

**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 2**

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Attorney for Petitioner Ali Kia, M.D.

|    | <b><u>ALPHABETICAL APPENDIX</u></b>   | <b>Volume</b> | <b>Bates No.</b> |
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| 8. | Defendant Nevada Hospitalist Group, LLP's Joinder to Defendant Ali Kia, M.D.'s Motion for Reconsideration Regarding Motion to Dismiss Plaintiff's Amended Complaint | 6             | PA1175- PA1177   |
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| Third Party Defendant Ali Kia, M.D.'s Answer to Third Party Complaint   | PA0061- PA0075   |
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|---|----------------|
| Third-Party Defendant Nevada Hospitalist Group, LLP's Reply in Support of Motion for Judgment on the Pleadings  | PA0133- PA0139 |
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| Transcript of Proceedings: 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 | PA0144- PA0163 |
| 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  | PA0164- PA0172 |
| 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   | PA0173- PA0185 |

| <b><u>Volume 2</u></b>   | <b>Bates No.</b> |
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| Defendant Sunrise Hospital and Medical Center's Limited Opposition to Plaintiff's "Motion for Leave of Court to Amend Complaint" | PA0209- PA0220   |
| Reply in Support of Motion for Reconsideration and Reply in Support of Motion for Leave of Court to Amend Complaint              | PA0221- PA0252   |
| Transcript of Proceedings: All Pending Motions   | PA0253- PA0293   |



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| Order Granting in Part and Denying in Part Plaintiff's Motion for Leave to Amend Complaint                                    | PA0294- PA0300  |
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| Defendant Nevada Hospitalist Group, LLP's Reply in Support of Motion to Dismiss  | PA0667- PA0680   |
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| Defendant Nevada Hospitalist Group, LLP's Joinder to Defendant Ali Kia, M.D.'s Motion for Reconsideration Regarding Motion to Dismiss Plaintiff's Amended Complaint | PA1175- PA1177   |
| Opposition to Defendant Ali Kia, M.D.'s Motion for Reconsideration Regarding Motion to Dismiss Plaintiff's Amended Complaint  | PA1178- PA1187   |
| Defendant Ali Kia, M.D.'s Reply in Support of Motion for Reconsideration Regarding Motion to Dismiss Plaintiff's Amended Complaint                                  | PA1188- PA1195   |
| Order Denying Ali Kia, M.D.'s Motion for Reconsideration  | PA1196- PA1204   |
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| <b><u>Volume 7</u></b>  | <b>Bates No.</b> |
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| 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 \_\_\_\_\_  
Patricia Egan Daehnke  
Nevada Bar No. 4976  
Linda K. Rurangirwa  
Nevada Bar No. 9172  
2110 E. Flamingo Road, Suite 212  
Las Vegas, NV 89119  
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 2** 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



**Linda K. Rurangirwa** | Partner  
Collinson, Daehnke, Inlow & Greco – Attorneys at Law  
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[linda.rurangirwa@cdiglaw.com](mailto:linda.rurangirwa@cdiglaw.com) | [www.cdiglaw.com](http://www.cdiglaw.com)

## 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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Associate Attorney  
Law Office of Daniel Marks  
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Telephone: (702) 386-0536  
Facsimile: (702) 386-6812

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**From:** Tyson Dobbs [mailto:tdobbs@HPSLAW.COM]  
**Sent:** Monday, August 09, 2021 12:42 PM  
**To:** Vogel, Brent <Brent.Vogel@lewisbrisbois.com>; Linda K. Rurangirwa <Linda.Rurangirwa@cdiglaw.com>; Daniel Marks <DMarks@danielmarks.net>; Stryker, Eric K. <Eric.Stryker@wilsonelser.com>; Jordan, Erin <Erin.Jordan@lewisbrisbois.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:** RE: Green v. Sunrise Hospital

Fine with us as well.



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**From:** Vogel, Brent <[Brent.Vogel@lewisbrisbois.com](mailto:Brent.Vogel@lewisbrisbois.com)>

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

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

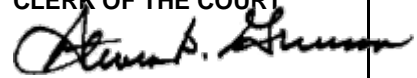
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LAW OFFICE OF DANIEL MARKS  
DANIEL MARKS, ESQ.  
Nevada State Bar No. 002003  
NICOLE M. YOUNG, ESQ.  
Nevada State Bar No. 12659  
610 South Ninth Street  
Las Vegas, Nevada 89101  
(702) 386-0536; Fax (702) 386-6812  
Attorneys for Plaintiff

DISTRICT COURT

CLARK COUNTY, NEVADA

CHOLOE GREEN, an individual,  
Plaintiff,

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

v.

***ORAL ARGUMENT REQUESTED***

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

Defendants.

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

COMES NOW the Plaintiff, Choloe Green, by and through her counsel, Daniel Marks, Esq., of the Law Office of Daniel Marks, and hereby moves for leave of this Court to amend her complaint. The grounds for Plaintiff's motion are set forth in the following Memorandum of Points and Authorities.

DATED this 16th day of October, 2020.

LAW OFFICES OF DANIEL MARKS

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

1 MEMORANDUM OF POINTS AND AUTHORITIES

2 **I. FACTUAL BACKGROUND**

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

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

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

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

26 One day after her second discharge from Sunrise, July 17, 2017, Choloe was admitted into

27 ////

28 ////

1 Centennial Hills Hospital (“Centennial”), again in severe pain and with no real bowel movement. The  
2 imaging studies at Centennial showed her condition had worsened in the one day since her discharge  
3 from Sunrise. (See Karamardian Affidavit, at ¶ 6.)

4 Dr. Karamardian opined that based on the above breaches to the standard of care by Delee and  
5 Sunrise, Choloe’s “hospital course was protracted with multiple complications and . . . [then]  
6 discharged to a step down facility once her antibiotic course was felt to be completed, still on a feeding  
7 tube and in need of rehabilitation.” (See Karamardian Affidavit, at ¶ 7.) The instant complaint was filed  
8 on June 30, 2017.

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

## 17 **II. LEGAL ARGUMENT**

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

24 In this case, Choloe seeks to amend her complaint to add Ali Kia, M.D., and Nevada Hospitalist  
25 Group, LLP, his employer, as named parties to this complaint. This amendment is necessary based on  
26 information discovered during this case and this Court’s recent decision granting Sunrise’s motion for  
27 partial summary judgment on the issue of ostensible agency. As this Court is aware, Choloe filed a  
28 motion for reconsideration of that order, as well as its decision denying her previous motion for leave to

1 amend her complaint. In this Court's Order from the July 7, 2020, hearing it comments that it could not  
2 grant Choloe's first motion to amend because Dr. Karamardian's affidavit did not comply with NRS  
3 41A.071 to add additional parties. Choloe's instant motion to amend cures that issue with the affidavit of  
4 Dr. Savluk.

5 Choloe's request for leave to amend is not made to delay this case. This case has been wrapped  
6 up in motion practice for the better part of this year. This amendment seeks to resolve all pending issues  
7 so that the parties can focus on discovery. The current initial expert disclosure deadline is December 30,  
8 2020, and discovery closes on April 29, 2021. With this amendment, Defendants would still have time to  
9 conduct discovery as to the proposed amendment to Choloe's complaint. This does not cause any  
10 prejudice to Ali Kia, M.D., because he was already a party to this case and has been deposed.  
11 This Court cannot find the proposed amendment is made in bad faith or for any dilatory motive.

12 On January 15, 2019, Sunrise filed its first motion for partial summary judgment relating to  
13 ostensible agency. As that motion related to Ali Kia, M.D., this Court ordered as follows:

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

18 (See Order From March 12, 2019 Hearing, filed on March 5, 2020.)

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

23 Based on these orders, it has become apparent that Choloe must protect her rights and ensure that  
24 she is able to recover for the malpractice at issue. Justice demands this case be heard on the merits.

25 This Court should grant Choloe leave to amend her complaint adding Ali Kia, M.D., as a named  
26 party. A copy of Plaintiff's proposed Amended Complaint is attached hereto as Exhibit 1, in accordance  
27 with EDCR 2.30. That Amended Complaint contains the affidavit of Robert S. Savluk, M.D., who

28 ////

1 reviewed Dr. Karamardian's affidavit, which attributes medical negligence to the conduct of Sunrise  
2 when it discharged Choloe on July 16, 2016. Dr. Savluk's affidavit complies with NRS 41A.071 because  
3 it expands on the conduct criticized by Dr. Karamardian and attributes that conduct to Ali Kia, M.D.

4 **III. CONCLUSION**

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

7 DATED this 16th day of October, 2020.

8 LAW OFFICES OF DANIEL MARKS

9  
10 /s/ Nicole M. Young

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

2 I hereby certify that I am an employee of the Law Office of Daniel Marks and that on the 16th  
3 day of October, 2020, pursuant to NRCP 5(b) and Administrative Order 14-2, I electronically transmitted  
4 a true and correct copy of the above and foregoing **MOTION FOR LEAVE OF COURT TO AMEND**  
5 **COMPLAINT** by way of Notice of Electronic Filing provided by the court mandated E-file & Serve  
6 System, as follows:  
7 following:

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

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

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

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

7 DISTRICT COURT  
8 CLARK COUNTY, NEVADA

9 CHOLOE GREEN, an individual,

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

11 Plaintiff,

12 v.

13 FRANK J. DELEE, M.D., an individual;  
FRANK J. DELEE MD, PC, a Domestic  
14 Professional Corporation, SUNRISE HOSPITAL  
AND MEDICAL CENTER, LLC, a Foreign  
15 Limited-Liability Company; ALI KIA, M.D. an  
individual; and NEVADA HOSPITALIST  
16 GROUP, LLP.

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

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

19 **AMENDED COMPLAINT FOR MEDICAL MALPRACTICE**

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

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

28 ////

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 at all times material hereto, Defendant ALI KIA, M.D., was a licensed medical doctor in the State of Nevada, and who practices through the limited-liability partnership entitled NEVADA HOSPITALIST GROUP, LLP.
7. That Defendant NEVADA HOSPITALIST GROUP, LLP, was a limited-liability partnership, registered to do business and doing business in the State of Nevada in Clark County, Nevada.
8. At all relevant times, Defendants, and each of them, were the agents, ostensible agents, servants, employees, employers, partners, co-owners and/or joint venturers of each other and of their co-defendants, and were acting within the color, purpose and scope of their employment, agency, ownership and/or joint ventures and by reason of such relationships the Defendants, and each of them, are vicariously and jointly and severally responsible and liable for the acts and/or omissions of their co-Defendants.
9. That on or about July 9, 2016, Dr. DeLee performed a cesarean section (C-Section) on Choloe at Sunrise Hospital. Choloe was discharged from the hospital the following day, on July 10, 2016, even though she did not have bowel movement prior to being discharged from the hospital.
10. On July 13, 2016, Choloe had an appointment with Dr. DeLee. At that appointment, Choloe notified Dr. Delee that she had not had a bowel movement post C-section. He did not provide any care or treatment to Choloe regarding her lack of a bowel movement.

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11. On July 14, 2016, after still not having a bowel movement post C-section, Choloe went to the emergency room at Sunrise Hospital, with severe abdominal pain and reports of nausea, vomiting, fever, and chills. She was admitted to the medical/surgical unit because of the diagnosis of sepsis. Sunrise Hospital, through Ali Kia, M.D., discharged Choloe on July 16, 2016, despite having a small bowel obstruction. The discharge was discussed and confirmed by Dr. DeLee.
12. That Choloe presented at Sunrise Hospital on July 14, 2016, seeking treatment from the hospital, not a specific doctor. Upon her admission, Sunrise Hospital provided various healthcare professionals, including doctors and nurses to provide emergency care/treatment to Choloe. Throughout her stay from July 14-16, 2016, Choloe believed all healthcare professionals that provided her care/treatment were employees and/or agents of the hospital. She was never provided the opportunity to affirmatively chose who provided her care/treatment. She was never informed the doctors or nurses providing care/treatment were not employees and/or agents of the hospital.
13. 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.

### **COUNT I**

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

14. Plaintiff restates and incorporates the allegations set forth in Paragraphs 1 through 13 herein by reference.
15. That Defendant Dr. DeLee, Sunrise Hospital, Dr. Kia, and Nevada Hospitalist Group, LLP, breached the standard of care in their treatment of Choloe and as a direct and proximate result of that breach, Choloe has been damaged.
16. 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.

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

3 18. This Complaint is supported by the Affidavit of Robert Savluk, M.D., a copy of which is  
4 attached hereto as Exhibit "B".

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

7 **COUNT II**

8 **(Vicarious Liability- Against Defendants Sunrise Hospital and Nevada Hospitalist Group)**

9 20. Plaintiff restates and incorporates the allegations set forth in Paragraphs 1 through 18 herein  
10 by reference.

11 21. That a hospital and/or hospitalist group cannot avoid liability by claiming a secret or  
12 undisclosed independent contractor relationship with doctors providing healthcare services  
13 on its premises and/or through its scheduling service because that relationship is unknown  
14 to a patient seeking emergency services from a hospital.

15 22. Defendant Sunrise Hospital and Nevada Hospitalist Group's employees, agents and/or  
16 servants were acting in the scope of their employment, under Defendants' control, and in  
17 furtherance of Defendant' 'interest at the time their actions fell below the standard of care  
18 causing injuries to Plaintiff.

19 23. Defendant Sunrise Hospital and Nevada Hospitalist Group are vicariously liable for damages  
20 resulting from its agents' and/or employees' and/or servants' negligent actions and omissions  
21 regarding the injuries to Plaintiff to include, but not are not limited to, conduct in failing to  
22 supervise and/or correct the negligence of their employees demonstrated disregard for the  
23 safety of the Plaintiff.

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

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

28 ////

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

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

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

7 LAW OFFICE OF DANIEL MARKS

8

9 \_\_\_\_\_

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

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1 VERIFICATION

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

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

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

8  
9 \_\_\_\_\_  
10 CHOLOE GREEN

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

13 \_\_\_\_\_  
14 NOTARY PUBLIC in and for said  
15 COUNTY and STATE  
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17  
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## **EXHIBIT A**

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AFFIDAVIT OF DR. LISA KARAMARDIAN


STATE OF California } : s.  
COUNTY OF Orange }

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

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

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

  
LISA KARAMARDIAN, MD.

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

2.

---

## **EXHIBIT B**

---

**AFFIDAVIT OF ROBERT S. SAVLUK, M.D.**

STATE OF CALIFORNIA                     )  
   )       ss:  
COUNTY OF SAN LUIS OBISPO        )

ROBERT S. SAVLUK, M.D., being first duly sworn under penalty of perjury, deposes and says:

1. That I have been asked to address issues relating to the care and treatment of patient Choloe Green provided at the Sunrise Hospital by Dr. Ali Kia (hospitalist).
2. That I practiced Internal Medicine (functioning as a hospitalist before the term was coined) and Critical Care Medicine for 36 years.
3. I graduated from the University of California at Los Angeles School of Medicine in 1977 with a doctor of medicine degree and completed my residency in Internal Medicine at University of Medical Center, Fresno, California.
4. That I am board certified in Internal Medicine and was boarded in Critical Care Medicine through 2018.
5. That I am familiar with the roles of hospitalist, and subspecialists in taking care of their patients in a hospital setting.
6. That I am particularly familiar with the case of a septic patient including but not limited to fluid resuscitation, antibiotics, and all manners of supporting medications and equipment.
7. That I am particularly familiar with the source identification and its importance in the treatment of a septic patient. In addition, I am very familiar with the coordination of the various physicians to treat that condition.

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- 1 8. In preparation for this affidavit, I have reviewed summaries of the two hospitalizations at  
2 Sunrise Hospital between August 9 and August 16, 2016 consisting of 33 pages plus an  
3 additional 45 pages of organized records related to medications and vital signs. I also  
4 reviewed 337 pages of Centennial Hills hospital records and the affidavit of Dr. Lisa  
5 Karamardian.  
6
- 7 9. That Choloe Green was a 29 year old G5 P3 obese individual at the time she was  
8 admitted to Sunrise Hospital on 7/09/2016 for repeat c-section for a transverse  
9 presentation. She underwent the procedure through the previous surgical scar (low  
10 transverse), under spinal anesthesia, delivering a 6 lb 7 oz male child.  
11
- 12 10. Post operatively she developed itching secondary to the spinal anesthetic. By the next day  
13 she was ambulatory and taking a regular diet. No mention of bowel activity or urination.  
14 She was deemed ready for discharge and sent home on Norco and Ibuprofen for pain.
- 15 11. That on July 14, 2016 she presented to the Sunrise Hospital ED with 2 days history of  
16 nausea, vomiting, and abdominal pain. She had 2 BM's that day. She was febrile and  
17 tachycardic with a marked leucocytosis. She met the criteria for sepsis and the sepsis  
18 bundle was initiated. She had blood cultures drawn, a fluid bolus given and a broad  
19 spectrum antibiotics initiated appropriately for an intra-abdominal source. An ultra sound  
20 of the pelvis and CT scan of the abdomen and pelvis were ordered. The ultra sound  
21 showed no retained products of conception but a moderate amount of complex free fluid  
22 in the cul-de-sac. The CT scan showed a gastric band in place, distention of duodenum  
23 and jejunum and free fluid with small amount of gas in the peritoneal cavity in the lower  
24 abdomen, anterior to an enlarged uterus. The impressions were 1) small bowel  
25 obstruction and 2) intraperitoneal abscess suspected.  
26  
27  
28

1 12. The patient was admitted to medicine at the request of Dr. DeLee (who was going to be  
2 out of town) by Dr. Ali Kia at 9:10 p.m. on July 14, 2016. Dr. Kim also consulted by ED  
3 but did not see patient stating "OB can manage care on an out-patient basis." On July 15,  
4 2016, the WBC was 20,600 with left shift. No additional antibiotics were given outside  
5 the first dose. At 17:33 patient seen by case worker with plan that patient would go home  
6 with sister or mother on out patient antibiotics and follow up with Dr. DeLee.

8 13. At 22:31 on July 15, 2016, Dr. Ali Kia saw the patient and noted patient having  
9 abdominal pain with distention. Additionally she was agitated and having no flatus on  
10 bowel movements. The discharge was halted. On the morning of July 16, 2016 an x-ray  
11 of the abdomen was done which revealed multiple dilated small bowel loops, small bowel  
12 obstruction versus ileus. Despite this, patient discharged home at 20:26 on Norco,  
13 dilaudid, motrin iron, and prenatal vitamins but no antibiotics. She was to follow up with  
14 Dr. DeLee in two days.

16 14. The patient presented to Centennial Hills Hospital the next day with an acute abdomen  
17 and was taken to surgery on July 18, 2016 where she was noted to have more than a liter  
18 of foul smelling fluid in her abdomen, plus an omental infarct which was resected. She  
19 then went on to develop severe ARDS and severe physical deconditioning requiring 6  
20 plus weeks in the ICU, a PEG, a trach and finally discharge to a sub-acute facility.

22 15. Dr. Ali Kia's care of his patient Choloe Green fell below the standard of care for a  
23 hospitalist for the following reasons:

25 1. Failure to continue appropriate antibiotics during the patients hospitalizations  
26 when she was clearly fighting an infection.

27 2. Failure to continue antibiotics post-discharge in a patient clearly not having  
28

- 1 recovered from her infection.
- 2 3. Failure to follow up the radiographic studies which were clearly suspicious for an
- 3 intra-abdominal abscess.
- 4 4. Discharging a patient with evidence of a small bowel obstruction or ileus without
- 5 any explanation or resolution.
- 6 5. Pre maturely discharging the patient before she had adequately recovered from the
- 7 septic process.
- 8
- 9 16. Finally due to the failures noted above, Choloe Green went on to develop an acute
- 10 abdomen requiring surgery, intra-abdominal abscess requiring percutaneous drainage and
- 11 sepsis related ARDS (severe) which required 6 plus weeks in the ICU and resulted in
- 12 severe physical deconditioning and prolonged sub-acute care.
- 13
- 14 17. The conduct described in paragraph 5 of Dr. Karamardian's affidavit dated June 29, 2017
- 15 relating to Ms. Green's discharge from Sunrise Hospital relates to the care provided to
- 16 Ms. Green at Sunrise by Dr. Ali Kia and any other medical providers that were involved
- 17 in the decision to discharge Ms. Green on July 16, 2016, this decision to discharge her
- 18 violated the standard of care.
- 19
- 20 18. My opinions are expressed to a reasonable degree of medical probability and/or certainty
- 21 and are based on my education, training, experience, and review of the medical records
- 22 outlined previously which reflect the care given Choloe Green by the aforementioned
- 23 Physician.
- 24
- 25 19. This affidavit is intended as a summary of my opinion and there obviously may be further
- 26 explanation of these opinions at the time of trial and/or depositions, should I be asked
- 27 follow-up questions related to any opinions.
- 28

FURTHER YOUR AFFLIANT SAYETH NAUGHT.

ROBERT S. SAVLUK, M.D.

SUBSCRIBED and SWORN TO  
Before me this \_\_\_\_ day of October, 2020.

See attached

NOTARY PUBLIC in and for said  
COUNTY and STATE

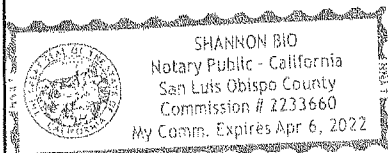


A notary public or other officer completing this certificate verifies only the identity of the individual who signed the document to which this certificate is attached, and not the truthfulness, accuracy, or validity of that document.

State of California  
County of San Luis Obispo

Subscribed and sworn to (or affirmed) before me on this 16th  
day of October, 2020, by Robert S. Savluk

proved to me on the basis of satisfactory evidence to be the  
person(s) who appeared before me.

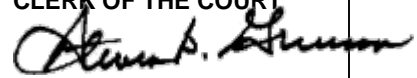


(Seal)

Signature

A handwritten signature in dark ink, appearing to read "Robert S. Savluk", written over a horizontal line.

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



**OPP**

MICHAEL E. PRANGLE, ESQ.  
Nevada Bar No.: 8619  
TYSON J. DOBBS, ESQ.  
Nevada Bar No.: 11953  
SHERMAN B. MAYOR, ESQ.  
Nevada Bar No. 1491  
T. CHARLOTTE BUYS, ESQ.  
Nevada Bar No.: 14845  
HALL PRANGLE & SCHOONVELD, LLC  
1140 N. Town Center Dr., Ste. 350  
Las Vegas, NV 89144  
(702) 889-6400 – Office  
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[efile@hpslaw.com](mailto:efile@hpslaw.com)  
*Attorneys for Defendant / Third-Party Plaintiff*  
*Sunrise Hospital and Medical Center, LLC*

**DISTRICT COURT  
CLARK COUNTY, NEVADA**

CHOLOE GREEN, an individual,  
  
Plaintiff,

vs.

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

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

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

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

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

This Opposition is made and based upon the papers and pleadings on file herein, the  
points and authorities attached hereto and such argument of counsel, which may be adduced at  
the time of hearing such Motion.

DATED this 26<sup>th</sup> day of October, 2020.

HALL PRANGLE & SCHOONVELD, LLC

By: /s/: Sherman B. Mayor

MICHAEL E. PRANGLE, ESQ.

Nevada Bar No.: 8619

TYSON J. DOBBS, ESQ.

Nevada Bar No.: 11953

SHERMAN B. MAYOR, ESQ.

Nevada Bar No. 1491

T. CHARLOTTE BUYS, ESQ.

Nevada Bar No. 14845

1140 N. Town Center Dr., Ste. 350

Las Vegas, NV 89144

*Attorneys for Defendant*

*Sunrise Hospital and Medical Center, LLC*

**POINTS AND AUTHORITES**

**I.**

**STATEMENT OF FACTS**

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

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

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

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

## II.

### ARGUMENT

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

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

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

---

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

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

**III.**

**CONCLUSION**

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

DATED this 26<sup>th</sup> day of October, 2020.

HALL PRANGLE & SCHOONVELD, LLC

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

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

**CERTIFICATE OF SERVICE**

I HEREBY CERTIFY that I am an employee of HALL PRANGLE & SCHOONVELD, LLC; that on the 26<sup>th</sup> day of October, 2020, I served a true and correct copy of the foregoing **DEFENDANT SUNRISE HOSPITAL AND MEDICAL CENTER'S LIMITED OPPOSITION TO PLAINTIFF'S "MOTION FOR LEAVE OF COURT TO AMEND COMPLAINT"** to the following parties via:

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

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

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

S. Brent Vogel, Esq.  
Erin E. Jordan, Esq.  
LEWIS BRISBOIS BISGAARD & SMITH LLP  
6385 S. Rainbow Blvd., Suite 600  
Las Vegas, NV 89118  
*Attorneys for Third-Party Defendant  
Nevada Hospitalist Group, LLP*

Eric K. Stryker, Esq.  
WILSON ELSER MOSKOWITZ  
EDELMAN & DICKER LLP  
300 S. 4<sup>th</sup> Street  
Las Vegas, NV 89101  
*Attorney for Defendants  
Frank J. DeLee, M.D. and  
Frank J. DeLee, M.D., PC*

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

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

/s/: Nicole Etienne  
An employee of HALL PRANGLE & SCHOONVELD, LLC

*Steven D. Grierson*

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

11  
12  
13 DISTRICT COURT  
14 CLARK COUNTY, NEVADA

15 CHLOE GREEN, an individual,  
16  
17 Plaintiff,

Case No.  
Dept. No.

A-17-757722-C y

Department 8

18 v.

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

Arbitration Exempt -- Action  
for Medical Malpractice

24 Defendants.

25  
26  
27 COMPLAINT FOR MEDICAL MALPRACTICE

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

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

////

////

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



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

7 WHEREFORE, Choloé 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:

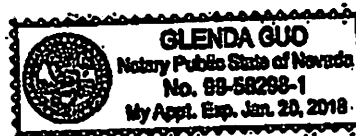
CHLOE GREEN, being first duly sworn, deposes and says:

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 *10th* 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

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 Cholee 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.

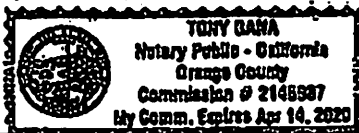
- 1 6. The day after she was released from Sunrise Hospital, Ms. Green presented at Centennial  
2 Hills Hospital, on July 17, 2016. At the time of presentation she was now 7 days  
3 postpartum, had not had a bowel movement, and was unable to even tolerate liquids. She  
4 was still in severe pain. 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.

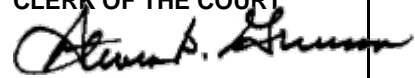
22 FURTHER YOUR AFFIANT SAYETH NAUGHT.

23   
24 LISA KARAMARDIAN, MD.

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

27   
28 NOTARY PUBLIC in and for said  
COUNTY and STATE





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

DISTRICT COURT  
CLARK COUNTY, NEVADA

CHOLOE GREEN, an individual,  
  
Plaintiff,

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

v.

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

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

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

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

DATED this 11th day of November, 2020.

LAW OFFICES OF DANIEL MARKS

/s/ Nicole M. Young

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

1 **MEMORANDUM OF POINTS AND AUTHORITIES**

2 **I. INTRODUCTION**

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

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

14 **II. LEGAL ARGUMENT**

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

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

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

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

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

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

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

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

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

28 ////



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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

27 ////

28 ////

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

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

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

27 ////

28 ////

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

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

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

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

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

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

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

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

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

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

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

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

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

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

### **III. CONCLUSION**

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

DATED this 11th day of November, 2020.

LAW OFFICES OF DANIEL MARKS

/s/ Nicole M. Young

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## **EXHIBIT 1**

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

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

16 DEPOSITION OF ALI KIA, M.D.  
17 Taken on Wednesday, November 14, 2018  
18 At 1:35 p.m.  
19 Taken at 610 South Ninth Street  
20 Las Vegas, Nevada  
21  
22  
23  
24  
25 Reported By: Terri M. Hughes, CCR No. 619

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

2 A. Uh-huh.

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

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

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

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

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

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

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

17 A. Roughly.

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

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

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

24 A. That's correct.

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

1 through Sunrise was assigned to you?

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

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

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

11 Q. You mean for patient care?

12 A. That's correct, yes.

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

14 A. I'm not quite sure.

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

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

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

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

1 A. Thank you.

2 Q. And then everyone can get a copy.

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

5 A. I do.

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

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

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

10 A. Yes, correct.

11 Q. So they really assigned her to you?

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

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

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

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

19 A. July 14th.

20 Q. July 14th, 2016; correct?

21 A. Yes, correct.

22 Q. And was she admitted?

23 A. She was, to inpatient status.

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

1 CERTIFICATE OF REPORTER

2

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

6

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

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

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

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

Terri M. Hughes

Terri M. Hughes, CCR No. 619

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## **EXHIBIT 2**

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### Conditions of Admission and Consent for Outpatient Care

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

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

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

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



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SUNRISE HOSPITAL & MEDICAL CENTER

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

**15. Other Acknowledgements.**

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

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

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

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

**16. Patient Self Determination Act.**

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

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

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

Acknowledge: CE (Initial)

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

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

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

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

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

Acknowledge: SG (Initial)

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

Acknowledge: Go (Initial)

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

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## **EXHIBIT 3**

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**AFFIDAVIT OF CHLOE GREEN**

STATE OF NEVADA        )  
                                  ) ss:  
COUNTY OF CLARK        )

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

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

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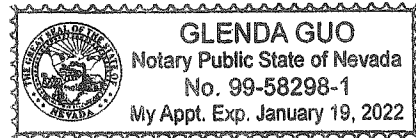


1 induced coma. I was eventually discharged from that hospital on September 2, 2016. I  
2 now suffer from COPD and require constant use of an oxygen tank. I also suffer from  
3 additional health issues relating to the COPD.

4 FURTHER YOUR AFFIANT SAYETH NAUGHT.  
5

6  
7   
8 CHLOE GREEN

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



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

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1                                    **AMENDED AFFIDAVIT OF DR. LISA KARAMARDIAN**

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

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

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

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

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

22 ////

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28 ////

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

4 FURTHER YOUR AFFIANT SAYETH NAUGHT.

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

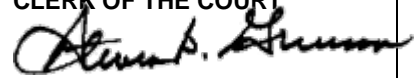
  
LISA KARAMARDIAN, MD.

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

*november 15*

9   
10 NOTARY PUBLIC in and for said  
COUNTY and STATE





TRAN

DISTRICT COURT

CLARK COUNTY, NEVADA

\* \* \* \* \*

|                                 |   |                                  |
|---------------------------------|---|----------------------------------|
| CHLOE GREEN,                    | ) |                                  |
|                                 | ) | CASE NO. A-17-757722-C           |
| Plaintiff,                      | ) |                                  |
|                                 | ) |                                  |
| vs.                             | ) | DEPT. NO. IX                     |
|                                 | ) |                                  |
| FRANK J. DELEE, M.D., FRANK J.) | ) |                                  |
| DELEE, M.D., PC, SUNRISE        | ) | <b>Transcript of Proceedings</b> |
| HOSPITAL AND MEDICAL CENTER,    | ) |                                  |
| LLC,                            | ) |                                  |
|                                 | ) |                                  |
| Defendants.                     | ) |                                  |

BEFORE THE HONORABLE CRISTINA D. SILVA, DISTRICT COURT JUDGE  
**ALL PENDING MOTIONS**

TUESDAY, NOVEMBER 17, 2020

APPEARANCES [ALL VIA VIDEO CONFERENCE]:

|                       |                             |
|-----------------------|-----------------------------|
| For the Plaintiff:    | DANIEL MARKS, ESQ.          |
|                       | NICOLE M. YOUNG, ESQ.       |
| For Sunrise Hospital: | SHERMAN BENNETT MAYOR, ESQ. |
| For Dr. Delee:        | ERIC K. STRYKER, ESQ.       |
| For Dr. Kia:          | LINDA RURANGIRWA, ESQ.      |

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

Proceedings recorded by audio-visual recording; transcript  
produced by transcription service.

1 TUESDAY, NOVEMBER 17, 2020 AT 9:42 A.M.

2

3 THE COURT: 17-757722-C, *Choloe Green versus Frank*  
4 *Delee, M.D.*

5 MR. MARKS: Your Honor, Daniel Marks for the  
6 plaintiff.

7 THE COURT: Good morning. And who is present on  
8 behalf of defendant, Sunrise Hospital?

9 MR. MAYOR: Sherman Mayor, Your Honor. Thank you.

10 THE COURT: All right. Good morning. And, then,  
11 is there someone present on behalf of Nevada Hospitalist?  
12 All right. I don't hear anybody. So, I'm getting a -- I'm  
13 getting feedback. Is there anybody who is signed on to  
14 BlueJeans using two separate devices?

15 MR. STRYKER: There is, Your Honor. Eric Stryker  
16 on behalf of defendant, Delee. I'll mute my other device.

17 THE COURT: All right.

18 MR. STRYKER: My apologies.

19 THE COURT: All right. Good morning. And thank  
20 you for that. That causes that feedback issue. All right.

21 So, we are here on a couple of different motions.  
22 First, we're here -- well, at least -- not first, but in  
23 order that I have them, is Plaintiff's Motion for  
24 Reconsideration. And, then, we are also here for Defendant  
25 Sunrise Hospital and Medical Center's Motion to Retax

1 and/or Settle the Costs. And we are also here for  
2 Defendants Delee -- Defendant Delee's Joinder to  
3 Plaintiff's Motion for Reconsideration and Motion for Leave  
4 to Amend the Complaint. And, then, there's the Motion to -  
5 - for Leave to Amend the Complaint. So, we have a couple  
6 different things. I'm going to start with the Motion for  
7 Reconsideration. And I'll start with counsel for  
8 plaintiff. Is there anything you would like to add outside  
9 of the Pleadings?

10 MR. MARKS: Well, yes, Your Honor. And I will try  
11 to be brief. I think the operative document we were all  
12 working with is your minute order from July 23<sup>rd</sup>, which I  
13 think we all probably read a dozen times or more. And you  
14 state the correct law of *Schoenfeld* [sic]. And, then, in  
15 *Schoenfeld*, I think where you started -- you know, I don't  
16 have any pleasure in telling your Court they're wrong or  
17 erred, especially in *BlueJeans* where I'm not, you know,  
18 with you in the courtroom. But where I think it went off  
19 track, *Schoenfeld* was essentially a plaintiff's summary  
20 judgment that the plaintiff got summary judgment so the  
21 Supreme Court was saying here are the factors that  
22 generally are questions of fact but in the rare case there  
23 could be a summary judgment for one party as a matter of  
24 law.

25 But the Court cited an 1865 U.S. Supreme Court



1 case, *Ananger* [phonetic], that it -- it appears that the  
2 Nevada Supreme Court cited those, and you recited them.  
3 Obviously, a lot of law has come down in the agency area  
4 since 1865. We know, even going through the pandemic, the  
5 lines are blurred between 1099s and W-2s in our society now  
6 to a large extent.

7           The Court apparently didn't look at *McCrosky*,  
8 which is only three years old. And *McCrosky* is a Nevada  
9 Supreme Court case and that, I would say, fine-tuned the  
10 standard and brought it up to date, that when you're in a  
11 hospital you sign a bunch of forms. Essentially, the  
12 patient can't check every doctor's corporate structure.  
13 This is more of a societal decision that the individual  
14 patient, especially in illness, can't go back and go: Hey,  
15 Doc, are you an LLC, are you a PC, are you employed by the  
16 hospital?

17           So, while the *McCrosky* court reaffirmed the  
18 *Schoenfeld* test, it brought it into the modern era by  
19 saying, you know, the patient in that case had signed a  
20 COA. That COA was much more pro-defense than the one  
21 Sunrise attached. But our Supreme Court said it's  
22 debatable whether a typical patient would understand the  
23 COA to mean the hospital is not liable for the physician's  
24 negligence. If you look at it in practical terms, you  
25 might see 10 or more medical providers in a hospital stay,

1 maybe even more. The Court -- the Nevada Supreme Court  
2 didn't want the patient to have to check credentials of  
3 everybody and potentially sue 10 individual doctors.  
4 That's not the intent of the reading of these cases.

5 Now, if -- let's assume this was a business case  
6 and there was an issue regarding, is somebody employed or  
7 not that could come out in business or could come out in a  
8 personal injury case where somebody, you know, is doing  
9 repairs and you call ABC Plumbing and you sue them and they  
10 go: Oh, no, this guy that came out really has his own  
11 professional corporation, he's XYZ. I would submit that  
12 that's going to be an issue of fact for the jury.

13 The Court went off on the affidavit requirement,  
14 but the affidavit requirement is not where we are. The  
15 affidavit would have been years ago, testing on a Motion to  
16 Dismiss the Gatekeeper Rule. We're now at summary judgment  
17 where you look at depositions, you look at the exhibits,  
18 you look at the affidavits, you look at everything. And a  
19 lot of the *Schoenfeld* factors are the intent of the  
20 plaintiff. It -- the first factor is whether the patient  
21 entrusted herself to the hospital. There's no dispute.

22 THE COURT: Yeah. There's no dispute with that.

23 MR. MARKS: Whether the hospital --

24 THE COURT: But, hold on. Let me interrupt you  
25 right there. Are -- is your argument to the Court that I

1 should not and cannot consider the Complaint and the  
2 affidavit and the deficiencies thereof in making the  
3 decision that I made?

4 MR. MARKS: Correct. Correct. Because, under  
5 *Zohar*, in other words, the law you cited has been, I would  
6 say, fine-tuned for lack of a better word.

7 THE COURT: Sure.

8 MR. MARKS: It's not over -- but I think that --

9 THE COURT: And *Zohar* says to read those together.  
10 Right? And, so, I agree with you on that.

11 MR. MARKS: *Zohar* --

12 THE COURT: But, again, I feel a little bit like  
13 we're going back in time and we're repeating history --

14 MR. MARKS: But I wanted to make --

15 THE COURT: Counsel, hold on. We're repeating  
16 history. And those were my prior questions previously, in  
17 that where in the affidavit and where in the Complaint do  
18 we have these potential other defendants that would be  
19 considered proper to this action if they're not on notice?  
20 And I --

21 MR. MARKS: Okay. So, --

22 THE COURT: Answer that question for me.

23 MR. MARKS: I'm going to answer it. *Zohar* talks  
24 about conduct. It specifically says you don't have to name  
25 the people. And, if you recall, I believe it was on Nevada

1 Hospitalist's Motion to Dismiss against Sunrise that my  
2 distinguished colleague for Sunrise argued to the Court the  
3 affidavit was sufficient. And the Court, almost sua  
4 sponte, decided no, as it related to Dr. Kia in that  
5 motion, and that effectively led Sunrise to file this  
6 Motion, which had been previously denied, you recall, by  
7 Judge Smith, on the same facts. If you read *McCrosky* and  
8 you read *Zohar* together, it's conduct. *Zohar* says you  
9 don't have to name the parties as long as the conduct is  
10 delineated, which it was.

11           Now, we have in our Motion to Amend, having  
12 amended affidavit from Lisa Karamardian, who specifically  
13 named Dr. Kia, and we had another affidavit from Dr.  
14 Salvuk, who said in reading the affidavit of Lisa -- Dr.  
15 Karamardian, it's clear she was talking about the  
16 discharge. So, you don't, in your minute order, have any  
17 analysis of *Zohar* and *McCrosky*, which are more recent  
18 cases. I think if you look at the more recent cases, you  
19 should reconsider because summary judgment is a different  
20 standard. You're not limited. There's nothing in *McCrosky*  
21 that says you're limited to the affidavit. There's nothing  
22 in *Schoenfeld* that says you're limited to the affidavit.

23           Ostensible agency is a question of fact whether  
24 the patient believed this doctor was working for Sunrise.  
25 And we use working, the Court has said not in the

1 legalistic sense, it's not: Was the -- did he have is own  
2 PC? It's working under the four parts, which are really  
3 laymen. Someone shows up at your bedside, they're working.  
4 The Court -- you went off, Your Honor, with all due  
5 respect, I think on an overly legalistic: He's an  
6 independent contractor. But *Schoenfeld McCrosky* had made a  
7 public policy that the people in the hospital, if they show  
8 up at your bedside and you go through the four-part test,  
9 those are questions of fact that the jury would have to  
10 decide, not the Court, with all due respect to the Court.

11 And that's the --

12 THE COURT: So, I don't -- so, hold on. I'm going  
13 to -- I apologize for interrupting you. But I'm going to  
14 ask where in my minute order I discuss anything with him  
15 having to be an independent contractor.

16 MR. MARKS: You don't. That's the point. You  
17 don't look at *McCrosky*, which essentially supports our view  
18 that whether he's in independent contractor or employed is  
19 a question of fact for the jury, not the Court. So, you  
20 cite --

21 THE COURT: I don't disagree with you. I agree  
22 with you as to what *McCrosky* holds and I'm familiar with  
23 *Zohar*. But what you're asking me to do is overlook the  
24 fact that Dr. Kia was not named as a defendant, that there  
25 was nothing in the Complaint or the affidavit that put him

1 on notice of the potential claims against him. And I --  
2 you want me to just overlook that and I simply cannot.

3 MR. MARKS: No. No, I don't. I mean, I --  
4 remember, I'm -- we're suing -- right now, we're arguing  
5 Sunrise. Sunrise was on notice that the conduct of Dr. Kia  
6 in the discharge was negligent. That's in the affidavit  
7 and the Complaint.

8 THE COURT: I agree.

9 MR. MARKS: And --

10 THE COURT: I don't disagree with you on that.

11 MR. MARKS: So, offensive agency arises when you  
12 don't name the individual doctor. But the Supreme Court,  
13 as a matter of public policy, is saying because the  
14 individual patient in a bed, drugged, very sick, doesn't  
15 have to run around and sue 10 doctors. They can prove to  
16 the jury that these individual doctors were part of the  
17 medical team that treated her and prove the *Schoenfeld*  
18 factors and get liability.

19 This isn't a case where Sunrise didn't know the  
20 theory. Sunrise knew, based on the affidavit of Lisa  
21 Karamardian and the Complaint, that we were suing them  
22 because of the discharge. And that was, whether we use the  
23 word ostensible agency or not, we were suing them. They  
24 have to act through agents. They're a corporation. It has  
25 to act through employees or agents.

1           The problem is, you're saying: Why didn't you sue  
2 Dr. Kia? Then we wouldn't be arguing ostensible agency.  
3 Under your theory, Your Honor, with all due respect, you're  
4 saying: If you don't name the people, then there's no  
5 ostensible agency.

6           Ostensible agency is quite simply when you don't  
7 name. If you named, then it's direct liability and/or you  
8 could be saying vicarious liability. Ostensible agency is  
9 a public policy of the Supreme Court, saying you go to a  
10 hospital, you used to think everybody was employed by the  
11 hospital unless you pick up the phone like you go to your  
12 internist, OB/G, dermatologist, you know you're -- that's  
13 your doctor. You're in a hospital. You don't sign with  
14 each doctor. They don't come -- Dr. Kia didn't come and  
15 have the person sign and say, you're employing Dr. Kia,  
16 like you would if you went to his office.

17           The court is saying, as a matter of policy, number  
18 one, they don't want 10 doctors sued. That doesn't make  
19 sense. Every time you go to the hospital, you're going to  
20 sue 10 or 15 doctors. Number two, in your sickened  
21 condition, you have no way to know the legal relationship  
22 of all these people. So, you can't -- the Court is saying,  
23 as a matter of public policy, we're not going to let  
24 hospitals, which are the big building where everybody --  
25 you get your treatment, avoid liability on this blurred

1 distinction between 1099 and W-2.

2           It doesn't matter how they get paid. If they --  
3 if the hospital essentially sends the person, you go to the  
4 ER, and their own COA says: We have hospital-based  
5 physicians such as hospitalists and emergency room. That's  
6 what this is. They call them hospital based. They don't,  
7 in red, say, you know: Alert, your emergency room is an  
8 independent contractor. If you have a problem, you better  
9 get to them separately and sue them separately, your  
10 hospitalist, who is an independent contractor. There's no  
11 evidence Dr. Kia had her sign a separate form: You're  
12 employing me separately.

13           So, normally, under those conditions, -- forget  
14 it's a malpractice case. Under those conditions of  
15 employment law or agency law, certainly it wouldn't be  
16 summary judgment for the defendant. The *Schoenfeld* court  
17 thought, initially the District Court, it would be summary  
18 judgment for the plaintiff. The Supreme Court said: No,  
19 you got to deal with each case on a case-by-case basis.  
20 But most of the time it's a question of fact. And we're at  
21 summary judgment. We're not limited -- the affidavit  
22 requirement is no longer operative. We're way beyond that.

23           So, we should be able to prove our case if, on the  
24 directed verdict stage, you hear all the evidence, you look  
25 the witnesses in the eye, and you conclude no reasonable



1 jury could rule in our favor. At that stage, it's a  
2 different standard; otherwise, it goes to the jury. But to  
3 cut the case off at summary judgment, essentially saying  
4 they prevailed as a matter of law that no facts could  
5 support ostensible agency, I think is just plain error at  
6 this point, Your Honor.

7 And utilizing the affidavit as the shield, I  
8 believe is incorrect under *Zohar*. *Zohar* is saying: Look  
9 at conduct, not name. Sunrise was on notice. We're not  
10 talking about whether Dr. Kia was on notice. Sunrise  
11 clearly is on notice. And we're suing Sunrise for the  
12 actions of their agents and they had plenty of notice.

13 So, that's why we're asking to reconsider, go back  
14 to Judge Smith's original Order. This was argued  
15 extensively over a year ago. And we would --

16 THE COURT: But that was the argument where you  
17 said ostensible agency did not apply. Correct?

18 MR. MARKS: No. We -- Judge Smith found  
19 ostensible agency applied. It was a question --

20 THE COURT: I know what he found. But your  
21 argument during that hearing was that ostensible agency did  
22 not apply. Correct?

23 MR. MARKS: Your Honor, I do not --

24 MR. MAYOR: Yes.

25 MR. MARKS: I don't recall. I mean, there's an

1 Abe Lincoln quote about I don't remember what I said. This  
2 is a year and a half ago. I honestly didn't -- I looked  
3 through everything the last weekend but I didn't go back to  
4 the Judge Smith hearing. But I think Abe Lincoln said: I  
5 don't remember what I argued, you know, in the past, but I  
6 know I'm right now.

7 Judge Smith found ostensible agency applied and  
8 was a question of fact. If it's -- I just think you went  
9 off track on the affidavit requirement.

10 THE COURT: Yeah. I --

11 MR. MARKS: I think the law should be it's a  
12 question of fact. And we'd ask you respectfully to  
13 reconsider that.

14 THE COURT: All right. I'm going to turn to  
15 counsel for defendant. And I want you to focus on the  
16 ostensible agency, kind of two-part: One, the argument  
17 that because Sunrise was on notice, then that is sufficient  
18 at this point to continue with the litigation. And, two, -  
19 - well, let's start with that. Go ahead.

20 MR. MAYOR: Your Honor, Sherman Mayor here.

21 First, just so we're clear on the law, there's a  
22 case called *Renown versus Vanderford*, a 2010 Nevada Supreme  
23 Court case, that makes it absolutely clear that a hospital  
24 does not have a nondelegable duty to provide competent  
25 medical center. So, counsel's belief somehow that every

1 provider in the hospital is the liability of the hospital  
2 is not only not true, it is refuted by *Renown versus*  
3 *Vanderford*. There is no automatic liability for the  
4 hospital for anybody who provides care in the hospital.

5 In this case, in plaintiff's original Complaint,  
6 they did not plead any kind of agency. They certainly  
7 didn't ever mention the words ostensible agency or even  
8 allude ostensible agency. Nowhere in their expert  
9 affidavit did they mention agency, ostensible agency, or  
10 Sunrise liability for Dr. Kia. In fact, there was no  
11 reference to Dr. Kia.

12 Counsel continues to argue *Zohar* to the Court.  
13 The *Zohar* case referenced the first version of NRS 41A.071.  
14 Since *Zohar*, since the passage of *Zohar*, NRS 41A.071 was  
15 amended. And the amendment, in particular in our brief in  
16 part 4, requires a defendant. And the amendment occurred  
17 in 2015, prior to the plaintiff's Complaint in this case.  
18 The amendment states that the plaintiff must set forth  
19 factually a specific act or acts of alleged negligence  
20 separately as to each defendant, separately as to each  
21 defendant. There is no separation whatsoever for Dr. Kia  
22 because he's not even mentioned. He's not referenced  
23 whatsoever. There's no Does or Roes anywhere in the  
24 Complaint. There's no fictitious persons mentioned.

25 And when this matter was first argued before Judge

1 Smith, counsel for plaintiff argued to the Court that the  
2 Motion for Partial Summary Judgment to Dismiss Ostensible  
3 Agency should be denied because there was no claim for  
4 ostensible agency. There was nothing to be denied. In  
5 fact, we gave the Court in our summary judgment a copy of  
6 Judge Smith's minute order journal entry where he states  
7 that. So, plaintiff is now arguing there is a claim. Then  
8 they argued against a summary judgment arguing there wasn't  
9 a claim. And, of course, there wasn't a claim. We were --  
10 in anticipation they might bring one, we were arguing. But  
11 they hadn't actually brought it. You actually have to  
12 plead your causes of action in order to have them.

13 And, in this case, what complicates matters for  
14 plaintiff is the statute of limitations for medical  
15 malpractice expired on August 9, 2018, more than two years  
16 ago. That is significant because the Nevada Supreme Court  
17 has stated, in a case called *Badger*, which we've provided  
18 in our brief to the Court, that you can't add a new theory  
19 or a new cause of action after the expiration of the  
20 statute of limitations. And that's what they're trying to  
21 do here. Ostensible agency has never been plead. They  
22 argued it wasn't plead to defeat the summary judgment in  
23 the first place.

24 And, Your Honor, just -- I know that Your Honor's  
25 read the briefs. I want Your Honor to consider that a

1 parallel motion today that the plaintiff has brought is a  
2 Motion to Amend to Add Dr. Kia and Add Nevada Hospitalist  
3 Group as Defendants. The reason I mention that is because  
4 they describe Nevada Hospitalist Group in their Motion to  
5 Amend as the employer of Dr. Kia. And Nevada Hospitalist  
6 Group is the entity that selected Dr. Kia.

7 I mean, you can't have it every which way you want  
8 to have it. The hospital didn't select Dr. Kia. And the  
9 case is not *Schoenfeld*, it's *Schlotfeldt*. And they didn't  
10 select -- in *Schlotfeldt*, the key element to have  
11 ostensible agency is that the hospital selected the doctor.  
12 Ostensible agency is based on the theory of vicarious  
13 liability. The hospital didn't select Dr. Kia. And we've  
14 provided the Court with four different deposition sections  
15 telling you that it was Nevada Hospitalist Group's private  
16 call schedule that selected Dr. Kia to treat the plaintiff,  
17 Choloe Green. They have nothing, no evidence whatsoever,  
18 none to contradict that. They keep arguing: Well, it's  
19 subject to a hospital contract. We gave the Court an  
20 affidavit. There is no hospital contract. There's  
21 nothing. We didn't select -- we didn't select Dr. Kia to  
22 treat.

23 So, they didn't plead ostensible agency. They  
24 haven't complied with .071 in arguing ostensible agency.  
25 You have to have an affidavit that supports your theory,

1 that at least names your theories, they -- the statute of  
2 limitations has expired. And they're trying to add in  
3 Nevada Hospitalist Group, arguing that it is the employer  
4 of Dr. Kia. And we've presented evidence to the Court that  
5 Nevada Hospitalist Group is the entity, the private entity  
6 that selected Dr. Kia to treat Choloe Green. There is  
7 absolutely no basis in this case for ostensible agency.

8 And, at this point, you can't bring -- when I say  
9 you can't, I mean the plaintiff's argument that you should  
10 bring -- allow ostensible agency after the expiration of  
11 the statute of limitations would render the statute of  
12 limitations meaningless. We'd be trying a different case.

13 Yes, we were aware that they contended early on  
14 there was an improper discharge. They claimed Sunrise  
15 Hospital's nurses improperly discharged. They never  
16 claimed the hospital is liable for Dr. Kia. They never  
17 named him. They never named agency. Ostensibly, they  
18 never named Dr. Kia. So, it's too late and the summary  
19 judgment is well taken. And, at this point, we're on a  
20 Motion to Reconsider where the standard is that the Court's  
21 ruling is clearly erroneous. The ruling is not erroneous.  
22 That -- there is no basis at this point by summary judgment  
23 to have an ostensible agency claim.

24 In *Schlotfeldt*, what the Court said was ostensible  
25 agency is an issue like summary judgment motions where the

1 plaintiff has to produce a genuine issue of material fact,  
2 otherwise it's granted. And they haven't produced an  
3 actual fact.

4 And, so, we ask that the Court affirm its earlier  
5 ruling and deny their reconsideration as to ostensible  
6 agency. Thank you, Judge.

7 THE COURT: All right. And just for the record to  
8 be -- I appreciate your argument that he was an independent  
9 contractor and there's no proof of ostensible agency. But  
10 I think that's going far beyond the issue that we have  
11 before us with the lack of Dr. Kia being named and the lack  
12 of any explanation in the expert affidavit or Complaint:  
13 A, putting him on notice; or, B, explaining how he was and,  
14 you know, negligent. I agree that negligence is a question  
15 of fact. But we have to get there. Otherwise, any person  
16 can be brought into any litigation without notice that they  
17 are facing the kind of claims that are against them.

18 And that would be in direct conflict with Nevada's  
19 long-standing requirement of notice, that you have -- this  
20 -- we are a notice pleading jurisdiction. And there is no  
21 such notice for Dr. Kia. I agree that Dr. -- that Sunrise  
22 Hospital was on notice that they were being sued on  
23 allegations of negligence and medical malpractice. But  
24 that's different than Dr. Kia.

25 So, I am going to deny the Motion for

1 Reconsideration --

2 MR. STRYKER: Your Honor, Eric Stryker for the  
3 lead defendant. May I be heard?

4 THE COURT: Sure. Go ahead.

5 MR. STRYKER: I apologize, Your Honor. I --

6 THE COURT: No problem. I didn't --

7 MR. STRYKER: I did not mean to step on your  
8 order.

9 THE COURT: -- and I didn't mean to forget you.  
10 So, please go ahead.

11 MR. STRYKER: That's okay.

12 I want to kind of focus in on the questions that  
13 the Court is asking. I'm not going to get into the  
14 ostensible agency issues. Those aren't my issues to  
15 litigate right now. I want to go to the question that the  
16 Court asked: Where are the other doctors, by name or  
17 conduct, referred to in the original affidavit plaintiff  
18 attached to her Complaint? And I can answer that.

19 The original affidavit of Dr. Karamardian attached  
20 to the original Complaint said that there were two acts of  
21 professional negligence. First, when the patient was  
22 discharged from Sunrise Hospital the day after Dr. Delee,  
23 my client, performed a c-section. The second act of  
24 professional negligence was when she was discharged from  
25 Sunrise Hospital when she returned to the hospital and was



1 treated by Dr. Kia and discharged on July 16<sup>th</sup>, 2016. As my  
2 brief on behalf of the Delee defendants makes clear, that  
3 second discharge was an act -- allegedly, an act of  
4 professional negligence on the face of the plaintiff's  
5 expert affidavit, that is conduct.

6 And as -- what we carefully did is in our Joinder  
7 we actually cut and pasted the image of the discharge  
8 orders so the Court could see exactly what the order looked  
9 like. And, I mean, I think the Court can probably agree  
10 that decisions -- a decision made by a physician to  
11 discharge a patient rather than keep her in the hospital  
12 and perform surgery is conduct. And that conduct is on the  
13 face of the original affidavit attached to the original  
14 Complaint. It was conduct of only one physician because  
15 only one physician issued that discharge order on July 16,  
16 2016. That doctor was Dr. Kia.

17 Now, --

18 THE COURT: Right. But I know you're seeing that  
19 --

20 MR. STRYKER: We have --

21 THE COURT: -- but where in the affidavit does it  
22 say Dr. Kia?

23 MR. STRYKER: The wonderful thing Dr. -- the  
24 wonderful thing, Your Honor, about Nevada law is that the  
25 affidavit doesn't have to. The affidavit can -- when the

1 statute says, the affidavit must describe by name or  
2 conduct, that's disjunctive. You can do one or the other.  
3 You can name Dr. Kia by name. Or you can describe Dr.  
4 Kia's act of professional negligence by conduct. And the  
5 face of the affidavit says the patient should not have been  
6 discharged by Sunrise Hospital on July 16<sup>th</sup>, 2016. That is  
7 naming Dr. Kia by conduct rather than his actual name. And  
8 that's okay. Under the statute, under *Zebegan* [phonetic]  
9 interpreting the statute, as long as they describe the  
10 specific conduct attributable to the medical malpractice --  
11 or, I should say professional negligence defendant, it  
12 passes muster.

13 And the -- I guess the central question --

14 THE COURT: Well, --

15 MR. STRYKER: -- that the Court has to --

16 THE COURT: Okay. Hold on, counsel.

17 MR. STRYKER: Yes.

18 THE COURT: Paragraph 5 of the affidavit says,  
19 quote:

20 This was a violation of the standard of care by  
21 Sunrise Hospital and Dr. Delee.

22 MR. STRYKER: And the expert made a mistake.

23 THE COURT: Okay.

24 MR. STRYKER: Because the expert didn't realize  
25 that Dr. Delee did not issue that order, Dr. Kia did. And

1 that's why we --

2 THE COURT: Okay. And I understand that. But,  
3 then, how does that not render that affidavit deficient?

4 And you -- here's a secondary challenge to this.  
5 There was issues and notice of these deficiencies when this  
6 initial motion was argued before Judge Smith in the spring  
7 of 2019. So, it's not like: Oh, we had no idea this was  
8 an issue. This was an issue brought up back then.

9 So, I -- if I am to accept the argument that  
10 anyone can be brought into the litigation based on what is  
11 clear -- and I agree with you that that's a mistake. And  
12 I'm sorry. And it's frustrating to me. And I feel very  
13 disappointed on behalf of the plaintiff that this is kind  
14 of the situation that we're in. But it's -- this issue has  
15 been known for quite some time. And if I were to accept  
16 the argument that, well, yeah, that was an error but that  
17 makes it okay, that would be: A, me disregarding the plain  
18 language of .071, which would be error; and, B,  
19 disregarding notice pleading requirement, that would also  
20 be error; and, C, really supporting a theory that anybody,  
21 myself included, could be brought into a litigation if  
22 somehow by argument alone, I would be considered an agent  
23 or agency liability based on the affidavit and the  
24 Complaint as written.

25 So, I ask, again, kind of the same question, where

1 in affidavit and where in the Complaint does Dr. Kia and  
2 let's call Nevada Hospitalist brought into this?  
3 Unfortunately, it's not there.

4 Conduct -- I would agree with you if said this was  
5 a violation of standard of care, period. Because, then,  
6 that could be read broader. And it could be read with a  
7 broader stroke of anyone who was involved in that  
8 discharge. But that's not what it reads. It specifically  
9 named Sunrise Hospital and Dr. Delee. So, focus --

10 MR. MARKS: Your Honor --

11 THE COURT: -- your argument as to that.

12 MR. STRYKER: I'll turn it to plaintiff shortly.  
13 But, just to kind of respond to the question, I think that  
14 it's -- obviously, Dr. Delee had nothing to do with this.  
15 Obviously, Dr. Delee is frustrated that he's being blamed  
16 for a nonparty physician's order discharging a patient when  
17 he was out of town. That having been said, it's the Delee  
18 defendant's position that if you were to look at the  
19 sentence as a whole, it describes the conduct of  
20 discharging the patient on July 16<sup>th</sup>, 2016. It's  
21 unfortunate that the sentence went on to say, by Sunrise  
22 and Dr. Delee, but that could be considered surplusage to  
23 the extent that the plaintiff's expert witness or  
24 plaintiff's counsel made a mistake.

25 As to why the issue was not handled sooner, I

1 can't speak to plaintiff's counsel. It's -- he's the  
2 captain of the ship of his pleadings. But when Sunrise  
3 Hospital brought Dr. Delee into the case, I think a couple  
4 years ago, it appeared to all the parties that the problem  
5 was addressed.

6 But I'll let plaintiff's counsel speak to that.  
7 And I thank the Court for her time.

8 THE COURT: Absolutely.

9 MR. MARKS: Your Honor, I think Mr. Stryker meant  
10 brought Dr. Kia in.

11 I think that for whatever reason, it's been kind  
12 of confusing to argue this by BlueJeans. Your Honor, if  
13 you look at that sentence, I don't think it was a mistake.  
14 The -- if you look earlier, what Dr. Karamardian is saying  
15 is: The discharge was discussed with Dr. Delee. I don't -  
16 - she clearly didn't mention Dr. Kia. But she's saying the  
17 discharge.

18 Now, my opponent is saying the discharge is the  
19 nurses. We know the discharge was signed by Dr. Kia. She  
20 doesn't have to mention Dr. Kia by name, as Mr. Stryker  
21 said. The discharge was a violation of the of the standard  
22 of care by Sunrise.

23 MR. STRYKER: Where is that case? Where is that  
24 case that says he doesn't have to be named?

25 THE COURT: Hold on. Hold on.

1 MR. MARKS: And --

2 THE COURT: Hold on, counsel.

3 MR. MARKS: And Dr. Delee is named because of the  
4 discussion earlier in the paragraph. I don't think that is  
5 a mistake.

6 The point is if we name Dr. Kia, we wouldn't be in  
7 this situation of arguing, necessarily, there would be  
8 ostensible agency. And I think Mr. Stryker pointed that  
9 out correctly. There's a detailed affidavit by Dr.  
10 Karamardian. If you would at least go back and look at the  
11 affidavit, and re-read *Zohar*, and look at *McCrosky*, and  
12 reconsider your decision.

13 *Badger* is not applicable. *Badger* is bringing in a  
14 different defendant after a six-month foreclosure date.  
15 That's just a different issue. This is saying: We sued  
16 Sunrise, can Sunrise get summary judgment or is there a  
17 question of fact? There -- if we had named Kia, we  
18 certainly wouldn't be here on a Sunrise Motion for Summary  
19 Judgment, it would be Sunrise versus Dr. Kia, presumably,  
20 which is what you had previously.

21 Now, if Kia had stayed in, my opponent had argued  
22 against Dr. Kia being dismissed, essentially saying the  
23 affidavit was sufficient. How can you argue the affidavit  
24 was sufficient at that point and now argue the affidavit's  
25 not sufficient at this point? Everybody should be in.

1 And, then, the Court can parse it out if the evidence  
2 doesn't support it.

3 THE COURT: All right. And I --

4 MR. MARKS: But, for today's purposes --

5 THE COURT: I respectfully disagree. Even looking  
6 at *Zohar*, it specifically says:

7 We conclude that reason and public policy dictate  
8 that courts should read the Complaint and the  
9 plaintiff's expert affidavit together when determining  
10 whether the expert affidavit meets the requirements of  
11 NRS 41A.071.

12 It cites to *Great Basin*. It cites to *Washoe*  
13 *Medical Center*. This makes sure there aren't any frivolous  
14 cases and, quote:

15 Furthers their purposes of our notice pleading  
16 standard and comports with the Nevada Rules of Civil  
17 Procedure.

18 If you go and you read cases that happened after  
19 *Zohar*, it kind of reiterates that. And it, again, says  
20 that they want to make sure that people are placed on  
21 notice of the claims against them.

22 I cannot read the affidavit and the Complaint  
23 together to find where Dr. Kia would be included. And I  
24 appreciate the argument and the zealous representation to -  
25 - for me to find otherwise. But I cannot. I do not

1 believe that my decision was clearly erroneous. And, so, I  
2 am going to deny the Motion for Reconsideration.

3 MR. MAYOR: Your Honor, that pertains to the  
4 ostensible agency claim. That's the only thing Sunrise is  
5 arguing here is that there's claims for ostensible agency  
6 issues to be dismissed and reaffirm.

7 THE COURT: Correct.

8 MR. MAYOR: Okay.

9 MR. MARKS: Your Honor, --

10 MR. MAYOR: We didn't --

11 MR. MARKS: -- the Motion -- go ahead, sir.

12 MR. MAYOR: We hadn't -- just so we're clear,  
13 Judge, Sunrise is not taking a position on the issue of  
14 Motion to Amend to add Dr. Kia or not. We've taken a  
15 position that they haven't plead and they haven't brought  
16 ostensible agency. And that was what the summary judgment  
17 granted and that's -- we're seeking to reaffirm and deny  
18 their reconsideration about ostensible agency. That's the  
19 only issue we're arguing here.

20 THE COURT: And I understand that. And I  
21 understand why you're arguing that, that you're not  
22 addressing the Motion to Amend because that's a different  
23 issue. I understand that.

24 MR. MARKS: Your Honor, the Motion to Amend was  
25 set for Thursday on the chambers calendar. I didn't know



1 if it was still that or if you were going to do it today.

2 THE COURT: Well, I think we can go ahead --

3 MR. MARKS: It's still on.

4 THE COURT: We can go ahead and do that today.  
5 Yeah. And I'll take it off my chambers calendar. I think  
6 that makes sense.

7 So, I have reviewed the Motion for Leave to Amend  
8 the Complaint. And I have reviewed the Opposition. Hold  
9 on here. I got to click into that Motion.

10 [Pause in proceedings]

11 THE COURT: All right. So, okay, there's the  
12 Motion to Amend was filed on October 16<sup>th</sup> of 2020. The  
13 Limited Opposition was filed on October 26<sup>th</sup>. And, of  
14 course, -- not here. I don't see an Opposition to the  
15 Motion to Amend in general. So, let me hear first from  
16 counsel for plaintiff.

17 MR. MARKS: Well, Your Honor, first, again,  
18 looking at your minute order, I think you found good cause  
19 but you thought the affidavit wasn't sufficient. We have  
20 done an amended affidavit.

21 I would point out there was some confusion about  
22 the deadlines. In the scheduling order there had been a  
23 deadline and we certainly complied. We had filed it  
24 previously within that deadline. I think the Court thought  
25 we didn't. You're allowed to amend within the scheduling

1 order deadline. And, then, certainly the defendant can  
2 move to dismiss or assert whatever defenses. But there's  
3 still the liberality pleading to amend. So, we've  
4 corrected any -- the Court found good cause to amend. You  
5 had some problems with the affidavit, which have been  
6 corrected. So, I think based on your minute order of July  
7 23<sup>rd</sup>, the amendment should be allowed.

8           Without belaboring, I think we briefed it  
9 adequately. There isn't really, I thought, a major  
10 opposition. So, I think it should be allowed to go  
11 forward.

12           THE COURT: Well, I agree that there's a --  
13 there's some amendments that are allowed to be made. But  
14 you still have to address statute of limitation issues,  
15 whether or not there's new causes of action that are being  
16 raised for the very first time, and I think that is the  
17 issue specifically that Sunrise Hospital has raised in  
18 their Opposition.

19           So, it -- narrow your argument to me as to why I  
20 should just grant this motion carte blanche in light of key  
21 issues like statute of limitations and notice.

22           MR. MARKS: Well, Your Honor, I think you should  
23 grant it and, then, they can file their motion and we can  
24 brief it if there's an issue regarding statute of  
25 limitations. I think the relation-back doctrine and Rule

1 15(a) applies. And I think the Court, at least from your  
2 prior order, seemed to be agreeing with us that we can  
3 amend, but felt that we needed a more detailed affidavit,  
4 which we've supplied. In -- on the last page of your  
5 minute order you say:

6           Despite finding good cause to amend, the Court  
7           cannot grant the Motion at this time until they comply  
8           with 41A.071.

9           We did that.

10           Now, if they feel they have statute of limitations  
11 or other issues, they certainly can raise that at the  
12 appropriate time. So, you said:

13           Accordingly, Plaintiff's Motion to Amend is denied  
14           without prejudice.

15           So, I thought, based on the fact we had done it  
16 prior to the -- these scheduling orders have to mean  
17 something, meaning someone can amend prior to that  
18 deadline, we corrected what the Court was concerned about  
19 on the July 23<sup>rd</sup> minute order, and, based on that, I think  
20 we should be allowed to amend. Obviously, once we do that,  
21 counsel can raise whatever they're raising.

22           *Badger* is a different person. At -- you know, to  
23 deal with Sunrise's objection, *Badger* is they're suing A  
24 and they bring in B. We're -- this is a claim for  
25 corporate negligence against Sunrise. Sunrise was on

1 notice of the factual basis for it. It's not a new party.  
2 It's not a totally different party, as in *Badger*. They  
3 keep citing the case where they bring in a different party,  
4 a guarantor, and not a different, you know, cause of action  
5 against the same party. The factual basis for that cause  
6 of action is the same. When the factual basis is the same,  
7 the relation-back doctrine should apply.

8 Dr. Kia is not here, I don't believe. Obviously,  
9 they could file a motion or do what they're going to do  
10 once they're served. But, right now, it's within the time  
11 frame of the scheduling order to set -- you don't deal with  
12 the statute of limitations at this point. That would come  
13 up at a later time, based on what Dr. Kia is going to file.

14 And we did everything in accordance with your July  
15 23<sup>rd</sup> minute order. So, I think the Motion, then, should be  
16 granted.

17 THE COURT: All right. Would either other counsel  
18 present want --

19 MR. MAYOR: Yes.

20 THE COURT: -- any argument in relation to that --  
21 to this Motion?

22 MR. MAYOR: Yes, Your Honor. This is Sherman  
23 Mayor for Sunrise Hospital.

24 I just want to make sure that I'm clear where  
25 we're going. The Court has denied Plaintiff's Motion to

1 Reconsider the Dismissal of the Ostensible Agency Claim.  
2 That's one ruling. Is that correct?

3 THE COURT: Correct.

4 MR. MAYOR: And, then, secondly, there was an  
5 argument that plaintiff attempted to bring in a corporate  
6 negligence claim. And the Court has denied that Motion to  
7 Reconsider as well. Is that correct?

8 MR. MARKS: I didn't hear the Court rule on that  
9 yet.

10 MR. MAYOR: I -- well, that's why I'm asking.

11 THE COURT: Right. So, these are kind of  
12 intertwined, if you will. Right? So, --

13 MR. MAYOR: Yes.

14 THE COURT: So, let me hear argument from you, Mr.  
15 Mayor, in regard to whether or not I should grant the  
16 Motion or deny the Motion for Reconsideration regarding the  
17 corporate negligence, negligent supervision.

18 MR. MAYOR: And the reason I'm separating these,  
19 Your Honor, is there -- in my view, there was three issues.  
20 One was ostensible agency, one was corporate negligence,  
21 and the third one was the amendment to bring in Dr. Kia.

22 THE COURT: Right.

23 MR. MAYOR: And, so, we're clear, Sunrise Hospital  
24 did not oppose or support the amendment to bring in Dr.  
25 Kia. We did not address that. We addressed the first two

1 arguments, ostensible agency and the corporate negligence.

2 But, with regard to the corporate negligence, the  
3 plaintiffs have offered no new facts and no new law to  
4 justify reconsideration of the denial of their late effort  
5 to bring in a corporate negligence claim. The Court found  
6 that under Rule 16(b), the standard to consider bringing in  
7 a corporate negligence claim at this late date would --  
8 it's a good cause standard. It's not the liberal standard  
9 of Rule 15(a) and, therefore, you go to the diligence of  
10 the parties seeking to amend.

11 And the Court specifically found in its August 28<sup>th</sup>  
12 Order that there was not good cause to allow such an  
13 amendment at this late date. And to hold otherwise would,  
14 in fact, render the statute of limitations, or medical  
15 malpractice, meaningless.

16 And, under *Badger*, in that case, the Nevada  
17 Supreme Court states, and I'm quoting from *Badger*:

18 We have refused to allow a new claim based upon a  
19 new theory of liability asserted in an Amended Pleading  
20 to relate back under Rule 16(c) after the statute of  
21 limitations had run.

22 That is -- that statement in *Badger*, a 2016 case,  
23 is precisely on point here. A claim never previously  
24 served -- never previously asserted for corporate  
25 negligence is clearly a new claim or a new theory of

1 liability. Under *Badger*, it's more than two years after  
2 the statute of limitations expired, it's too late. And  
3 plaintiff would argue that they still had a deadline -- the  
4 deadline for amendments had not yet been expired, wasn't  
5 set to expire until September of 2020. But that's a  
6 deadline for amendments, for legal amendments, for  
7 amendments that can be amended. This one can't. It's  
8 untimely. The statute of limitations is gone. And, so,  
9 you can't bring in a new theory more than four years after  
10 the events at issue and more than three years after they  
11 filed their Complaint, and now bring in a corporate  
12 negligence claim. And the Court -- and with a lot of  
13 discovery done. And the Court found that there wasn't good  
14 cause to permit that.

15           And, you know, there's a case called *Stephens*  
16 *versus Music* -- I have it here somewhere. *Stephens versus*  
17 *Music Company* something. It's a Nevada Supreme Court case  
18 saying that in any statute where the -- where leave is  
19 required of the Court to amend, then you have to show a  
20 basis for it. It's not automatically granted. Otherwise,  
21 there would be no reason to have a statute saying leave of  
22 court. Here, the corporate negligence claim is untimely by  
23 at least two years since the passage of the statute of  
24 limitations. And it's untimely in the flow of the case and  
25 it's more than three years since they've filed their

1 Complaint. And it violates the theory of *Badger* and it  
2 should be denied. And the Court did deny it and we're  
3 asking that reconsideration be affirmed. Thank you, Judge.

4 THE COURT: All right. Thank you.

5 MR. MARKS: Your Honor, just briefly.

6 We think the applicable laws is *Costello*, not  
7 *Badger*. *Badger* is bringing in a different party. This is  
8 a different theory on the same facts. We think *Costello*  
9 applies and we think, therefore, reconsideration should be  
10 granted on that.

11 THE COURT: All right. I'm going to deny  
12 reconsideration as to the new claims of corporate  
13 negligence, or negligent supervision. I am going to grant  
14 the Motion to Amend as to -- to the extent that plaintiff  
15 can add in Dr. Kia. I anticipate that this will then be  
16 subject of additional litigation. But we'll cross that  
17 bridge when we get there. And, so, to that extent, the  
18 Motion to Amend is granted in part and denied in part.

19 And does either party have any questions as to my  
20 ruling on this Motion?

21 MR. MAYOR: Are you -- Plaintiff's Motion to Amend  
22 was to add Dr. Kia and Nevada Hospitalist Group. Is it --

23 MR. MARKS: Yeah.

24 MR. MAYOR: I'm sorry, Judge.

25 THE COURT: Correct. Correct.



1 MR. MARKS: Correct.

2 MR. MAYOR: Did you grant it as to both?

3 THE COURT: Yes.

4 MR. MARKS: Thank you.

5 MR. STRYKER: Thank you, Your Honor.

6 THE COURT: Now, adding that --

7 MR. MAYOR: Thank you, Your Honor.

8 THE COURT: Just to be clear, again, I anticipate  
9 additional litigation. So, we'll see what happens when  
10 that -- when we cross that bridge.

11 So, I would ask --

12 MR. MARKS: Do you want me to prepare --

13 THE COURT: I'm sorry?

14 MR. MAYOR: There's a final issue of -- there's a  
15 final Motion to Retax before the Court today, too, as well,  
16 Judge.

17 THE COURT: Correct. Correct. Before we get  
18 there --

19 MR. MAYOR: And, --

20 THE COURT: Hold on. Before we get there, --

21 MR. MAYOR: I'm sorry.

22 THE COURT: -- I'm going to ask counsel for  
23 Sunrise Hospital to draft the Order regarding the denial of  
24 the Motion to Reconsider. I am going to ask counsel for  
25 plaintiff to draft the Order regarding my granting in part

1 and denial in part of the Motion to Amend the Complaint.  
2 I'm ordering both of you to meet and confer on those draft  
3 Orders before they're submitted to chambers within 30 days.  
4 They need to be submitted on or before -- actually, they  
5 need to be submitted before December 15<sup>th</sup>. I'm going to set  
6 this for a status for those Orders. And if they're signed  
7 -- if they're received and signed, then we'll be off  
8 calendar.

9 MR. MARKS: So, is it on calendar for 9 a.m. on  
10 the 15<sup>th</sup>, subject to the Orders being signed by the Court,  
11 or it's in chambers?

12 THE COURT: It will be -- no, no, no. It will be  
13 set for hearing. And it will be taken off calendar if I  
14 receive the Orders.

15 MR. MARKS: Okay. Very well. Thank you.

16 THE COURT: Okay. All right. And, then, last we  
17 have the Motion to Retax Costs. It doesn't appear to me  
18 there's much opposition. But I'll hear from anyone who  
19 would like to argue any opposition to the Motion.

20 MR. MAYOR: Your Honor, it's Sunrise's Motion.  
21 But there was an Opposition filed. I have to advise the  
22 Court of that.

23 THE COURT: I did see that. It was filed on  
24 November 17<sup>th</sup>. But the Opposition didn't seem like -- I  
25 didn't get -- the Opposition was limited, I guess, in that

1 it was asking us to wait because --

2 MR. MAYOR: That was our Motion, Judge. In our  
3 Motion, what we're saying is that Dr. Kia was seeking costs  
4 because he was dismissed from the case.

5 THE COURT: Right.

6 MR. MAYOR: Sunrise is asking that that ruling be  
7 delayed to see if Dr. Kia is brought back into the case.  
8 And we thought that the Motion for Costs would be premature  
9 then. And we're just asking for it to be deferred to see  
10 what happens with Dr. Kia.

11 THE COURT: Hold on here.

12 MS. RURANGIRWA: Your Honor, this is Linda  
13 Rurangirwa on behalf of Dr. Kia.

14 THE COURT: Good morning.

15 MS. RURANGIRWA: Good morning.

16 Opposition with regard to the Motion to Retax is  
17 that the costs that were incurred up until that time were  
18 incurred as a result of Sunrise bringing us into the case.  
19 If -- and, as Your Honor noted, there will be further  
20 litigation with regard to the Motion to Amend. But any  
21 costs associated with bringing Dr. Kia back into the  
22 Complaint going forward would be associated with plaintiff  
23 as opposed to Sunrise Hospital. I think those are separate  
24 issues. I think we can have a ruling on the costs  
25 associated with Sunrise Hospital's failure to maintain Dr.

1 Kia in the case, based on their Third-Party Complaint.

2 THE COURT: All right. Let me hear from Sunrise  
3 as to that issue.

4 MR. MAYOR: Yes. And our Opposition is that the  
5 majority of the costs they're claiming are for deposition  
6 transcripts that they will need if they're brought back  
7 into the case. And, essentially then, we would be funding  
8 their participation in this case for their own defense if  
9 they're brought back in. We would agree that if Dr. Kia is  
10 not brought back in the case, then we would owe them the  
11 costs they've alleged when they were dismissed. But if  
12 they're brought back in, they will be using the transcripts  
13 that they paid for, the deposition transcripts, that's a  
14 majority of the costs, in defense of Dr. Kia, if he's  
15 brought back in the case. So, they would -- if he comes  
16 back in, they would essentially have us funding their  
17 transcripts.

18 So, we're asking the Court just wait to see what  
19 happens with Dr. Kia. If he's brought back in, then we  
20 don't owe it. And if he's not brought back in, we do owe  
21 it.

22 THE COURT: All right. I do think it's a little  
23 early to make this determination. So, I'm going to deny  
24 this Motion without prejudice. And, especially in light of  
25 my ruling on the Motion to Amend the Complaint. When this

1 litigation is all said and done, at some point, perhaps we  
2 can break up the costs, depending on what happens.

3 Any questions?

4 MR. MAYOR: May I prepare that Order as well, Your  
5 Honor? It will be just if -- it'll just be deferring it  
6 until -- it'd be denied without prejudice and to be  
7 deferred to a later date.

8 THE COURT: That's fine. And just share it with  
9 opposing counsel and have it submitted jointly, please.

10 MR. MAYOR: Will do.

11 THE COURT: All right. Anything else we need to  
12 address this morning?

13 MR. MARKS: No, Your Honor. Thank you very much  
14 for your time.

15 THE COURT: All right. Thank you.

16 MR. STRYKER: No, Your Honor. Thank you.

17 MS. RURANGIRWA: Thank you, Your Honor.

18 THE COURT: Take care, everyone. Stay well.

19 MR. MAYOR: Thank you, Judge. Bye-bye.

20 THE COURT: All right.

21

22 PROCEEDING CONCLUDED AT 10:35 A.M.

23 \* \* \* \* \*

24

25

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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20 KRISTEN LUNKWITZ

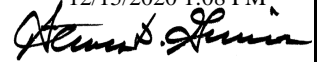
21 INDEPENDENT TRANSCRIBER

22

23

24

25

  
CLERK OF THE COURT

LAW OFFICE OF DANIEL MARKS  
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(702) 386-0536; Fax (702) 386-6812  
Attorneys for Plaintiff

DISTRICT COURT  
CLARK COUNTY, NEVADA

CHOLOE GREEN, an individual,  
Plaintiff,

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

v.

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

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

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

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

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

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

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

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

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

25 ////

26 ////

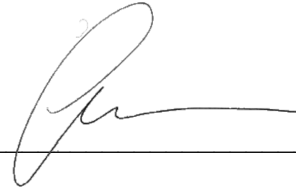
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DENIED, including Plaintiff's request to amend her complaint to add ostensible agency as a theory of liability against Defendant Sunrise Hospital and to add a claim of corporate negligence against Defendant Sunrise Hospital.

Dated this 15th day of December, 2020



EC

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

Respectfully Submitted:

Approved as to Form and Content:

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

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

/s/ Nicole M. Young  
\_\_\_\_\_  
DANIEL MARKS, ESQ.  
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NICOLE M. YOUNG, ESQ.  
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Attorney for Plaintiff

/s/ Charlotte Buys  
\_\_\_\_\_  
SHERMAN MAYOR, ESQ.  
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Nevada State Bar No. 14845  
1160 N. Town Center Drive Suite #200  
Las Vegas, Nevada 89144  
Attorney for Sunrise Hospital

Approved as to Form and Content:

DATED this 10th day of December, 2020.

WILSON, ELSER, MOSKOWITZ,  
EDELMAN & DICKER LLP

/s/ Eric K. Stryker  
\_\_\_\_\_  
ERIC K. STRYKER, ESQ.  
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Attorney for Frank DeLee, M.D. and  
Frank DeLee, M.D., PC's

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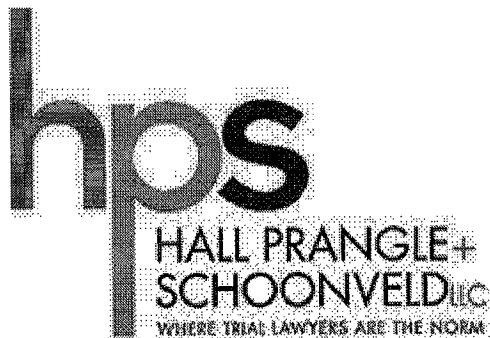
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**From:** Charlotte Buys [mailto:cbuys@HPSLAW.COM]  
**Sent:** Thursday, December 10, 2020 2:51 PM  
**To:** Stryker, Eric K. <Eric.Stryker@wilsonelser.com>; Nicole Young <NYoung@danielmarks.net>; Office <office@danielmarks.net>; Lord, Nicole N. <Nicole.Lord@wilsonelser.com>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

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

Very truly yours,

Charlotte Buys



**Charlotte Buys**  
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O: 702.212.1478  
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PA0297

**From:** Stryker, Eric K. <Eric.Stryker@wilsonelser.com>  
**Sent:** Thursday, December 10, 2020 1:40 PM  
**To:** Nicole Young <NYoung@danielmarks.net>; Charlotte Buys <cbuys@HPSLAW.COM>; Office <office@danielmarks.net>; Lord, Nicole N. <Nicole.Lord@wilsonelser.com>  
**Cc:** Sherman Mayor <smayor@HPSLAW.COM>; Mike Prangle <mprangle@HPSLAW.COM>; Tyson Dobbs <tdobbs@HPSLAW.COM>; Casey Henley <CHenley@HPSLaw.com>  
**Subject:** RE: Green v. Delee- Proposed Order re Motion to Amend

[External Email] CAUTION!.

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

Eric K. Stryker  
Attorney at Law  
Wilson Elser Moskowitz Edelman & Dicker LLP  
6689 Las Vegas Blvd. South, Suite 200  
Las Vegas, NV 89119  
702.727.1242 (Direct)  
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---

**From:** Nicole Young [mailto:NYoung@danielmarks.net]  
**Sent:** Thursday, December 10, 2020 10:14 AM  
**To:** Charlotte Buys <cbuys@HPSLAW.COM>; Stryker, Eric K. <Eric.Stryker@wilsonelser.com>; Office <office@danielmarks.net>; Lord, Nicole N. <Nicole.Lord@wilsonelser.com>  
**Cc:** Sherman Mayor <smayor@HPSLAW.COM>; Mike Prangle <mprangle@HPSLAW.COM>; Tyson Dobbs <tdobbs@HPSLAW.COM>; Casey Henley <CHenley@HPSLaw.com>  
**Subject:** RE: Green v. Delee- Proposed Order re Motion to Amend

**[EXTERNAL EMAIL]**

Good morning:

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

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

Thank you!

Nicole

Nicole M. Young, Esq.

PA0298

1 **CSERV**

2  
3 DISTRICT COURT  
4 CLARK COUNTY, NEVADA

5  
6 Choloe Green, Plaintiff(s)

CASE NO: A-17-757722-C

7 vs.

DEPT. NO. Department 9

8 Frank Delee, M.D., Defendant(s)

9  
10 **AUTOMATED CERTIFICATE OF SERVICE**

11 This automated certificate of service was generated by the Eighth Judicial District  
12 Court. The foregoing Order was served via the court's electronic eFile system to all  
13 recipients registered for e-Service on the above entitled case as listed below:

14 Service Date: 12/15/2020

15 E-File Admin

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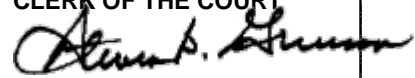
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LAW OFFICE OF DANIEL MARKS  
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Attorneys for Plaintiff

DISTRICT COURT  
CLARK COUNTY, NEVADA

CHOLOE GREEN, an individual,

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

Plaintiff,

v.

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

Defendants.

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

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

DATED this 15 day of December, 2020.

LAW OFFICE OF DANIEL MARKS

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

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

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

9 Erik K. Stryker, Esq.  
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24 Erin Jordan, Esq.  
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27 Las Vegas, Nevada 89118  
28 Attorney for Nevada Hospitalist Group, LLP

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

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Nevada State Bar No. 002003  
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(702) 386-0536; Fax (702) 386-6812  
Attorneys for Plaintiff

DISTRICT COURT  
CLARK COUNTY, NEVADA

CHOLOE GREEN, an individual,  
Plaintiff,

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

v.

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

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

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



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

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

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

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

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

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

25 ////

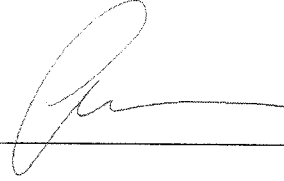
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DENIED, including Plaintiff's request to amend her complaint to add ostensible agency as a theory of liability against Defendant Sunrise Hospital and to add a claim of corporate negligence against Defendant Sunrise Hospital.

Dated this 15th day of December, 2020



EC

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

Respectfully Submitted:

Approved as to Form and Content:

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

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

/s/ Nicole M. Young

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

/s/ Charlotte Buys

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

Approved as to Form and Content:

DATED this 10th day of December, 2020.

WILSON, ELSER, MOSKOWITZ,  
EDELMAN & DICKER LLP

/s/ Eric K. Stryker

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Nevada State Bar No. 005793  
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Attorney for Frank DeLee, M.D. and  
Frank DeLee, M.D., PC's

Associate Attorney  
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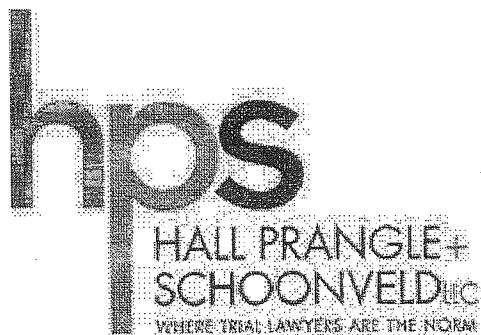
---

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

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

Very truly yours,

Charlotte Buys



**Charlotte Buys**  
*Associate*  
O: 702.212.1478  
Email: cbuys@HPSLAW.COM

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

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

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

**From:** Stryker, Eric K. <Eric.Stryker@wilsonelser.com>  
**Sent:** Thursday, December 10, 2020 1:40 PM  
**To:** Nicole Young <NYoung@danielmarks.net>; Charlotte Buys <cbuys@HPSLAW.COM>; Office <office@danielmarks.net>; Lord, Nicole N. <Nicole.Lord@wilsonelser.com>  
**Cc:** Sherman Mayor <smayor@HPSLAW.COM>; Mike Prangle <mprangle@HPSLAW.COM>; Tyson Dobbs <tdobbs@HPSLAW.COM>; Casey Henley <CHenley@HPSLaw.com>  
**Subject:** RE: Green v. Delee- Proposed Order re Motion to Amend

[External Email] CAUTION!.

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

Eric K. Stryker  
Attorney at Law  
Wilson Elser Moskowitz Edelman & Dicker LLP  
6689 Las Vegas Blvd. South, Suite 200  
Las Vegas, NV 89119  
702.727.1242 (Direct)  
702.727.1400 (Main)  
702.727.1401 (Fax)  
eric.stryker@wilsonelser.com

---

**From:** Nicole Young [mailto:NYoung@danielmarks.net]  
**Sent:** Thursday, December 10, 2020 10:14 AM  
**To:** Charlotte Buys <cbuys@HPSLAW.COM>; Stryker, Eric K. <Eric.Stryker@wilsonelser.com>; Office <office@danielmarks.net>; Lord, Nicole N. <Nicole.Lord@wilsonelser.com>  
**Cc:** Sherman Mayor <smayor@HPSLAW.COM>; Mike Prangle <mprangle@HPSLAW.COM>; Tyson Dobbs <tdobbs@HPSLAW.COM>; Casey Henley <CHenley@HPSLaw.com>  
**Subject:** RE: Green v. Delee- Proposed Order re Motion to Amend

[EXTERNAL EMAIL]

Good morning:

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

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

Thank you!

Nicole

Nicole M. Young, Esq.

PA0307

1 CSERV

2 DISTRICT COURT  
3 CLARK COUNTY, NEVADA  
4

5  
6 Choloe Green, Plaintiff(s)

CASE NO: A-17-757722-C

7 vs.

DEPT. NO. Department 9

8 Frank Delee, M.D., Defendant(s)  
9

10 **AUTOMATED CERTIFICATE OF SERVICE**

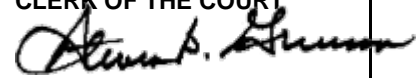
11 This automated certificate of service was generated by the Eighth Judicial District  
12 Court. The foregoing Order was served via the court's electronic eFile system to all  
13 recipients registered for e-Service on the above entitled case as listed below:

14 Service Date: 12/15/2020

|                    |                                   |
|--------------------|-----------------------------------|
| 15 E-File Admin    | efile@hpslaw.com                  |
| 16 S. Vogel        | brent.vogel@lewisbrisbois.com     |
| 17 Eric Stryker    | eric.stryker@wilsonelser.com      |
| 18 Johana Whitbeck | johana.whitbeck@lewisbrisbois.com |
| 19 Erin Jordan     | erin.jordan@lewisbrisbois.com     |
| 20 Efile LasVegas  | efilelasvegas@wilsonelser.com     |
| 21 Angela Clark    | angela.clark@wilsonelser.com      |
| 22 Daniel Marks    | office@danielmarks.net            |
| 23 Tyson Dobbs     | tdobbs@hpslaw.com                 |
| 24 Alia Najjar     | alia.najjar@wilsonelser.com       |
| 25 Charlotte Buys  | cbuys@hpslaw.com                  |

26  
27  
28

|    |                  |                                |
|----|------------------|--------------------------------|
| 1  | Patricia Daehnke | patricia.daehnke@cdiglaw.com   |
| 2  |                  |                                |
| 3  | Nicolle Etienne  | netienne@hpslaw.com            |
| 4  | Sherman Mayor    | smayor@hpslaw.com              |
| 5  | Casey Henley     | chenley@hpslaw.com             |
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| 7  | Linda Rurangirwa | linda.rurangirwa@cdiglaw.com   |
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| 17 | Joshua Daor      | joshua.daor@lewisbrisbois.com  |
| 18 |                  |                                |
| 19 |                  |                                |
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| 27 |                  |                                |
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COMP  
LAW OFFICE OF DANIEL MARKS  
DANIEL MARKS, ESQ.  
Nevada State Bar No. 002003  
NICOLE M. YOUNG, ESQ.  
Nevada State Bar No. 12659  
610 South Ninth Street  
Las Vegas, Nevada 89101  
(702) 386-0536; Fax (702) 386-6812  
Attorneys for Plaintiff

DISTRICT COURT  
CLARK COUNTY, NEVADA

CHOLOE GREEN, an individual,

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

Plaintiff,

v.

FRANK J. DELEE, M.D., an individual;  
FRANK J. DELEE MD, PC, a Domestic  
Professional Corporation, SUNRISE HOSPITAL  
AND MEDICAL CENTER, LLC, a Foreign  
Limited-Liability Company; ALI KIA, M.D. an  
individual; and NEVADA HOSPITALIST  
GROUP, LLP.

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

Defendants.

**AMENDED COMPLAINT FOR MEDICAL MALPRACTICE**

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

////

3. That at all times material hereto, Defendant FRANK J. DELEE MD, PC, was a domestic professional corporation organized and existing under the laws of the state of Nevada and registered to do business, and doing business in the State of Nevada in Clark County, Nevada.
4. That Defendant FRANK J. DELEE, MD, is the President of Defendant FRANK J. DELEE MD, PC (hereinafter collectively referred to as “Dr. DeLee”).
5. That Defendant SUNRISE HOSPITAL AND MEDICAL CENTER, LLC, (hereinafter “Sunrise Hospital”), was a foreign limited-liability company, registered to do business and doing business in the State of Nevada in Clark County, Nevada.
6. That at all times material hereto, Defendant ALI KIA, M.D., was a licensed medical doctor in the State of Nevada, and who practices through the limited-liability partnership entitled NEVADA HOSPITALIST GROUP, LLP.
7. That Defendant NEVADA HOSPITALIST GROUP, LLP, was a limited-liability partnership, registered to do business and doing business in the State of Nevada in Clark County, Nevada.
8. 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.
9. 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.
10. 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, through Ali Kia, M.D., discharged Choloe on July 16, 2016, despite having a small bowel obstruction. The discharge was discussed and confirmed by Dr. DeLee.

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- 1 11. That Choloe presented at Sunrise Hospital on July 14, 2016, seeking treatment from the  
2 hospital, not a specific doctor. Upon her admission, Sunrise Hospital provided various  
3 healthcare professionals, including doctors and nurses to provide emergency care/treatment  
4 to Choloe. Throughout her stay from July 14-16, 2016, Choloe believed all healthcare  
5 professionals that provided her care/treatment were employees and/or agents of the hospital.  
6 She was never provided the opportunity to affirmatively chose who provided her  
7 care/treatment. She was never informed the doctors or nurses providing care/treatment were  
8 not employees and/or agents of the hospital.
- 9 12. On July 17, 2016, Choloe went to the emergency room at Centennial Hills Hospital where  
10 she was admitted until she was finally discharged on September 2, 2016. Centennial Hills  
11 admitted Choloe with the diagnosis of small bowel obstruction. She had an NG Tube placed,  
12 underwent surgery, had diffuse pulmonary infiltrates, suggestive of pulmonary edema or ARDS,  
13 and eventually needed a tracheostomy and PEG tube placement.
- 14 13. Plaintiff restates and incorporates the allegations set forth in Paragraphs 1 through 13 herein  
15 by reference.
- 16 14. That Defendant Dr. DeLee, Sunrise Hospital, Dr. Kia, and Nevada Hospitalist Group, LLP,  
17 breached the standard of care in their treatment of Choloe and as a direct and proximate  
18 result of that breach, Choloe has been damaged.
- 19 15. That as a direct and proximate result of all of the Defendants' negligence, Choloe has been  
20 damaged in an amount in excess of \$15,000.00.
- 21 16. This Complaint is supported by the Affidavit of Lisa Karamardian, M.D., a copy of which  
22 is attached hereto as Exhibit "A".
- 23 17. This Complaint is supported by the Affidavit of Robert Savluk, M.D., a copy of which is  
24 attached hereto as Exhibit "B".
- 25 18. Choloe has been forced to retain counsel to bring this action and should be awarded his  
26 reasonable attorneys fees and costs.

27 ////

28 ////

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

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

6 DATED this 16th day of December, 2020.

7 LAW OFFICE OF DANIEL MARKS

8

9 /s/ Nicole M. Young

10 DANIEL MARKS, ESQ.

11 Nevada State Bar No. 002003

12 NICOLE M. YOUNG, ESQ.

13 Nevada State Bar No. 012659

14 610 South Ninth Street

15 Las Vegas, Nevada 89101

16 Attorneys for Plaintiff

17

18

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1 **CERTIFICATE OF SERVICE**

2 I hereby certify that I am an employee of the Law Office of Daniel Marks and that on the  
3 16th day of December, 2020, pursuant to NRCP 5(b) and Administrative Order 14-2, I  
4 electronically transmitted a true and correct copy of the above and foregoing **AMENDED**  
5 **COMPLAINT FOR MEDICAL MALPRACTICE** by way of Notice of Electronic Filing  
6 provided by the court mandated E-file & Serve System, as follows:  
7 following:

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

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

14  
15 /s/ Nicole M. Young  
16 \_\_\_\_\_  
17 An employee of the  
18 LAW OFFICE OF DANIEL MARKS  
19  
20  
21  
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## **EXHIBIT A**

---

AFFIDAVIT OF DR. LISA KARAMARDIAN


STATE OF California  
COUNTY OF Orange } : s .

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

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

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

  
LISA KARAMARDIAN, MD.

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

2.

---

## **EXHIBIT B**

---

**AFFIDAVIT OF ROBERT S. SAVLUK, M.D.**

STATE OF CALIFORNIA                     )  
   )       ss:  
COUNTY OF SAN LUIS OBISPO        )

ROBERT S. SAVLUK, M.D., being first duly sworn under penalty of perjury, deposes and says:

1. That I have been asked to address issues relating to the care and treatment of patient Choloe Green provided at the Sunrise Hospital by Dr. Ali Kia (hospitalist).
2. That I practiced Internal Medicine (functioning as a hospitalist before the term was coined) and Critical Care Medicine for 36 years.
3. I graduated from the University of California at Los Angeles School of Medicine in 1977 with a doctor of medicine degree and completed my residency in Internal Medicine at University of Medical Center, Fresno, California.
4. That I am board certified in Internal Medicine and was boarded in Critical Care Medicine through 2018.
5. That I am familiar with the roles of hospitalist, and subspecialists in taking care of their patients in a hospital setting.
6. That I am particularly familiar with the case of a septic patient including but not limited to fluid resuscitation, antibiotics, and all manners of supporting medications and equipment.
7. That I am particularly familiar with the source identification and its importance in the treatment of a septic patient. In addition, I am very familiar with the coordination of the various physicians to treat that condition.

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- 1 8. In preparation for this affidavit, I have reviewed summaries of the two hospitalizations at  
2 Sunrise Hospital between August 9 and August 16, 2016 consisting of 33 pages plus an  
3 additional 45 pages of organized records related to medications and vital signs. I also  
4 reviewed 337 pages of Centennial Hills hospital records and the affidavit of Dr. Lisa  
5 Karamardian.  
6
- 7 9. That Choloe Green was a 29 year old G5 P3 obese individual at the time she was  
8 admitted to Sunrise Hospital on 7/09/2016 for repeat c-section for a transverse  
9 presentation. She underwent the procedure through the previous surgical scar (low  
10 transverse), under spinal anesthesia, delivering a 6 lb 7 oz male child.  
11
- 12 10. Post operatively she developed itching secondary to the spinal anesthetic. By the next day  
13 she was ambulatory and taking a regular diet. No mention of bowel activity or urination.  
14 She was deemed ready for discharge and sent home on Norco and Ibuprofen for pain.
- 15 11. That on July 14, 2016 she presented to the Sunrise Hospital ED with 2 days history of  
16 nausea, vomiting, and abdominal pain. She had 2 BM's that day. She was febrile and  
17 tachycardic with a marked leucocytosis. She met the criteria for sepsis and the sepsis  
18 bundle was initiated. She had blood cultures drawn, a fluid bolus given and a broad  
19 spectrum antibiotics initialed appropriately for an intra-abdominal source. An ultra sound  
20 of the pelvis and CT scan of the abdomen and pelvis were ordered. The ultra sound  
21 showed no retained products of conception but a moderate amount of complex free fluid  
22 in the cul-de-sac. The CT scan showed a gastric band in place, distention of doudenum  
23 and jejunum and free fluid with small amount of gas in the peritoneal cavity in the lower  
24 abdomen, anterior to an enlarged uterus. The impressions were 1) small bowel  
25 obstruction and 2) intraperitoneal abscess suspected.  
26  
27  
28

12. The patient was admitted to medicine at the request of Dr. DeLee (who was going to be out of town) by Dr. Ali Kia at 9:10 p.m. on July 14, 2016. Dr. Kim also consulted by ED but did not see patient stating "OB can manage care on an out-patient basis." On July 15, 2016, the WBC was 20,600 with left shift. No additional antibiotics were given outside the first dose. At 17:33 patient seen by case worker with plan that patient would go home with sister or mother on out patient antibiotics and follow up with Dr. DeLee.
13. At 22:31 on July 15, 2016, Dr. Ali Kia saw the patient and noted patient having abdominal pain with distention. Additionally she was agitated and having no flatus on bowel movements. The discharge was halted. On the morning of July 16, 2016 an x-ray of the abdomen was done which revealed multiple dilated small bowel loops, small bowel obstruction versus ileus. Despite this, patient discharged home at 20:26 on Norco, dilaudid, motrin iron, and prenatal vitamins but no antibiotics. She was to follow up with Dr. DeLee in two days.
14. The patient presented to Centennial Hills Hospital the next day with an acute abdomen and was taken to surgery on July 18, 2016 where she was noted to have more than a liter of foul smelling fluid in her abdomen, plus an omental infarct which was resected. She then went on to develop severe ARDS and severe physical deconditioning requiring 6 plus weeks in the ICU, a PEG, a trach and finally discharge to a sub-acute facility.
15. Dr. Ali Kia's care of his patient Choloe Green fell below the standard of care for a hospitalist for the following reasons:
1. Failure to continue appropriate antibiotics during the patients hospitalizations when she was clearly fighting an infection.
  2. Failure to continue antibiotics post-discharge in a patient clearly not having

- 1 recovered from her infection.
- 2 3. Failure to follow up the radiographic studies which were clearly suspicious for an
- 3 intra-abdominal abscess.
- 4
- 5 4. Discharging a patient with evidence of a small bowel obstruction or ileus without
- 6 any explanation or resolution.
- 7
- 8 5. Pre maturely discharging the patient before she had adequately recovered from the
- 9 septic process.
- 10 16. Finally due to the failures noted above, Choloe Green went on to develop an acute
- 11 abdomen requiring surgery, intra-abdominal abscess requiring percutaneous drainage and
- 12 sepsis related ARDS (severe) which required 6 plus weeks in the ICU and resulted in
- 13 severe physical deconditioning and prolonged sub-acute care.
- 14 17. The conduct described in paragraph 5 of Dr. Karamardian's affidavit dated June 29, 2017
- 15 relating to Ms. Green's discharge from Sunrise Hospital relates to the care provided to
- 16 Ms. Green at Sunrise by Dr. Ali Kia and any other medical providers that were involved
- 17 in the decision to discharge Ms. Green on July 16, 2016, this decision to discharge her
- 18 violated the standard of care.
- 19
- 20 18. My opinions are expressed to a reasonable decree of medical probability and/or certainty
- 21 and are based on my education, training, experience, and review of the medical records
- 22 outlined previously which reflect the care given Choloe Green by the aforementioned
- 23 Physician.
- 24
- 25 19. This affidavit is intended as a summary of my opinion and there obviously may be further
- 26 explanation of these opinions at the time of trial and/or depositions, should I be asked
- 27 follow-up questions related to any opinions.
- 28

FURTHER YOUR AFFLIANT SAYETH NAUGHT.

ROBERT S. SAVLUK, M.D.

SUBSCRIBED and SWORN TO  
Before me this \_\_\_\_ day of October, 2020.

See attached

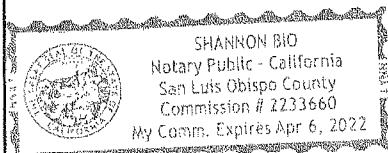
NOTARY PUBLIC in and for said  
COUNTY and STATE

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

State of California  
County of San Luis Obispo

Subscribed and sworn to (or affirmed) before me on this 16th  
day of October, 2020, by Robert S. Savluk

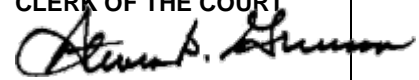
proved to me on the basis of satisfactory evidence to be the  
person(s) who appeared before me.



(Seal)

Signature

A handwritten signature in dark ink, appearing to read "Robert S. Savluk", written over a horizontal line.



ANS  
MICHAEL E. PRANGLE, ESQ.  
Nevada Bar No.: 8619  
TYSON J. DOBBS, ESQ.  
Nevada Bar No.: 11953  
SHERMAN B. MAYOR, ESQ.  
Nevada Bar No. 1491  
T. CHARLOTTE BUYS, ESQ.  
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HALL PRANGLE & SCHOONVELD, LLC  
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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;  
ALI KIA, M.D. an individual; and NEVADA  
HOSPITALIST GROUP, LLP.

Defendants.

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

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

COMES NOW, Defendant, SUNRISE HOSPITAL AND MEDICAL CENTER, LLC  
("Sunrise Hospital") by and through its counsel of record, HALL PRANGLE &  
SCHOONVELD, LLC and hereby submits its Answer to Plaintiff's Amended Complaint for  
Medical Malpractice. If any numbered paragraph is not answered, this answering Defendant,  
Sunrise Hospital, states that such unanswered paragraph should be deemed to be denied.

...

1           1.       Answering paragraph 1 of Plaintiff's Amended Complaint, this answering  
2 Defendant states it is without sufficient information to form a belief as to the truth or falsity of  
3 the allegations contained in said paragraph and therefore denies the same.

4           2.       In answering paragraph 2 of Plaintiff's Amended Complaint, this answering  
5 Defendant states it is without sufficient information to form a belief as to the truth or falsity of  
6 the allegations contained in said paragraph and therefore denies the same.

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

10          4.       In answering paragraph 4 of Plaintiff's Amended Complaint, this answering  
11 Defendant states it is without sufficient information to form a belief as to the truth or falsity of  
12 the allegations contained in said paragraph and therefore denies the same.

13          5.       In answering paragraph 5 of Plaintiff's Amended Complaint, this answering  
14 Defendant, Sunrise Hospital and Medical Center, LLC (hereinafter "Sunrise Hospital"), admits  
15 that it is licensed to do business and is doing business in the State of Nevada, Clark County,  
16 Nevada. This answering Defendant is without knowledge as to the remainder of this paragraph  
17 and therefore denies same.

18          6.       In answering paragraph 6 of Plaintiff's Amended Complaint, this answering  
19 Defendant states it is without sufficient information to form a belief as to the truth or falsity of  
20 the allegations contained in said paragraph and therefore denies the same.

21          7.       In answering paragraph 7 of Plaintiff's Amended Complaint, this answering  
22 Defendant states it is without sufficient information to form a belief as to the truth or falsity of  
23 the allegations contained in said paragraph and therefore denies the same.

24          8.       In answering paragraph 8 of Plaintiff's Amended Complaint, this answering  
25 Defendant states it is without sufficient information to form a belief as to the truth or falsity of  
26 the allegations contained in said paragraph and therefore denies the same.  
27  
28

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

4           10.    In answering paragraph 10 of Plaintiff's Amended Complaint, this answering  
5 Defendant Sunrise Hospital denies that it "discharged" Choloe Green on July 16, 2016. This  
6 answering Defendant is without knowledge as to the remainder of the allegations contained in  
7 said paragraph and therefore denies the same.

8           11.    In answering paragraph 11 of Plaintiff's Amended Complaint, this answering  
9 Defendant denies the allegations contained in paragraph 11. This Defendant, Sunrise Hospital,  
10 asserts that such allegations have been precluded by Court order.

11           12.    In answering paragraph 12 of Plaintiff's Amended Complaint, this answering  
12 Defendant states it is without sufficient information to form a belief as to the truth or falsity of  
13 the allegations contained in said paragraph and therefore denies the same.

14           13.    In answering paragraph 13 of Plaintiff's Amended Complaint, this answering  
15 Defendant hereby incorporates, repeats, and realleges its answers to paragraphs 1 through 12,  
16 inclusive, as though fully set forth herein.

17           14.    In answering paragraph 14 of Plaintiff's Amended Complaint, this answering  
18 Defendant, Sunrise Hospital, denies the allegations contained in Paragraph 14 as to the Hospital.  
19 This answering Defendant is without sufficient information to form a belief as to the truth or  
20 falsity of the allegations in the remainder of the paragraph and therefore denies same.

21           15.    In answering paragraph 15 of Plaintiff's Amended Complaint, this answering  
22 Defendant, Sunrise Hospital, denies the allegations contained in paragraph 15 as to the Hospital.  
23 This answering Defendant is without sufficient information to form a belief as to the truth or  
24 falsity of the allegations in the remainder of the paragraph and therefore denies same.

25           16.    In answering paragraph 16 of Plaintiff's Amended Complaint, this answering  
26 Defendant states it is without sufficient information to form a belief as to the truth or falsity of  
27 the allegations contained in said paragraph and therefore denies the same.  
28



1 17. In answering paragraph 17 of Plaintiff's Amended Complaint, this answering  
2 Defendant states it is without sufficient information to form a belief as to the truth or falsity of  
3 the allegations contained in said paragraph and therefore denies the same.

4 18. In answering paragraph 18 of Plaintiff's Amended Complaint, this answering  
5 Defendant denies the allegations contained in paragraph 18.

6  
7 **AFFIRMATIVE DEFENSES**

8 **GENERAL DENIAL**

9 Defendant, Sunrise Hospital, denies each and every allegation contained in Plaintiff's  
10 Amended Complaint that is not specifically admitted to be true.

11 **FIRST AFFIRMATIVE DEFENSE**

12 Plaintiff's Amended Complaint fails to state a claim against this answering Defendant,  
13 Sunrise Hospital, upon which relief can be granted.

14 **SECOND AFFIRMATIVE DEFENSE**

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

18 **THIRD AFFIRMATIVE DEFENSE**

19 The incident alleged in Plaintiff's Amended Complaint and the resulting damages, if any,  
20 to Plaintiff was proximately caused or contributed to by Plaintiff's own negligence, if any, and if  
21 such negligence was greater than the alleged negligence of Defendant Sunrise Hospital,  
22 Plaintiff's recovery, if any, is barred as to Sunrise Hospital.

23 **FOURTH AFFIRMATIVE DEFENSE**

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

27 . . .

28 . . .

**FIFTH AFFIRMATIVE DEFENSE**

The damages, if any, alleged by Plaintiff were not the result of any acts of omission, or commission, or negligence by Sunrise Hospital, 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 she consented to treatment.

**SIXTH AFFIRMATIVE DEFENSE**

In all medical care and attention rendered directly by this Defendant, Sunrise Hospital, to Plaintiff, such care satisfied the applicable hospital standard of care as more fully described in NRS 41A.015 and NRS 41A.017. This Defendant, Sunrise Hospital, denies that it was negligent in rendering care and treatment.

**SEVENTH AFFIRMATIVE DEFENSE**

In the event this answering Defendant, Sunrise Hospital, is found liable, then this answering Defendant, Sunrise Hospital, shall only be severally liable for that portion of the judgment, which represents the percentage of negligence attributable to this answering Defendant, Sunrise Hospital.

**EIGHTH AFFIRMATIVE DEFENSE**

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

**NINTH AFFIRMATIVE DEFENSE**

Defendant, Sunrise Hospital, 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 the Court to amend its Answer to specifically assert the same. Such defenses are herein incorporated by reference for the specific purpose of not waiving the same.

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**TENTH AFFIRMATIVE DEFENSE**

Defendant, Sunrise Hospital, asserts that Plaintiff's Amended Complaint should be dismissed, as to Sunrise Hospital, on the basis that Plaintiff has not complied with NRS 41A.071 as to Defendant, Sunrise Hospital.

**ELEVENTH AFFIRMATIVE DEFENSE**

Defendant Sunrise Hospital avails itself of all affirmative defenses as set forth in NRS 41A.021, 4A.031, 41A.035, 41A.071, 41A.100, 42.020, 41.1395 and all applicable subparts.

**TWELFTH AFFIRMATIVE DEFENSE**

Plaintiff's recovery, if any, for non-economic damages is limited, or capped, at \$350,000.00 per NRS 41A.035.

**THIRTEENTH AFFIRMATIVE DEFENSE**

To the extent Plaintiff has been reimbursed from any source, including collateral sources, for any special damages claimed to have been sustained as a result of the incidents alleged in Plaintiff's Amended Complaint, Defendant Sunrise Hospital may elect to offer those amounts, or write-offs or write-downs of medical bills, into evidence, if Defendant so elects, and, Plaintiff's special damages can be reduced by those amounts pursuant to NRS 42.021(1).

**FOURTEENTH AFFIRMATIVE DEFENSE**

Paragraph 11 of Plaintiff's Amended Complaint should be dismissed, per Order of the Court, as any issues with regard hospital liability via ostensible agency/vicarious liability for non-hospital employees has been dismissed by the Court.

**FIFTEENTH AFFIRMATIVE DEFENSE**

Plaintiff has failed to mitigate, if any, her damages and, thus, monetary recovery, if any, should be reduced accordingly.

**SIXTEENTH AFFIRMATIVE DEFENSE**

That is 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.

**SEVENTEENTH 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 its Answer to allege additional Affirmative Defenses or to withdraw Affirmative Defenses if subsequent investigation warrants.

**EIGHTEENTH AFFIRMATIVE DEFENSE**

As records are obtained, discovery occurs, and this litigation is pursued, this defendant reserves the right to abandon or vacate any of these affirmative defenses, or any part thereof, as needed to be consistent with facts of the case as such becomes known.

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 17<sup>th</sup> day of December, 2020.

HALL PRANGLE & SCHOONVELD, LLC

By: /s/ T. Charlotte Buys, Esq.  
MICHAEL E. PRANGLE, ESQ.  
Nevada Bar No.: 8619  
TYSON J. DOBBS, ESQ.  
Nevada Bar No.: 11953  
SHERMAN B. MAYOR, ESQ.  
Nevada Bar No. 1491  
T. CHARLOTTE BUYS, ESQ.  
Nevada Bar No. 14845  
1140 N. Town Center Dr., Ste. 350  
Las Vegas, NV 89144  
*Attorneys for Defendant*  
*Sunrise Hospital and Medical Center, LLC*

**CERTIFICATE OF SERVICE**

I HEREBY CERTIFY that I am an employee of HALL PRANGLE & SCHOONVELD, LLC; that on the 17<sup>th</sup> day of December, 2020, I served a true and correct copy of the foregoing **DEFENDANT SUNRISE HOSPITAL AND MEDICAL CENTER'S ANSWER TO PLAINTIFF'S AMENDED COMPLAINT FOR MEDICAL MALPRACTICE** 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;

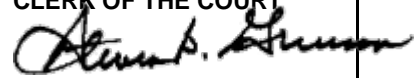
\_\_\_\_\_ Receipt of Copy at their last known address:

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

Eric K. Stryker, Esq.  
WILSON ELSEER MOSKOWITZ  
EDELMAN & DICKER LLP  
300 S. 4<sup>th</sup> Street  
Las Vegas, NV 89101  
*Attorney for Defendants*  
*Frank J. DeLee, M.D. and*  
*Frank J. DeLee, M.D., PC*

/s/ Casey Henley

An employee of HALL PRANGLE & SCHOONVELD, LLC



ANS  
ERIC K. STRYKER, ESQ.  
Nevada Bar No. 5793  
BRIGETTE E. FOLEY, ESQ.  
Nevada Bar No.: 12965  
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*Attorney for Defendants, Frank J. DeLee, M.D.  
and Frank J. DeLee M.D., P.C.*

**DISTRICT COURT**

**CLARK COUNTY, NEVADA**

CHOLOE GREEN, an individual,  
  
Plaintiff,

v.s.

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

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

**DEFENDANTS FRANK J. DELEE,  
M.D. AND FRANK J. DELEE M.D.,  
PC'S ANSWER TO PLAINTIFF'S  
AMENDED COMPLAINT FOR  
MEDICAL MALPRACTICE**

Defendants Frank J. DeLee, M.D., and Frank J. DeLee M.D., PC (hereinafter, "answering Defendants"), by and through their counsel of record Eric K. Stryker, Esq. of the law firm of Wilson Elser, Moskowitz Edelman & Dicker, LLP, hereby answer Plaintiff's Amended Complaint for Medical Malpractice on file herein, as follows:

1. Answering paragraph 1 of Plaintiff's Amended Complaint on file herein, these answering Defendants state they do not have sufficient knowledge or information upon which to base a belief as to the truth of the allegations contained therein, and upon said grounds deny each and every allegation contained therein.

2. Answering paragraph 2 of Plaintiff's Amended Complaint on file herein, Defendant Frank J. DeLee, M.D. admits that he was a licensed medical doctor in the State of Nevada at the

1 time of the incidents alleged, and Frank J. DeLee M.D., PC was a domestic professional  
2 corporation licensed in Nevada at the time of the incident alleged.

3 3. Answering paragraphs 3 and 4 of Plaintiff's Amended Complaint on file herein,  
4 these answering Defendants admit the allegations contained therein.

5 4. Answering paragraphs 5, 6 and 7 of Plaintiff's Amended Complaint on file herein,  
6 these answering Defendants state they do not have sufficient knowledge or information upon  
7 which to base a belief as to the truth of the allegations contained therein, and upon said grounds  
8 deny each and every allegation contained therein.

9 5. Answering paragraph 8 of Plaintiff's Amended Complaint on file herein, these  
10 answering Defendants deny all allegations of negligence or wrongdoing by these answering  
11 Defendants. As to the remaining allegations, these answering Defendants are without knowledge  
12 and therefore deny same.

13 6. Answering paragraphs 9 and 10 of Plaintiff's Amended Complaint on file herein,  
14 these answering Defendants deny each and every allegation contained therein.

15 7. Answering paragraphs 11 and 12 of Plaintiff's Amended Complaint on file herein,  
16 these answering Defendants state they do not have sufficient knowledge or information upon  
17 which to base a belief as to the truth of the allegations contained therein, and upon said grounds  
18 deny each and every allegation contained therein.

19 8. Answering paragraph 13 of Plaintiff's Amended Complaint on file herein, these  
20 answering Defendants repeat, reallege and incorporate their responses to paragraphs 1 through 12,  
21 inclusive, of the Amended Complaint, as though fully set forth in full herein.

22 9. Answering paragraphs 14 and 15 of Plaintiff's Amended Complaint on file herein,  
23 these answering Defendants deny all allegations of negligence or wrongdoing by these answering  
24 Defendants. As to the remaining allegations, these answering Defendants are without knowledge  
25 and therefore deny same.

26 10. Answering paragraphs 16 and 17 of Plaintiff's Amended Complaint on file herein,  
27 these answering Defendants state they do not have sufficient knowledge or information upon  
28 which to base a belief as to the truth of the allegations contained therein, and upon said grounds  
deny each and every allegation contained therein.

1           11.     Answering paragraph 18 of Plaintiff's Amended Complaint on file herein, these  
2     answering Defendants deny each and every allegation contained therein.

3                                 **AFFIRMATIVE DEFENSES**

4                                 **FIRST AFFIRMATIVE DEFENSE**

5           Plaintiff's Amended Complaint fails to state a claim against these answering Defendants  
6     upon which relief can be granted.

7                                 **SECOND AFFIRMATIVE DEFENSE**

8           The loss, injuries, and damages that the Plaintiff alleges, if any, were directly and  
9     proximately caused by the negligence, carelessness or fault of the Plaintiff, which is greater than  
10    the alleged negligence, carelessness, or fault of these answering Defendants, and, therefore,  
11    Plaintiff's claims against these answering Defendants are barred.

12                                **THIRD AFFIRMATIVE DEFENSE**

13           These answering Defendants state that the damages, if any, alleged by the Plaintiff was the  
14    result of independent intervening acts, over which these answering Defendants had no control or  
15    right of control, which resulted in a superseding cause of Plaintiff's alleged damages.

16                                **FOURTH AFFIRMATIVE DEFENSE**

17           That the damage sustained by the Plaintiff, if any, was caused by the acts of third persons  
18    who are not agents, servants or employees of these answering Defendants, and were not acting on  
19    behalf of these answering Defendants in any manner or form, and, as such, these answering  
20    Defendants are not liable in any manner to the Plaintiff.

21                                **FIFTH AFFIRMATIVE DEFENSE**

22           These answering Defendants allege that the Plaintiff failed to mitigate their damages.

23                                **SIXTH AFFIRMATIVE DEFENSE**

24           The Plaintiff's claims are barred by the applicable statute of limitations.

25                                **SEVENTH AFFIRMATIVE DEFENSE**

26           These answering Defendants allege that at all times mentioned herein, these answering  
27    Defendants acted reasonably and in good faith, with regard to the acts and transactions which are  
28    the subject of this pleading.



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, if any, as set forth in the Amended Complaint, were  
6 caused by a pre-existing condition.

7 **TENTH AFFIRMATIVE DEFENSE**

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

11 **ELEVENTH AFFIRMATIVE DEFENSE**

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

15 **TWELFTH AFFIRMATIVE DEFENSE**

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

19 **THIRTEENTH AFFIRMATIVE DEFENSE**

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

21 **FOURTEENTH AFFIRMATIVE DEFENSE**

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

26 **FIFTEENTH AFFIRMATIVE DEFENSE**

27 Plaintiff's non-economic damages, if any, may not exceed \$350,000.00 pursuant to NRS  
28 §41A.035.

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

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


WILSON, ELSE, MOSKOWITZ,  
EDELMAN & DICKER LLP

ERIC K. STRYKER, ESQ.  
Nevada Bar No. 5793  
BRIGETTE E. FOLEY, ESQ.  
Nevada Bar No.: 12965  
6689 Las Vegas Blvd., Suite 200  
Las Vegas, NV 89119  
*Attorney for Defendants, Frank J. DeLee,  
M.D. and Frank J. DeLee M.D., P.C*

1 **CERTIFICATE OF SERVICE**

2 Pursuant to NRCP 5(b), I certify that I am an employee of WILSON ELSER  
3 MOSKOWITZ EDELMAN & DICKER LLP, and that on this 30th day of December, 2020, I  
4 served a true and correct copy of the foregoing **DEFENDANTS FRANK J. DELEE, M.D. AND**  
5 **FRANK J. DELEE M.D., PC'S ANSWER TO PLAINTIFF'S AMENDED COMPLAINT**  
6 **FOR MEDICAL MALPRACTICE** as follows:

- 7
- 8 ☒ via electronic means by operation of the Court's electronic filing system, upon  
9 each party in this case who is registered as an electronic case filing user with the  
10 Clerk
- 11 ☐ by placing same to be deposited for mailing in the United States Mail, in a sealed  
12 envelope upon which first class postage was prepaid in Las Vegas, Nevada

13 By:   
14 An Employee of WILSON ELSER MOSKOWITZ  
15 EDELMAN & DICKER LLP