

**IN THE SUPREME COURT OF THE STATE OF NEVADA**

ALI KIA, M.D.

Petitioner,  
vs.

THE EIGHTH JUDICIAL DISTRICT  
COURT OF THE STATE OF  
NEVADA, IN AND FOR THE  
COUNTY OF CLARK, AND THE  
HONORABLE JASMIN LILLY-  
SPELLS.

Respondents.

and

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; and NEVADA  
HOSPITALIST GROUP, LLP.

Real Parties in Interest.

Electronically Filed  
Aug 12 2021 08:36 a.m.  
Elizabeth A. Brown  
Clerk of Supreme Court

Supreme Court No.:

District Court No.: A-17-757722-C

**PETITIONER'S APPENDIX – Volume 1**

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Order Granting in Part and Denying in Part Plaintiff's Motion for Leave to Amend Complaint	PA0294- PA0300
Notice of Entry of Order Granting in Part and Denying in Part Plaintiff's Motion for Leave to Amend Complaint	PA0301- PA0309
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<b><u>Volume 7</u></b>	<b>Bates No.</b>
Defendant Ali Kia, M.D.'s Answer to Plaintiff's Amended Complaint	PA1216- PA1226

## **CERTIFICATE OF COMPLIANCE**

I hereby certify that this appendix consists of true and correct copies of papers in the Clark County District Court file pursuant to NRAP 30 (g).

Dated: August 11, 2021

COLLINSON, DAEHNKE, INLOW & GRECO

*/s/ Linda Rurangirwa*

By \_\_\_\_\_  
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Attorneys for Petitioner Ali Kia, M.D.

## **CERTIFICATE OF SERVICE**

I HEREBY CERTIFY that I am an employee of COLLINSON, DAEHNKE, INLOW & GRECO; that service of the foregoing **PETITIONER'S APPENDIX – VOLUME 1** was made on August 11, 2021, via mandatory electronic service, proof of electronic service attached to any copy filed with the Court. Pursuant to Eighth Judicial District Court Administrative Order 21-04, filed June 4, 2021, Respondent does not accept any paper copies and thus was not served by mail. Pursuant to agreement of Real Parties in Interest, proof of which is attached, mail service of the foregoing is waived.

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***Respondent***

/s/ Lacey Ambro  
An Employee of COLLINSON, DAEHNKE,  
INLOW & GRECO

## Deborah Rocha

---

**From:** Stryker, Eric K. <Eric.Stryker@wilsonelser.com>  
**Sent:** Monday, August 9, 2021 12:23 PM  
**To:** Linda K. Rurangirwa; Daniel Marks; Jordan, Erin; Vogel, Brent; Tyson Dobbs; Mike Prangle  
**Cc:** Deborah Rocha; Nicole Young; Foley, Brigitte E.; Clark, Angela; Lord, Nicole N.; Office; Nicole M. Etienne  
**Subject:** RE: Green v. Sunrise Hospital

Yes, thanks.

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**From:** Linda K. Rurangirwa [mailto:Linda.Rurangirwa@cdiglaw.com]  
**Sent:** Monday, August 9, 2021 12:16 PM  
**To:** Daniel Marks <DMarks@danielmarks.net>; Stryker, Eric K. <Eric.Stryker@wilsonelser.com>; Jordan, Erin <Erin.Jordan@lewisbrisbois.com>; Vogel, Brent <Brent.Vogel@lewisbrisbois.com>; Tyson Dobbs <tdobbs@HPSLAW.COM>; Mike Prangle <mprangle@hpslaw.com>  
**Cc:** Deborah Rocha <deborah.rocha@cdiglaw.com>; Nicole Young <NYoung@danielmarks.net>; Foley, Brigitte E. <Brigitte.Foley@wilsonelser.com>; Clark, Angela <Angela.Clark@wilsonelser.com>; Lord, Nicole N. <Nicole.Lord@wilsonelser.com>; Office <office@danielmarks.net>; Nicole M. Etienne <netienne@HPSLAW.COM>  
**Subject:** Green v. Sunrise Hospital

### [EXTERNAL EMAIL]

Good afternoon:

We are filing a writ with regard to the court's decision on Dr. Kia's motion to dismiss. Would you be agreeable to only receiving an electronic copy of the Writ and Petitioner's Appendix?

Thank you,

Linda



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## Deborah Rocha

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**From:** Nicole Young <NYoung@danielmarks.net>  
**Sent:** Monday, August 9, 2021 2:38 PM  
**To:** Tyson Dobbs; Vogel, Brent; Linda K. Rurangirwa; Daniel Marks; Stryker, Eric K.; Jordan, Erin; Mike Prangle  
**Cc:** Deborah Rocha; Foley, Brigitte E.; Clark, Angela; Lord, Nicole N.; Office; Nicole M. Etienne  
**Subject:** RE: Green v. Sunrise Hospital

An electronic copy by email works for us as well.

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**From:** Tyson Dobbs [mailto:tdobbs@HPSLAW.COM]  
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**Cc:** Deborah Rocha <deborah.rocha@cdiglaw.com>; Nicole Young <NYoung@danielmarks.net>; Foley, Brigitte E. <Brigitte.Foley@wilsonelser.com>; Clark, Angela <Angela.Clark@wilsonelser.com>; Lord, Nicole N. <Nicole.Lord@wilsonelser.com>; Office <office@danielmarks.net>; Nicole M. Etienne <netienne@HPSLAW.COM>  
**Subject:** RE: Green v. Sunrise Hospital

Fine with us as well.



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**Sent:** Monday, August 9, 2021 12:29 PM

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**Cc:** Deborah Rocha <[deborah.rocha@cdiglaw.com](mailto:deborah.rocha@cdiglaw.com)>; Nicole Young <[NYoung@danielmarks.net](mailto:NYoung@danielmarks.net)>; Foley, Brigitte E. <[Brigitte.Foley@wilsonelser.com](mailto:Brigitte.Foley@wilsonelser.com)>; Clark, Angela <[Angela.Clark@wilsonelser.com](mailto:Angela.Clark@wilsonelser.com)>; Lord, Nicole N. <[Nicole.Lord@wilsonelser.com](mailto:Nicole.Lord@wilsonelser.com)>; Office <[office@danielmarks.net](mailto:office@danielmarks.net)>; Nicole M. Etienne <[netienne@HPSLAW.COM](mailto:netienne@HPSLAW.COM)>

**Subject:** RE: Green v. Sunrise Hospital

[External Email] CAUTION!.

Yes, that's fine. Thank you.



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**From:** Linda K. Rurangirwa <[Linda.Rurangirwa@cdiglaw.com](mailto:Linda.Rurangirwa@cdiglaw.com)>

**Sent:** Monday, August 9, 2021 12:16 PM

**To:** Daniel Marks <[DMarks@danielmarks.net](mailto:DMarks@danielmarks.net)>; Stryker, Eric K. <[Eric.Stryker@wilsonelser.com](mailto:Eric.Stryker@wilsonelser.com)>; Jordan, Erin <[Erin.Jordan@lewisbrisbois.com](mailto:Erin.Jordan@lewisbrisbois.com)>; Vogel, Brent <[Brent.Vogel@lewisbrisbois.com](mailto:Brent.Vogel@lewisbrisbois.com)>; Tyson Dobbs <[tdobbs@HPSLAW.COM](mailto:tdobbs@HPSLAW.COM)>; Mike Prangle <[mprangle@hpslaw.com](mailto:mprangle@hpslaw.com)>

**Cc:** Deborah Rocha <[deborah.rocha@cdiglaw.com](mailto:deborah.rocha@cdiglaw.com)>; Nicole Young <[NYoung@danielmarks.net](mailto:NYoung@danielmarks.net)>; Foley, Brigitte E. <[Brigitte.Foley@wilsonelser.com](mailto:Brigitte.Foley@wilsonelser.com)>; Clark, Angela <[Angela.Clark@wilsonelser.com](mailto:Angela.Clark@wilsonelser.com)>; Lord, Nicole N. <[Nicole.Lord@wilsonelser.com](mailto:Nicole.Lord@wilsonelser.com)>; Office <[office@danielmarks.net](mailto:office@danielmarks.net)>; Nicole M. Etienne <[netienne@HPSLAW.COM](mailto:netienne@HPSLAW.COM)>

**Subject:** [EXT] Green v. Sunrise Hospital

**Caution:** This email originated from outside of the organization. Do not click links or open attachments unless you recognize the sender and know the content is safe.

Good afternoon:

We are filing a writ with regard to the court's decision on Dr. Kia's motion to dismiss. Would you be agreeable to only receiving an electronic copy of the Writ and Petitioner's Appendix?

Thank you,

Linda



**Linda K. Rurangirwa | Partner**

Collinson, Daehnke, Inlow & Greco – Attorneys at Law

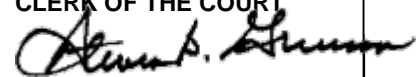
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DISTRICT COURT  
CLARK COUNTY, NEVADA

CHLOE GREEN, an individual,

Case No.  
Dept. No.

A-17-757722-C

Plaintiff,

Department 8

v.

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

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

Defendants.

**COMPLAINT FOR MEDICAL MALPRACTICE**

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

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

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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 Choloe at Sunrise Hospital. Choloe was discharged from the hospital the following day, on July 10, 2016, even though she did not have bowel movement prior to being discharged from the hospital.
7. On July 13, 2016, Choloe had an appointment with Dr. DeLee. At that appointment, Choloe notified Dr. Delee that she had not had a bowel movement post C-section. He did not provide any care or treatment to Choloe regarding her lack of a bowel movement.
8. On July 14, 2016, after still not having a bowel movement post C-section, Choloe went to the emergency room at Sunrise Hospital, with severe abdominal pain and reports of nausea, vomiting, fever, and chills. She was admitted to the medical/surgical unit because of the diagnosis of sepsis. Sunrise Hospital discharged Choloe on July 16, 2016, despite having a small bowel obstruction. The discharge was discussed and confirmed by Dr. DeLee.
9. On July 17, 2016, Choloe went to the emergency room at Centennial Hills Hospital where she was admitted until she was finally discharged on September 2, 2016. Centennial Hills admitted Choloe with the diagnosis of small bowel obstruction. She had an NG Tube placed, underwent surgery, had diffuse pulmonary infiltrates, suggestive of pulmonary edema or ARDS, and eventually needed a tracheostomy and PEG tube placement.
10. That Defendant Dr. DeLee and Sunrise Hospital breached the standard of care in their treatment of Choloe and as a direct and proximate result of that breach, Choloe has been damaged.

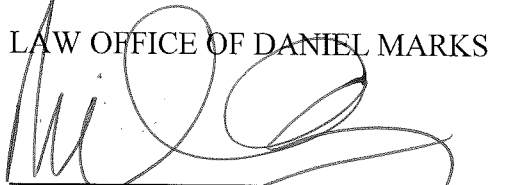
11. That as a direct and proximate result of all of the Defendants' negligence, Choloe has been damaged in an amount in excess of \$15,000.00.
12. This Complaint is supported by the Affidavit of Lisa Karamardian, M.D., a copy of which is attached hereto as Exhibit "1".
13. Choloe has been forced to retain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

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

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

DATED this 30 day of June, 2017.

LAW OFFICE OF DANIEL MARKS



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

1 VERIFICATION

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

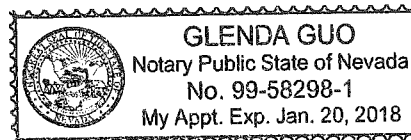
4 CHLOE GREEN, being first duly sworn, deposes and says:

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

8   
9 \_\_\_\_\_  
10 CHLOE GREEN

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

13   
14 \_\_\_\_\_  
15 NOTARY PUBLIC in and for said  
16 COUNTY and STATE



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# **EXHIBIT 1**

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AFFIDAVIT OF DR. LISA KARAMARDIAN

STATE OF California  
COUNTY OF Orange ) s.

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

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



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

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

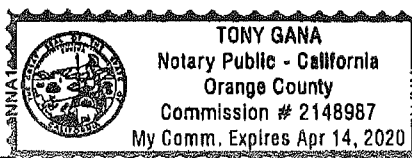
8. That in my professional opinion, to a degree of medical probability, the standard of care was breached by both Dr. DeLee and Sunrise Hospital and Medical Center in their treatment of Ms. Green.

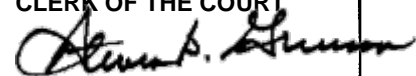
FURTHER YOUR AFFIANT SAYETH NAUGHT.

  
LISA KARAMARDIAN, MD.

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

NOTARY PUBLIC in and for said  
COUNTY and STATE





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

**DISTRICT COURT  
CLARK COUNTY, NEVADA**

CHLOE GREEN, an individual,  
  
Plaintiff,

vs.

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

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

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

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

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

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

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

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

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

**FIRST AFFIRMATIVE DEFENSE**

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

**SECOND AFFIRMATIVE DEFENSE**

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

**THIRD AFFIRMATIVE DEFENSE**

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

**FOURTH AFFIRMATIVE DEFENSE**

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

...

...

**FIFTH AFFIRMATIVE DEFENSE**

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

**SIXTH AFFIRMATIVE DEFENSE**

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

**SEVENTH AFFIRMATIVE DEFENSE**

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

**EIGHTH AFFIRMATIVE DEFENSE**

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

**NINTH AFFIRMATIVE DEFENSE**

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

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**TENTH AFFIRMATIVE DEFENSE**

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

**ELEVENTH AFFIRMATIVE DEFENSE**

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

**TWELFTH AFFIRMATIVE DEFENSE**

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

**THIRTEENTH AFFIRMATIVE DEFENSE**

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

**FOURTEENTH AFFIRMATIVE DEFENSE**

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

**FIFTEENTH AFFIRMATIVE DEFENSE**

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

**SIXTEENTH AFFIRMATIVE DEFENSE**

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

**SEVENTEENTH AFFIRMATIVE DEFENSE**

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

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**EIGHTEENTH AFFIRMATIVE DEFENSE**

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

**NINETEENTH AFFIRMATIVE DEFENSE**

Plaintiff has failed to join all necessary parties.

**TWENTIETH AFFIRMATIVE DEFENSE**

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

**TWENTY-FIRST AFFIRMATIVE DEFENSE**

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

**TWENTY-SECOND AFFIRMATIVE DEFENSE**

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

**TWENTY-THIRD AFFIRMATIVE DEFENSE**

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

**TWENTY-FOURTH AFFIRMATIVE DEFENSE**

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

WHEREFORE, Defendant prays for judgment as follows:

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

DATED this 20<sup>th</sup> day of July, 2017.

HALL PRANGLE & SCHOONVELD, LLC

By: 

JOHN F. BEMIS, ESQ.

Nevada Bar No.: 9509

TYSON J. DOBBS, ESQ.

Nevada Bar No.: 11953

1160 N. Town Center Dr., Ste. 200

Las Vegas, NV 89144

*Attorneys for Defendant*

*Sunrise Hospital and Medical Center, LLC*

**CERTIFICATE OF SERVICE**

I HEREBY CERTIFY that I am an employee of HALL PRANGLE & SCHOONVELD, LLC; that on the 20<sup>th</sup> day of July, 2017, I served a true and correct copy of the foregoing **DEFENDANT SUNRISE HOSPITAL AND MEDICAL CENTER'S ANSWER TO PLAINTIFF'S COMPLAINT** via the E-Service Master List for the above referenced matter in the Eighth Judicial District Court e-filing System in accordance with the electronic service requirements of Administrative Order 14-2 and the Nevada Electronic Filing and Conversion Rules to the following:

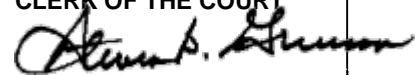
Daniel Marks, Esq.  
Nicole M. Young, Esq.  
LAW OFFICE OF DANIEL MARKS  
610 South Ninth Street  
Las Vegas, NV 89101  
*Attorneys for Plaintiff*



\_\_\_\_\_  
An employee of HALL PRANGLE & SCHOONVELD, LLC

4846-5582-2923, v. 1





1 ANS

Eric K. Stryker

2 Nevada Bar No. 5793

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

300 South 4<sup>th</sup> Street, 11<sup>th</sup> Floor

4 Las Vegas, NV 89101

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

5 Eric.Stryker@wilsonelser.com

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

7 DISTRICT COURT

8 CLARK COUNTY, NEVADA

9 CHOLOE GREEN, an individual,

10 Plaintiff,

11 v.

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

15 Defendants.  
16

CASE NO.: A-17-757722-C

DEPT. NO.: VIII

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

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

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

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

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1 **EIGHTH AFFIRMATIVE DEFENSE**

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

4 **NINTH AFFIRMATIVE DEFENSE**

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

7 **TENTH AFFIRMATIVE DEFENSE**

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

10 **ELEVENTH AFFIRMATIVE DEFENSE**

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

13 **TWELFTH AFFIRMATIVE DEFENSE**

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

18 **THIRTEENTH AFFIRMATIVE DEFENSE**

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

20 **FOURTEENTH AFFIRMATIVE DEFENSE**

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

25 **FIFTEENTH AFFIRMATIVE DEFENSE**

26 Plaintiff(s)' non-economic damages, if any, may not exceed \$350,000.00 pursuant to NRS  
27 §41A.035.

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**SIXTEENTH AFFIRMATIVE DEFENSE**

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

**SEVENTEENTH AFFIRMATIVE DEFENSE**

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

**EIGHTEENTH AFFIRMATIVE DEFENSE**

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

**NINETEENTH SEVENTH DEFENSE**

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

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1 **PRAYER FOR RELIEF**

2 WHEREFORE, Defendants prays as follows:

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

9 DATED this 31<sup>st</sup> day of July, 2017

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

12 BY: 

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

**CERTIFICATE OF SERVICE**

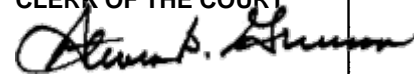
Pursuant to NRCP 5(b), I certify that I am an employee of WILSON ELSEER MOSKOWITZ  
EDELMAN & DICKER LLP, and that on this 31 day of July, 2017, I served a true and correct  
copy of the foregoing **DEFENDANTS FRANK J. DeLEE, M.D. AND FRANK J. DeLEE, M.D.,**  
**PC's ANSWER TO PLAINTIFFS' COMPLAINT**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

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

Daniel Marks  
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BY 

An Employee of  
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MLEV  
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1160 N. Town Center Dr., Ste. 200  
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*Attorneys for Defendant*  
*Sunrise Hospital and Medical Center, LLC*

**DISTRICT COURT  
CLARK COUNTY, NEVADA**

CHLOE GREEN, an individual,  
  
Plaintiff,

vs.

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

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

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

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

...

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

DATED this 24<sup>th</sup> day of April, 2019.

HALL PRANGLE & SCHOONVELD, LLC

By: \_\_\_\_\_

MICHAEL E. PRANGLE, ESQ.

Nevada Bar No.: 8619

TYSON J. DOBBS, ESQ.

Nevada Bar No.: 11953

SHERMAN B. MAYOR, ESQ.

Nevada Bar No. 1491

1160 N. Town Center Dr., Ste. 200

Las Vegas, NV 89144

*Attorneys for Defendant*

*Sunrise Hospital and Medical Center, LLC*

**ORDER SHORTENING TIME**

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

Mar, 2019, at the hour of 3:00 <sup>CD</sup> a.m./p.m. in Department 9.

DATED April 29, 2019.

\_\_\_\_\_  
DISTRICT COURT JUDGE




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

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

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

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

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

20  
21  
22  
23  
24  
25  
26  
27  
28  
  
4/24/19  
\_\_\_\_\_  
SHERMAN B. MAYOR, ESQ.

## PREFATORY NOTE

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

## POINTS AND AUTHORITIES

### I. FACTS

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

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

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

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

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

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

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

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

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

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

## 16 II. 17 ARGUMENT

18 NRCP 14 provides in relevant part:

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

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

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

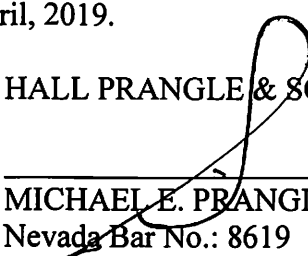
4 Sunrise Hospital now brings the instant motion for leave to assert a third-party complaint  
5 against Ali Kia M.D. and Nevada Hospitalist Group, LLP. The court's recent decision that the  
6 issue as to whether Dr. Kia is an ostensible agent of Sunrise Hospital is a factual question for the  
7 finder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

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

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

19 DATED this 24<sup>th</sup> day of April, 2019.

20  
21 HALL PRANGLE & SCHOONVELD, LLC

22 By:   
23 MICHAEL E. PRANGLE, ESQ.  
24 Nevada Bar No.: 8619  
25 TYSON J. DOBBS, ESQ.  
26 Nevada Bar No.: 11953  
27 SHERMAN B. MAYOR, ESQ.  
28 Nevada Bar No. 1491  
1160 N. Town Center Dr., Ste. 200  
Las Vegas, NV 89144  
*Attorneys for Defendant*  
*Sunrise Hospital and Medical Center, LLC*

# ***EXHIBIT A***

# ***EXHIBIT A***

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

Press <Enter> for Order Details below

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

Order's Audit Trail of Events

```

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

```

Electronics

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

Other Provider : Sig Lvl Provider :

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

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

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

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

Other Specific Reason:

Antithrombotic at Discharge?  
 Antithrombotic Contraindications:

Other Specific Reason:  
 Antiplatelet Therapy at Discharge?

## PERMANENT MEDICAL RECORD COPY



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

MEDITECH FACILITY: COCSZ  
IDEV - Discharge Report

PAGE 52

PATIENT: GREEN, CHLOE S  
ACCOUNT NO: D00113938887

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

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

ATTEND DR: Kia, Ali MD  
REPORT STATUS: FINAL

Antiplatelet Contraindications:

Other Specific Reason:

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

Anticoagulation Contraindications:

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

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

What anticoagulation med is patient being sent home on:

List reason for medication choice:

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

Return to Work/School:  
OK to Drive:

Call Your Doctor If -  
Fever Greater Than: 101.5

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

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

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

## PERMANENT MEDICAL RECORD COPY

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

MEDITECH FACILITY: COCSZ  
IDEV - Discharge Report

PAGE 53

PATIENT: GREEN, CHLOE S  
ACCOUNT NO: D00113938887

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

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

ATTEND DR: Kia, Alf MD  
REPORT STATUS: FINAL

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

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

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

== INFANT/NICU ==

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

Provide Pre-printed Mother/Infant Instructions:

== Outpatient Services Needs ==

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

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

#### Order's Audit Trail of Events

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

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

PERMANENT MEDICAL RECORD COPY

# ***EXHIBIT B***

# ***EXHIBIT B***

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

Good Afternoon,

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

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

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

Thank you,

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

# ***EXHIBIT C***

# ***EXHIBIT C***

TPC

MICHAEL E. PRANGLE, ESQ.  
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Nevada Bar No.: 11953  
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*Attorneys for Defendant*  
*Sunrise Hospital and Medical Center, LLC*

DISTRICT COURT  
CLARK COUNTY, NEVADA

CHOLOE GREEN, an individual,  
  
Plaintiff,

vs.

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

Defendants.

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

Third-Party Plaintiff,

vs.

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

Third-Party Defendants.

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

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

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

### GENERAL ALLEGATIONS

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

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

4 **STATEMENTS OF FACTS**

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



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

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

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

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

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

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

9 DATED this 24<sup>th</sup> day of April, 2019.

10 HALL PRANGLE & SCHOONVELD, LLC

11 By: \_\_\_\_\_

12 MICHAEL E. PRANGLE, ESQ.

13 Nevada Bar No.: 8619

14 TYSON J. DOBBS, ESQ.

15 Nevada Bar No.: 11953

16 SHERMAN B. MAYOR, ESQ.

17 Nevada Bar No. 1491

18 1160 N. Town Center Dr., Ste. 200

19 Las Vegas, NV 89144

20 *Attorneys for Defendant*

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

*Steven D. Grierson*

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

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

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

**Case No.**  
**Dept. No.**

**A-17-757722-C** *y*

**Department 8**

12 **v.**

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

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

16 **Defendants.**

18 **COMPLAINT FOR MEDICAL MALPRACTICE**

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

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

27 **////**

28 **////**

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

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

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

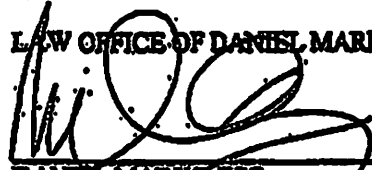
5 13. Cholee has been forced to retain counsel to bring this action and should be awarded his  
6 reasonable attorneys fees and costs.

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

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

12 DATED this 30 day of June, 2017.

13 LAW OFFICE OF DANIEL MARKS

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

STATE OF NEVADA }  
COUNTY OF CLARK } ss:

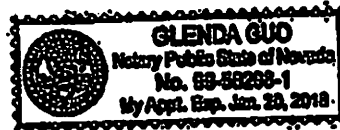
CHLOE GREEN, being first duly sworn, deposes and says:

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

*Chloe Green*  
CHLOE GREEN

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

*Glenda Guo*  
NOTARY PUBLIC in and for said  
COUNTY and STATE



---

# EXHIBIT 1

---



**AFFIDAVIT OF DR. LISA KARAMARDIAN**

STATE OF California  
COUNTY OF Orange } ss.

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

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

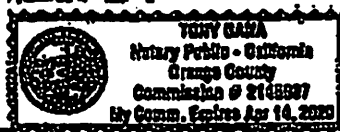
- 1 6. The day after she was released from Sunrise Hospital, Ms. Green presented at Centennial  
2 Hills Hospital, on July 17, 2016. At the time of presentation she was now 7 days  
3 postpartum, had not had a bowel movement, and was unable to even tolerate liquids. She  
4 was still in severe pain.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

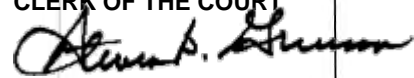
22 FURTHER YOUR AFFIANT SAYETH NAUGHT.

23   
24 LISA KARAMARDIAN, MD.

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

27   
28 NOTARY PUBLIC in and for said  
COUNTY and STATE





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

**DISTRICT COURT  
CLARK COUNTY, NEVADA**

CHLOE GREEN, an individual,  
  
Plaintiff,

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

vs.

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

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

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

Third-Party Plaintiff,

vs.

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

Third-Party Defendants.

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

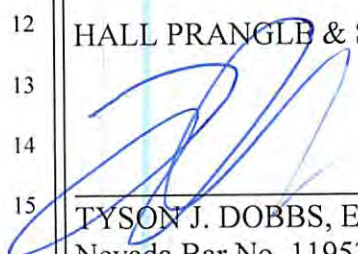
1 On May 1, 2019, Defendant Sunrise Hospital Medical Center, LLC filed its Motion for  
2 Leave to File Third-Party Complaint on Order Shortening Time. No Opposition was filed and  
3 the Court considered the Motion in Chambers on May 13, 2019.

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

7 DATED this 11<sup>th</sup> day of June, 2019.

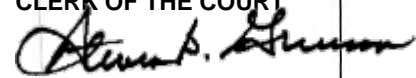
8  
9   
10 DISTRICT COURT JUDGE  
11 \$

12 Respectfully Submitted:

13 HALL PRANGLE & SCHOONVELD LLC  
14 

15 TYSON J. DOBBS, ESQ.  
16 Nevada Bar No. 11953  
17 1160 North Town Center Drive, Ste. 200  
18 Las Vegas, Nevada 89144  
19 *Attorneys for Plaintiff*  
20 *Valley Health System, LLC*  
21 *d/b/a Valley Hospital Medical Center*  
22  
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28





1 TPC

2 MICHAEL E. PRANGLE, ESQ.

3 Nevada Bar No.: 8619

4 TYSON J. DOBBS, ESQ.

5 Nevada Bar No.: 11953

6 SHERMAN B. MAYOR, ESQ.

7 Nevada Bar No. 1491

8 HALL PRANGLE & SCHOONVELD, LLC

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

10 Las Vegas, NV 89144

11 (702) 889-6400 – Office

12 (702) 384-6025 – Facsimile

13 [efile@hpslaw.com](mailto:efile@hpslaw.com)

14 *Attorneys for Defendant*

15 *Sunrise Hospital and Medical Center, LLC*

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

18 CHOLOE GREEN, an individual,

19 Plaintiff,

20 vs.

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

26 Defendants.

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

Third-Party Plaintiff,

vs.

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

Third-Party Defendants.

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

**NOTICE OF ENTRY OF ORDER**

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

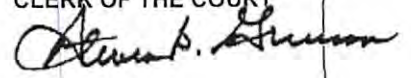
HALL PRANGLE & SCHOONVELD, LLC  
1160 NORTH TOWN CENTER DRIVE  
SUITE 200  
LAS VEGAS, NEVADA 89144  
TELEPHONE: 702-889-6400 FACSIMILE: 702-384-6025

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

4 DATED this 14<sup>th</sup> day of June, 2019.

5 HALL PRANGLE & SCHOONVELD, LLC

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

10 DISTRICT COURT  
CLARK COUNTY, NEVADA

11 CHOLOE GREEN, an individual,  
12  
13 Plaintiff,

14 vs.

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

19 Defendants.

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

Third-Party Plaintiff,

22 vs.

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

27 Third-Party Defendants.  
28

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

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

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



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

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

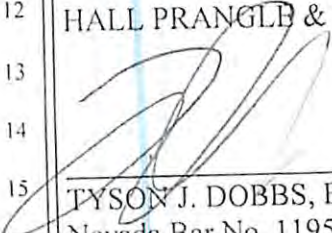
4 The Court, having reviewed the pleadings and papers on file, HEREBY ORDERS,  
5 ADJUDGES, AND DECREES that Defendant Sunrise Hospital Medical Center's Motion for  
6 Leave to File Third-Party Complaint is hereby GRANTED.

7 DATED this 11<sup>th</sup> day of June, 2019.

8  
9  
10   
DISTRICT COURT JUDGE

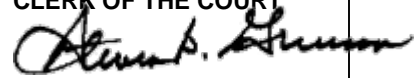
11 Respectfully Submitted:

12 HALL PRANGLE & SCHOONVELD LLC

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



HALL PRANGLE & SCHOONVELD, LLC  
1160 NORTH TOWN CENTER DRIVE  
SUITE 200  
LAS VEGAS, NEVADA 89144  
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TPC

MICHAEL E. PRANGLE, ESQ.  
Nevada Bar No.: 8619  
TYSON J. DOBBS, ESQ.  
Nevada Bar No.: 11953  
SHERMAN B. MAYOR, ESQ.  
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[efile@hpslaw.com](mailto:efile@hpslaw.com)  
*Attorneys for Defendant*  
*Sunrise Hospital and Medical Center, LLC*

**DISTRICT COURT  
CLARK COUNTY, NEVADA**

CHOLOE GREEN, an individual,  
  
Plaintiff,

vs.

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

Defendants.

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

Third-Party Plaintiff,

vs.

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

Third-Party Defendants.

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

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

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

**GENERAL ALLEGATIONS**

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

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

### STATEMENTS OF FACTS

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

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

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

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

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

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

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

21  
22 **THIRD-PARTY PLAINTIFF SUNRISE HOSPITAL CLAIM FOR INDEMNITY AND**  
23 **CONTRIBUTION AGAINST ALI KIA, M.D., AND NEVADA HOSPITALIST GROUP**

24 18. Third-Party Plaintiff, Sunrise Hospital repeats and realleges and incorporates each and  
25 every allegation contained in paragraphs 1-17 as though fully set forth herein.  
26  
27  
28

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

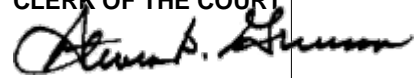
1 against Ali Kia, M.D. and Nevada Hospitalist Group for any amount awarded (by  
2 verdict or judgment) against the hospital resulting from Ali Kia, M.D.'s treatment and  
3 care of Choloe Green during her July 14, 2016 hospital admission.

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

9 DATED this 14<sup>th</sup> day of June, 2019.

10 HALL PRANGLE & SCHOONVELD, LLC

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



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9 2110 E. Flamingo Road, Suite 212  
10 Las Vegas, Nevada 89119  
11 (702) 979-2132 Telephone  
12 (702) 979-2133 Facsimile  
13  
14 *Attorneys for Third- Party Defendant*  
15 *Ali Kia, M.D.*

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

12 CHLOE GREEN, an individual,  
13  
14 Plaintiffs,

15 vs.

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

21 Defendants.

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

25 Third-Party Plaintiff,

26 vs.

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

Third-Party Defendants.

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

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

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

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

### GENERAL ALLEGATIONS

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

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

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

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

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

### STATEMENT OF FACTS

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



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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

## 22                   **AFFIRMATIVE DEFENSES**

### 23                   **FIRST AFFIRMATIVE DEFENSE**

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

### 26                   **SECOND AFFIRMATIVE DEFENSE**

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

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

5 **THIRD AFFIRMATIVE DEFENSE**

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

9 **FOURTH AFFIRMATIVE DEFENSE**

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

17 **FIFTH AFFIRMATIVE DEFENSE**

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

20 **SIXTH AFFIRMATIVE DEFENSE**

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

23 **SEVENTH AFFIRMATIVE DEFENSE**

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

26 **EIGHTH AFFIRMATIVE DEFENSE**

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

**NINTH AFFIRMATIVE DEFENSE**

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

**TENTH AFFIRMATIVE DEFENSE**

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

**ELEVENTH AFFIRMATIVE DEFENSE**

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

**TWELFTH AFFIRMATIVE DEFENSE**

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

**THIRTEENTH AFFIRMATIVE DEFENSE**

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

**FOURTEENTH AFFIRMATIVE DEFENSE**

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

**FIFTEENTH AFFIRMATIVE DEFENSE**

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

**SIXTEENTH AFFIRMATIVE DEFENSE**

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

**SEVENTEENTH AFFIRMATIVE DEFENSE**

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

**EIGHTEENTH AFFIRMATIVE DEFENSE**

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

**NINETEENTH AFFIRMATIVE DEFENSE**

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

**TWENTETH AFFIRMATIVE DEFENSE**

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

**TWENTY-FIRST AFFIRMATIVE DEFENSE**

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

**TWENTY-SECOND AFFIRMATIVE DEFENSE**

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

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**TWENTY-THIRD AFFIRMATIVE DEFENSE**

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

**TWENTY-FOURTH AFFIRMATIVE DEFENSE**

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

**TWENTY-FIFTH AFFIRMATIVE DEFENSE**

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

**TWENTY-SIXTH AFFIRMATIVE DEFENSE**

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

**TWENTY-SEVENTH AFFIRMATIVE DEFENSE**

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

**TWENTY-EIGHTH AFFIRMATIVE DEFENSE**

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



**TWENTY-NINTH AFFIRMATIVE DEFENSE**

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

**THIRTEETH AFFIRMATIVE DEFENSE**

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

**THIRTY-FIRST AFFIRMATIVE DEFENSE**

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

**THIRTY-SECOND AFFIRMATIVE DEFENSE**

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

**THIRTY-THIRD AFFIRMATIVE DEFENSE**

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

**THIRTY-FOURTH AFFIRMATIVE DEFENSE**

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

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///

1                                    **THIRTY-FIFTH AFFIRMATIVE DEFENSE**

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

7                                    **THIRTY-SIXTH AFFIRMATIVE DEFENSE**

8                    Pursuant to Nevada Rule of Civil Procedure 11, all possible affirmative defenses may  
9 not have been alleged as sufficient facts were not available, after reasonable inquiry, upon the  
10 filing of Answering Defendant's Answer to Third Party Complaint and, therefore, Answering  
11 Third Party Defendant reserves the right to amend his Answer to allege additional affirmative  
12 defenses if subsequent investigation warrants. Additionally, one or more of these affirmative  
13 defenses may have been pled for the purposes of non-waiver.

14                    **WHEREFORE**, Answering Third Party Defendant prays as follows:

- 15                    1.     That Third Party Plaintiff take nothing by reason of its Third Party Complaint;  
16                    2.     For all attorney's fees incurred in the defense of Third Party Plaintiff's Third  
17                    Party Complaint against Answering Third Party Defendant;  
18                    3.     For costs and disbursements incurred herein; and

19                    ///

20                    ///

21                    ///

22                    ///

23                    ///

24                    ///

25                    ///

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27                    ///

28                    ///

4. For such other and further relief as the Court may deem just and proper in these premises.

DATED: August 2, 2019      **COLLINSON, DAEHNKE, INLOW & GRECO**

BY: /s/ Linda K. Rurangirwa

PATRICIA EGAN DAEHNKE

Nevada Bar No. 4976

LINDA K. RURANGIRWA

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*Attorneys for Third- Party Defendant  
Ali Kia, M.D.*

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

-13-

PA0073

1 **CERTIFICATE OF SERVICE**

2 I hereby certify that on this 2<sup>nd</sup> day of August, 2019, a true and correct copy of  
3 **THIRD PARTY DEFENDANT ALI KIA, M.D.'S ANSWER TO THIRD PARTY**  
4 **COMPLAINT** was served by electronically filing with the Clerk of the Court using the  
5 Odyssey File & Serve system and serving all parties with an email address on record, who  
6 have agreed to receive Electronic Service in this action.

7  
8 DANIEL MARKS, ESQ.  
9 NICOLE M. YOUNG, ESQ.  
10 Law Office of Daniel Marks  
11 610 South Ninth Street  
12 Las Vegas, Nevada 89101  
13 (702) 386-0536  
14 *Attorneys for Plaintiff Choloe Green*

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19 Las Vegas, Nevada 89101  
20 (702) 727-1400  
21 *Attorneys for Defendants*  
22 *Frank J. DeLee, M.D. and Frank J. DeLee, M.D., P.C.:*

23 MICHAEL E. PRANGLE, ESQ.  
24 TYSON J. DOBBS, ESQ.  
25 SHERMAN B. MAYOR, ESQ.  
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*Attorneys for Defendant and Third Party Plaintiff*  
*Sunrise Hospital and Medical Center, LLC*

26 By /s/ Linda K. Rurangirwa  
27 An employee of COLLINSON, DAEHNKE,  
28 INLOW & GRECO

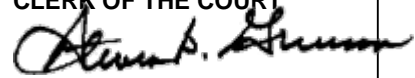
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Hospitalist Group, LLP*

8  
9 DISTRICT COURT  
10 CLARK COUNTY, NEVADA

11 CHOLOE GREEN, an individual,  
12  
13 Plaintiff,

14 vs.

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

17 Defendants.

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

**THIRD-PARTY DEFENDANT NEVADA  
HOSPITALIST GROUP, LLP'S ANSWER  
TO SUNRISE HOSPITAL AND MEDICAL  
CENTER, LLC'S THIRD PARTY  
COMPLAINT**

18  
19 SUNRISE HOSPITAL AND MEDICAL  
CENTER, LLC, a Foreign Limited-Liability  
20 Company,

21 Third Party Plaintiff,

22 vs.

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

25 Third Party Defendants.  
26  
27  
28

1 Third-Party Defendant NEVADA HOSPITALIST GROUP, LLP, (“Defendant”) by and  
2 through its attorneys of record, S. Brent Vogel, Esq. and Erin E. Jordan, Esq. of LEWIS  
3 BRISBOIS BISGAARD & SMITH LLP, hereby answers Third-Party Plaintiff’s Third Party  
4 Complaint as follows:

5 **GENERAL ALLEGATIONS**

6 1. Answering Paragraphs 1 and 2 of Third-Party Plaintiff’s Third Party Complaint, Third-  
7 Party Defendant is without sufficient information or knowledge to form a belief as to the truth or  
8 falsity of the allegations contained therein and upon that basis, denies each and every allegation  
9 contained therein.

10 2. Answering Paragraph 3 of Third-Party Plaintiff’s Third Party Complaint, Third-Party  
11 Defendant denies each and every allegation contained therein.

12 3. Answering Paragraphs 4 and 5 of Third-Party Plaintiff’s Third Party Complaint, Third-  
13 Party Defendant is without sufficient information or knowledge to form a belief as to the truth or  
14 falsity of the allegations contained therein and upon that basis, denies each and every allegation  
15 contained therein.

16 **STATEMENT OF FACTS**

17 4. Answering Paragraph 6 of Third-Party Plaintiff’s Third Party Complaint, Third-Party  
18 Defendant hereby repeats, realleges and incorporates by reference its responses to Paragraphs 1  
19 through 5, supra, as though fully set forth herein.

20 5. Answering Paragraphs 7, 8, 9, 10, 11, 12, 13, 14 and 15 of Third-Party Plaintiff’s Third  
21 Party Complaint, Third-Party Defendant is without sufficient information or knowledge to form a  
22 belief as to the truth or falsity of the allegations contained therein and upon that basis, denies each  
23 and every allegation contained therein.

24 6. Answering Paragraphs 16 and 17 of Third-Party Plaintiff’s Third Party Complaint, Third-  
25 Party Defendant denies each and every allegation contained therein.

26 ///

27 ///

28 ///

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

3     7.     Answering Paragraph 18 of Third-Party Plaintiff's Third Party Complaint, Third-Party  
4     Defendant hereby repeats, realleges and incorporates by reference its responses to Paragraphs 1  
5     through 17, supra, as though fully set forth herein.

6     8.     Answering Paragraphs 19, 20, 21, 22, 23, 24 and 25 of Third-Party Plaintiff's Third Party  
7     Complaint, Third-Party Defendant is without sufficient information or knowledge to form a belief  
8     as to the truth or falsity of the allegations contained therein and upon that basis, denies each and  
9     every allegation contained therein.

10                     **AFFIRMATIVE DEFENSES**

11     1.     Third-Party Plaintiff's Third Party Complaint on file herein fails to state a claim against  
12     Third-Party Defendant upon which relief can be granted.

13     2.     Third-Party Plaintiff's Third Party Complaint on file herein is barred by the applicable  
14     statute of limitations.

15     3.     The injuries, if any, allegedly suffered by Third-Party Plaintiff as set forth in the Third-  
16     Party Complaint were caused in whole or in part by the negligence of a third party or third parties  
17     over which Third-Party Defendant had no control.

18     4.     The damages, if any, alleged by Third-Party Plaintiff are not the result of any acts of  
19     omission, commission, or negligence by this Third-Party Defendant, but were the result of a  
20     known risk, which was consented to by Third-Party Plaintiff.

21     5.     Pursuant to NRS 41A.110, Defendant is entitled to a conclusive presumption of informed  
22     consent.

23     6.     The damages, if any, incurred by Third-Party Plaintiff are not attributable to any act,  
24     conduct, or omission on the part of this Third-Party Defendant. Third-Party Defendant denies that  
25     it was negligent or otherwise culpable in any matter or in any degree with respect to the matters set  
26     forth in Third-Party Plaintiff's Third-Party Complaint.

27     7.     That it has been necessary for Third-Party Defendant to employ the services of an attorney  
28     to defend this action and a reasonable sum should be allowed Third-Party Defendant for attorneys'



1 fees, together with costs of suit incurred herein.

2 8. Pursuant NRS 41A.035 Plaintiffs' non-economic damages, if any, may not exceed  
3 \$350,000.

4 9. Third-Party Defendant is not jointly liable with any other entity that may or may not be  
5 named in this action, and will only be severally liable for that portion of Third-Party Plaintiff's  
6 claims that represent the percentage of negligence attributable to Third-Party Defendant, if any.

7 10. Third-Party Plaintiff's damages, if any, were not proximately caused by Third-Party  
8 Defendant.

9 11. Third-Party Plaintiff's injuries and damages, if any, are the result of forces of nature over  
10 which Third-Party Defendant had no control or responsibility.

11 12. Third-Party Plaintiff are barred from asserting any claims against Third-Party Defendant  
12 because the alleged damages were the result of one or more unforeseeable intervening and  
13 superseding causes.

14 13. Third-Party Plaintiff failed to mitigate damages, if any.

15 14. Third-Party Plaintiff failed to allege facts in support of any award of pre-judgment interest.

16 15. The incident alleged in the Third-Party Complaint, and the resulting damages, if any, to  
17 Third-Party Plaintiff, were proximately caused or contributed to by the decedent's own  
18 negligence, and such negligence was greater than the negligence, if any, of Third-Party Defendant.

19 16. Pursuant to NRCP 11, as amended, all applicable Affirmative Defenses may not have been  
20 alleged herein insofar as sufficient facts were not available after reasonable inquiry upon the filing  
21 of Third-Party Defendant's Answer and, therefore, Third-Party Defendant reserves the right to  
22 amend its Answer to allege additional Affirmative Defenses if subsequent investigation warrants.

23 17. Third-Party Plaintiff failed to substantively comply with NRS 41A.071.

24 18. At all times mentioned herein, Third-Party Defendant acted reasonably and in good faith  
25 with regard to the acts and transactions which are the subject of this lawsuit.

26 19. To the extent Third-Party Plaintiff has been reimbursed from any source for any special  
27 damages claimed to have been sustained as a result of the incidents alleged in Third-Party  
28 Plaintiff's Third-Party Complaint, Third-Party Defendant may elect to offer those amounts into

1 evidence and, if Third-Party Defendant so elects, Third-Party Plaintiff's special damages shall be  
2 reduced by those amounts pursuant to NRS 42.021.

3 20. Third-Party Defendant hereby incorporates by reference those affirmative defenses  
4 enumerated in NRCP 8 as if fully set forth herein. In the event further investigation or discovery  
5 reveals the applicability of such defenses, Third-Party Defendant reserves the right to seek leave  
6 of the Court to amend his Answer to assert the same. Such defenses are incorporated herein by  
7 reference for the purpose of not waiving the same.

8 21. Third-Party Defendant avail itself of all affirmative defenses and limitations of action as  
9 set out in NRS 41.085, 41A.035, 41A.045, 41A.061, 41A.071, 41A.097, 41A.100, 42.005, 42.021,  
10 41.141, and all applicable subparts.

11 22. NRS Chapters 41 and 41A limit damages that may be collectable against Third-Party  
12 Defendant.

13 23. Third-Party Plaintiff is barred from bringing this action for failure to comply with  
14 applicable contractual remedies and requirements, including arbitration, if applicable. Third-Party  
15 Plaintiff's failure to comply with the contractual remedies and requirements notwithstanding,  
16 Third-Party Defendant reserves his right to enforce any applicable arbitration provision.

17 WHEREFORE, Third-Party Defendant prays for judgment as follows:

18 1. That Third-Party Plaintiff take nothing by way of the Third Party Complaint on file  
19 herein;

20 ///

21 ///

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27 ///

28 ///

2. For reasonable attorneys' fees and costs of suit incurred herein;
3. For trial by jury, and;

DATED this 27th day of December, 2019

LEWIS BRISBOIS BISGAARD & SMITH LLP

By /s/ Erin E. Jordan

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*Attorneys for Third-Party Defendant Nevada  
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1 **CERTIFICATE OF SERVICE**

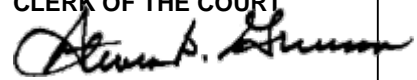
2 I hereby certify that on this 27th day of December, 2019, a true and correct copy  
3 of **THIRD-PARTY DEFENDANT NEVADA HOSPITALIST GROUP, LLP'S ANSWER**  
4 **TO SUNRISE HOSPITAL AND MEDICAL CENTER, LLC'S THIRD PARTY**  
5 **COMPLAINT** was served by electronically filing with the Clerk of the Court using the Electronic  
6 Service system and serving all parties with an email-address on record, who have agreed to receive  
7 Electronic Service in this action.

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21 *Attorneys for Defendant/Third-Party Plaintiff*

22 By /s/ Johana Whitbeck  
23 An Employee of  
24 LEWIS BRISBOIS BISGAARD & SMITH LLP  
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8  
9 DISTRICT COURT

10 CLARK COUNTY, NEVADA

11 CHOLOE GREEN, an individual,  
12 Plaintiff,

13 vs.

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

16 Defendants.

17  
18 SUNRISE HOSPITAL AND MEDICAL  
CENTER, LLC, a Foreign Limited-Liability  
Company,

19 Third-Party Plaintiff,

20 vs.

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

24 Third-Party Defendants.

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

25 **HEARING REQUESTED**

**THIRD-PARTY DEFENDANT NEVADA  
HOSPITALIST GROUP, LLP'S MOTION  
FOR JUDGMENT ON THE PLEADINGS**

26 Third-Party Defendant NEVADA HOSPITALIST GROUP, LLP, by and through its  
27 attorneys of record, S. Brent Vogel, Esq. and Erin E. Jordan, Esq. of LEWIS BRISBOIS  
28 BISGAARD & SMITH LLP, hereby files this Motion for Judgment on the Pleadings.

1 This Motion is based upon the following Memorandum of Points and Authorities, the  
2 papers and pleadings on file in this matter, and any oral argument offered at the hearing of this  
3 matter.

4 DATED this 19th day of March, 2020.

5 LEWIS BRISBOIS BISGAARD & SMITH LLP  
6  
7

8 By /s/ Erin E. Jordan

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14 Las Vegas, Nevada 89118

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16 *Attorneys for Third-Party Defendant Nevada  
Hospitalist Group, LLP*

17 **MEMORANDUM OF POINTS AND AUTHORITIES**

18 **I. FACTUAL BACKGROUND**

19 This is a professional negligence case that arises out of medical care and treatment  
20 Defendants Dr. DeLee and Sunrise Hospital provided to Choloe Green between July 9, 2016 and  
21 July 17, 2016 following a cesarean section. Complaint, ¶¶ 6-17. Plaintiff alleges that Defendants  
22 Dr. DeLee and Sunrise Hospital breached the standard of care while caring for her following the  
23 cesarean section and that she sustained injury requiring long-term hospitalization as a result. *Id.*,  
¶¶ 10-11.

24 Plaintiff Choloe Green brought a claim for professional negligence against Dr. DeLee and  
25 Sunrise Hospital on June 20, 2017. Defendant Sunrise Hospital filed a Third-Party Complaint  
26 against two Third-Party Defendants, Ali Kia, M.D. and Nevada Hospitalist Group, LLP on June  
27 14, 2019. Third-Party Plaintiff Sunrise Hospital brought claims against Dr. Kia and Nevada  
28 Hospitalist Group, LLP for contribution and indemnity. The basis for Sunrise Hospital's third-

1 party claims against Nevada Hospitalist Group, LLP was alleged vicarious liability for the alleged  
2 professional negligence of Third-Party Defendant Ali Kia, M.D. Third-Party Complaint, ¶¶ 6-17.

3 Third-Party Plaintiff Sunrise Hospital specifically alleges that the bases of its claims  
4 against Third-Party Defendants Dr. Kia and Nevada Hospitalist Group is the medical care and  
5 treatment that Dr. Kia provided to Choloe Green on July 16, 2016. Third-Party Complaint, ¶ 23  
6 (“Although unnamed as a party in Plaintiff Choloe Green’s underlying complaint, Ali Kia, M.D.  
7 (Third-Party Defendant) discharged Plaintiff on July 16, 2016. **As such, Dr. Kia’s care of**  
8 **Choloe Green is at issue in Plaintiff’s underlying complaint.**”) (emphasis added). Sunrise  
9 Hospital did not attach an affidavit of merit specifying breaches of the standard of care of either  
10 Dr. Kia or Nevada Hospitalist Group, LLP, and has therefore failed to satisfy NRS 41A.071.

## 11 II. ARGUMENT

### 12 a. Motion for Judgment on the Pleadings Standard of Review

13 Nevada Rule of Civil Procedure 12(c) provides that “[a]fter the pleadings are closed but  
14 early enough not to delay trial, a party may move for judgment on the pleadings.” NRCP  
15 12(h)(2)(B) further provides that the “defense of failure to state a claim upon which relief can be  
16 granted...may be raised...by a motion under Rule 12(c).”

17 The Nevada Supreme Court has held that a motion for judgment on the pleadings should  
18 be granted where material facts “are not in dispute and the movant is entitled to judgment as a  
19 matter of law.” *Bonicamp v. Vazquez*, 120 Nev. 377, 379, 91 P.3d 584, 585 (2004). The motion is  
20 useful where only questions of law remain. *Bernard v. Rockhill Dev. Co.*, 103 Nev. 132, 135,  
21 (1987). NRCP 12(c) may also be utilized where there are “allegations in the plaintiff’s pleadings  
22 that, if proved, would [not] permit recovery.” *Id.* at 136. See also NRCP 12(h)(2)(B) (allowing the  
23 defense of failure to state a claim upon which relief may be granted to be asserted in a motion for  
24 judgment on the pleadings). The latter scenario is the one applicable here.

25 The defense of failure to state a claim may be raised at any time. *Clark County Sch. Dist.*  
26 *v. Richardson Constr., Inc.*, 123 Nev. 382, 396 (2007) (“a defense under NRCP 12(b)(5) need not  
27 be pleaded affirmatively because it may be asserted at any time.”). It is appropriate to grant a  
28 Defendant judgment on the pleadings pursuant to NRCP 12 when a professional negligence

1 Plaintiff has failed to comply with NRS 41A.071. *Peck v. Zipf*, 133 Nev. Adv. Rep. 108 (2017)  
2 (“Based on the foregoing, we affirm the district court’s order granting Doctors Zipf’s and  
3 Barnum’s motion for judgment on the pleadings because Peck failed to include a medical expert  
4 affidavit with his medical malpractice complaint.”).

5 Here, the Plaintiff has failed to comply with NRS 41A.071, and therefore, judgment on the  
6 pleadings in Third-Party Defendant Nevada Hospitalist Group, LLC’s favor should be granted.

7 **b. The Third-Party Plaintiff Has Failed to State A Claim for Professional**  
8 **Negligence by Failing to Comply with NRS 41A.071, and Therefore, Third-**  
9 **Party Defendant Nevada Hospitalist Group, LLP is Entitled to Judgment as a**  
10 **Matter of Law**

11 A Plaintiff that files a professional negligence action must attach a supporting affidavit to  
12 his or her Complaint, which supports the allegations in the Complaint. NRS 41A.071. This  
13 statute requires a Plaintiff to provide an expert opinion that supports the allegations in the  
14 complaint. The expert must practice in an area that is substantially similar to the type of practice  
15 engaged in at the time of the alleged professional negligence.

16 NRS 41A.071 Dismissal of action filed without affidavit of medical expert. If  
17 an action for professional negligence is filed in the district court, the district court  
18 shall dismiss the action, without prejudice, if the action is filed without an  
19 affidavit that:

1. Supports the allegations contained in the action;
2. Is submitted by a medical expert who practices or has practiced in  
an area that is substantially similar to the type of practice engaged in at the  
time of the alleged professional negligence;
3. Identifies by name, or describes by conduct, each provider of  
health care who is alleged to be negligent; and
4. Sets forth factually a specific act or acts of alleged negligence  
separately as to each defendant in simple, concise and direct terms.

21 It is well-established that NRS 41A.071 was enacted to deter frivolous claims and provide  
22 Defendants with notice of the claims against them. *Zohar v. Zbiegien*, 130 Nev. Adv. Rep. 74, \*2  
23 (2014). A Complaint that is filed in violation of NRS 41A.071 is *void ab initio* and must be  
24 dismissed. *Washoe Med. Ctr. v. Second Judicial Dist. Court*, 122 Nev. 1298, 1300 (2006) (“We  
25 conclude that, under NRS 41A.071, a complaint filed without a supporting medical expert  
26 affidavit is void ab initio and must be dismissed.”).

27 In this case, the Third-Party Plaintiff Sunrise Hospital filed a Third-Party Complaint that  
28 fails to satisfy NRS 41A.071 and therefore, judgment on the pleadings in favor of Defendant



1 Nevada Hospitalist Group, LLP is warranted.

2 Third-Party Plaintiff Sunrise Hospital did not attach a NRS 41A.071 affidavit to its Third-  
3 Party Complaint. However, Sunrise Hospital acknowledges that this is a professional negligence  
4 claim and that NRS 41A.071 applies by referencing it in the Third-Party Complaint. Third-Party  
5 Complaint, ¶ 24.

6 24. Attached as Exhibit "A" to this Third-Party Complaint is the Plaintiff, Choloe  
7 Green's underlying complaint for medical malpractice and attached expert affidavit of  
8 Lisa Karamardian, M.D.  
9

10 Third-Party Plaintiff Sunrise Hospital only refers to the affidavit filed by Plaintiff Choloe Green.  
11 Plaintiff Choloe Green's NRS 41A.071 affidavit does not state that Dr. Kia breached the standard  
12 of care or caused injury to her. Rather, it identifies alleged breaches of the standard of care by  
13 Defendants Dr. DeLee and Sunrise Hospital only. Karamardian Affidavit Attached to Complaint,  
14 ¶ 5. The following paragraph discusses the hospital admission during which Dr. Kia provided care  
15 to Ms. Green, but does not identify any alleged breaches of the standard of care by Dr. Kia. *Id.*

16 5. A review of the medical records also reveals that on July 14, 2016, Ms. Green presented  
17 again to Sunrise Hospital, now five (5) days post-partum, with severe abdominal pain  
18 and reports of nausea, vomiting, fever, and chills. She was admitted to the  
19 medical/surgical unit because of the diagnosis of sepsis. She was discharged on July 16,  
20 2016. The discharge was discussed and confirmed by Dr. DeLee. This discharge violated  
21 the standard of care. Ms. Green was discharged despite the fact that she was not able to  
22 tolerate a regular diet. Further, on the day of her discharge, her KUB showed multiple  
23 dilated loops of bowel, thought to be related to a small bowel obstruction, yet she was  
24 sent home. An intraperitoneal abscess was suspected on a CT scan, yet she was still sent  
25 home. This was a violation of the standard of care by Sunrise Hospital and Dr. DeLee.  
26

27 Sunrise Hospital did not provide an affidavit that states that Dr. Kia breached the standard  
28 of care, which is required by NRS 41A.071. While Sunrise Hospital labeled its claims against Dr.

1 Kia and Nevada Hospitalist Group as claims for contribution and indemnity, the gravamen of  
2 those claims is the alleged professional negligence of Dr. Kia. Without any professional  
3 negligence by Dr. Kia, Sunrise Hospital's claims for contribution and indemnity would fail.  
4 Therefore, a NRS 41A.071 requires an affidavit setting forth alleged breaches of the standard of  
5 care on the part of Dr. Kia and Nevada Hospitalist Group, LLP.

6 A claim sounds in malpractice if it is related to medical diagnosis, judgment, or treatment.  
7 *Deboer v. Senior Bridges of Sparks Family Hospital, Inc.*, 282 P.3d 727 (Nev. 2012). ("Savage's  
8 complaint was grounded in ordinary negligence, as it was not related to medical diagnosis,  
9 judgment, or treatment. As such, the district court erred in branding Savage's complaint as a  
10 medical malpractice claim."). Here, Third-Party Plaintiff Sunrise Hospital's claims for  
11 contribution and indemnity against Dr. Kia are based upon allegations that he was professionally  
12 negligent and its claims against Nevada Hospitalist Group, LLP are based upon allegations that it  
13 is vicariously negligence for the alleged professional negligence of Dr. Kia. Therefore, pursuant  
14 to *Deboer* and *Szymborski*, the claims are grounded in professional negligence and NRS 41A.071  
15 applies. *Id.*, *Szymborski v. Spring Mt. Treatment Ctr.*, 133 Nev. Adv. Rep. 80, ("Allegations of  
16 breach of duty involving medical judgment, diagnosis, or treatment indicate that a claim is for  
17 medical malpractice.").

18 The Nevada Supreme Court has adopted this analysis and held that a contribution claim  
19 based upon medical malpractice allegations is subject to the affidavit requirement found in NRS  
20 41A.071. *Pack v. LaTourette*, 128 Nev. 264, 270 (2012).

21 Here, Sun Cab's complaint rested upon the theory that La Tourette's negligence  
22 had contributed to Zinni's injuries. In other words, to establish a right to  
23 contribution, Sun Cab would have been required to establish that LaTourette  
24 committed medical malpractice. Thus, Sun Cab is required to satisfy the statutory  
prerequisites in place for a medical malpractice action before bringing its  
contribution claim.

25 *Id.*

26 There can be no dispute that Third-Party Plaintiff Sunrise Hospital did not attach an  
27 affidavit that discusses alleged breaches of the standard of care by either Dr. Kia or Nevada  
28 Hospitalist Group, LLP and that, therefore, it did not satisfy NRS 41A.71.

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DATED this 19th day of March, 2020.

By /s/ Erin E. Jordan  
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Hospitalist Group, LLP*

**CERTIFICATE OF SERVICE**

I hereby certify that on this 19th day of March, 2020, a true and correct copy of THIRD-PARTY DEFENDANT NEVADA HOSPITALIST GROUP, LLP'S MOTION FOR JUDGMENT ON THE PLEADINGS was served by electronically filing with the Clerk of the Court using the Electronic Service system and serving all parties with an email-address on record, who have agreed to receive Electronic Service in this action.

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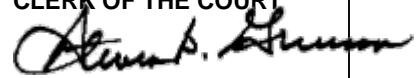
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**OPPM**

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*Sunrise Hospital and Medical Center, LLC*

**DISTRICT COURT  
CLARK COUNTY, NEVADA**

CHOLOE GREEN, an individual,  
  
Plaintiff,

vs.

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

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

vs.

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

Third-Party Defendants.

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

**THIRD-PARTY PLAINTIFF SUNRISE  
HOSPITAL'S OPPOSITION TO THIRD-  
PARTY DEFENDANT NEVADA  
HOSPITALIST GROUP, LLP'S  
MOTION FOR JUDGMENT ON THE  
PLEADINGS**

**Hearing Date: April 21, 2020  
Hearing Time: 8:30 a.m.**

**THIRD-PARTY PLAINTIFF SUNRISE HOSPITAL’S OPPOSITION TO THIRD-  
PARTY DEFENDANT NEVADA HOSPITALIST GROUP, LLP’S MOTION FOR  
JUDGMENT ON THE PLEADINGS**

COMES NOW, Defendant/Third-Party Plaintiff, SUNRISE HOSPITAL AND MEDICAL CENTER, LLC (“Sunrise Hospital” or “Defendant”) by and through its counsel of record, HALL PRANGLE & SCHOONVELD, LLC and hereby files its Opposition to Third-Party Defendant Nevada Hospitalist Group, LLP’s Motion for Judgment on the Pleadings.

## POINTS AND AUTHORITIES

Although Third-Party Plaintiff Sunrise Hospital filed an action for indemnity and contribution against both Dr. Ali Kia and Nevada Hospitalist Group, LLP, only the Group is seeking dismissal by Motion for Judgment on the Pleadings.

## STATEMENT OF FACTS

Ms. Green's treating OB/GYN, Frank J. DeLee, M.D., is a named defendant in Ms. Green's Complaint. Dr. DeLee issued the first discharge order for July 10, 2016. However, and for reasons unknown, Plaintiff did not name Ali Kia, M.D. as a defendant in her complaint even though Dr. Kia ordered her second discharge from Sunrise Hospital on July 14, 2016. In addition, and also for unknown reasons, Plaintiff failed to name Nevada Hospitalist Group, LLP

as a defendant in her Complaint. Nevada Hospitalist Group is alleged to be the employer of Dr. Kia and the group's call schedule assigned Dr. Kia to treat Choloe Green.

Dr. Kia has testified in this case, in Interrogatory and/or Deposition, that Nevada Hospitalist Group, LLP was his employer on July 14, 2016, and that he came to treat the Plaintiff, Choloe Green, because he was on the Nevada Hospitalist Group, LLP call schedule. Nevada Hospitalist Group denies that it was Dr. Kia's employer, creating a genuine issue of fact.

On January 15, 2019, Sunrise Hospital filed a Motion for Partial Summary Judgment to Dismiss any Claim of "Ostensible Agency" for Dr. DeLee or Dr. Kia. No party has challenged Sunrise Hospital's assertion that neither Dr. DeLee or Dr. Kia were "employees" of Sunrise Hospital. They were not. As such, the only liability the hospital could have for the care rendered by Dr. DeLee or Dr. Kia would be via "ostensible agency."

District Court Judge Doug Smith heard Sunrise Hospital's Motion for Partial Summary Judgment. Judge Smith ruled that both Dr. DeLee and Dr. Kia were not employees of Sunrise Hospital. Further, Judge Smith dismissed any claim of "ostensible agency" by the hospital for Dr. DeLee (first hospital discharge). However, Judge Smith decided that there was a factual question as to whether Dr. Kia was an "ostensible agent" of the hospital (second hospital discharge) and denied the Motion to that extent.

Accordingly, and since Sunrise Hospital could conceivably have liability exposure for Dr. Kia's care via the Doctrine of Ostensible Agency, Sunrise Hospital decided to file a Third-Party Complaint against Dr. Kia and his employer, Nevada Hospitalist Group, LLP (via the group's call schedule) for indemnity and contribution. That Motion for Leave to File Third-Party Complaint against both Dr. Kia and Nevada Hospitalist Group, LLP was granted on June 14, 2019 (*See Exhibit A* – Motion for Leave to File Third Party Complaint and *Exhibit B* – Order Granting Motion for Leave to File Third Party Complaint).

On June 14, 2019, with leave of court having been granted, Sunrise Hospital filed a Third-Party Complaint for Contribution and Indemnity against both Ali Kia, M.D. and Nevada Hospitalist Group, LLP. In the Third-Party Complaint, Ali Kia, M.D. is described as an agent and/or employee of Third-Party Defendant Nevada Hospitalist Group, LLP.

1 In Paragraph 22 of the Third-Party Complaint, it is noted that Sunrise Hospital’s Motion  
2 to Dismiss any claim that Dr. Kia was an ostensible agent of the hospital was denied. In  
3 Paragraph 16 of the Third-Party Complaint, it is alleged that Ali Kia, M.D. was “on call” for  
4 Nevada Hospitalist Group, LLP which resulted in Dr. Kia becoming a treating physician of  
5 Plaintiff, Choloe Green.

6 In Paragraph 23 of the Third-Party Complaint, Sunrise Hospital notes that although Ali  
7 Kia, M.D. was unnamed as a party in Choloe Green’s underlying complaint, his care was  
8 criticized in the underlying Complaint. (Please see paragraphs 23 and 24 of Third-Party  
9 Complaint). Further, Sunrise Hospital attached, as *Exhibit A* to its Third-Party Complaint, (to  
10 comply with NRS 41A.071) the underlying Complaint filed by Choloe Green. The underlying  
11 Complaint (which is attachment “A” to Sunrise’s Third-Party Complaint) sets forth the criticism  
12 Dr. Kia’s care although that care was erroneously attributed to Sunrise Hospital and Dr. DeLee:

13  
14 “... A review of the medical records also reveals that on July 14, 2016, Ms. Green  
15 presented again to Sunrise Hospital, now five (5) days post-partum, with severe  
16 abdominal pain and reports of nausea, vomiting, fever, and chills. She was  
17 admitted to the medical/surgical unit because of the diagnosis of sepsis. She was  
18 discharged on July 16, 2016. The discharge was discussed and confirmed by Dr.  
19 DeLee. This discharge violated the standard of care. Ms. Green was discharged  
20 despite the fact that she was not able to tolerate a regular diet. Further, on the day  
21 of her discharge, her KUB showed multiple dilated loops of bowel, though to be  
22 related to bowel obstruction, yet she was sent home. An intraperitoneal abscess  
23 was suspected on a CT scan, yet she was still sent home. This was a violation of  
24 the standard of care by Sunrise Hospital and Dr. DeLee.”

25 To be clear, Plaintiff’s underlying complaint repeatedly criticizes the care rendered by  
26 Dr. Kia in discharging Choloe Green from Sunrise Hospital on July 14, 2016. It is acknowledged  
27 that the underlying complaint mistakenly attributes that discharge to a conversation between Dr.  
28 DeLee and Sunrise Hospital. Dr. Kia has stated, under oath, twice, by Interrogatory Answer and  
Deposition, that he discharged Choloe Green from Sunrise Hospital on July 14, 2016. Dr. Kia’s  
actual discharge order, for July 14, 2016, is attached as an exhibit to Sunrise Hospital’s Motion  
for Leave to File Third-Party Complaint, which was granted by the Court.



Sunrise Hospital is in an interesting legal position here. On the one hand, the hospital denies that Ali Kia, M.D. was a hospital employee or ostensible agent. However, the Court has found that whether Dr. Kia was or was not an ostensible agent of the hospital presents a factual issue. As such, Sunrise Hospital could potentially have liability exposure for Dr. Kia's discharge order of July 14, 2016 via the Doctrine of Ostensible Agency. On the other hand, if the hospital does have liability exposure for Dr. Kia's discharge order of July 14, 2016, the hospital, then, would not be in a position to provide an expert affidavit challenging Dr. Kia's care of Choloe Green (since he is a potential hospital ostensible agent).

Sunrise Hospital satisfies this conundrum by having attached Plaintiff's underlying complaint (with expert criticism of Dr. Kia's care) as Exhibit "A" to its Third-Party Complaint. This would satisfy any requirement about an expert affidavit as to the care provided by Dr. Kia. With regard to Nevada Hospitalist Group, LLP, Sunrise Hospital, in its Third-Party Complaint, does not contend that Nevada Hospitalist Group, LLP was negligent. There is no contention by Sunrise Hospital that Nevada Hospitalist Group, LLP violated the standard of care. Instead, there is a claim that Nevada Hospitalist Group, LLP was the employer of Dr. Kia on July 14, 2016, and is therefore liable for any negligence on his part. AS the argument below will demonstrate, there is no requirement to provide an expert affidavit, per NRS 41A.071, against a professional group or corporation whose liability arises out solely of vicarious liability or agency.<sup>1</sup>

## II.

### ARGUMENT

#### **A. Plaintiffs' Underlying Complaint Contains an Expert Affidavit, Which Criticizes the Care of Dr. Kia.**

In Plaintiff Choloe Green's Underling Complaint, she attached an Expert Affidavit of Lisa Karamardian, MD. In Paragraph 5 of her expert affidavit, Dr. Karamardian criticized the

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<sup>1</sup> Sunrise Hospital's Third-Party Complaint against Nevada Hospitalist Group, LLP is solely for indemnity and contribution. The claim arises out of an employment relationship. There is no claim of direct negligence against the group, separate and apart from the care provided by Dr. Kia.

1 hospital discharge of Choloe Green on July 14, 2016, as premature. Unfortunately, Dr.  
2 Karamardian attributed that decision to discharge to Sunrise Hospital and Dr. DeLee. In this  
3 case, Dr. Kia has acknowledged, twice, that he was the discharging physician of Choloe Green  
4 on July 14, 2016. Although unnamed, Dr. Kia's care was criticized and is at the heart of  
5 Plaintiffs' Complaint.

6 Plaintiff, Choloe Green's expert criticized the July 14, 2016, discharge (which we now  
7 know was issued by Dr. Kia). To make such claim, Plaintiff had to satisfy the requirements of  
8 NRS 41A.071. If such requirement was not satisfied in Plaintiff's underlying complaint, then  
9 respectfully, Sunrise Hospital should have no liability exposure via ostensible agency for Dr.  
10 Kia's care. Since the Court denied Sunrise's Hospital's Motion for Summary Judgment, based  
11 upon a claim of ostensible agency, then attachment of the underlying Complaint to Sunrise  
12 Hospital's Third-Party Complaint for contribution and indemnity necessarily satisfies the expert  
13 affidavit requirement.<sup>2</sup>

14 **B. If the Underlying Complaint Does Not Establish a Claim Against Dr. Kia, Then**  
15 **There is No Basis for An Ostensible Agency Claim for Sunrise Hospital Due to**  
16 **His Care.**

17 Sunrise Hospital's Third-Party Complaint seeks contribution and/or indemnity from Dr.  
18 Kia arising from the care he rendered, which is criticized by Plaintiff in her underlying  
19 Complaint. That underlying Complaint and criticism was attached to Sunrise Hospital's Third-  
20 Party Complaint to satisfy the requirements of NRS 41A.071.

21 Sunrise does not challenge the authority provided by Nevada Hospitalist Group stating  
22 that a Third-Party Complaint for contribution and/or indemnity, which is based on medical  
23 malpractice, must comply with the requirements of NRS 41A.071. That is, it is agreed that if no  
24 claim for professional negligence is made against Dr. Kia, then he cannot be liable for indemnity  
25 and/or contribution for the care he rendered to Choloe Green. *See Pack v. LaTourette*, 277 P.3d  
26 1246, 1249 128 Nev. Adv. Op. 25 (2012). Such, however, is not the case with regard to Sunrise

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27 <sup>2</sup> If no claim against Dr. Kia can be found, in name or deed, then there can be no ostensible agency for him, in name  
28 or in deed.

Hospital's Third-Party claim for indemnity and contribution from Nevada Hospitalist Group.  
(See the argument immediately below).

**C. NRS 41A.071 Only Applies Against Defendants Against Whom Specific Acts of Negligence are Asserted. No Acts of Negligence are Asserted Against Nevada Hospitalist Group.**

NRS 41A.071 (2017) provides that if an action for professional negligence, is filed without an affidavit setting forth specific acts of alleged negligence, such action shall be dismissed. In applying that statute to Dr. Kia, against whom allegations of negligence are asserted, NRS 41A.071 must be satisfied. However, with regard to Nevada Hospitalist Group, LLP, Sunrise Hospital is not asserting any specific act of alleged negligence against that group. Instead, the hospital is merely asserting a Third-Party claim for Indemnity and Contribution based upon the facts that the group was the employer of Dr. Kia and that the Group's call schedule steered Dr. Kia into treating Choloe Green.

Sunrise Hospital does not contend that Nevada Hospitalist Group committed any independent act of negligence. Further, Sunrise Hospital does not contend that Nevada Hospitalist Group negligently hired Dr. Kia. Sunrise Hospital does not contend that Nevada Hospitalist Group was negligent in having Dr. Kia on its call schedule for patient referral. Sunrise Hospital is contending that because of such activities Nevada Hospitalist Group is vicariously liable for Dr. Kia either through his employment relationship or ostensible agency.

In *Fierle v. Perez*, 125 Nev. 728, 736 (Nev. 2009), the Nevada Supreme Court concluded that NRS 41A.071 required the attachment of an expert affidavit for "professional negligence claims against providers of healthcare and that such requirement applied to professional corporations. However, in *Fierle*, the Court is very clear that the professional corporation in that case was subject to claims of direct negligence. That is, the Plaintiff in *Fierle* was asserting that the Professional Corporation of Dr. Perez was also actively negligent. While Nevada Hospitalist Group, LLP may be a professional group or corporation there is no allegation of direct negligence against it asserted by Sunrise Hospital's Third-Party Complaint.

As the Nevada Supreme Court stated in *Szydel v. Markman*, 121 Nev. 453, 460 (Nev. 2005) it would be unreasonable to suspect a Plaintiff to provide expert testimony against a Defendant against whom expert testimony is not needed in order for a Plaintiff to prevail.<sup>3</sup> Third Party Defendant, Nevada Hospitalist Group, LLP's reliance upon the case of *Pack v. LaTourette*, 128 Nev. 264 (Nev. 2012), is misplaced. In *Pack*, the case involved an automobile accident. The Defendant Sun-Cab sued Dr. LaTourette for negligence claiming that he was the cause of Plaintiff's injuries. In *Pack*, Sun-Cab's Complaint for indemnity and contribution required a finding of medical malpractice against Dr. LaTourette. Here, no finding of medical malpractice need be established to prove that Nevada Hospitalist Group, LLP is vicariously liable for Dr. Kia.

A claim for indemnity and contribution against Dr. Kia required satisfaction of the requirements of NRS 41A.071 to support a claim or indemnity and contribution. That is why Sunrise Hospital attached Plaintiffs' underlying Complaint and expert affidavit to its Third-Party Complaint. No such attachment is needed to prove that Nevada Hospitalist Group, LLP had an employee/employer relationship with Dr. Kia that subjects the group to vicarious liability (and Sunrise Hospital's indemnity and contribution claims).<sup>4</sup>

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<sup>3</sup> While *Szydel* was a "res ipsa loquitor" case, the principle is the same. If no expert affidavit is required then a case cannot be dismissed for a lack of one. Sunrise Hospital does not need expert testimony to prove an agency relationship between Nevada Hospitalist Group, LLP and Dr. Kia. Nothing more is asserted.

<sup>4</sup> It is a straw argument to contend that Sunrise has to comply with NRS 41A.071 to bring an indemnity claim against a professional group against which no negligence is asserted. There can be no expert affidavit formulated when no specific acts of negligence are asserted.

**III.**

**CONCLUSION**

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

DATED this 25th day of March 2020.

HALL PRANGLE & SCHOONVELD, LLC

By: /s/ Sherman B. Mayor

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Nevada Bar No.: 8619

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**CERTIFICATE OF SERVICE**

I HEREBY CERTIFY that I am an employee of HALL PRANGLE & SCHOONVELD, LLC; that on the 25th day of March 2020, I served a true and correct copy of the foregoing **THIRD-PARTY PLAINTIFF SUNRISE HOSPITAL'S OPPOSITION TO THIRD-PARTY DEFENDANT NEVADA HOSPITALIST GROUP, LLP'S MOTION FOR JUDGMENT ON THE PLEADINGS** to the following parties via:

XX the E-Service Master List for the above referenced matter in the Eighth Judicial District Court e-filing System in accordance with the electronic service requirements of Administrative Order 14-2 and the Nevada Electronic Filing and Conversion Rules;

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

\_\_\_\_\_ Receipt of Copy at their last known address:

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/s/ Kelli Wightman  
An employee of HALL PRANGLE & SCHOONVELD, LLC

**EXHIBIT A**

**EXHIBIT A**

*Steven D. Grierson*

MLEV

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*Sunrise Hospital and Medical Center, LLC*

**DISTRICT COURT  
CLARK COUNTY, NEVADA**

CHLOE GREEN, an individual,

Plaintiff,

vs.

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

Defendants.

CASE NO.: A-17-757722-C

DEPT NO.: 1X

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

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

...

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app. 5/10  
certified

R2C → 5-20-19. (R) 5-17-19



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

DATED this 24<sup>th</sup> day of April, 2019.

HALL PRANGLE & SCHOONVELD, LLC

By: \_\_\_\_\_

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*Attorneys for Defendant*

*Sunrise Hospital and Medical Center, LLC*

**ORDER SHORTENING TIME**

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

May, 2019, at the hour of 3:00 <sup>CDL</sup> ~~am~~ p.m. in Department 9.

DATED April 24, 2019.

\_\_\_\_\_  
DISTRICT COURT JUDGE

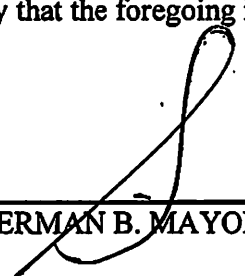
1                   **DECLARATION OF SHERMAN B. MAYOR, ESQ., IN SUPPORT OF ORDER**  
2                   **SHORTENING TIME FOR SUNRISE HOSPITAL'S MOTION**  
3                   **FOR LEAVE TO FILE THRID PARTY COMPLAINT**

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

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

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

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

20  
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22  
23  
24  
25  
26  
27  
28  
  
4/24/19  
SHERMAN B. MAYOR, ESQ.

## PREFATORY NOTE

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

## POINTS AND AUTHORITIES

### I. FACTS

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

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

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

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

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

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

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

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

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

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

## 16 II. 17 ARGUMENT

18 NRCP 14 provides in relevant part:

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

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

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1160 NORTH TOWN CENTER DRIVE  
SUITE 200  
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1 Nev. 137, 390 P.2d 45 (1964). The clear import of the Nevada Rules of Civil Procedure is to  
2 enable litigants to try fully their issues before the court. . ." *Morris v. Morris* 83 Nev. 412, 414,  
3 432 P.2d. 1022 (1967).

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

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

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

19 DATED this 24<sup>th</sup> day of April, 2019.

20  
21 HALL PRANGLE & SCHOONVELD, LLC

22 By: \_\_\_\_\_

23 MICHAEL E. PRANGLE, ESQ.

24 Nevada Bar No.: 8619

25 TYSON J. DOBBS, ESQ.

26 Nevada Bar No.: 11953

27 SHERMAN B. MAYOR, ESQ.

28 Nevada Bar No. 1491

1160 N. Town Center Dr., Ste. 200

Las Vegas, NV 89144

Attorneys for Defendant

Sunrise Hospital and Medical Center, LLC

***EXHIBIT A***

***EXHIBIT A***



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

MEDITECH FACILITY: COCSZ  
IDEV - Discharge Report

PAGE 51

PATIENT: GREEN, CHLOE S  
ACCOUNT NO: D00113938887  
ATTEND DR: Kia, All MD  
REPORT STATUS: FINAL

A/S: 30 F  
LOC: D.54  
RM: D.4508  
BD: 0

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

Press <Enter> for Order Details below

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

Order's Audit Trail of Events

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

Electronic

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

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

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

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

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

Other Specific Reason:

Antithrombotic at Discharge?  
Antithrombotic Contraindications:

Other Specific Reason:  
Antiplatelet Therapy at Discharge?

PERMANENT MEDICAL RECORD COPY

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

MEDITECH FACILITY: CICSZ  
IDEV - Discharge Report

PAGE 52

PATIENT: GREEN, CHLOE S  
ACCOUNT NO: 00011393887

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

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

ATTEND DR: K1a.A11 MD  
REPORT STATUS: FINAL

Antiplatelet Contraindications:

Other Specific Reason:

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

Anticoagulation Contraindications:

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

Height Monitoring:  
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

**PAGE 53**

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

# ***EXHIBIT B***

# ***EXHIBIT B***

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

Good Afternoon,

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

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

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

Thank you,

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

# ***EXHIBIT C***

# ***EXHIBIT C***

HALL PRANGLE & SCHOONVELD, LLC  
1160 NORTH TOWN CENTER DRIVE  
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TPC  
MICHAEL E. PRANGLE, ESQ.  
Nevada Bar No.: 8619  
TYSON J. DOBBS, ESQ.  
Nevada Bar No.: 11953  
SHERMAN B. MAYOR, ESQ.  
Nevada Bar No. 1491  
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[efile@hpslaw.com](mailto:efile@hpslaw.com)  
*Attorneys for Defendant*  
*Sunrise Hospital and Medical Center, LLC*

DISTRICT COURT  
CLARK COUNTY, NEVADA

CHLOE GREEN, an individual,  
  
Plaintiff,

vs.

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

Defendants.

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

Third-Party Plaintiff,

vs.

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

Third-Party Defendants.

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

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

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

### GENERAL ALLEGATIONS

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



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

#### 4 STATEMENTS OF FACTS

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

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

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

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

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

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

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

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

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

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

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

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

9 DATED this 24<sup>th</sup> day of April, 2019.

10 HALL PRANGLE & SCHOONVELD, LLC

11  
12 By: \_\_\_\_\_

13 MICHAEL E. PRANGLE, ESQ.

14 Nevada Bar No.: 8619

15 TYSON J. DOBBS, ESQ.

16 Nevada Bar No.: 11953

17 SHERMAN B. MAYOR, ESQ.

18 Nevada Bar No. 1491

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

20 Las Vegas, NV 89144

21 *Attorneys for Defendant*

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

*Steven G. Griesen*

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

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

9 **CHLOE GREEN, an individual,**

Case No.  
Dept. No.

**A-17-757722-C** y

11 **Plaintiff,**

Department 8

12 **v.**

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

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

18 **Defendants.**

19 **COMPLAINT FOR MEDICAL MALPRACTICE**

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

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

28 **////**

**////**

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

11. That as a direct and proximate result of all of the Defendants' negligence, Cholee 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. Cholee has been forced to retain counsel to bring this action and should be awarded his reasonable attorneys fees and costs.

WHEREFORE, Cholee 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

**VERIFICATION**

STATE OF NEVADA  
COUNTY OF CLARK

ss:

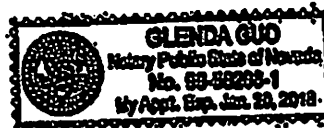
CHLOE GREEN, being first duly sworn, deposes and says:

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

*Chloe Green*  
CHLOE GREEN

SUBSCRIBED AND SWORN to before me  
this 22<sup>nd</sup> day of June, 2017.

*Glenda Guo*  
NOTARY PUBLIC in and for said  
COUNTY and STATE





---

**EXHIBIT 1**

---

**AFFIDAVIT OF DR. LISA KARAMARDIAN**

STATE OF California  
COUNTY OF Orin

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

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

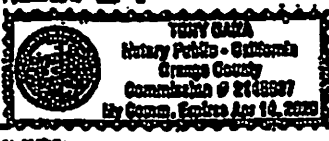
- 1 6. The day after she was released from Sunrise Hospital, Ms. Green presented at Centennial  
2 Hills Hospital, on July 17, 2016. At the time of presentation she was now 7 days  
3 postpartum, had not had a bowel movement, and was unable to even tolerate liquids. She  
4 was still in severe pain.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

22 FURTHER YOUR AFFIANT SAYETH NAUGHT.

23   
24 LISA KARAMARDIAN, MD.

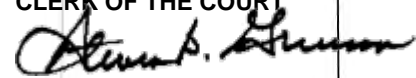
25 SUBSCRIBED and SWORN to before me  
26 this 28 day of June, 2017,

27   
28 NOTARY PUBLIC in and for said  
COUNTY and STATE



**EXHIBIT B**

**EXHIBIT B**



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TYSON J. DOBBS, ESQ.  
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*Sunrise Hospital and Medical Center, LLC*

DISTRICT COURT  
CLARK COUNTY, NEVADA

CHLOE GREEN, an individual,  
  
Plaintiff,

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

vs.

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

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

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

vs.

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

Third-Party Defendants.

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

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

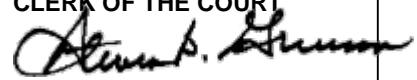
7 DATED this 11<sup>th</sup> day of June, 2019.

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DISTRICT COURT JUDGE

Respectfully Submitted:

HALL PRANGLE & SCHOONVELD LLC

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*Valley Health System, LLC*  
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*Attorneys for Third-Party Defendant Nevada*  
7 *Hospitalist Group, LLP*

8  
9 DISTRICT COURT

10 CLARK COUNTY, NEVADA

11 CHOLOE GREEN, an individual,  
12 Plaintiff,

13 vs.

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

16 Defendants.

17  
18 SUNRISE HOSPITAL AND MEDICAL  
CENTER, LLC, a Foreign Limited-Liability  
Company,

19 Third-Party Plaintiff,

20 vs.

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

24 Third-Party Defendants.

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

**THIRD-PARTY DEFENDANT NEVADA  
HOSPITALIST GROUP, LLP'S REPLY  
IN SUPPORT OF MOTION FOR  
JUDGMENT ON THE PLEADINGS**

25  
26 Third-Party Defendant NEVADA HOSPITALIST GROUP, LLP, by and through its  
27 attorneys of record, S. Brent Vogel, Esq. and Erin E. Jordan, Esq. of LEWIS BRISBOIS  
28 BISGAARD & SMITH LLP, hereby files this Reply in Support of Motion for Judgment on the

1 Pleadings.

2 This Reply is based upon the following Memorandum of Points and Authorities, the papers  
3 and pleadings on file in this matter, and any oral argument offered at the hearing of this matter.

4 DATED this 6th day of April, 2020.

5 LEWIS BRISBOIS BISGAARD & SMITH LLP

6  
7 By /s/ Erin E. Jordan

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15 *Attorneys for Third-Party Defendant Nevada  
Hospitalist Group, LLP*

16 **MEMORANDUM OF POINTS AND AUTHORITIES**

17 **I. ARGUMENT**

18 Third-Party Defendant Nevada Hospitalist Group, LLP filed a Motion for Judgment on the  
19 Pleadings asking this Court to dismiss Third-Party Plaintiff Sunrise Hospital's claims against it  
20 because the claims Sunrise Hospital brought did not comply with NRS 41A.071. There is no  
21 dispute that Third-Party Plaintiff Sunrise Hospital seeks to hold Nevada Hospitalist Group, LLC  
22 vicariously liable for the actions of Third-Party Defendant hospitalist Dr. Kia. The basis of  
23 Sunrise Hospital's third-party claims is alleged negligence on the behalf of Dr. Kia as a basis for  
24 indemnity and contribution claim against Dr. Kia and vicarious liability for Nevada Hospitalist  
25 Group for the actions of Dr. Kia. All parties agree that the basis of all third-party claims in this  
26 matter is the alleged professional negligence of Dr. Kia. Defendant NHG filed the instant Motion  
27 for Judgment on the Pleadings based upon Sunrise Hospital's failure to attach an affidavit to the  
28 Third-Party Complaint as required by NRS 41A.071.



1 Sunrise Hospital filed an Opposition to NHG's Motion for Judgment on the Pleadings in  
2 which it made the following arguments: 1) the affidavit that Plaintiff originally filed contains  
3 criticism of Dr. Kia by implication, although he is never named in the affidavit; 2) Sunrise  
4 Hospital cannot produce an affidavit critical of Dr. Kia because Sunrise Hospital is concerned that  
5 it may become liable for Dr. Kia's actions through the doctrine of ostensible agency; and 3)  
6 Sunrise Hospital does not need to provide a NRS 41A.071 affidavit against NHG because the  
7 claims against NHG are vicarious in nature only.

8 Sunrise Hospital has failed to give this Court any reason to deny NHG's Motion for  
9 Judgment on the Pleadings for the reasons set forth below.

10 **a. A NRS 41A.071 Affidavit Regarding Acts of Negligence by Dr. Kia Is**  
11 **Required**

12 Sunrise Hospital argues in its Opposition that NHG's Motion for Judgment on the  
13 Pleadings that the Motion should be denied because it is not required to provide an NRS 41A.071  
14 affidavit against NHG because Sunrise Hospital has not alleged any acts of negligence against  
15 NHG. Opposition, pp. 7-8 ("However, with regard to Nevada Hospitalist Group, LLP, Sunrise  
16 Hospital is not asserting any specific act of alleged negligence against that group."). Sunrise  
17 Hospital has misconstrued NHG's position. NHG has never argued that Sunrise Hospital needed  
18 to attach a NRS 41A.071 affidavit regarding NHG. Rather, NHG very clearly explained in its  
19 Motion for Judgment on the Pleadings that the third-party claims all fail because Sunrise Hospital  
20 did not satisfy NRS 41A.071 for the allegations of professional negligence against Dr. Kia, the  
21 alleged professional negligence of which forms the basis of the alleged vicarious liability of  
22 NHG.<sup>1</sup> Motion, pp. 5-6.

23 Third-Party Plaintiff Sunrise Hospital admits that contribution and indemnity claims like  
24 those that it brought in this action must satisfy NRS 41A.071 if the basis of those claims is alleged

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25  
26 <sup>1</sup> Sunrise Hospital repeatedly refers to NHG as Dr. Kia's employer, however, it is surely aware of  
27 Dr. Kia's Answers to Requests for Admission in which he clearly states that he was not an  
28 employee of NHG. However, a factual determination need not be made regarding this issue for a  
decision on the Motion for Judgment on the Pleadings that is before this Court.

1 professional negligence. Opposition, p. 6.

2 Sunrise does not challenge the authority provided by Nevada Hospitalist Group  
3 stating that a Third-Party Complaint for contribution and/or indemnity, which is  
4 based upon medical malpractice, must comply with the requirements of NRS  
5 41A.071. That is, it is agreed that if no claim for professional negligence is made  
against Dr. Kia, then he cannot be liable for indemnity and/or contribution for the  
care he rendered to Choloe Green.

6 *Id.*

7 There is, therefore, no dispute that Third-Party Plaintiff Sunrise Hospital was required to  
8 provide a NRS 41A.071 affidavit that supported its indemnity and contribution claims against Dr.  
9 Kia. As any vicarious liability claim against NHG is dependent upon the claim against Dr. Kia,  
10 the claims against NHG fail if Sunrise Hospital failed to satisfy NRS 41A.071 regarding Dr. Kia.

11 **b. Third-Party Plaintiff Sunrise Hospital did Not Satisfy NRS 41A.071**  
12 **Regarding its Allegations of Professional Negligence Against Dr. Kia**

13 Third-Party Plaintiff Sunrise Hospital contends that it satisfied the requirement that it  
14 admits that it has, to provide a NRS 41A.071 affidavit of merit supporting allegations of  
15 professional negligence against Dr. Kia. Sunrise Hospital argues that it satisfied this requirement  
16 by simply attaching Plaintiff Choloe Green's NRS 41A.071 affidavit to the Third-Party  
17 Complaint. This affidavit is insufficient. It does not mention Dr. Kia one single time. It cannot  
18 be concluded that the affidavit is referencing Dr. Kia because Dr. Kia is not a Defendant in the  
19 underlying action. Sunrise Hospital asks this Court to make a factual finding that even though the  
20 affidavit does not discuss Dr. Kia at all, the affidavit is really talking about Dr. Kia. Opposition,  
21 p. 6. The argument is silly. Additionally, a Motion for Judgment on the Pleadings does not  
22 require factual findings, but rather, is made based upon the pleadings as they are pled. Asking this  
23 Court to deny the Motion based upon anything other than what is in the pleadings is asking this  
24 Court to disregard the law of motions for judgment on the pleadings.

25 A motion for judgment on the pleadings should be granted when a decision can be made as  
26 a matter of law. *Bernard v. Rockhill Dev. Co.*, 103 Nev. 132, 135, (1987). *Id.* at 136. It must be  
27 determined whether as a matter of law, Third-Party Plaintiff Sunrise Hospital has stated a claim  
28 for relief. There can be no dispute that Third-Party Plaintiff Sunrise Hospital did not attach an

1 affidavit that discusses alleged breaches of the standard of care by either Dr. Kia or Nevada  
2 Hospitalist Group, LLP and that, therefore, it did not satisfy NRS 41A.71.

3 **c. Ostensible Agency Does Not Excuse Sunrise Hospital From the Requirements**  
4 **of NRS 41A.071**

5 Third-Party Plaintiff Sunrise Hospital also argues that it is in a unique position that  
6 prevents it from being able to file an affidavit alleging professional negligence of Dr. Kia.  
7 Opposition, p. 5 (“On the other hand, if the hospital does have liability exposure for Dr. Kia’s  
8 discharge order of July 14, 2016, the hospital, then, would not be in a position to provide an expert  
9 affidavit challenging Dr. Kia’s care of Choloe Green (since he is a potential hospital ostensible  
10 agent)”. The fact that Sunrise Hospital’s own litigation strategy has forced it into the position  
11 where it must comply with NRS 41A.071 for claims it chose to bring against Dr. Kia and an entity  
12 that has proven not to be his employer is not a burden that NHG must bear.

13 Sunrise Hospital made the strategic decision to file a Motion for Summary Judgment  
14 regarding ostensible agency of then non-party Dr. Kia. Sunrise Hospital then, presumably upset  
15 with this Court’s ruling on that Motion, filed a Third-Party Complaint against Dr. Kia and also  
16 NHG. Sunrise Hospital was well within the bounds of proper litigation tactics pursuant to the  
17 Nevada Rules of Civil Procedure when it filed the Third-Party Complaint. However, Sunrise  
18 Hospital, as a provider of healthcare, is intimately familiar with NRS 41A.071 and is aware that  
19 there is no ostensible agency exception to the affidavit requirement. The claims against Dr. Kia  
20 and NHG are subject to NRS 41A.071 like any other professional negligence claims.

21 **II. CONCLUSION**

22 Judgment on the Pleadings in favor of Third-Party Defendant Nevada Hospitalist Group,  
23 LLP is appropriate in this case because Third-Party Plaintiff Sunrise Hospital has failed to state a  
24 claim for which relief may be granted by failing to comply with NRS 41A.071. Therefore,  
25 Nevada Hospitalist Group, LLP respectfully requests that this Court enter judgment in its favor  
26 based upon the pleadings in this case. The claims against NHG are vicarious only, and therefore

27 ///

28 ///

1 may only succeed if the claims against Dr. Kia succeed. The claims against Dr. Kia fail as a  
2 matter of law because Sunrise Hospital has failed to comply with NRS 41A.071.

3 DATED this 6th day of April, 2020.

4 LEWIS BRISBOIS BISGAARD & SMITH LLP

5

6

7

By /s/ Erin E. Jordan

8

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**CERTIFICATE OF SERVICE**

I hereby certify that on this 6th day of April, 2020, a true and correct copy of THIRD-PARTY DEFENDANT NEVADA HOSPITALIST GROUP, LLP'S REPLY IN SUPPORT OF MOTION FOR JUDGMENT ON THE PLEADINGS was served by electronically filing with the Clerk of the Court using the Electronic Service system and serving all parties with an email-address on record, who have agreed to receive Electronic Service in this action.

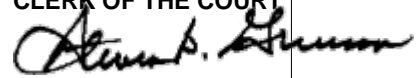
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M.D.*

By /s/ Johana Whitbeck  
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LEWIS BRISBOIS BISGAARD & SMITH LLP



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13 *Attorneys for Third-Party Defendant*

14 ALI KIA, M.D.

15 **DISTRICT COURT**

16 **CLARK COUNTY, NEVEDA**

17 CHLOE GREEN, an individual,

18 Plaintiffs,

19 vs.

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

25 Defendants.

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

Third-Party Plaintiff,

vs.

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

Third-Party Defendants.

CASE NO.: A-17-757722-C

DEPT. NO.: VIII

**THIRD PARTY DEFENDANT ALI KIA,  
M.D.'S JOINDER IN THIRD-PARTY  
DEFENDANT NEVADA HOSPITALIST  
GROUP, LLP'S MOTION FOR  
JUDGMENT ON THE PLEADINGS  
AND REPLY IN SUPPORT OF  
MOTION FOR JUDGMENT ON THE  
PLEADINGS**

**DATE: APRIL 21, 2020**

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

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

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

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

DATED: April 13, 2020

**COLLINSON, DAEHNKE, INLOW & GRECO**

BY: /s/ Linda K. Rurangirwa

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Nevada Bar No. 4976

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

1 **CERTIFICATE OF SERVICE**

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

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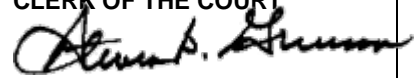
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*Nevada Hospitalist Group, LLP*  
5

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

DISTRICT COURT

CLARK COUNTY, NEVADA

\* \* \* \* \*

CHOLOE GREEN,

Plaintiff,

vs.

FRANK J. DELEE, M.D., FRANK J.)  
DELEE, M.D., PC, SUNRISE )  
HOSPITAL AND MEDICAL CENTER, )  
LLC, )

Defendants.)

CASE NO. A-17-757722-C

DEPT. NO. IX

**Transcript of Proceedings**

BEFORE THE HONORABLE CRISTINA D. SILVA, DISTRICT COURT JUDGE

**THIRD PARTY DEFENDANT NEVADA HOSPITALIST GROUP, LLP'S  
MOTION FOR JUDGMENT ON THE PLEADINGS; THIRD PARTY DEFENDANT  
KIA'S JOINDER TO MOTION FOR JUDGMENT ON THE PLEADINGS AND  
REPLY IN SUPPORT OF MOTION FOR JUDGMENT ON THE PLEADINGS**

WEDNESDAY, APRIL 29, 2020

APPEARANCES [ALL VIA VIDEO AND TELEPHONE CONFERENCE]:

For the Plaintiff:	NICOLE M. YOUNG, ESQ.
For Sunrise Hospital:	SHERMAN BENNETT MAYOR, ESQ.
For Dr. DeLee:	ERIC K. STRYKER, ESQ.
For Dr. Kia:	LINDA RURANGIRWA, ESQ.
For NHG:	ERIN E. JORDAN, ESQ.

RECORDED BY:	GINA VILLANI, DISTRICT COURT
TRANSCRIBED BY:	KRISTEN LUNKWITZ

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1 WEDNESDAY, APRIL 29, 2020 AT 12:00 P.M.

2

3 THE COURT: Let's turn to page 4, which is A-17-  
4 757722-C, *Choloe Green versus Frank DeLee, M.D.* Who is  
5 here for that case?

6 MS. JORDAN: Good afternoon, Your Honor. This is  
7 Erin Jordan appearing on behalf of Nevada Hospitalist  
8 Group. We are the party that brought the instant motion.

9 THE COURT: Good -- let's see here. Good  
10 afternoon. It's just switched.

11 MS. YOUNG: good afternoon. This is Nicole Young,  
12 appearing on behalf of the plaintiff, Choloe Green.

13 THE COURT: All right. Good afternoon. So, we  
14 are here on Third Party Defendant Nevada Hospitalist Group,  
15 LLP's Motion for Judgment on the Pleadings. In a  
16 nutshell, Nevada Hospitalist Group argues that the third  
17 party plaintiff has failed to state a claim for which  
18 professional negligence can be asserted because they had  
19 failed to comply with NRS 41A.071 and then, therefore, they  
20 argue they're entitled to relief. The plaintiffs respond  
21 in opposition that the underlying Complaint contains an  
22 expert affidavit that does comply with 41A.071, but also  
23 argues, at the same time, this is an issue, essentially, of  
24 indemnity or contribution, and so it's not a direct  
25 professional negligence claim against Dr. -- that would be

1 -- that would require compliance with 41A.071.

2           So, that's what I've reviewed here today. So, my  
3 first question is for the Hospitalist Group and I  
4 understand you're arguing that there should be an affidavit  
5 complaining -- or attached to the Complaint or attached to  
6 the actions that comply with 41A.071. I guess my question  
7 for you is: What do you think that affidavit will look  
8 like, in light of what the plaintiff is arguing?

9           Uh oh. Counsel, did we lose you?

10          THE COURT RECORDER: There's two more people on --

11          MS. RURANGIRWA: I'm sorry, Your Honor. You're  
12 not talking to me, are you? On video?

13          THE COURT: No. I think we lost who was here.  
14 There -- I don't see another person on BlueJeans anymore.

15          MR. MAYOR: This is Sherman Mayor for the  
16 Hospital, Judge. I am here.

17          THE COURT: Oh, good afternoon.

18          MS. YOUNG: And Nicole Young for the plaintiff is  
19 still here. I think you lost --

20          MR. STRYKER: Eric Stryker for Dr. DeLee and his  
21 professional corporations is here.

22          THE COURT: Okay. We lost Erin Jordan, I think.  
23 Ms. Jordan, are you there and we can just not see you?  
24 Hmm. We seem to have lost Ms. Jordan who my question was  
25 directed at. Let's see if we can get her on the phone or

1 at least shoot her an e-mail and see if she can rejoin  
2 BlueJeans. So, I apologize. I'm going to put this case on  
3 hold and I ask everyone for patience during these -- all  
4 these interesting technical difficulties.

5 THE CLERK: There she is.

6 THE COURT: Oh, there she is. Ah, Ms. Jordan.

7 MS. JORDAN: Hi. Sorry about that.

8 THE COURT: Oh, that's okay.

9 MS. JORDAN: Here I am.

10 THE COURT: Glad to see you back. I had posed a  
11 question and I think -- I posed it after we lost you for a  
12 few minutes there and my question to you is: What --  
13 you're arguing that an affidavit should be attached that  
14 complies with 41A.071. But my question for you is: What  
15 do you think that affidavit would look like, in light of  
16 what the plaintiff is arguing or asserting against your  
17 client?

18 MS. JORDAN: Thank you, Your Honor. That  
19 affidavit would need to support any allegations that Dr.  
20 Kia fell below the standard of care. The *Pack versus*  
21 *LaTourette* case states that even claims for contribution  
22 and indemnity need to be supported by the affidavit,  
23 weighing the underlying reason that could cause potential  
24 liability is medical malpractice. So, the fact that the  
25 underlying potential liability stems from medical

1 malpractice, which all parties agree here, that's not  
2 disputed, there needed to be an affidavit attached to the  
3 Third Party Complaint that stated that Dr. Kia was  
4 negligent and his care and treatment of the patient.

5 Nevada Hospitalist Group is a separate entity and  
6 the claims against Nevada Hospitalist Group are vicarious  
7 in nature only. So, I agree with plaintiff that, as  
8 plaintiff stated in their Opposition -- or third party  
9 plaintiff, rather, stated in his Opposition papers that  
10 they don't need to provide an affidavit when the claims are  
11 purely vicarious against Nevada Hospitalist Group. I agree  
12 with that. But the basis for a potential liability against  
13 Nevada Hospitalist Group is the medical malpractice of Dr.  
14 Kia. And they did not provide an affidavit that stated  
15 that Dr. Kia fell below the standard of care, that the  
16 standard -- that that breach of the standard of care  
17 allegedly injured the plaintiff, the original plaintiff,  
18 Choloe Green. And that was required under the statute.

19 They did, as you know, attach the plaintiff's  
20 affidavit, which does not mention Dr. Kia in the affidavit  
21 anywhere. The affidavit and the Complaint are supposed to  
22 be read together, pursuant to the Nevada Supreme Court  
23 caselaw. And I understand that fully, but Dr. Kia's name  
24 and care is not in either the affidavit or the original  
25 Complaint. And plaintiff -- I think the reason they didn't

1 get -- they informed the Court the reason they didn't  
2 provide an affidavit is because it would potentially be  
3 against their own interest, as they feared that they may be  
4 held liable through -- for the actions of Dr. Kia through  
5 the doctrine ostensible agency. But if you need -- if you  
6 bring a claim against a physician and an entity related to  
7 that claim, then you are subject to the statute NRS  
8 41A.071. Hall Prangle is intimately familiar with that  
9 statute, files motions with it all the time, and I think  
10 that, here, it's a pretty simple issue.

11           Everyone agrees that the underlying claim is med-  
12 mal. Everyone agrees that 41A.071 applies. And it's  
13 simply -- just was not complied with, as the unique  
14 situation that Sunrise Hospital put itself into makes them  
15 disinclined to produce an affidavit that states that Dr.  
16 Kia acted with negligence and that injured plaintiff.

17           THE COURT: All right. Thank you for that. Let  
18 me hear from plaintiff regarding that argument.

19           MR. MAYOR: This is Sherman --

20           MS. YOUNG: So, this -- yeah. Go ahead.

21           MR. MAYOR: -- Mayor -- I'm sorry.

22           THE COURT: No, go ahead.

23           MS. YOUNG: Go ahead, Mr. Mayor.

24           MR. MAYOR: This is Sherman Mayor for Sunrise  
25 Hospital, which is a defendant and the third party

1 plaintiff.

2           Your Honor, when the plaintiff, Choloe Green,  
3 brought this case, she sued two defendants: Sunrise  
4 Hospital and Dr. DeLee. So, her expert affidavit attached  
5 to her original Complaint criticized three healthcare  
6 providers: Sunrise, Dr. DeLee, and an unnamed Dr. Kia.  
7 Dr. Kia wasn't named, but his care was described and  
8 criticized in the underlying Complaint and expert affidavit  
9 of Lisa Karamardian.

10           The plaintiffs -- the plaintiff, Choloe Green,  
11 claims that Dr. DeLee discharged -- wrongfully discharged  
12 the plaintiff from Sunrise Hospital on her first discharge  
13 and the plaintiff claims that Dr. Kia discharged her a  
14 second time wrongfully in her second hospital discharge.  
15 Sunrise Hospital filed a Motion for Partial Summary  
16 Judgment in the case and the Motion was to seek dismissal  
17 of any claims against the Hospital, that the Hospital  
18 [indiscernible] the employer of either Dr. DeLee or Dr. Kia  
19 or that either of those two physicians were ostensible  
20 agents of the Hospital.

21           The Court, at that time, in June of 2019, granted  
22 the Motion for Partial Summary Judgment, finding that Dr.  
23 DeLee and Dr. Kia were not employees of Sunrise Hospital.  
24 The Court further found that Dr. DeLee was not an  
25 ostensible agent of the Hospital. So, the Hospital was not



1 liable for Dr. DeLee's care. The Court found that there  
2 was a factual question as to whether the Hospital -- as to  
3 whether Dr. Kia was an ostensible agent of the Hospital or  
4 not.

5           So, it is possible, through the doctrine of  
6 ostensible agency, that the Hospital could have liability  
7 for Dr. Kia's care and Dr. Kia's discharge. So, the --  
8 and, so that I'm saying this clearly, Judge, if -- there is  
9 no case made against Dr. Kia in the underlying Complaint.  
10 If the Court finds that the underlying Complaint and expert  
11 affidavit of the original Complaint don't make a case  
12 against Dr. Kia that would satisfy NRS 41A.071, then there  
13 can't be a case of ostensible agency of the Hospital for  
14 Dr. Kia's negligence. But, right now, as it sits, Sunrise  
15 is in the position that it -- that Dr. Kia may be an  
16 ostensible agent of the Hospital based on the claims of the  
17 underlying Complaint.

18           So, the deposition of Dr. Kia was taken. In that  
19 deposition, he testified, --

20           THE COURT: Well, hold --

21           MR. MAYOR: -- and I have the pages --

22           THE COURT: -- on. Counsel. Counsel. Hold on.  
23 Before we get to the deposition, I want to focus on the  
24 affidavit that accompanied the Complaint.

25           MR. MAYOR: Yes.

1           THE COURT: I read that in preparation for this  
2 hearing and then I read it again this morning, and I am  
3 looking for where it would criticize Dr. Kia's care. I do  
4 find --

5           MR. MAYOR: The --

6           THE COURT: -- delay -- DeLee, excuse me, and  
7 Sunrise Hospital and Medical Center, but there is no, that  
8 I could find, mention of a third doctor or another doctor  
9 in the affidavit itself. So, I'm happy to admit when I  
10 miss something. So, direct me to what paragraph I should  
11 be looking at.

12          MR. MAYOR: Your Honor, my computer just shut off,  
13 but I think it's paragraph 4 or paragraph 5, by memory,  
14 where they talk about the Hospital discharge of July 14 --  
15 of July 14<sup>th</sup>.

16          THE COURT: That's paragraph 5. You have a good  
17 memory. Yes.

18          MR. MAYOR: That discharge was done by Dr. Kia.  
19 He testified it was his discharge and not Dr. DeLee's. The  
20 underlying expert is critical of the discharge, although  
21 she misnamed it as a DeLee discharge when, in fact, it was  
22 a Dr. Kia discharge. And that is uncontested in this case.  
23 Dr. Kia has answered interrogatories stating that he made  
24 that discharge, which is being criticized. And that  
25 discharge, which is being criticized, is the only basis for

1 ostensible agency against the Hospital. Either it's there  
2 or it's not. If it's not there, the ostensible agency  
3 should go away. And, if that goes away, our Third Party  
4 Complaint goes away. If it is there, well then that's why  
5 we have a Third Party Complaint in effect right now, for  
6 that criticism of Dr. Kia's discharge. He's unnamed, but  
7 it's his care that we're -- the liability for which is  
8 trying to be imposed on Sunrise Hospital.

9 THE COURT: So, are you saying that the Complaint  
10 captures the -- what's required under 41A.071 with the last  
11 sentence that states:

12 This was a violation of the standard of care by  
13 Sunrise Hospital and Dr. DeLee?

14 MR. MAYOR: I do, because the underlying expert  
15 affidavit criticizes the care of Dr. Kia, although it's  
16 misnamed as Dr. DeLee. And what I'm saying is if there's a  
17 finding that that is insufficient as an expert affidavit to  
18 identify Dr. Kia's contribution to this case, well then  
19 there can't be an ostensible agency against Sunrise  
20 Hospital for the same care. Either there is a claim for  
21 which we can be liable or there isn't a claim and we can't  
22 be liable. So, we attach the underlying Complaint and  
23 affidavit saying that is the crux of the ostensible agency  
24 case against the Hospital. If it doesn't present a case,  
25 there shouldn't be ostensible agency. If it does present a

1 case, well then we've complied with 41A.071. That's our  
2 argument with regard to Dr. Kia.

3 THE COURT: Well, 41A.071 provides that the  
4 affidavit must support the allegations contained in the  
5 action, be submitted by a medical expert who practices or  
6 has practiced in the area that is substantially similar to  
7 the practice engaged at the time of that alleged  
8 professional negligence, must identify by name or describes  
9 by conduct each provider of healthcare who was alleged to  
10 be negligent, and, four, sets forth the factually specific  
11 act or acts of the alleged negligence separately as to each  
12 defendant in simple, concise, and direct terms. I -- so, -  
13 -

14 MR. MAYOR: Yes. Dr. Kia's care is described  
15 [indiscernible] and that it violated the standard of care  
16 that's described in the affidavit. And that, although it's  
17 misnamed, it is his care and he is -- he has agreed to that  
18 in interrogatory answers.

19 THE COURT: All right.

20 MR. MAYOR: That is the basis of the ostensible  
21 agency case against Sunrise Hospital.

22 So, if I may just proceed one -- just another  
23 moment or two, Your Honor?

24 THE COURT: Yes.

25 MR. MAYOR: As to Nevada Hospitalist Group, Dr.

1 Kia testified that although he's an independent contractor,  
2 he was affiliated with Nevada Hospitalist Group, that  
3 Nevada Hospitalist Group was the HPN provider that -- and  
4 the HPN insurance of Choloe Green required they be used.  
5 Contact was made with Nevada Hospitalist Group and they  
6 provided Dr. Kia for care of Ms. Green from their call  
7 schedule. Dr. Kia billed through Nevada Hospitalist Group  
8 and testified at page 12 of his deposition that when he was  
9 covering Ms. Green, he was an employee of Nevada  
10 Hospitalist Group. So, they're being sued in a Third Party  
11 Complaint solely as the employer and the person that -- and  
12 the entity that selected Dr. Kia to treat Choloe Green.  
13 We're not saying that Nevada Hospitalist Group was  
14 negligent. We're saying that they were he employer and  
15 it's an employee agency -- employer/employee agency  
16 Complaint.

17           Counsel has misstated the *Pack versus LaTourette*  
18 case. The *Pack versus LaTourette* case that she bases her  
19 Opposition -- her Motion on was a case where a cab company  
20 was sued by a plaintiff because of an accident. The cab  
21 company then sued the doctor and claimed the doctor  
22 committed medical malpractice. Under those circumstances,  
23 you would have to have an 41A.071 Motion against the  
24 doctor. But not against the employer of the doctor if  
25 there's no allegation of negligence against the employer.

1           And *Pack versus LaTourette* does not stand for the  
2 proposition that the employer, here Nevada Hospitalist  
3 Group, has to have a 41A.071 affidavit. We're not saying  
4 the employer did any negligent act. We're simply saying  
5 they were the employer of Dr. Kia. Therefore, if Sunrise  
6 Hospital is required to pay money because Dr. Kia's care is  
7 found negligent, then we're seeking indemnity from Dr. Kia  
8 for his care and from Nevada Hospitalist Group as his  
9 employer. We don't need a 41A.071 affidavit for the  
10 employer.

11           And, as to Dr. Kia, if the underlying affidavit of  
12 Lisa Karamardian doesn't state a case against his care and  
13 states that he violated the standard of care, if it doesn't  
14 make that claim, there can't be an ostensible agency claim  
15 against the Hospital. It should be dismissed, in which  
16 case our Third Party Complaint will be dismissed. If there  
17 is a claim against Dr. Kia in that Complaint, which, of  
18 course, there is because his care is being criticized  
19 specifically as being below the standard of care, and he  
20 has acknowledged that that was his care, well then we've  
21 complied with 41A.071 by providing the underlying Complaint  
22 and affidavit. Thank you, Judge.

23           THE COURT: No. All right. I appreciate that.  
24 All right. Hospitalist Group, do you want to respond?

25           MS. JORDAN: I would like to respond, Your Honor.

1 Thank you very much.

2           The first point I'd like to make in response is  
3 that this is not the opportunity for the Hospital to ask  
4 for reconsideration of the Court's prior ruling regarding  
5 ostensible agency.

6           THE COURT: But that wasn't my ruling, right?  
7 That --

8           MS. JORDAN: The Hospital --

9           THE COURT: -- was Mr. Doug Smith's ruling. I  
10 just adopted the Order based on what had happened in Court  
11 in the briefing. I don't -- my -- or am I misremembering  
12 the hearing on this one?

13           MS. JORDAN: No, I believe that's true. I wasn't  
14 involved in the case, but that's what was represented in  
15 the papers.

16           THE COURT: Okay.

17           MS. JORDAN: But this isn't the prior -- this  
18 isn't the correct time to relitigate the issue of  
19 ostensible agency. This is a Motion brought by Nevada  
20 Hospitalist Group, and joined by Dr. Kia, and what is being  
21 adjudicated here today is whether the claims were filed in  
22 compliance with NRS 41A.071. Whether or not that has an  
23 impact on the ostensible liability or not of the Hospital  
24 is not at issue here. And I think that putting that issue  
25 aside really simplifies the issues before this Court.

1           If the Hospital feels that, however the ruling is  
2 today, impacts that prior ruling, certainly they will be  
3 well within their right to file a Motion for  
4 Reconsideration. But this is not the time to litigate that  
5 issue.

6           This is a Motion for Judgment on the Pleadings.  
7 So, the comments about the discovery and what it did or did  
8 not show is not relevant. What is relevant to the Court's  
9 determination pursuant to the rule is whether or not --  
10 it's just like a Motion to Dismiss, but after a responsive  
11 pleading has been file. So, it's whether or not the  
12 pleading requirements were met. And, so, in this case,  
13 every -- it's well accepted that you fail to state a claim  
14 if you fail to comply with NRS 41A.071.

15           And Your Honor nailed it right on the head when  
16 you pointed out that Dr. Kia is not in the affidavit. It's  
17 really simple. As I stated, when I originally spoke, I was  
18 not saying that there needs to be an affidavit against  
19 Nevada Hospitalist Group in order for the Nevada  
20 Hospitalist Group claim to survive. However, the  
21 underlying claim needs to survive and there is no NRS  
22 41A.071 affidavit that mentions Dr. Kia in any way.

23           And I wasn't involved in the case. I have read  
24 the entire case file and I believe that the Hospital's  
25 issues with Dr. Kia are not appropriately brought up before



1 this Court. These factual issues are going well beyond the  
2 bounds of the law on a Motion for Judgment on the  
3 Pleadings.

4           And the *Pack versus LaTourette* case simply states  
5 that a contribution claim based on medical malpractice  
6 requires an affidavit and that's what we've said all along.  
7 So, I believe that it is appropriate to dismiss the Third  
8 Party Complaint and, you know, if they're able to procure  
9 an affidavit or if circumstances change, obviously, the  
10 statute of limitations for contribution and indemnity is  
11 different than a medical malpractice straight claim. So,  
12 if they're able to comply with the statute, perhaps they --  
13 now this is not a they would be able to refile if they felt  
14 that that was necessary, but their Third Party Complaint  
15 does not satisfy NRS 41A.071, Your Honor.

16           And I'm happy to answer any questions if you have  
17 any. Thank you.

18           THE COURT: Okay. Thank you.

19           MR. MAYOR: Your Honor, the Motion for Judgment on  
20 the Pleadings was brought by Nevada Hospitalist Group, not  
21 by Dr. Kia. Nevada Hospitalist Group has no right to a  
22 41A.071 affidavit because there is no allegation of  
23 negligence against the Group. The Group is indicated  
24 solely because they are the employer of Dr. Kia. Dr. Kia  
25 filed the Joinder in this Motion, after Sunrise filed an

1 Opposition, and after a Reply brief was filed by Nevada  
2 Hospitalist Group, and there was no Opposition filed to  
3 their Joinder because it was after the pleadings were done.

4           The issue before the Court is the judgment on the  
5 pleadings by Nevada Hospitalist Group. They are the  
6 employer of Dr. Kia. There's been nothing in this hearing  
7 to contradict that. They employed Dr. Kia and we're  
8 seeking contribution indemnity from Dr. Kia and his  
9 employer by a Third Party Complaint.

10           THE COURT: All right. I understand the issues  
11 and the fact that this is an indemnity and contribution  
12 issue is one that's interesting and one that I want to  
13 spend a little bit more time on before I issue my decision.  
14 So, I'm going to take this under advisement, but I know we  
15 have a couple of other parties that were present. Did  
16 anyone want to argue or request anything that is also  
17 present for this case?

18           MS. RURANGIRWA: Linda Rurangirwa on behalf of Dr.  
19 Kia and I just want to join in the arguments made by Nevada  
20 Hospitalist Group.

21           THE COURT RECORDER: Can she say her name again?

22           THE COURT: I'm sorry. What was your name again?

23           MS. RURANGIRWA: Linda Rurangirwa.

24           THE COURT: How do you spell that?

25           MS. RURANGIRWA: R-U-R-A-N-G-I-R-W-A.

1 THE COURT: All right. Thank you. Wanted to make  
2 sure we got that for my Court Recorder to take down any  
3 transcript.

4 All right. And, then, I thought I heard another  
5 voice.

6 MS. YOUNG: Yes. This is Nicole Young.

7 THE COURT: Ms. Young, yes.

8 MS. YOUNG: Sorry. This is Nicole Young for the  
9 plaintiffs. We would just join in Mr. Mayor's argument  
10 that Dr. Kia's conduct is described in the underlying  
11 affidavit.

12 THE COURT: Okay.

13 MR. STRYKER: Your Honor, Eric Stryker for  
14 defendant Dr. DeLee and his professional corporation. I  
15 don't know if you can hear me.

16 THE COURT: I can hear you. Yes.

17 MR. STRYKER: Excellent. I have nothing to add  
18 but I also join in Mr. Mayor's argument that the statute  
19 clearly says -- describes by conduct and the conduct was  
20 described in the affidavit. Dr. DeLee also indicate -- in  
21 the records, Dr. DeLee also indicated he was out of town.  
22 So, there couldn't be any confusion that it was Dr. DeLee  
23 discharged. And, as Mr. Mayor expressed, it was admitted  
24 by Dr. Kia to have been his own discharge. So, the conduct  
25 of Dr. Kia was described in the original affidavit, but I

1 have nothing further to add and I thank the Court for its  
2 time.

3 THE COURT: Okay. All right. I'm going to take  
4 this under submission. Thank you, everybody, for appearing  
5 today remotely. Our new normal, if you will.

6 I'm going to put this on my chamber's calendar on  
7 May 11<sup>th</sup> for a decision. You'll get --

8 MS. JORDAN: Thank you very much, Your Honor.

9 THE COURT: -- a decision on or before that day.  
10 All right. Thank you. I appreciate it. Have a great day,  
11 everyone. Stay safe.

12 MR. MAYOR: Thank you, Judge.

13 MS. YOUNG: Thank you, Your Honor.

14

15 PROCEEDING CONCLUDED AT 12:23 P.M.

16 \* \* \* \* \*

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1 **CERTIFICATION**

2

3

4 I certify that the foregoing is a correct transcript from

5 the audio-visual recording of the proceedings in the

6 above-entitled matter.

7

8 **AFFIRMATION**

9

10 I affirm that this transcript does not contain the social

11 security or tax identification number of any person or

12 entity.

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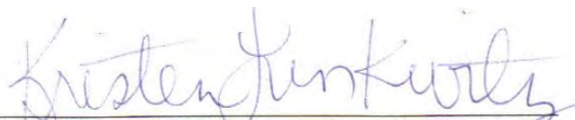
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20 KRISTEN LUNKWITZ

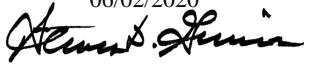
21 INDEPENDENT TRANSCRIBER

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25

  
CLERK OF THE COURT

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8  
9 DISTRICT COURT

10 CLARK COUNTY, NEVADA

11 CHOLOE GREEN, an individual,  
12  
13 Plaintiff,

14 vs.

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

17 Defendants.  
18

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

21 Third Party Plaintiff,

22 vs.

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

25 Third Party Defendants.  
26

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

**ORDER REGARDING THIRD-PARTY  
DEFENDANT NEVADA HOSPITALIST  
GROUP, LLP'S MOTION FOR  
JUDGMENT ON THE PLEADINGS AND  
THIRD-PARTY DEFENDANT ALI KIA,  
M.D.'S JOINDER THERETO**

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

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

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

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

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

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

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



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

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

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

9  
10   
DISTRICT COURT JUDGE

MK  
28B 6D1 A711 ED7D  
Cristina D. Silva

11 Submitted by:

12 LEWIS BRISBOIS BISGAARD & SMITH LLP

13 /s/ Erin E. Jordan  
14 S. BRENT VOGEL  
15 Nevada Bar No. 6858  
ERIN E. JORDAN  
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19 Attorneys for Third-Party Defendant Nevada  
Hospitalist Group, LLP

20 Approved as to Form:

21 LAW OFFICE OF DANIEL MARKS

HALL PRANGLE & SCHOONVELD, LLC

22 /s/ Nicole M. Young  
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Attorneys for Defendant/Third-Party Plaintiff  
Sunrise Hospital and Medical Center, LLC

*Green v. Delee, et al.*  
*Case No. A-17-757722-C*  
*Order Regarding Third-Party Defendant*  
*Nevada Hospitalist Group, LLP's*  
*Motion For Judgment On The Pleadings*  
*And Third-Party Defendant*  
*Ali Kia, M.D.'S Joinder Thereto*

WILSON ELSEER MOSKOWITZ EDELMAN  
& DICKER LLP

COLLINSON, DAEHNKE, INLOW,  
GRECO

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

*/s/ Linda K. Rurangirwa*

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*M.D.*

## Whitbeck, Johana

---

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

You may use my electronic signature. Thanks.

Linda K. Rurangirwa  
Collinson, Daehnke, Inlow & Greco

---

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

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

Thanks,  
Erin

---

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

Hi Erin:

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

Nicole M. Young, Esq.  
Associate Attorney

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

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**Cc:** Vogel, Brent <[Brent.Vogel@lewisbrisbois.com](mailto:Brent.Vogel@lewisbrisbois.com)>; Whitbeck, Johana <[Johana.Whitbeck@lewisbrisbois.com](mailto:Johana.Whitbeck@lewisbrisbois.com)>  
**Subject:** RE: Green v. Sunrise and DeLee; Sunrise v. Kia and NHG; proposed Order

Erin:

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



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

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

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---

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

[External Email] CAUTION!.

All,

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

Thanks,

Erin

---

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

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

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

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

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

No changes from me – thanks for sending.

Eric K. Stryker

Attorney at Law

Wilson Elser Moskowitz Edelman & Dicker LLP

Attorney at Law

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**PLEASE NOTE OUR NEW ADDRESS**

---

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

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

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

[EXTERNAL EMAIL]

All,

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

Thanks,  
Erin



**Erin E. Jordan**

**Partner**

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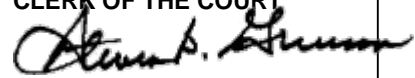
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For further information about Wilson, Elser, Moskowitz, Edelman & Dicker LLP, please see our website at [www.wilsonelser.com](http://www.wilsonelser.com) or refer to any of our offices.

Thank you.



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*Attorneys for Third-Party Defendant Nevada  
Hospitalist Group, LLP*

8  
9 DISTRICT COURT  
10 CLARK COUNTY, NEVADA

11 CHOLOE GREEN, an individual,  
12  
13 Plaintiff,

14 vs.

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

17 Defendants.

18  
19 SUNRISE HOSPITAL AND MEDICAL  
CENTER, LLC, a Foreign Limited-Liability  
20 Company,

21 Third Party Plaintiff,

22 vs.

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

25 Third Party Defendants.  
26

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

**NOTICE OF ENTRY OF ORDER  
REGARDING THIRD-PARTY  
DEFENDANT NEVADA HOSPITALIST  
GROUP, LLP'S MOTION FOR  
JUDGMENT ON THE PLEADINGS AND  
THIRD-PARTY DEFENDANT ALI KIA,  
M.D.'S JOINDER THERETO**

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

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

4 DATED this 3rd day of June, 2020

5 LEWIS BRISBOIS BISGAARD & SMITH LLP  
6  
7

8 By /s/ Erin E. Jordan

9 S. BRENT VOGEL

10 Nevada Bar No. 6858

11 ERIN E. JORDAN

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14 Las Vegas, Nevada 89118

15 Tel. 702.893.3383

16 *Attorneys for Third-Party Defendant Nevada*  
17 *Hospitalist Group, LLP*  
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25  
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27  
28



1 **CERTIFICATE OF SERVICE**

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

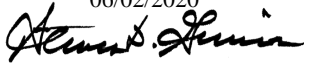
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24 *Sunrise Hospital and Medical Center, LLC*

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*Attorneys for Third-Party Defendant Ali Kia,  
M.D.*

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

  
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*Attorneys for Third-Party Defendant Nevada*  
7 *Hospitalist Group, LLP*

8  
9 DISTRICT COURT

10 CLARK COUNTY, NEVADA

11 CHOLOE GREEN, an individual,  
12  
13 Plaintiff,

14 vs.

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

17 Defendants.  
18

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

21 Third Party Plaintiff,

22 vs.

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

25 Third Party Defendants.  
26

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

**ORDER REGARDING THIRD-PARTY  
DEFENDANT NEVADA HOSPITALIST  
GROUP, LLP'S MOTION FOR  
JUDGMENT ON THE PLEADINGS AND  
THIRD-PARTY DEFENDANT ALI KIA,  
M.D.'S JOINDER THERETO**

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

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

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

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

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

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

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

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

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

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

  
DISTRICT COURT JUDGE

MK  
28B 6D1 A711 ED7D  
Cristina D. Silva

11 Submitted by:

12 LEWIS BRISBOIS BISGAARD & SMITH LLP

13 /s/ Erin E. Jordan  
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15 Nevada Bar No. 6858  
16 ERIN E. JORDAN  
17 Nevada Bar No. 10018  
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22 [Erin.Jordan@lewisbrisbois.com](mailto:Erin.Jordan@lewisbrisbois.com)  
23 *Attorneys for Third-Party Defendant Nevada*  
24 *Hospitalist Group, LLP*

25 Approved as to Form:

26 LAW OFFICE OF DANIEL MARKS

HALL PRANGLE & SCHOONVELD, LLC

27 /s/ Nicole M. Young  
28 Daniel Marks, Esq.  
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*Attorneys for Defendant/Third-Party Plaintiff*  
*Sunrise Hospital and Medical Center, LLC*

*Green v. Delee, et al.*  
*Case No. A-17-757722-C*  
*Order Regarding Third-Party Defendant*  
*Nevada Hospitalist Group, LLP's*  
*Motion For Judgment On The Pleadings*  
*And Third-Party Defendant*  
*Ali Kia, M.D.'S Joinder Thereto*

WILSON ELSEER MOSKOWITZ EDELMAN  
& DICKER LLP

COLLINSON, DAEHNKE, INLOW,  
GRECO

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

*/s/ Linda K. Rurangirwa*

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*Attorneys for Third-Party Defendant Ali Kia,*  
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## Whitbeck, Johana

---

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

You may use my electronic signature. Thanks.

Linda K. Rurangirwa  
Collinson, Daehnke, Inlow & Greco

---

**From:** Jordan, Erin <Erin.Jordan@lewisbrisbois.com>  
**Sent:** Tuesday, May 26, 2020 3:51 PM  
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**Cc:** Vogel, Brent <Brent.Vogel@lewisbrisbois.com>; Whitbeck, Johana <Johana.Whitbeck@lewisbrisbois.com>  
**Subject:** RE: Green v. Sunrise and DeLee; Sunrise v. Kia and NHG; proposed Order

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

Thanks,  
Erin

---

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

Hi Erin:

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

Nicole M. Young, Esq.  
Associate Attorney

Law Office of Daniel Marks  
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Telephone: (702) 386-0536  
Facsimile: (702) 386-6812

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**Sent:** Thursday, May 21, 2020 2:27 PM  
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**Subject:** RE: Green v. Sunrise and DeLee; Sunrise v. Kia and NHG; proposed Order

Erin:

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



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

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**Cc:** Vogel, Brent <[Brent.Vogel@lewisbrisbois.com](mailto:Brent.Vogel@lewisbrisbois.com)>; Whitbeck, Johana <[Johana.Whitbeck@lewisbrisbois.com](mailto:Johana.Whitbeck@lewisbrisbois.com)>  
**Subject:** RE: Green v. Sunrise and DeLee; Sunrise v. Kia and NHG; proposed Order



[External Email] CAUTION!.

All,

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

Thanks,

Erin

---

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

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

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

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

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

No changes from me – thanks for sending.

Eric K. Stryker

Attorney at Law

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Attorney at Law

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**PLEASE NOTE OUR NEW ADDRESS**

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

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

[EXTERNAL EMAIL]

All,

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

Thanks,  
Erin



**Erin E. Jordan**

**Partner**

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

Thank you.

1 **CERTIFICATE OF SERVICE**

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

8 Erik K. Stryker, Esq.  
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11 Sherman Mayor, Esq.  
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14 Linda K. Rurangirwa, Esq.  
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16 Attorney for Ali Kia, M.D.

17 Erin Jordan, Esq.  
18 Lewis Brisbois Bisgaard & Smith, LLP  
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Las Vegas, Nevada 89118  
19 Attorney for Nevada Hospitalist Group, LLP

20  
21  
22 /s/ Nicole M. Young

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