGLE:
 20 Q. Okay. So -- and it's Kitae Kim?
 21 A. Yes.
 22 Q. K-I-T-A-E Kim. Dr. Kim is a surgeon?
 23 A. Yes, a general and trauma surgeon.
 24 Q. Okay. And so in leaving this aside, I believe you
 25 told us that on at least two occasions during the

1 admission you had conversations with Dr. Kim, the surgeon,
 2 as to how to manage this patient; true?
 3 A. I consulted him for the patient, not -- and I was
 4 looking for feedback from his --
 5 Q. Sure.
 6 A. -- point of view.
 7 Q. You were seeking the superior knowledge of a
 8 surgeon as to the best way to care for this patient?
 9 A. Correct.
 10 Q. And so you provided Dr. Kim information about this
 11 patient, and am I correct that Dr. Kim agreed with your
 12 plan?
 13 A. I believe so, yes.
 14 MR. PRANGLE: All right. Thank you, Doctor.
 15 FURTHER EXAMINATION
 16 BY MR. MARKS:
 17 Q. Let me just follow up. You don't recall Dr. Kim
 18 ever examining the patient?
 19 A. I'm not aware.
 20 Q. Regarding the whole issue of how you were
 21 assigned, I think counsel said she or they chose you. You
 22 were assigned through arrangements between the company,
 23 Nevada Hospitalist, and Sunrise to be assigned to
 24 Ms. Green; correct?
 25 MR. PRANGLE: Objection. Misstates the

1 testimony.
 2 MR. MARKS: Isn't that correct, sir?
 3 THE WITNESS: Can I answer that?
 4 MS. LUCERO: You can answer.
 5 THE WITNESS: Oh, okay.
 6 Yes, I was. I was actually on call.
 7 BY MR. MARKS:
 8 Q. Right. Ms. Green never called you, you were
 9 assigned?
 10 A. That's correct.
 11 Q. Okay. Regarding her insurance, HPN, did that
 12 affect the amount of days she was allowed to be in the
 13 hospital for something like a small bowel obstruction?
 14 A. No.
 15 Q. Okay. So you felt she was ready to be discharged
 16 based on your medical judgment?
 17 A. I did.
 18 Q. Okay. And you don't know what happened the next
 19 day?
 20 A. No.
 21 MR. MARKS: All right. That's all I have.
 22 Thank you for coming.
 23 MR. STRYKER: I have more. I apologize.
 24 MR. MARKS: You do? Oh, sorry. Okay.
 25 That's fine. Just jump right in. That's fine.

1 Do you want us to make copies, Counsel? So while we're
 2 waiting should we -- do you want copies of what's Exhibit
 3 1 or you just want it attached?
 4 MR. PRANGLE: Attached is fine for me.
 5 MR. STRYKER: Attached is fine for me.
 6 MR. MARKS: Okay.
 7 FURTHER EXAMINATION
 8 BY MR. STRYKER:
 9 Q. Doctor, you were taught in medical school how to
 10 treat a suspected small bowel obstruction or ileus; true?
 11 A. I was.
 12 Q. Okay. And at the same time you reached out to a
 13 general surgeon because if the suspected small bowel
 14 obstruction or ileus were to get worse, you would want to
 15 have someone available to perform surgery to surgically
 16 address that condition?
 17 A. Yes, correct.
 18 Q. Okay. Did you ever tell my client, Dr. DeLee,
 19 that an obstetric examination was essential prior to this
 20 patient's discharge?
 21 A. I'm not aware. I could not recall.
 22 Q. Is that something that you would tell an
 23 obstetrician in this type of patient's presentation, that
 24 she needs to have an obstetrical examination before
 25 discharge?

1 A. That would be their judgment, an obstetrician's
 2 judgment.
 3 Q. If the suspected small bowel obstruction or ileus
 4 were to proceed to the point that you were concerned this
 5 patient would require surgery to address it, who would you
 6 call to perform surgery to address a small bowel
 7 obstruction or ileus that required surgical intervention?
 8 A. For small bowel obstruction, ileus, it's typically
 9 the general surgeon on call.
 10 Q. Okay.
 11 A. And so the general surgeon.
 12 Q. And of the doctors whose names have been discussed
 13 today, would that have been Dr. Kitae Kim?
 14 A. Yes.
 15 MR. STRYKER: Okay. Thank you very much.
 16 MR. PRANGLE: Nothing further from me.
 17 MR. MARKS: I just have one clarification.
 18 FURTHER EXAMINATION
 19 BY MR. MARKS:
 20 Q. Dr. Kim -- you would be calling whoever's on call
 21 that day, right, Dr. Kim who was on call just different
 22 days?
 23 A. On call for that shift, yes, correct.
 24 Q. Okay.
 25 A. For that day.

1 Q. And, again, you talked to Dr. Kim by phone, but
 2 you don't know whether Dr. Kim ever examined the patient?
 3 A. I spoke with Dr. Kim.
 4 Q. But you don't know whether he ever examined the
 5 patient?
 6 A. I'm not aware.
 7 MR. MARKS: Okay. That's all I have.
 8 MR. PRANGLE: Nothing.
 9 MR. MARKS: Okay. You'll take care of the
 10 reading and signing, Counsel?
 11 MS. LUCERO: Yes, we'll read and sign.
 12 MR. STRYKER: E-Tran.
 13 THE REPORTER: Mr. Prangle, E-Tran; right?
 14 MR. PRANGLE: E-Tran only for me.
 15 (Plaintiff's Exhibit 1 was marked for
 16 identification.)
 17 (Thereupon, the taking of the deposition was
 18 concluded at 3:03 p.m.)
 19 * * * * *

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 ALI KIA, M.D.,
 9 commencing on Wednesday, November 14, 2018, at 1:35 p.m.
 10 That prior to being deposed, the witness was
 11 duly sworn by me to testify to the truth, the whole truth
 12 and nothing but the truth. That I thereafter transcribed
 13 my said shorthand notes into typewritten form, and that
 14 the typewritten transcript of said deposition is a
 15 complete, true and accurate transcription of my said
 16 shorthand notes. That prior to the conclusion of the
 17 proceedings, pursuant to NRC 30(e) the reading and
 18 signing of the transcript was requested by the witness or
 19 a party.
 20 I further certify that I am not a relative or
 21 employee of counsel of any of the parties, nor a relative
 22 or employee of the parties involved in said action, nor a
 23 person financially interested in said action.
 24 IN WITNESS WHEREOF, I have set my hand in my
 25 office in the County of Clark, State of Nevada, this 4th
 day of December, 2018.

 Terri M. Hughes, CCR No. 619

1 CERTIFICATE OF DEPONENT
 2
 3 PAGE LINE CHANGE REASON
 4 _____
 5 _____
 6 _____
 7 _____
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 9 _____
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 11 _____
 12 _____
 13 _____
 14 _____
 15 * * * * *
 16 I, ALI KIA, M.D., deponent herein, do hereby
 17 certify and declare the within and foregoing transcription
 18 to be my deposition in said action; that I have read,
 19 corrected and do hereby affix my signature to said
 20 deposition.
 21
 22 _____
 Ali Kia, M.D., Deponent
 23
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EXHIBIT B

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

MEDITECH FACILITY: COCSZ
IDEV - Discharge Report

PAGE 51

PATIENT: GREEN, CHLOE S
ACCOUNT NO: ██████████

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

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

ATTEND DR: Kia, Ali MD
REPORT STATUS: FINAL

Press <Enter> for Order Details below

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

Order's Audit Trail of Events

- 1 07/16/16 0522 DNUR.CCV Order ENTER in OM
- 2 07/16/16 0522 DNUR.CCV Ordering Doctor: Kia, Ali MD
- 3 07/16/16 0522 DNUR.CCV Order Source: TELEPHONE & VERIFIEDq
- 4 07/16/16 0522 interface order's status changed from TRANS to ACTIVE by NUR
- 5 07/16/16 0540 DNUR.CCV order acknowledged
- 6 07/16/16 0713 DNUR.CCV order viewed from Order Management
- 7 07/16/16 1818 DR KIAAL Signed by Kia, Ali MD

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

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

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

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

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

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

Other Specific Reason:

Antithrombotic at Discharge?
Antithrombotic Contraindications:

Other Specific Reason:
Antiplatelet Therapy at Discharge?

PERMANENT MEDICAL RECORD COPY

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

MEDITECH FACILITY: COCSZ
IDEV - Discharge Report

PAGE 52

PATIENT: GREEN, CHLOE S
ACCOUNT NO: ██████████

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

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

ATTEND DR: Kia, Ali MD
REPORT STATUS: FINAL

Antiplatelet Contraindications:

Other Specific Reason:

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

Anticoagulation Contraindications:

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

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

What anticoagulation med is patient being sent home on:

List reason for medication choice:

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

Return to Work/School:
OK to Drive:

Call Your Doctor If -
Fever Greater Than: 101.5

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

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

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

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

PERMANENT MEDICAL RECORD COPY

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

MEDITECH FACILITY: COCSZ
IDEV - Discharge Report

PAGE 53

PATIENT: GREEN, CHLOE S
ACCOUNT NO: ██████████

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

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

ATTEND DR: Kia, Ali MD
REPORT STATUS: FINAL

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

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

Follow-Up with:
Follow up in:

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

== INFANT/NICU ==

== INFANT/PEDIATRIC/NICU ==

Primary Dx of Asthma:

Provide Pre-printed Mother/Infant Instructions:

== Outpatient Services Needs ==

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

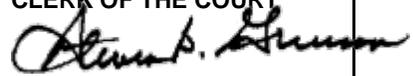
Rehabilitation Potential: (Group response undefined)
Anticipated LOS:
I certify that post-hospital skilled services are required at an extended care facility as a continuation for which he/she was receiving in-patient hospital services prior to the transfer to the extended care facility.

Order's Audit Trail of Events

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

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

PERMANENT MEDICAL RECORD COPY



1 **ERR**
ERIC K. STRYKER, ESQ.
2 Nevada Bar No. 5793
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3 Nevada Bar No.: 12965
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9 *Attorney for Defendants, Frank J. DeLee, M.D.*
and Frank J. DeLee M.D., P.C.

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

12 CHOLOE GREEN, an individual,
13
14 Plaintiff,

15 v.

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

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

DEFENDANTS FRANK J. DeLEE,
M.D. AND FRANK J. DeLEE, M.D.,
P.C.'S ERRATA TO JOINDER TO
PLAINTIFF'S (1) MOTION FOR
RECONSIDERATION, AND (2)
MOTION FOR LEAVE OF COURT TO
AMEND COMPLAINT

22 Defendants Frank J. DeLee, M.D. and Frank J. DeLee M.D., P.C. (collectively "DeLee
23 Defendants"), by and through their attorneys of record, Eric K. Stryker and Brigitte E. Foley, of
24 the law firm of Wilson, Elser, Moskowitz, Edelman & Dicker, LLP, hereby submit the following
25 errata to their joinder to Plaintiff's (1) Motion for Reconsideration, and (2) Motion for Leave of
26 Court to Amend Complaint.

27 ...

28 ...

...

1 **CERTIFICATE OF SERVICE**

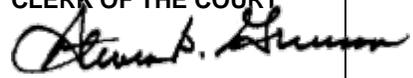
2 Pursuant to NRCp 5(b), I certify that I am an employee of WILSON ELSER
3 MOSKOWITZ EDELMAN & DICKER LLP, and that on this 23rd day of October, 2020, I served
4 a true and correct copy of the foregoing **DEFENDANTS FRANK J. DeLEE, M.D. AND**
5 **FRANK J. DeLEE, M.D., P.C.'S ERRATA TO JOINDER TO PLAINTIFF'S (1) MOTION**
6 **FOR RECONSIDERATION, AND (2) MOTION FOR LEAVE OF COURT TO AMEND**
7 **COMPLAINT** as follows:

- 8 via electronic means by operation of the Court's electronic filing system, upon
9 each party in this case who is registered as an electronic case filing user with the
10 Clerk
- 11 by placing same to be deposited for mailing in the United States Mail, in a sealed
12 envelope upon which first class postage was prepaid in Las Vegas, Nevada

13
14 By: 

15 An Employee of WILSON ELSER MOSKOWITZ
16 EDELMAN & DICKER LLP

17
18
19
20
21
22
23
24
25
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27
28



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
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*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
AND MEDICAL CENTER’S LIMITED
OPPOSITION TO PLAINTIFF’S
“MOTION FOR LEAVE OF COURT TO
AMEND COMPLAINT”**

**Hearing Date: November 19, 2020
(In Chambers)**

COMES NOW, Defendant, SUNRISE HOSPITAL AND MEDICAL CENTER, LLC (“Sunrise Hospital”) by and through its counsel of record, HALL PRANGLE & SCHOONVELD, LLC and hereby submits its Limited Opposition to Plaintiff’s “Motion for Leave of Court to Amend Complaint” as follows.

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.

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

1 DATED this 26th day of October, 2020.

2 HALL PRANGLE & SCHOONVELD, LLC

3 By: /s/ Sherman B. Mayor

4 MICHAEL E. PRANGLE, ESQ.

5 Nevada Bar No.: 8619

6 TYSON J. DOBBS, ESQ.

7 Nevada Bar No.: 11953

8 SHERMAN B. MAYOR, ESQ.

9 Nevada Bar No. 1491

10 T. CHARLOTTE BUYS, ESQ.

11 Nevada Bar No. 14845

12 1140 N. Town Center Dr., Ste. 350

13 Las Vegas, NV 89144

14 *Attorneys for Defendant*

15 *Sunrise Hospital and Medical Center, LLC*

16 **POINTS AND AUTHORITES**

17 **I.**

18 **STATEMENT OF FACTS**

19 Plaintiff has filed a “Motion for Leave of Court to Amend Complaint.” In that Motion,
20 Plaintiff offers argument and seeks leave of Court to add Ali Kia, M.D. and Nevada Hospitalist
21 Group as named Defendants in this litigation. However, the proposed Amended Complaint not
22 only adds Dr. Kia and Nevada Hospitalist Group to the caption of the case, but also adds 2
23 additional claims for which Leave has not been sought and both of which have been denied by
24 the Court.

25 Specifically, Plaintiff argues that Sunrise Hospital should have “vicarious liability” in this
26 action and also should be liable under the doctrine of “ostensible agency.” First, Plaintiff has
27 never pled a claim for “vicarious liability” in her original and operative Complaint or thereafter.
28 (See Plaintiff’s Original Complaint, attached hereto as “**Exhibit A**”). Moreover, to the extent
Plaintiff is seeking to present an unapproved claim for vicarious liability against the hospital with
regard to Dr. DeLee or Dr. Kia, it should be noted that the Court has specifically decided that

1 neither physician was actually “employed” by the hospital. There can be, then, no vicarious
2 liability as to Sunrise Hospital.

3 Second, Plaintiff, in “Count II” of her proposed Amended Complaint attached to her
4 Motion for Leave of Court to Amend Complaint tosses in an allegation of ostensible agency. To
5 the extent “ostensible agency” is set forth in Plaintiff’s proposed Amended Complaint, it should
6 be stricken for at least 2 reasons. First, ostensible agency has been dismissed by Partial Summary
7 Judgment Order of this Court. Second, Plaintiff does not even argue to add ostensible agency in
8 Plaintiff’s Motion for Leave to Amend complaint. Therefore, it is a fugitive claim.¹

9 **II.**

10 **ARGUMENT**

11 **A. PLAINTIFF’S GRATUITOUS ADDITION OF CLAIMS FOR “VICARIOUS LIABILITY” AND**
12 **“OSTENSIBLE AGENCY” IN HER PROPOSED AMENDED COMPLAINT SHOULD BE**
13 **STRICKEN.**

14 Per EDCR 2.30, it is axiomatic that when a Plaintiff seeks leave of Court to amend the
15 Complaint, that the new defendants and/or allegations in the proposed Amended Complaint
16 represent the matters for which leave is requested. Nowhere in Plaintiff’s Motion for Leave of
17 Court to Amend Complaint is there argument presented to add brand new claims of “vicarious
18 liability” and “ostensible agency.”

19 In this case, Plaintiff has never heretofore pled the claim for vicarious liability (attached
20 hereto as “**Exhibit A**” is a copy of Plaintiffs original and operative Complaint). Plaintiff cannot
21 be permitted to simply toss in vicarious liability as a new theory of liability more than 2-years
22 after the expiration of the medical malpractice statute of limitations. There is no good cause to do
23 so and see also *Badger v. Eighth Jud. Dist. Ct.*, 132 Nev. 396, 373 P.3d 89 (Nev. 2016).

24
25
26
27 ¹ Plaintiff does have a pending Motion for Reconsideration in which Plaintiff asks the Court to reconsider and
28 reverse this Court’s ruling dismissing ostensible agency. That Motion, however, has already been opposed and is not
even scheduled for hearing until November 17, 2020. Without argument set forth in the Motion for Leave of Court
to Amend, Plaintiff should not add the claim of “ostensible agency” to the proposed Amended Complaint as though
belongs there. It does not.

1 Similarly, Plaintiff adds a claim in “Count II” in their proposed Amended Complaint for
2 ostensible agency. Ostensible agency (whereby Dr. DeLee and/or Dr. Kia would be the
3 ostensible agents of Sunrise Hospital) has specifically be denied and/or dismissed in this action.
4 Again, Plaintiff makes no argument that this claim in her “Motion for Leave of Court to Amend
5 Complaint” to add this claim.

6 **III.**

7 **CONCLUSION**

8 The allegations contained in Plaintiff’s proposed Amended Complaint for vicarious
9 liability and ostensible agency should be stricken. Neither claim is made in Plaintiff’s original
10 and operative Complaint (*See “Exhibit A”*), and neither claim has been approved by the Court,
11 and there is no argument contained in Plaintiff’s “Motion for Leave of Court to Amend
12 Complaint” to add such claims. The claims should therefore, respectfully, be stricken.

13
14 DATED this 26th day of October, 2020.

15 HALL PRANGLE & SCHOONVELD, LLC

16 By: /s/ Sherman B. Mayor, Esq.
17 MICHAEL E. PRANGLE, ESQ.
18 Nevada Bar No.: 8619
19 TYSON J. DOBBS, ESQ.
20 Nevada Bar No.: 11953
21 SHERMAN B. MAYOR, ESQ.
22 Nevada Bar No. 1491
23 T. CHARLOTTE BUYS, ESQ.
24 Nevada Bar No. 14845
25 1140 N. Town Center Dr., Ste. 350
26 Las Vegas, NV 89144
27 *Attorneys for Defendant / Third-Party Plaintiff*
28 *Sunrise Hospital and Medical Center, LLC*

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that I am an employee of HALL PRANGLE & SCHOONVELD, LLC; that on the 26th day of October, 2020, I served a true and correct copy of the foregoing **DEFENDANT SUNRISE HOSPITAL AND MEDICAL CENTER'S LIMITED 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. 4th Street
Las Vegas, NV 89101
*Attorney for Defendants
Frank J. DeLee, M.D. and
Frank J. DeLee, M.D., PC*

Patricia Egan Daehnke, Esq.
Linda K. Rurangirwa, Esq.
COLLINSON, DAEHNKE, INLOW & GRECO
2110 E. Flamingo Road, Suite 212
Las Vegas, NV 89119
*Attorneys for Third-Party Defendant
Ali Kia, M.D.*

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

/s/: Nicole Etienne

An employee of HALL PRANGLE & SCHOONVELD, LLC

Steven D. Grierson

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

11 DISTRICT COURT
12 CLARK COUNTY, NEVADA

13 CHOLOE GREEN, an individual,
14 Plaintiff,

Case No.
Dept. No.

A-17-757722-C *y*

Department 8

15 v.

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

Arbitration Exempt -- Action
for Medical Malpractice

22 COMPLAINT FOR MEDICAL MALPRACTICE

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

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

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

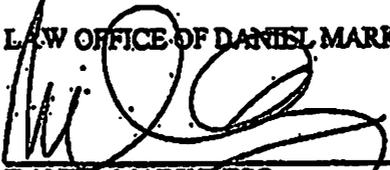
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- 11. That as a direct and proximate result of all of the Defendants' negligence, Choloe has been damaged in an amount in excess of \$15,000.00.
- 12. This Complaint is supported by the Affidavit of Lisa Karamardian, M.D., a copy of which is attached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

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

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

DATED this 30 day of June, 2017.

LAW OFFICE OF DANIEL MARKS

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

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VERIFICATION

STATE OF NEVADA }
COUNTY OF CLARK } ss:

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

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

Chloe Green

CHOLOE GREEN

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

Glenda Guo

NOTARY PUBLIC in and for said
COUNTY and STATE

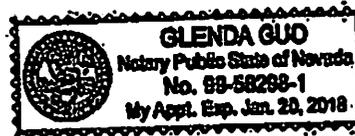


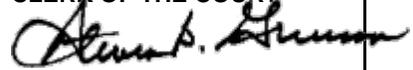
EXHIBIT 1

AFFIDAVIT OF DR. LISA KARAMARDIAN

1
2 STATE OF California
3 COUNTY OF Orange } : s.

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

- 6 1. That I am a medical doctor licensed in the State of California and am board certified in
7 the field of Obstetrics and Gynecology.
- 8 2. This affidavit is executed pursuant to NRS 41A.071 in support of a Complaint for
9 Medical Malpractice against Dr. Frank DeLee and Sunrise Hospital and Medical Center.
- 10 3. That I have reviewed Plaintiff Chloee Green's medical records relating to the care and
11 treatment she received from Dr. Frank DeLee, Sunrise Hospital and Medical Center,
12 Valley Hospital Medical Center and Centennial Hills Medical Center.
- 13 4. A review of the medical records reveals that on July 9, 2016, Ms. Green had a cesarean
14 section birth at Sunrise Hospital with Dr. DeLee as the obstetrician. She was released
15 home on post-operative day number one. This was a breach of the standard of care by Dr.
16 DeLee and Sunrise Hospital. The typical post-operative course for a routine cesarean is a
17 3-4 night stay in the hospital. The standard of care was also breached because Ms. Green
18 had not even attempted to tolerate clear liquids and she had not passed flatus when she
19 was released on post-operative day number one.
- 20 5. A review of the medical records also reveals that on July 14, 2016, Ms. Green presented
21 again to Sunrise Hospital, now five (5) days post-partum, with severe abdominal pain
22 and reports of nausea, vomiting, fever, and chills. She was admitted to the
23 medical/surgical unit because of the diagnosis of sepsis. She was discharged on July 16,
24 2016. The discharge was discussed and confirmed by Dr. DeLee. This discharge violated
25 the standard of care. Ms. Green was discharged despite the fact that she was not able to
26 tolerate a regular diet. Further, on the day of her discharge, her KUB showed multiple
27 dilated loops of bowel, thought to be related to a small bowel obstruction, yet she was
28 sent home. An intraperitoneal abscess was suspected on a CT scan, yet she was still sent
home. This was a violation of the standard of care by Sunrise Hospital and Dr. DeLee.



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8 (702) 386-0536; Fax (702) 386-6812
9 Attorneys for Plaintiff

6 DISTRICT COURT
7
8 CLARK COUNTY, NEVADA

9 CHOLOE GREEN, an individual,
10
11 Plaintiff,

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

11 v.

Date of Hearing: November 17, 2020
Time of Hearing: 9:00 a.m.

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

15 Defendants.

16 _____ /
17 **REPLY IN SUPPORT OF MOTION FOR RECONSIDERATION;**
18 **AND**
19 **REPLY IN SUPPORT OF MOTION FOR LEAVE OF COURT TO AMEND COMPLAINT**

19 COMES NOW the Plaintiff, Choloe Green, by and through her counsel, Daniel Marks, Esq., and
20 Nicole M. Young, Esq., of the Law Office of Daniel Marks, and hereby submits her Reply in Support of
21 Motion for Reconsideration and Reply in Support of Motion for Leave of Court to Amend Complaint.

22 The grounds for Plaintiff's replies are set forth in the following Memorandum of Points and Authorities.

23 DATED this 11th day of November, 2020.

24 LAW OFFICES OF DANIEL MARKS

25 /s/ Nicole M. Young

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

1 MEMORANDUM OF POINTS AND AUTHORITIES

2 **I. INTRODUCTION**

3 The rulings the parties received from this Court this year have caused this case to go off track.
4 This Court’s Minute Order dated July 23, 2020, caused extreme confusion between all counsel involved
5 in this case. It is apparent that this Court realized the Minute Order would cause confusion because
6 instead of assigning the drafting of the order to one attorney, this Court ordered the parties to “meet and
7 confer” regarding the Minute Order. It is not understood why the parties would need to meet and confer
8 if the Court had made a decision that was clear. This is unusual to say the least.

9 This case needs to get back on track so that parties can focus on discovery and the merits of this
10 case rather than procedural issues that do not bring the parties closer to trial. This case was filed three
11 years ago, yet the main dispute relates to the sufficiency of the affidavit attached to the complaint, which
12 is only meant to ensure Choloe filed this case in good faith. It is undisputed that the instant lawsuit was
13 brought in good faith.

14 **II. LEGAL ARGUMENT**

15 **A. This Court has repeatedly misinterpreted NRS 41A.071's affidavit requirement in**
16 **violation of the liberal construction intended by the Legislature.**

17 The first time this Court misinterpreted and misapplied the NRS 41A.071 affidavit requirement
18 was when it dismissed the Third-Party Complaint that the prior judge assigned to this case allowed. This
19 first misinterpretation was one year after the original judge found there was an issue of fact regarding
20 ostensible agency and allowed Sunrise to file a Third-Party Complaint. The parties conducted discovery
21 based on those orders for one year, until this Court allowed judgment be entered on the pleadings in
22 favor of Nevada Hospitalist Group and Dr. Ali Kia because this Court applied a very strict construction
23 of NRS 41A.071, instead of the liberal construction prescribed by the legislature. The original affidavit
24 Choloe attached to her complaint properly describes Dr. Kia’s conduct in accordance with NRS
25 41A.071.

26 In *Zohar*, the Nevada Supreme Court held a medical malpractice complaint and supporting
27 affidavit must be read together. 130 Nev. at 735. It held that even if the healthcare provider names are
28 omitted, the notice-pleading requirement is satisfied if the providers’ conduct is described. *Id.* at 737-40.

1 The second time this Court misinterpreted and misapplied the NRS 41A.071 affidavit
2 requirement was when it *sua sponte* reconsidered Judge Smith’s order there was an issue of fact
3 regarding ostensible agency. Instead of applying the applicable case law to whether there was an actual
4 issue of fact, this Court once again applied a very strict construction of NRS 41A.071, instead of the
5 liberal construction prescribed by the legislature.

6 The third time this Court misinterpreted and misapplied the NRS 41A.071 affidavit requirement
7 was when it denied Choloe’s original motion to amend her complaint. Once again, the affidavit
8 requirement must be liberally construed, yet this Court’s orders maintain a strict construction in violation
9 of the legislative intent. The requirement is only meant to put defendants on “notice” based on Nevada’s
10 “notice pleading” requirement. NRCP 8. This Court’s interpretation goes beyond “notice pleading.”
11 NRCP 8.

12 During the 2002 Special Session, Bill Bradley of Nevada Trial Lawyers testified:

13
14 It is important that this discussion takes place. If you go to a full-blown
15 affidavit, it is a \$3,000 to \$5,000 minimum cost. The problem is the only
16 thing that is available is the medical record. This was one of the
17 shortcomings of the screening panel. We believe it is unfair to require a
18 full-blown affidavit because there is such limited information available in
19 the record without the ability to ask anyone what happened and why was
20 there not any records for this past day. **We would like to see more of a
summary affidavit. This is meant to serve, along with the lawyer pays,
as a deterrent to just filing an action to extort or do something that is
not done in good faith.** To go too far would defeat it. I hope it is the
intent of this body not to turn this into a war at the beginning of a case as
to whether this expert was qualified or not.

20 See 2002 18th Special Session regarding Assembly Bill 1, Excerpts from the Senate Journal Remarks and
21 testimony from July 30, 2002, at p. 94.

22 What is apparent from the original affidavit mandate is that its only purpose was to ensure that a
23 medical malpractice lawsuit is brought in good faith. The summary affidavit from a qualified medical
24 professional attached to a complaint ensures these cases are brought in good faith. See 2002 18th Special
25 Session regarding Assembly Bill 1, Excerpts from the Senate Journal Remarks and testimony from July
26 30, 2002, at p. 92. The affidavit is not meant to limit a plaintiff’s case to the items contained in the
27 affidavit.

28 ////

1 This case has now entered the war-like territory regarding the affidavit that the legislature did not
2 intend. This Court has allowed this case to degenerate into a fight over the sufficiency of an affidavit
3 rather than the merits of this case.

4 **B. This Court committed clear error when it dismissed Choloe’s claim for ostensible**
5 **agency when the evidence of the case shows there are sufficient facts to go to the**
6 **jury.**

7 In Nevada, courts are reluctant to grant summary judgment in negligence actions because
8 whether a defendant was negligent is generally a question of fact for the jury to decide. *Foster v. Costco*
9 *Wholesale Corp.*, 128 Nev. 773, 291 P.3d 150, 153 (2012). In *McCrosky v. Carson Tahoe Regional*
10 *Medical Center* 133 Nev. 930, 408 P.3d 149 (2017), the Nevada Supreme Court reversed the district
11 court’s erroneous finding of no vicarious liability or ostensible agency stating those issues may only be
12 determined by a jury. *Id.* at 936.

13 Vicarious liability, *McCrosky* holds, is “[l]iability that a supervisory party ... bears for the
14 actionable conduct of a subordinate ...based on the relationship between the two parties.” *Id.* at 932-33
15 (quoting Black’s Law Dictionary 1055 (10th ed 2014)). The Court held the “supervisory party need not
16 be directly at fault to be liable, because the subordinate’s negligence is imputed to the supervisor.” *Id.* at
17 933 (citing Restatement (Third) of Torts: Apportionment of Liability § 13 (Am. Law Inst. 2000)). The
18 Court reasoned that because “NRS 41A.045 is silent regarding vicarious liability, it leaves vicarious
19 liability intact,” and survives the several liability issue created by NRS 41A.045. *Id.*

20 The Court further elaborated on the vicarious liability issue as it pertains to independent
21 contractors and doctors chosen by the hospital for the patient. While the general rule is that an employer
22 is not liable for the negligence of an independent contractor, “an exception exists if the hospital selects
23 the doctor and it is reasonable for the patient to assume that the doctor is an agent of the hospital.” *Id.* at
24 934 (internal quotations omitted). In such a scenario, it is reasonable for a patient to assume “the doctor
25 has apparent authority to bind the hospital, making the hospital vicariously liable for the doctor’s actions
26 under the doctrine of ostensible agency.” *Id.* (internal quotations omitted).

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

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

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

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

13 In this case, there is no question that Sunrise has been on notice of Choloe’s claim of ostensible
14 agency since January of 2019. Judge Smith affirmed that ostensible agency was an issue of fact in this
15 case based on his order from the March 12, 2019 hearing. Despite that order, Sunrise argues there can be
16 no issue of fact because ostensible agency was not specifically pled in Choloe’s complaint. This
17 argument defies logic. Nevada is a notice-pleading state. The affidavit requirement is only meant to
18 ensure a plaintiff’s complaint has a meritorious medical basis to move to the discovery stage. This case
19 moved to that stage without incident because the affidavit attached to Choloe’s complaint properly
20 shows she had a meritorious medical basis to bring the instant lawsuit.

21 Judge Smith already found there were sufficient facts showing a genuine issue of material fact
22 whether ostensible agency exists. He ordered:

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

(*See Order From March 12, 2019 Hearing*, entered on March 6, 2020.) The fact that another district court
judge found its an issue of fact should preclude summary judgment at this point.

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

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

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

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

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

27 ////

28 ////

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

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

17 When Choloe was admitted to Sunrise, they ran various tests. She had various conversations with
18 doctors, none of whom she chose, whom she thought were employed by Sunrise. (*See* Ex. 3, at ¶ 5.) The
19 decision to discharge Choloe, while signed by Dr. Kia, is based on all the medical activity over her three
20 (3) day admission. While Sunrise is liable for Dr. Kia’s actions under an ostensible agency theory,
21 Sunrise is also liable for the act of discharging Choloe from the hospital with a suspected small bowel
22 obstruction and without actually treating Choloe for that illness. This Court must remember she sought
23 care from Sunrise, not Dr. Kia who she had never met prior to her admission on July 14th. Since Dr. Kia
24 was assigned to Choloe through the emergency department, and she did not choose the doctors who
25 treated her, the theory of ostensible agency against Sunrise applies, as stated in *McCrosky* and
26 *Schlotfeldt*.

27 ////

28 ////

1 There is no statute of limitations issue because Sunrise has been on notice of Choloe’s claims
2 since she served Sunrise with her complaint in 2017. Sunrise is a hospital. It is not an individual. Any
3 actions by Sunrise relative to Choloe’s care, as described in Choloe’s complaint, can only be done
4 through Sunrise’s officers, agents, employees, and doctors on the premises. To suggest otherwise defies
5 logic. Further, because Sunrise is an original defendant to this action, the relation back doctrine squarely
6 applies to negate any statute of limitations issues relating to ostensible agency.

7 **C. Choloe timely requested amendment to add the claim for corporate**
8 **negligence/negligent supervision, so reliance on the NRCP 16(b) “good cause”**
9 **standard was clear error.**

10 This Court misapplied NRCP 16(b)’s “good cause” standard. That standard only applies after the
11 deadline to amend has run. That deadline has not run in this case. The last day to amend the pleadings
12 and add parties, under the applicable scheduling order, was September 1, 2020. (*See* Notice of Entry of
13 Stipulation and Order to Extend the Discovery Deadlines and Trial Date (Fifth Request), filed on April
14 23, 2020.) Choloe did not miss this deadline, as this Court incorrectly concluded. (*See* July 7th Order, at ¶
15 20.) It is unknown why this Court made this incorrect conclusion.

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

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

28 The standard this Court must apply is *Costello*. Based on the liberal construction of NRCP 15
and the new claims are against an original defendant, Sunrise, the relation back doctrine applies to

1 resolve any statute of limitations issues. The new claims all relate back to the same conduct, transaction,
2 and occurrence set forth in Choloe’s original complaint against Sunrise. In addition, these new claims do
3 not put Sunrise at a disadvantage because Sunrise was aware of the vicarious liability issue in 2019 when
4 it filed its original motion for partial summary judgment regarding ostensible agency. The corporate
5 negligence claim relates to Sunrise’s conduct that Choloe attempted to set forth in her original
6 complaint. Through discovery and the motions filed earlier this year, Choloe realized she needed to
7 amend her complaint to add corporate negligence against Sunrise to protect her rights.

8 Because the “new” claims relate to Sunrise, who is an original defendant to this action, the
9 relation back doctrine squarely applies to negate any statute of limitations issues relating to the corporate
10 negligence claim.

11 Additionally, the NRS 41A.071 affidavit requirement does not apply to this amendment. The
12 affidavit requirement is only meant to ensure Choloe brought the lawsuit in good faith. This case is well
13 past that stage.

14 **D. Choloe should be permitted to file an amended complaint adding Dr. Kia and**
15 **Nevada Hospitalist Group as parties to this action.**

16 When the parties met and conferred regarding the July 23, 2020 Minute Order, it was agreed that
17 the Minute Order was phrased in a way that lead everyone to believe that this Court wanted Choloe to
18 file a motion to amend to add Dr. Kia and Nevada Hospitalist Group as defendants to this action. Choloe
19 went through the expense of paying Dr. Savluk to prepare an affidavit in support of an amended
20 complaint to add Dr. Kia and Nevada Hospitalist Group. Choloe also was able to obtain an amended
21 affidavit from Dr. Karamardian. (See Amended Affidavit of Dr. Lisa Karamardian, dated November 8,
22 2020, attached hereto as Exhibit 4.)

23 This Court already found there was good cause to amend the complaint in July of 2020. The only
24 reason it did not allow amendment at that time is based on a strict interpretation of NRS 41A.071. The
25 two additional affidavits submitted by Choloe, Dr. Savluk’s affidavit attached to the new motion to
26 amend and Dr. Karamardian’s amended affidavit attached hereto, should alleviate any affidavit
27 sufficiency issues this Court references in its July of 2020 order. Choloe always contended that Dr.
28 Karamardian’s original affidavit always complied with NRS 41A.071 because that affidavit properly

1 describes Dr. Kia's conduct. The amended affidavit of Dr. Karamardian confirms that. (*See* Ex. 4.) Dr.
2 Savluk's affidavit elaborates on Dr. Karamardian's original affidavit regarding how Dr. Kia breached the
3 standard of care. With these additional affidavits, there should be no question that Choloe has, in fact,
4 met NRS 41A.071's four-part test.

5 This Court should allow Choloe to file and serve an amended complaint adding Dr. Kia and
6 Nevada Hospitalist Group as defendants based on those affidavits.

7 **III. CONCLUSION**

8 Based on the foregoing, this Court should reconsider its dismissal of the ostensible agency, and
9 allow Choloe to file an amended complaint including ostensible agency, the new claim of corporate
10 negligence/negligent supervision, and add Dr. Kia and Nevada Hospitalist Group as parties. If this Court
11 will not allow all these amendments, then this Court should, at the very least, allow Choloe to move
12 forward with ostensible agency because justice requires Choloe be afforded her day in court on the actual
13 merits of this case.

14 DATED this 11th day of November, 2020.

15 LAW OFFICES OF DANIEL MARKS

16
17 /s/ Nicole M. Young

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

1 **CERTIFICATE OF SERVICE**

2 I hereby certify that I am an employee of the Law Office of Daniel Marks and that on the 11th
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**
5 **RECONSIDERATION; AND REPLY IN SUPPORT OF MOTION FOR LEAVE OF COURT TO**
6 **AMEND COMPLAINT** by way of Notice of Electronic Filing provided by the court mandated E-file &
7 Serve System, as follows:

8 following:

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

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

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

EXHIBIT 1

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?

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.

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

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

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

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

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

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

("Responsible Party") for any and all benefits due me for the payment of charges associated with my treatment. This assignment shall not be construed as an obligation of the 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 Provider(s) 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.

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

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

16. Patient Self Determination Act.

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

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

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

Acknowledge: CG (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

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)

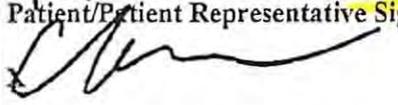
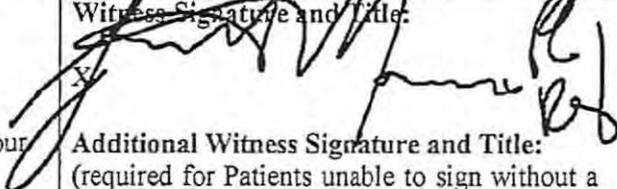
Date: <u>7.14.16</u>	I, the undersigned, as the Patient or Patient Representative, or, for a minor/incapacitated Patient, as the legal guardian, hereby certify I have read, and fully and completely understand this Conditions of Admission and Authorization for Medical treatment, and that I have signed 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:  If you are not the Patient, please identify your Relationship to the Patient. (Circle or mark relationship(s) from list below): Spouse Parent Legal Guardian Neighbor/Friend Sibling Healthcare Power of Attorney Guarantor Other (please specify): _____	Witness Signature and Title:  Additional Witness Signature and Title: (required for Patients unable to sign without a representative or Patients who refuse to sign) X _____ HCA Corporate Standard COA-COS 06.20.2016

EXHIBIT 3

AFFIDAVIT OF CHOLOE GREEN

STATE OF NEVADA)
) ss:
COUNTY OF CLARK)

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

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

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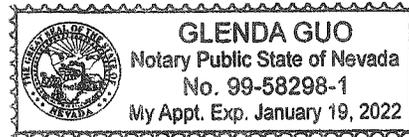
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1 induced coma. I was eventually discharged from that hospital on September 2, 2016. I
2 now suffer from COPD and require constant use of an oxygen tank. I also suffer from
3 additional health issues relating to the COPD.

4 FURTHER YOUR AFFIANT SAYETH NAUGHT.

5
6 
7 _____
8 CHOLOE GREEN

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



12 
13 _____
14 NOTARY PUBLIC in and for said
15 COUNTY and STATE
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EXHIBIT 4

1 AMENDED AFFIDAVIT OF DR. LISA KARAMARDIAN

2 STATE OF CALIFORNIA)
3 COUNTY OF ORANGE) : s

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

- 6 1. That I am a medical doctor licensed in the State of California and am board certified in
7 the field of Obstetrics and Gynecology.
- 8 2. This affidavit is executed pursuant to NRS 41A.071 in support of a Complaint for
9 Medical Malpractice against Dr. Frank DeLee, Sunrise Hospital and Medical Center, and
10 **Ali Kia, M.D.**
- 11 3. That I have reviewed Plaintiff Choloe Green's medical records relating to the care and
12 treatment she received from Dr. Frank DeLee, Sunrise Hospital and Medical Center, **Ali**
13 **Kia, M.D.**, Valley Hospital Medical Center and Centennial Hills Medical Center.
- 14 4. A review of the medical records reveals that on July 9, 2016, Ms. Green had a cesarean
15 section birth at Sunrise Hospital with Dr. DeLee as the obstetrician. She was released
16 home on post-operative day number one. This was a breach of the standard of care by Dr.
17 DeLee and Sunrise Hospital. The typical post-operative course for a routine cesarean is a
18 3-4 night stay in the hospital. The standard of care was also breached because Ms. Green
19 had not even attempted to tolerate clear liquids and she had not passed flatus when she
20 was released on post-operative day number one.
- 21 5. A review of the medical records also reveals that on July 14, 2016, Ms. Green presented
22 again to Sunrise Hospital , now five (5) days post-partum, with severe abdominal pain
23 and reports of nausea, vomiting, fever, and chills. She was admitted to the
24 medical/surgical unit because of the diagnosis of sepsis. She was discharged on July 16,
25 2016, by **Ali Kia, M.D.** The discharge was discussed and confirmed by Dr. DeLee. This
26 discharge violated the standard of care. Ms. Green was discharged despite the fact that
27 she was not able to tolerate a regular diet. Further, on the day of her discharge, her KUB
28 showed multiple dilated loops of bowel, thought to be related to a small bowel

1 obstruction, yet she was sent home. An intraperitoneal abscess was suspected on a CT
2 scan, yet she was still sent home. This was a violation of the standard of care by Sunrise
3 Hospital, **Ali Kia, M.D.**, and Dr. DeLee.

4 6. The day after she was released from Sunrise Hospital, Ms. Green presented at Centennial
5 Hills Hospital, on July 17, 2016. At the time of presentation she was now 7 days
6 postpartum, had not had a bowel movement, and was unable to even tolerate liquids. She
7 was still in severe pain. Her imaging studies had worsened and she was now admitted,
8 again, with the diagnosis of small bowel obstruction. An NG tube was finally placed and
9 a general surgery evaluation ordered. She was admitted for concern for bowel perforation.
10 She underwent an exploratory laparotomy on July 18th for what was presumed to be a
11 perforated viscus, but none was found intraoperatively, just diffuse ascites. Infarcted
12 mesentery was removed and post-op her condition deteriorated, culminating in a rapid
13 response call on July 20th when she was found to be hypoxic. By the 22nd she had diffuse
14 pulmonary infiltrates, suggestive of pulmonary edema or ARDS, and her condition worsened. CT
15 guided drain placement cultures of fluid revealed enterococcus faecalis, supporting the fact that
16 there must have been a bowel perforation. She then developed a pneumothorax and eventually
17 needed a tracheostomy and PEG tube placement. On August 5, 2016, there was difficulty with
18 her airway support.

19 7. Because of the violations of the standard of care, her hospital course was protracted with
20 multiple complications and she was apparently discharged to a step down facility once her
21 antibiotic course was felt to be completed, still on a feeding tube and in need of rehabilitation.

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8. That in my professional opinion, to a degree of medical probability, the standard of care was breached by Dr. DeLee, Sunrise Hospital and Medical Center, and Ali Kia, M.D., in their treatment of Ms. Green.

FURTHER YOUR AFFIANT SAYETH NAUGHT.

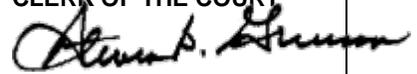
A notary public or other officer completing this certificate verifies only the identity of the individual who signed the document to which this certificate is attached, and not the truthfulness, accuracy, or validity of that document.


LISA KARAMARDIAN, MD.

SUBSCRIBED and SWORN to before me this 8 day of ~~October~~, 2020.
November




NOTARY PUBLIC in and for said COUNTY and STATE



1 MICHAEL E. PRANGLE, ESQ.
Nevada Bar No. 8619
2 TYSON J. DOBBS, ESQ.
Nevada Bar No. 11953
3 SHERMAN B. MAYOR, ESQ.
Nevada Bar No. 1491
4 T. CHARLOTTE BUYS, ESQ.
Nevada Bar No. 14845
5 HALL PRANGLE & SCHOONVELD, LLC
6 1140 N. Town Center Dr., Ste. 350
7 Las Vegas, NV 89144
8 (702) 889-6400 – Office
(702) 384-6025 – Facsimile
efile@hpslaw.com
9 *Attorneys for Defendant*
10 *Sunrise Hospital and Medical Center, LLC*

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

13 CHOLOE GREEN, an individual,

14 Plaintiff,

15 vs.

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

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

NOTICE OF ENTRY OF ORDER
DENYING PLAINTIFF’S “MOTION
FOR RECONSIDERATION”
REGARDING DENIAL OF
ADDITIONAL CLAIMS OF
“OSTENSIBLE AGENCY” AND
“CORPORATE
NEGLIGENCE/NEGLIGENT
SUPERVISION”

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

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PLEASE TAKE NOTICE that the Order Denying, Plaintiff’s Motion for Reconsideration Regarding Denial of Additional Claims of Ostensible Agency and Corporate Negligence/Negligent Supervision was entered in the above entitled matter on the 7th day of December, 2020, a copy of which is attached hereto.

DATED this 8th day of December, 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 8th day of December, 2020, I served a true and correct copy of the foregoing **NOTICE OF ENTRY OF ORDER DENYING PLAINTIFF’S “MOTION FOR RECONSIDERATION” REGARDING DENIAL OF ADDITIONAL CLAIMS OF “OSTENSIBLE AGENCY” AND “CORPORATE NEGLIGENCE/NEGLIGENT SUPERVISION”** 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;

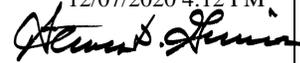
_____ U.S. Mail, first class postage pre-paid to the following parties at their last known address;

_____ 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. 4th 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

1 MICHAEL E. PRANGLE, ESQ.
 2 Nevada Bar No.: 8619
 3 TYSON J. DOBBS, ESQ.
 4 Nevada Bar No.: 11953
 5 SHERMAN B. MAYOR, ESQ.
 6 Nevada Bar No. 1491
 7 T. CHARLOTTE BUYS, ESQ.
 8 Nevada Bar No.: 14845
 9 HALL PRANGLE & SCHOONVELD, LLC
 10 1140 N. Town Center Dr., Ste. 350
 11 Las Vegas, NV 89144
 12 (702) 889-6400 – Office
 13 (702) 384-6025 – Facsimile
 14 efile@hpslaw.com
 15 *Attorneys for Defendant / Third-Party Plaintiff*
 16 *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

**ORDER DENYING PLAINTIFF'S
"MOTION FOR RECONSIDERATION"
REGARDING DENIAL OF
ADDITIONAL CLAIMS OF
"OSTENSIBLE AGENCY" AND
"CORPORATE
NEGLIGENCE/NEGLIGENT
SUPERVISION"**

**Hearing Date: November 17, 2020
Hearing Time: 9:00 a.m.**

This cause having come on to be heard on November 17, 2020, upon Plaintiff's "Motion for Reconsideration" regarding denial of Plaintiff's proposed claims of ostensible agency and "corporate negligence/negligent supervision," and Defendant, SUNRISE HOSPITAL AND MEDICAL CENTER being represented by SHERMAN BENNETT MAYOR, ESQ. of the law firm HALL PRANGLE & SCHOONVELD, LLC; and PLAINTIFF being represented by DANIEL MARKS, ESQ.

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

1 and NICOLE M. YOUNG, ESQ. of the LAW OFFICE OF DANIEL MARKS; and Defendants
2 FRANK DELEE, M.D. and FRANK J. DELEE MD, PC being represented by ERIC K. STRYKER, ESQ.
3 the law firm of WILSON ELSER MOSKOWITZ EDELMAN & DICKER LLP; and the Court
4 having reviewed the papers and pleadings on file herein; and having heard argument of counsel;
5 and being otherwise duly advised in the premises, the Court finds as follows:

6 **FINDINGS**

7
8 **PLAINTIFF HAS FAILED TO SATISFY THE REQUIREMENTS TO “RECONSIDER”**
9 **THIS COURT’S DECISION OF SEPTEMBER 25, 2020 DENYING PROPOSED**
10 **CLAIMS OF “OSTENSIBLE AGENCY” AND “CORPORATE**
11 **NEGLIGENCE/NEGLIGENT SUPERVISION”**

12 1. Plaintiff filed a Motion for Reconsideration on October 12, 2020, seeking
13 reconsideration of this Court’s September 25, 2020 Order denying proposed claims of
14 “ostensible agency” and “corporate negligence/negligent supervision.”

15 2. In order to grant a Motion for Reconsideration, in Nevada, there must be “new
16 facts” or “new law” or a showing that the Court’s decision was clearly erroneous. *See Moore v.*
17 *City of Las Vegas*, 92 Nev. 402, 405, 551 P.2d 244, 246 (Nev. 1976); *see also Masonry and Tile*
18 *Contractors Ass’n. of So. Nev. v. Jolley, Urga & Wirth, Ltd.*, 113 Nev. 737, 741 (Nev. 1997).

19 3. Applying the law to Plaintiff’s Motion for Reconsideration, there is not sufficient
20 basis to “reconsider” and change this Court’s September 25, 2020 Order denying Plaintiff’s
21 request to add proposed theories of liability of “ostensible agency” and “corporate
22 negligence/negligent supervision.”

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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

ORDER

ACCORDINGLY, IT IS HEREBY ORDERED, ADJUDGED AND DECREED,

1. That Plaintiff's Motion for Reconsideration of this Court's September 25, 2020 Order denying Plaintiff's proposed claims of "ostensible agency" and "corporate negligence/negligent supervision" is hereby DENIED.

Dated this 7th day of December, 2020



EC

ECB D85 D49D 1BCA
Cristina D. Silva
District Court Judge

Respectfully Submitted by and
Approved as to Form and Content:

Approved as to Form and Content:

DATED this 4th day of December, 2020.

DATED this 4th day of December, 2020.

HALL PRANGLE & SCHOONVELD, LLC

LAW OFFICE OF DANIEL MARKS

/s/ T. Charlotte Buys, Esq.
MICHAEL E. PRANGLE, ESQ.

/s/ Nicole M. Young, Esq.
DANIEL MARKS, 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*

Nevada Bar No. 2003
NICOLE M. YOUNG, ESQ.
Nevada Bar No. 12659
610 South Ninth Street
Las Vegas, NV 89101
Attorneys for Plaintiff

...
...
...

HALL PRANGLE & SCHOONVELD, LLC
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Approved as to Form and Content:

DATED this 4th day of December, 2020.

WILSON ELSER MOSKOWITZ
EDELMAN & DICKER LLP

/s/ Eric K. Stryker, Esq.
ERIC K. STRYKER, ESQ.
Nevada Bar No. 5793
BRIGETTE E. FOLEY, ESQ.
Nevada Bar No. 12965
300 S. 4th Street
Las Vegas, NV 89101
Attorneys for Defendants
Frank J. Deelee, M.D. and Frank J. Deelee,
M.D., PC

Casey Henley

From: Stryker, Eric K. <Eric.Stryker@wilsonelser.com>
Sent: Friday, December 4, 2020 10:03 AM
To: Nicole Young; Charlotte Buys; Daniel Marks; Lord, Nicole N.
Cc: Sherman Mayor; Mike Prangle; Tyson Dobbs; Casey Henley
Subject: RE: Green v. DeLee, et al., Proposed Order Denying Motion for Reconsideration

[External Email] CAUTION!

Yes you can e-sign if for me – thank you and 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

From: Nicole Young [mailto:NYoung@danielmarks.net]
Sent: Friday, December 4, 2020 9:28 AM
To: Stryker, Eric K. <Eric.Stryker@wilsonelser.com>; Charlotte Buys <cbuys@HPSLAW.COM>; Daniel Marks <DMarks@danielmarks.net>; Lord, Nicole N. <Nicole.Lord@wilsonelser.com>
Cc: Sherman Mayor <smayor@HPSLAW.COM>; Mike Prangle <mprangle@HPSLAW.COM>; Tyson Dobbs <tdobbs@HPSLAW.COM>; Casey Henley <CHenley@HPSLaw.com>
Subject: RE: Green v. DeLee, et al., Proposed Order Denying Motion for Reconsideration

[EXTERNAL EMAIL]

Hi Charlotte:

You may use my e-signature to submit your proposed order to the court.

Hope you have a great weekend!
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: Stryker, Eric K. [mailto:Eric.Stryker@wilsonelser.com]
Sent: Tuesday, December 01, 2020 5:41 PM

To: Charlotte Buys <cbuys@HPSLAW.COM>; Daniel Marks <DMarks@danielmarks.net>; Nicole Young <NYoung@danielmarks.net>; Lord, Nicole N. <Nicole.Lord@wilsonelser.com>
Cc: Sherman Mayor <smayor@HPSLAW.COM>; Mike Prangle <mprangle@HPSLAW.COM>; Tyson Dobbs <tdobbs@HPSLAW.COM>; Casey Henley <CHenley@HPSLaw.com>
Subject: RE: Green v. DeLee, et al., Proposed Order Denying Motion for Reconsideration

Hi Charlotte,

You have my authority to e-sign the order for me as-is.

Thank you,

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

From: Charlotte Buys [<mailto:cbuys@HPSLAW.COM>]
Sent: Tuesday, December 1, 2020 5:05 PM
To: Daniel Marks <DMarks@danielmarks.net>; Nicole Young <NYoung@danielmarks.net>; Stryker, Eric K. <Eric.Stryker@wilsonelser.com>; Lord, Nicole N. <Nicole.Lord@wilsonelser.com>
Cc: Sherman Mayor <smayor@HPSLAW.COM>; Mike Prangle <mprangle@HPSLAW.COM>; Tyson Dobbs <tdobbs@HPSLAW.COM>; Casey Henley <CHenley@HPSLaw.com>
Subject: Green v. DeLee, et al., Proposed Order Denying Motion for Reconsideration

[EXTERNAL EMAIL]

Dear Counsel,

Enclosed please find Defendant Sunrise Hospital's proposed Order denying Plaintiff's Motion for Reconsideration regarding denial of proposed claims of "ostensible agency" and "corporate negligence/negligent supervision."

As you will see, the Order is only a few paragraphs in length and we ask that you provide us with approval of the Order or any proposed changes thereto by Thursday at 5:00 p.m., as it is our intention to provide the Court with the proposed Order by this Friday, December 6, 2020.

Very truly yours,

Sherman B. Mayor and Charlotte Buys

Charlotte Buys
Associate



**1140 North Town Center Dr.
Suite 350
Las Vegas, NV 89144
F: 702.384.6025**

O: 702.212.1478
Email: cbuys@HPSLAW.COM

Legal Assistant: Casey Henley
O: 702.212.1449
Email: chenley@hpslaw.com

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For further information about Wilson, Elser, Moskowitz, Edelman & Dicker LLP, please see our website at www.wilsonelser.com or refer to any of our offices.

Thank you.

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For further information about Wilson, Elser, Moskowitz, Edelman & Dicker LLP, please see our website at www.wilsonelser.com or refer to any of our offices.

Thank you.

1 **CSERV**

2
3 DISTRICT COURT
CLARK COUNTY, NEVADA

4
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 Denying Motion was served via the court's electronic eFile
13 system to all recipients registered for e-Service on the above entitled case as listed below:

14 Service Date: 12/7/2020

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

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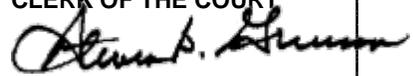
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3 NICOLE M. YOUNG, ESQ.
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4 610 South Ninth Street
Las Vegas, Nevada 89101
5 (702) 386-0536; Fax (702) 386-6812
Attorneys for Plaintiff
6

7 DISTRICT COURT
8 CLARK COUNTY, NEVADA

9 CHOLOE GREEN, an individual,

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

10
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.

16 Defendants.
17

**NOTICE OF ENTRY OF ORDER GRANTING IN PART AND DENYING IN PART
PLAINTIFF'S MOTION FOR LEAVE TO AMEND COMPLAINT**

18
19 PLEASE TAKE NOTICE that a Order Granting in Part and Denying in Part Plaintiff's Motion for
20 Leave to Amend Complaint was entered in the above-entitled action on the 15th day of December, 2020, a
21 copy of which is attached hereto.

22 DATED this 15 day of December, 2020.

23 LAW OFFICE OF DANIEL MARKS

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

APP3-0623

1
2 **CERTIFICATE OF SERVICE BY ELECTRONIC FILING**

3 I hereby certify that I am an employee of the Law Office of Daniel Marks and that on the 15
4 day of December, 2020, pursuant to NRCP 5(b) and Administrative Order 14-2, I electronically
5 transmitted a true and correct copy of the above and foregoing **NOTICE OF ENTRY OF ORDER**
6 **GRANTING IN PART AND DENYING IN PART PLAINTIFF'S MOTION FOR LEAVE TO**
7 **AMEND COMPLAINT** by way of Notice of Electronic Filing provided by the court mandated E-file &
8 Serve system, to the e-mail address on file for the following:

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

14 Sherman Mayor, Esq.
15 HALL PRANGLE & SCHOONVELD, LLC.
16 1160 N. Town Center Dr., Ste. 200
17 Las Vegas, Nevada 89144
18 Attorneys for Sunrise Hospital and Medical Center LLC.

19 Linda K. Rurangirwa, Esq.
20 Collinson, Daehn, Inlow & Greco
21 2110 E. Flamingo Road, Suite 212
22 Las Vegas, Nevada 89119
23 Attorney for Ali Kia, M.D.

24 Erin Jordan, Esq.
25 Lewis Brisbois Bisgaard & Smith, LLP
26 6385 S. Rainbow Blvd., Suite 600
27 Las Vegas, Nevada 89118
28 Attorney for Nevada Hospitalist Group, LLP

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

1 LAW OFFICE OF DANIEL MARKS
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3 Nevada State Bar No. 002003
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8 (702) 386-0536; Fax (702) 386-6812
9 Attorneys for Plaintiff

DISTRICT COURT
CLARK COUNTY, NEVADA

10 CHOLOE GREEN, an individual,
11 Plaintiff,

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

12 v.

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

18 Defendants.

**ORDER GRANTING IN PART AND DENYING IN PART PLAINTIFF'S MOTION FOR
LEAVE TO AMEND COMPLAINT**

19 This matter having come on for hearing on November 17, 2020, on Plaintiff's Motion for Leave
20 to Amend Complaint, which was filed on October 16, 2020; Plaintiff appearing by and through her
21 counsel, Daniel Marks, Esq., and Nicole M. Young, Esq., of the Law Office of Daniel Marks, via Blue
22 Jeans; Defendant Frank J. Delee, M.D., appearing by and through its counsel Eric K. Stryker, Esq., of
23 Wilson, Elser, Moskowitz, Edelman & Dicker, LLP, via Blue Jeans; and Defendant Sunrise Hospital and
24 Medical Center, LLC, appearing by and through its counsel Sherman B. Mayor, Esq., of Hall Prangle &
25 Schoonveld, LLC, via Blue Jeans; the Court having reviewed the papers and pleadings on file, having
26 heard the arguments of counsel, and good cause appearing:

27 THIS COURT FINDS that amended pleadings arising out of the same transaction or occurrence
28 set forth in the original pleadings may relate back to the date of the original filing. *See* NRCPC 15(c). The
same remains true when an amended pleading adds a defendant that is filed after the statute of

1 limitations so long as the proper defendant (1) receives actual notice of the action; (2) knows that it is
2 the proper party; and (3) has not been misled to its prejudice by the amendment. *Echols v. Summa Corp.*,
3 95 Nev. 720, 722, 601 P.2d 716, 717 (1979).

4 THIS COURT FURTHER FINDS that NRCP 15(c) is liberally construed to allow relation back
5 of the amended pleading where the opposing party will be put to no disadvantage. *See E.W. French &*
6 *Sons, Inc. v. General Portland Inc.*, 885 F.2d 1392, 1396 (9th Cir.1989) (discussing Federal Rule of
7 Civil Procedure 15).

8 THIS COURT FURTHER FINDS that good cause to allow for the filing of an amended
9 complaint to add Dr. Ali Kia and Nevada Hospitalist Group, LLP, to the instant action. As the Nevada
10 Court of Appeals noted in *Nutton v. Sunset Station, Inc.*, the liberality reflected in NRCP 15(a)
11 recognizes that discovery is a fluid process through which unexpected and surprising evidence is
12 uncovered with regularity, and parties should have some ability to tailor their pleadings and reframe the
13 case around what they might have learned after the initial pleadings were filed. 131 Nev. 279, 284, 357
14 P.3d 966, 970 (Nev. App. 2015).

15 THIS COURT FURTHER FINDS that plaintiff has attached affidavits to her proposed amended
16 complaint in compliance with NRS 41A.071 to allow Dr. Ali Kia and Nevada Hospitalist Group, LLP, to
17 be added as defendants to this action.

18 IT IS HEREBY ORDERED, ADJUDGED, AND DECREED that Plaintiff's Motion for Leave to
19 Amend Complaint, which was filed on October 16, 2020, is GRANTED IN PART to the extent that
20 Plaintiff is granted leave to file an Amended Complaint adding Dr. Ali Kia and Nevada Hospitalist
21 Group, LLP, as defendants to the instant suit.

22 IT IS FURTHER ORDERED, ADJUDGED, AND DECREED that all other relief requested in
23 relation to the Motion for Leave to Amend Complaint, filed on October 16, 2020, and the Motion for
24 Leave to Amend Complaint, filed on June 3, 2020, which was before this Court on reconsideration, is

25 ////

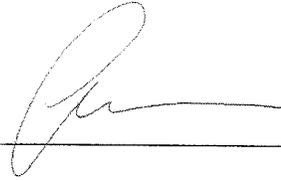
26 ////

27 ////

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1 DENIED, including Plaintiff's request to amend her complaint to add ostensible agency as a theory of
2 liability against Defendant Sunrise Hospital and to add a claim of corporate negligence against
3 Defendant Sunrise Hospital.
4
5
6

Dated this 15th day of December, 2020



EC

CAA CB5 8D32 4813
Cristina D. Silva
District Court Judge

7
8 Respectfully Submitted:

Approved as to Form and Content:

9 DATED this 10th day of December, 2020.
10 LAW OFFICE OF DANIEL MARKS

DATED this 10th day of December, 2020.
HALL PRANGLE & SCHOONVELD, LLC

11 /s/ Nicole M. Young

/s/ Charlotte Buys

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
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18 Attorney for Plaintiff

19 SHERMAN MAYOR, ESQ.
20 Nevada State Bar No. 001491
21 CHARLOTTE BUYS, ESQ.
22 Nevada State Bar No. 14845
23 1160 N. Town Center Drive Suite #200
24 Las Vegas, Nevada 89144
25 Attorney for Sunrise Hospital

16 Approved as to Form and Content:

17 DATED this 10th day of December, 2020.

18 WILSON, ELSER, MOSKOWITZ,
19 EDELMAN & DICKER LLP

20
21 /s/ Eric K. Stryker

22 ERIC K. STRYKER, ESQ.
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24 300 South 4th Street, 11th floor
25 Las Vegas, Nevada 89101
26 Attorney for Frank DeLee, M.D. and
27 Frank DeLee, M.D., PC's
28

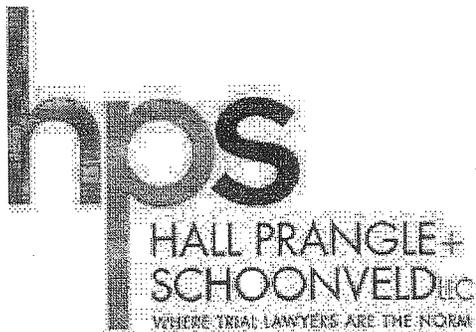
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From: Charlotte Buys [mailto:cbuys@HPSLAW.COM]
Sent: Thursday, December 10, 2020 2:51 PM
To: Stryker, Eric K. <Eric.Stryker@wilsonelser.com>; Nicole Young <NYoung@danielmarks.net>; Office <office@danielmarks.net>; Lord, Nicole N. <Nicole.Lord@wilsonelser.com>
Cc: Sherman Mayor <smayor@HPSLAW.COM>; Mike Prangle <mprangle@HPSLAW.COM>; Tyson Dobbs <tdobbs@HPSLAW.COM>; Casey Henley <CHenley@HPSLaw.com>
Subject: RE: Green v. Delee- Proposed Order re Motion to Amend

You can use my electronic signature on Plaintiff's proposed Order on the Motion for Leave.

Very truly yours,

Charlotte Buys



Charlotte Buys
Associate
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Email: cbuys@HPSLAW.COM

1140 North Town Center Dr.
Suite 350
Las Vegas, NV 89144
F: 702.384.6025

Legal Assistant: Casey Henley
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NOTICE: The information contained in this electronic message is intended only for the personal and confidential use of the designated recipient(s) named above. This message may be attorney-client communication, and as such, is privileged and confidential. If the reader of this message is not the intended recipient or an agent responsible for delivering it to the intended recipient, you are hereby notified that you have received this document in error, and that any review, dissemination, distribution, or copying of this message is strictly prohibited. If you have received this communication in error, please notify us immediately by telephone or return e-mail and permanently destroy all original messages. Thank you.

APP3-0628

From: Stryker, Eric K. <Eric.Stryker@wilsonelser.com>
Sent: Thursday, December 10, 2020 1:40 PM
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Cc: Sherman Mayor <smayor@HPSLAW.COM>; Mike Prangle <mprangle@HPSLAW.COM>; Tyson Dobbs <tdobbs@HPSLAW.COM>; Casey Henley <CHenley@HPSLaw.com>
Subject: RE: Green v. Delee- Proposed Order re Motion to Amend

[External Email] CAUTION!

You can e-sign the revised order on my behalf – thank you.

Eric K. Stryker
Attorney at Law
Wilson Elser Moskowitz Edelman & Dicker LLP
6689 Las Vegas Blvd. South, Suite 200
Las Vegas, NV 89119
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From: Nicole Young [mailto:NYoung@danielmarks.net]
Sent: Thursday, December 10, 2020 10:14 AM
To: Charlotte Buys <cbuys@HPSLAW.COM>; Stryker, Eric K. <Eric.Stryker@wilsonelser.com>; Office <office@danielmarks.net>; Lord, Nicole N. <Nicole.Lord@wilsonelser.com>
Cc: Sherman Mayor <smayor@HPSLAW.COM>; Mike Prangle <mprangle@HPSLAW.COM>; Tyson Dobbs <tdobbs@HPSLAW.COM>; Casey Henley <CHenley@HPSLaw.com>
Subject: RE: Green v. Delee- Proposed Order re Motion to Amend

[EXTERNAL EMAIL]

Good morning:

Attached is the revised order. While the judge did not specifically find the affidavits comply with NRS 41A.071, her order granting the motion shows she believes those affidavits do comply. That was the reason she denied the motion over the summer. To resolve this issue, I took out the specific language regarding each element so it is more general.

Please provide your consent to affix your electronic signature to submit the order to the judge. I want to submit this order no later than tomorrow afternoon in light of the status check in chambers scheduled for December 15th.

Thank you!

Nicole

Nicole M. Young, Esq.

APP3-0629

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:

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