

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 08:37 a.m.
Elizabeth A. Brown
Clerk of Supreme Court

Supreme Court No.:

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

PETITIONER'S APPENDIX – Volume 3

PATRICIA EGAN DAEHNKE

Nevada Bar No.: 4976

Patricia.Daehnke@cdiglaw.com

LINDA K. RURANGIRWA

Nevada Bar No.: 9172

Linda.Rurangirwa@cdiglaw.com

COLLINSON, DAEHNKE, INLOW & GRECO

2110 E. Flamingo Road, Suite 212

Las Vegas, Nevada 89119

Attorney for Petitioner Ali Kia, M.D.

	<u>ALPHABETICAL APPENDIX</u>	Volume	Bates No.
1.	Amended Complaint for Medical Malpractice	2	PA0310- PA0324
2.	Complaint for Medical Malpractice	1	PA0001- PA0007
3.	Defendant Ali Kia, M.D.'s Answer to Plaintiff's Amended Complaint	7	PA1216- PA1226
4.	Defendant Ali Kia, M.D.'s Motion for Reconsideration Regarding Motion to Dismiss Plaintiff's Amended Complaint	5 -6	PA0728-PA1174
5.	Defendant Ali Kia, M.D.'s Motion to Dismiss Plaintiff's Amended Complaint	3	PA0340- PA0474
6.	Defendant Ali Kia, M.D.'s Reply in Support of Motion for Reconsideration Regarding Motion to Dismiss Plaintiff's Amended Complaint	6	PA1188- PA1195
7.	Defendant Ali Kia, M.D.'s Reply in Support of Motion to Dismiss Plaintiff's Amended Complaint	4	PA0652- PA0666
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
9.	Defendant Nevada Hospitalist Group, LLP's Joinder to Defendant Ali Kia, M.D.'s Motion to Dismiss Plaintiff's Amended Complaint	3	PA0475- PA0477

10.	Defendant Nevada Hospitalist Group, LLP's Reply in Support of Motion to Dismiss	4	PA0667- PA0680
11.	Defendant Sunrise Hospital and Medical Center's Answer to Plaintiff's Amended Complaint for Medical Malpractice	2	PA0325- PA0332
12.	Defendant Sunrise Hospital and Medical Center's Answer to Plaintiff's Complaint	1	PA0008- PA0014
13.	Defendant Sunrise Hospital and Medical Center's Limited Opposition to Plaintiff's "Motion for Leave of Court to Amend Complaint"	2	PA0209- PA0220
14.	Defendant Sunrise Hospital and Medical Center, LLC's Motion for Leave to File Third Party Complaint on Order Shortening Time	1	PA0021- PA0048
15.	Defendants Frank J. DeLee, M.D. and Frank J. DeLee, M.D., PC's Answer to Plaintiff's Amended Complaint for Medical Malpractice	2	PA0333- PA 0339
16.	Defendants Frank J. DeLee, M.D. and Frank J. DeLee, M.D., PC's Answer to Plaintiffs' Complaint	1	PA0015- PA0020
17.	Motion for Leave of Court to Amend Complaint	2	PA0186- PA0208
18.	Nevada Hospitalist Group, LLP's Answer to Amended Complaint	5	PA0722- PA0727

19.	Notice of Entry of Order Denying Defendant Ali Kia, M.D.'s Motion for Reconsideration	6	PA1205- PA1215
20.	Notice of Entry of Order from March 16 2021 Hearing	4	PA0708- PA0721
21.	Notice of Entry of Order Granting in Part and Denying in Part Plaintiff's Motion for Leave to Amend Complaint	2	PA0301- PA0309
22.	Notice of Entry of Order Granting Sunrise Hospital and Medical Center LLC's Motion to File Third Party Complaint for Contribution and Indemnity	1	PA0051- PA0054
23.	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	1	PA0173- PA0185
24.	Opposition to Defendant Ali Kia, M.D.'s Motion for Reconsideration Regarding Motion to Dismiss Plaintiff's Amended Complaint	6	PA1178- PA1187
25.	Opposition to Defendant Ali Kia, M.D.'s Motion to Dismiss Plaintiff's Amended Complaint	4	PA0478- PA0651
26.	Order Denying Ali Kia, M.D.'s Motion for Reconsideration	6	PA1196- PA1204
27.	Order from March 16, 2021 Hearing	4	PA0696- PA0707

28.	Order Granting in Part and Denying in Part Plaintiff's Motion for Leave to Amend Complaint	2	PA0294- PA0300
29.	Order Granting Sunrise Hospital and Medical Center LLC's Motion to File Third Party Complaint for Contribution and Indemnity (Ali Kia, M.D.)	1	PA0049- PA0050
30.	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	1	PA0164- PA0172
31.	Reply in Support of Motion for Reconsideration and Reply in Support of Motion for Leave of Court to Amend Complaint	2	PA0221- PA0252
32.	Sunrise Hospital and Medical Center, LLC's Third Party Complaint for Contribution and Indemnity (Ali Kia, M.D.)	1	PA0055- PA0060
33.	Third-Party Defendant Ali Kia, M.D.'s Answer to Third Party Complaint	1	PA0061- PA0075
34.	Third Party Defendant Ali Kia, M.D.'s Joinder in Third-Party Defendant Nevada Hospitalist Group, LLP's Motion for Judgment on the Pleadings and Reply in Support of Motion for Judgment on the Pleadings	1	PA0140- PA0143
35.	Third-Party Defendant Nevada Hospitalist Group, LLP's Answer to	1	PA0076- PA0082

	Sunrise Hospital and Medical Center, LLC's Third Party Complaint		
36.	Third-Party Defendant Nevada Hospitalist Group, LLP's Motion for Judgment on the Pleadings	1	PA0083- PA0090
37.	Third-Party Defendant Nevada Hospitalist Group, LLP's Reply in Support of Motion for Judgment on the Pleadings	1	PA0133- PA0139
38.	Third-Party Plaintiff Sunrise Hospital's Opposition to Third-Party Defendant Nevada Hospitalist Group, LLP's Motion for Judgment on the Pleadings	1	PA0091- PA0132
39.	Transcript of Proceedings: All Pending Motions	2	PA0253- PA0293
40.	Transcript of Proceedings: Defendant Ali Kia, M.D.'s Motion to Dismiss Plaintiff's Amended Complaint, Defendant Nevada Hospitalist Group, LLP's Joinder to Defendant Ali Kia, M.D.'s Motion to Dismiss Plaintiff's Amended Complaint	4	PA0681- PA0695
41.	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	1	PA0144- PA0163

<u>VOLUME APPENDIX</u>	Bates No.
<u>Volume 1</u>	
Complaint for Medical Malpractice	PA0001- PA0007
Defendant Sunrise Hospital and Medical Center's Answer to Plaintiff's Complaint	PA0008- PA0014
Defendants Frank J. DeLee, M.D. and Frank J. DeLee, M.D., PC's Answer to Plaintiffs' Complaint	PA0015- PA0020
Defendant Sunrise Hospital and Medical Center, LLC's Motion for Leave to File Third Party Complaint on Order Shortening Time	PA0021- PA0048
Order Granting Sunrise Hospital and Medical Center LLC's Motion to File Third Party Complaint for Contribution and Indemnity (Ali Kia, M.D.)	PA0049- PA0050
Notice of Entry of Order Granting Sunrise Hospital and Medical Center LLC's Motion to File Third Party Complaint for Contribution and Indemnity	PA0051- PA0054
Sunrise Hospital and Medical Center, LLC's Third Party Complaint for Contribution and Indemnity (Ali Kia, M.D.)	PA0055- PA0060
Third Party Defendant Ali Kia, M.D.'s Answer to Third Party Complaint	PA0061- PA0075
Third-Party Defendant Nevada Hospitalist Group, LLP's Answer to Sunrise Hospital and Medical Center, LLC's Third Party Complaint	PA0076- PA0082
Third-Party Defendant Nevada Hospitalist Group, LLP's Motion for Judgment on the Pleadings	PA0083- PA0090
Third-Party Plaintiff Sunrise Hospital's Opposition to Third-Party Defendant Nevada Hospitalist Group, LLP's Motion for Judgment on the Pleadings	PA0091- PA0132

Third-Party Defendant Nevada Hospitalist Group, LLP's Reply in Support of Motion for Judgment on the Pleadings	PA0133- PA0139
Third Party Defendant Ali Kia, M.D.'s Joinder in Third-Party Defendant Nevada Hospitalist Group, LLP's Motion for Judgment on the Pleadings and Reply in Support of Motion for Judgment on the Pleadings	PA0140- PA0143
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

<u>Volume 2</u>	Bates No.
Motion for Leave of Court to Amend Complaint	PA0186- PA0208
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

Order Granting in Part and Denying in Part Plaintiff's Motion for Leave to Amend Complaint	PA0294- PA0300
Notice of Entry of Order Granting in Part and Denying in Part Plaintiff's Motion for Leave to Amend Complaint	PA0301- PA0309
Amended Complaint for Medical Malpractice	PA0310- PA0324
Defendant Sunrise Hospital and Medical Center's Answer to Plaintiff's Amended Complaint for Medical Malpractice	PA0325- PA0332
Defendant Frank J. DeLee, M.D. and Frank J. DeLee, M.D., PC's Answer to Plaintiff's Amended Complaint for Medical Malpractice	PA0333- PA 0339

<u>Volume 3</u>	Bates No.
Defendant Ali Kia, M.D.'s Motion to Dismiss Plaintiff's Amended Complaint	PA0340- PA0474
Defendant Nevada Hospitalist Group, LLP's Joinder to Defendant Ali Kia, M.D.'s Motion to Dismiss Plaintiff's Amended Complaint	PA0475- PA0477

<u>Volume 4</u>	Bates No.
Opposition to Defendant Ali Kia, M.D.'s Motion to Dismiss Plaintiff's Amended Complaint	PA0478- PA0651
Defendant Ali Kia, M.D.'s Reply in Support of Motion to Dismiss Plaintiff's Amended Complaint	PA0652- PA0666
Defendant Nevada Hospitalist Group, LLP's Reply in Support of Motion to Dismiss	PA0667- PA0680
Transcript of Proceedings: Defendant Ali Kia, M.D.'s Motion to Dismiss Plaintiff's Amended Complaint, Defendant Nevada Hospitalist Group, LLP's Joinder to Defendant Ali Kia, M.D.'s Motion to Dismiss Plaintiff's Amended Complaint	PA0681- PA0695
Order from March 16, 2021 Hearing	PA0696- PA0707
Notice of Entry of Order from March 16 2021 Hearing	PA0708- PA0721

<u>Volume 5</u>	Bates No.
Nevada Hospitalist Group, LLP's Answer to Amended Complaint	PA0722- PA0727
Defendant Ali Kia, M.D.'s Motion for Reconsideration Regarding Motion to Dismiss Plaintiff's Amended Complaint	PA0728- PA0967

<u>Volume 6</u>	Bates No.
Defendant Ali Kia, M.D.'s Motion for Reconsideration Regarding Motion to Dismiss Plaintiff's Amended Complaint (continued)	PA0968- PA1174
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
Notice of Entry of Order Denying Defendant Ali Kia, M.D.'s Motion for Reconsideration	PA1205- PA1215

<u>Volume 7</u>	Bates No.
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 3** 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.

DANIEL MARKS, ESQ.
NICOLE M. YOUNG, ESQ.
Law Office of Daniel Marks
610 South Ninth Street
Las Vegas, Nevada 89101
(702) 386-0536
DMarks@danielmarks.net
NYoung@danielmarks.net
Attorneys for Real Party in Interest
Choloe Green

ERIC K. STRYKER, ESQ.
BRIGETTE FOLEY, ESQ.
WILSON ELSEER MOSKOWITZ EDELMAN & DICKER LLP
6689 Las Vegas Blvd., Suite 200
Las Vegas, NV 89119
11th Floor
(702) 727-1400
Eric.stryker@wilsonelser.com
Brigette.Foley@wilsonelser.com
Attorneys for Real Parties in Interest
Frank J. Delee, M.D. and Frank J. Delee, M.D., P.C.

MICHAEL E. PRANGLE, ESQ.
TYSON J. DOBBS, ESQ.
HALL PRANGLE AND SCHOONVELD LLC
1140 North Town Center Drive Suite 350
20 Las Vegas, Nevada 89144
mprangle@HPSLAW.COM
tdobbs@HPSLAW.COM
Attorneys for Real Party in Interest
Sunrise Hospital and Medical Center, LLC

S. BRENT VOGEL, ESQ.
ERIN E. JORDAN, ESQ.
LEWSI BRISBOIS BISGAARD & SMITH, LLP
6385 Rainbow Boulevard, Suite 600
Las Vegas, Nevada 89118
Brent.Vogel@lewisbrisbois.com
Erin.Jordan@lewisbrisbois.com
Attorneys for Real Party in Interest
Nevada Hospitalist Group, LLP

THE HONORABLE JASMIN LILLY-SPEARS
The Eighth Judicial District Court
Department 23
Regional Justice Center
200 Lewis Avenue
Las Vegas, NV 89155
dept23lc@clarkcountycourts.us
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.

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: 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
2110 E. Flamingo Road, Suite 212, Las Vegas, NV 89119
Phone: (702) 979-2132 | Facsimile: (702) 979-2133
linda.rurangirwa@cdiglaw.com | www.cdiglaw.com

Deborah Rocha

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.

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

From: 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.



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

Tyson Dobbs
Partner
O: 702.212.1457
Email: tdobbs@HPSLAW.COM

Legal Assistant: Nicole Etienne
O: 702.212.1446
Email: netienne@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: Vogel, Brent <Brent.Vogel@lewisbrisbois.com>

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

To: 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>; 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: RE: Green v. Sunrise Hospital

[External Email] CAUTION!.

Yes, that's fine. Thank you.



Brent Vogel  AOL
Partner
Brent.Vogel@lewisbrisbois.com

T: 702.693.4320 F: 702.893.3789

6385 South Rainbow Blvd., Suite 600, Las Vegas, NV 89118 | LewisBrisbois.com

Representing clients from coast to coast. View our locations nationwide.

This e-mail may contain or attach privileged, confidential or protected information intended only for the use of the intended recipient. If you are not the intended recipient, any review or use of it is strictly prohibited. If you have received this e-mail in error, you are required to notify the sender, then delete this email and any attachment from your computer and any of your electronic devices where the message is stored.

From: Linda K. Rurangirwa <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: [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

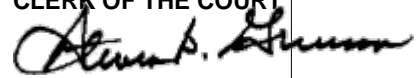
Collinson, Daehnke, Inlow & Greco – Attorneys at Law

2110 E. Flamingo Road, Suite 212, Las Vegas, NV 89119

Phone: (702) 979-2132 | Facsimile: (702) 979-2133

linda.rurangirwa@cdiglaw.com | www.cdiglaw.com

This electronic message is intended for the use of the individual or entity to which it is addressed, and may contain information that is privileged and confidential. If you are not the intended recipient, or the employee or agent responsible for delivering the message to the intended recipient, you are hereby notified that any dissemination, distribution or copying of this communication is strictly prohibited. If you have received this transmission in error, please notify us immediately by reply e-mail or by telephone at (424) 212-7777, and destroy the original transmission and its attachments without reading or saving them to disk. No waiver of privilege or confidentiality should be inferred from any error in transmittal.



MDSM

Patricia Egan Daehnke

Nevada Bar No. 4976

Patricia.Daehnke@cdiglaw.com

Linda K. Rurangirwa

Nevada Bar No. 9172

Linda.Rurangirwa@cdiglaw.com

COLLINSON, DAEHNKE, INLOW & GRECO

2110 E. Flamingo Road, Suite 212

Las Vegas, Nevada 89119

(702) 979-2132 Telephone

(702) 979-2133 Facsimile

Attorneys for Defendant

Ali Kia, M.D.

DISTRICT COURT

CLARK COUNTY, NEVADA

CHOLOE GREEN, an individual,

Plaintiffs,

vs.

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

Defendants.

CASE NO.: A-17-757722-C

DEPT. NO.: XXIII

**DEFENDANT ALI KIA, M.D.'S
MOTION TO DISMISS PLAINTIFF'S
AMENDED COMPLAINT**

HEARING REQUESTED

COMES NOW Defendant, ALI KIA, M.D., by and through his attorneys of records,
the law firm of COLLINSON, DAEHNKE, INLOW & GRECO, and hereby submits the
following Motion to Dismiss Plaintiff's Complaint pursuant to NRCP 12 (b) (5) and NRS
41A.097 (2).

This Motion is made and based upon the Notice of Motion, the Memorandum of
Points and Authorities set forth below, the exhibits attached hereto, together with all files,

1 pleadings and records on file herein, and any and all evidence and argument made at the time
2 of the hearing on this Motion.

3 DATED: January 21, 2021

COLLINSION, DAEHNKE, INLOW & GRECO

/s/ Linda K. Rurangirwa

BY: _____

PATRICIA EGAN DAEHNKE
Nevada Bar No. 4976
LINDA K. RURANGIRWA
Nevada Bar No. 9172
2110 E. Flamingo Road, Suite 212
Las Vegas, Nevada 89119
Tel. (702) 979-2132
Fax (702) 979-2133

Attorneys for Defendant
ALI KIA, M.D.

MEMORANDUM OF POINTS AND AUTHORITIES

I.

INTRODUCTION

Plaintiff Choloe Green filed her medical malpractice claim on June 30, 2017 against Frank J. DeLee, M.D., Frank J. DeLee, M.D., P.C. and Sunrise Hospital and Medical Center (“Sunrise”) arising from the care and treatment provided to Plaintiff between July 9, 2016 and July 17, 2016.¹ The Complaint was filed with the supporting affidavit of Lisa Karamardian, M.D. signed on June 29, 2017. Neither the Complaint, nor the affidavit made mention of Dr. Kia or Nevada Hospitalist Group, LLP (“NHG”). The affidavit stated:

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 . . .

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.²

Plaintiff contended that as a result of the alleged negligence, she was admitted at Centennial Hills Hospital from July 17, 2016 through September 2, 2016 during which she underwent surgery and had postoperative complications.³

On May 1, 2019, Defendant Sunrise filed a Motion for Leave to File a Third-Party Complaint on the grounds that Dr. Kia was the discharging physician on July 16, 2016 and sought to hold him and NHG liable for contribution and indemnity in the event a jury found

¹ See Plaintiff’s Complaint, attached hereto as Exhibit “A.”

² *Id.*, Affidavit of Dr. Lisa Karamardian ¶¶ 4-5.

³ *Id.*, ¶ 9

Dr. Kia's actions were negligent and the hospital was found vicariously liable on a theory of ostensible agency.⁴ The motion was granted and the Third-Party Complaint was filed on June 14, 2019.⁵ In order to satisfy the expert affidavit requirement set forth in NRS 41A.071, Sunrise relied on the expert affidavit of Dr. Karamardian that was filed with Plaintiff's Complaint.⁶

On March 19, 2020, Third-Party Defendant NHG filed a Motion for Judgment on the Pleadings on the grounds that Sunrise did not attach an affidavit of merit specifying breaches in the standard of care by Dr. Kia or NHG.⁷ Dr. Kia filed a Joinder to such motion on April 13, 2020.⁸ The Motion was heard on April 29, 2020 and granted. Specifically, the Court found:

When evaluating complaints that assert claims of medical negligence, a Plaintiff must comply with NRS 41A.071, which requires not only a complaint but also an accompanying affidavit setting forth the professional negligence allegations. The Supreme Court held "that courts should read the complaint and the plaintiff's NRS 41A.071 expert affidavit together when determining whether the expert affidavit meets the requirements of NRS 41A.071." *Zohar v. Zbiegien*, 130 Nev. 733, 739, 334 P.3d 402, 406 (2014) (citing *Great Basin Water Network v. Taylor*, 126 Nev. 187, 196, 234 P.3d 912, 918 (2010); *Washoe Med. Ctr. v. Second Judicial Dist. Court*, 122 Nev. 1298, 1304, 148 P.3d 790, 794 (2006)). The same decision went on to hold that the NRS 41A.071 affidavit requirement is a preliminary procedural rule subject to the notice pleading standard, and must be liberally construe[d] ... in a manner that is consistent with our NRCP 12 jurisprudence." *Borger v. Eighth Judicial District Court*, 120 Nev. 1021, 1028, 102 P.3d 600, 605 (recognizing that "NRS 47A.071 governs the threshold requirements for initial pleadings in medical malpractice cases, not the ultimate trial of such matters") (emphasis added); see also *Baxter v. Dignity Health*, 131 Nev. 759, 763-64, 357 P.3d 927, 930 (2015) (holding that NRS 41A.071 must be liberally construed). The

⁴ See Sunrise Hospital and Medical Center's Motion for Leave to File Third-Party Complaint on Order Shortening Time, attached hereto as Exhibit "B."

⁵ See Sunrise Hospital and Medical Center's Third-Party Complaint, attached hereto as Exhibit "C."

⁶ See Exhibit B, p. 7, line 3-8.

⁷ See Third-Party Defendant Nevada Hospitalist Group, LLP's Motion for Judgment on the Pleadings, attached hereto as Exhibit "D."

⁸ See Third-Party Defendant Ali Kia, M.D.'s Joinder in Third-Party Defendant Nevada Hospitalist Group, LLP's Motion for Judgment on the Pleadings and Reply in Support of Motion for Judgment on the Pleadings, attached hereto as Exhibit "E."

affidavit must (1) support the allegations contained in the action; (2) be submitted by a medical expert who practices or has practiced in an area that is substantially similar to the type of practice engaged in at the time of the alleged professional negligence; (3) identify by name, or describe by conduct, each provider of health care who is alleged to be negligent; and (4) set forth factually a specific act or acts of alleged negligence separately as to each defendant in simple, concise and direct terms. A complaint that does not comply with NRS 41A.071 is void ab initio, it does not legally exist and thus it cannot be amended. *Washoe Medical Center v. Second Judicial Dist. Court of State of Nevada ex rel. County of Washoe*, 122 Nev. 1298, 148 P.3d 790 (2006). Dismissal applies even when only some of the claims violate the requirements of NRS 41A.071 affidavit requirement.

Here, Third-Party Plaintiff Sunrise Hospital incorporated Plaintiff's affidavit in the filing of their Third-Party Complaint. Plaintiff's complaint and affidavit do not identify Dr. Kia or Nevada Hospitalist Group ("NHG"). Nor does either document identify any John Doe, "unknown" or "unidentified" potential defendants that could arguably be Dr. Kia and/or NHG. Because neither Dr. Kia nor NHG are identified in the complaint or the affidavit there is no identified specific act or specific acts of alleged professional negligence by Dr. Kia and NHG. Instead, the complaint and affidavit only identifies Sunrise Hospital and Dr. DeLee when laying the facts and circumstances that form the cause of action involving the alleged professional negligence. Because the Plaintiff's affidavit fails to meet the third and fourth prongs of the NRS 41A.071 affidavit requirements regarding professional negligence claims against Defendants Dr. Kia and NHG, so does the Third-Party Complaint, rendering it void ab initio. The Court recognizes that the opposition argues that this Third-Party Complaint is brought only for the purposes of contribution and indemnity. But the Court is unaware of any authority that would relieve a party of meeting the requirements set forth in NRS 41A.071 in circumstances where a Third-Party Plaintiff is only seeking indemnity and/or contribution.⁹

On October 16, 2020, Plaintiff filed a Motion for Leave to Amend the Complaint to add Dr. Kia and NHG as Defendants. The motion was granted and the Amended Complaint was filed on December 16, 2020.¹⁰ Therein, Plaintiff states with regards to Dr. Kia:

14. 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.¹¹

⁹ See 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, attached hereto as Exhibit "F."

¹⁰ See Amended Complaint for Medical Malpractice, attached hereto as Exhibit "G."

¹¹ *Id.*, ¶ 14.

1 The Affidavit of Dr. Karamardian from June 2017 is attached, as is a new affidavit of
2 Robert S. Savluk, M.D. dated October 16, 2020 dated four and a half years after the alleged
3 medical malpractice. Dr. Savluk's affidavit for the first time identifies Dr. Kia and asserts
4 allegations that Dr. Kia breached the standard of care.¹²

5 Defendant Dr. Kia moves to dismiss Plaintiff's Complaint on the grounds that it is
6 barred by both the one and three year statute of limitations applicable to medical malpractice
7 cases. As late as June 30, 2017, when Plaintiff filed her initial Complaint, she was aware of
8 the alleged negligence. Plaintiff, however, did not file an amended Complaint adding Dr. Kia
9 as a defendant until December 16, 2020, three years and six months later. Thus, Plaintiff's
10 claims are barred by both the three and one year limitation periods set forth in NRS 41A.097
11 (2). Plaintiff's Amended Complaint therefore fails to state a claim upon which relief can be
12 granted and is subject to dismissal pursuant to NRCP 12 (b) (5).

13 II.

14 LEGAL ARGUMENT

15 A. Standard of Review

16 Pursuant to NRCP 12 (b) (5), a pleading is subject to dismissal for failing to state a
17 claim upon which relief may be granted. Dismissal is appropriate where a plaintiff's
18 allegations "are insufficient to establish the elements of a claim for relief." *Hampe v. Foote*,
19 118 Nev. 405, 408, 47 P.3d 438 439 (2002), overruled in part on other grounds by *Buzz Stew*,
20 *LLC v. City of N. Las Vegas*, 124 Nev. 224, 228, 181 P.3d 670, 672 (2008). "***A court can***
21 ***dismiss a complaint for failure to state a claim upon which relief may be granted if the***
22 ***action is barred by the statute of limitations.***" *Bemis v. Estate of Bemis*, 114 Nev. 1021,
23 1024, 967 P.2d 437, 439 (1998)(emphasis added).

24 To survive dismissal under NRCP 12, a complaint must contain "facts, which if true,
25 would entitled the plaintiff to relief." *Buzz Stew, LLC*, 124 Nev. at 228. In analyzing the
26 validity of a claim the court is to accept a plaintiff's factual allegations "as true and draw all
27 inferences in the Plaintiff's favor." *Id.* However, the court is not bound to accept as true a

28 ¹² *Id.*, Affidavit of Robert S. Savluk, M.D., ¶15.

1 plaintiff's legal conclusions and "[t]hreadbare recitals of the elements of a cause of action,
2 supported by mere conclusory statement, do not suffice." *Ashcroft v. Iqbal*, 556 U.S. 662,
3 678 (2009)(analyzing the federal counterpart to NRC 12). Moreover, the court may not take
4 into consideration matters outside of the pleadings being attacked. *Breliant v. Preferred*
5 *Equities Corp.*, 109 Nev. 842, 847, 858 P.2d 1258, 1261 (1993).

6 **B. Plaintiff's Claims Against Dr. Kia are Barred by the Statute of**
7 **Limitations**

8 The applicable statute of limitations for medical malpractice/professional negligence
9 claims that accrue on or after October 1, 2002 is set forth in NRS 41A.097(2) which provides
10 in pertinent part:

11 [A]n action for injury or death against a provider of health care may not be
12 commenced more than 3 years after the date of injury or 1 year after the
13 plaintiff discovers or through the use of reasonable diligence should have
14 discovered the injury, *whichever occurs first.*" (emphasis added).

15 In *Winn v. Sunrise Hospital and Medical Center*, the Nevada Supreme Court
16 explained that NRS 41A.097(2), by its terms, requires a plaintiff "to satisfy both the one-year
17 discovery period *and* the three year injury period." 128 Nev. Adv. Op. 23, 277 P.3d 458, 461
18 (2012) (emphasis added).

19 With regard to the one year statute of limitations, generously assuming for purposes of
20 this Motion that Plaintiff discovered her injury at the time she filed her Complaint on June 30,
21 2017, Plaintiff needed to file an Amended Complaint naming Dr. Kia by June 30, 2018.
22 Plaintiff failed to file her Amended Complaint naming Dr. Kia until December 2020, over two
23 years after the expiration of the statute of limitations. Even when Sunrise filed its Motion for
24 Leave to File a Third-Party Complaint on May 1, 2019 alleging that Dr. Kia and NHG were
25 negligent, Plaintiff still did not seek to amend the Complaint to add Dr. Kia and NHG until
26 over one year and five months later.

27 The three year limitation period provided in NRS 41A.087(2) "begins to run when a
28 plaintiff suffers appreciable harm [appreciable manifestation of the plaintiff's injury],
regardless of whether the plaintiff is aware of the injury's cause." *Libby v. Eighth Judicial*

1 *Dist. Ct.*, 130 Nev. Adv. Rep. 39, 325 P.3d 1276, 1280 (2014). Plaintiff in this case became
2 aware of her alleged injury when she was hospitalized at Centennial Hills Hospital from July
3 17, 2016 through September 2, 2016 where she underwent surgery and postoperative
4 complications. Commencement of the three year limitation period does not require that
5 Plaintiff be aware of the *cause* of her injury. Such a requirement would “render NRS
6 41A.097(2)’s three year limitation period irrelevant.” *Libby*, 277 P.3d at 1280. Any attempt
7 by Plaintiff to impose a “discovery” rule on the three-year statute of limitations provided in
8 NRS 41A.097(2) is incorrect and directly contrary to the holding in *Libby*.

9 In *Libby*, the Nevada Supreme Court looked to California authority for guidance on
10 application of the three-year limitation period for medical malpractice matters (as the
11 California and Nevada statutes are identical). The Court noted California cases have reasoned
12 the purpose for the three-year limitation period is “to put an outside cap on the
13 commencements of actions of medical malpractice, to be measured from the date of injury,
14 regardless of whether or when the plaintiff discovered its negligent cause.” *Libby*, 277 P.3d at
15 1280.

16 The holding of *Garabet v. Superior Court*, 151 Cal.App.4th 1538, 60 Cal.Rptr.3d 800
17 (Ct.App. 2007) was specifically cited with authority in *Libby*. Similar to the instant matter,
18 the plaintiff in *Garabet* claimed injury stemming from surgery; however, the plaintiff did not
19 file a medical malpractice lawsuit until six years after the surgery. The *Garabet* Court
20 dismissed the plaintiff’s complaint as time-barred under California’s three year statute of
21 limitations, holding the ***limitations period started running when the plaintiff began to***
22 ***experience adverse symptoms after the surgery.*** *Id.* at 809.

23 The three-year limitation period set forth in NRS 41A.097(2) commenced, *at the*
24 *latest*, in September 2016 and expired in September 2019. The date Plaintiff learned of
25 (discovered) the alleged cause of her injury is irrelevant for purposes of the current Motion.
26 Plaintiff’s Complaint against Dr. Kia was not filed until December 16, 2020 and is, therefore,
27 time-barred and should be dismissed pursuant to NRCP 12(b)(5).
28

C. **The Amendment to Add Dr. Kia as a Defendant Does Not Relate Back to the Filing of the Original Complaint**

Pursuant to NRCP 15 (c):

An amendment to a pleading relates back to the date of the original pleading when:

(1) the amendment asserts a claim or defense that arose out of the conduct, transaction, or occurrence set out – or attempted to be set out – in the original pleading; or

(2) The amendment changes a party or the naming of a party against whom a claim is asserted if Rule 15 (c) (1) is satisfied and if, within the period provided by Rule 4 (e) for serving the summons and complaint, the party to be brought in by amendment:

(A) received such notice of the action that it will not be prejudiced in defending on the merits; and

(B) knew or should have known that the action would have been brought against it, but for a mistake concerning the proper party’s identity.

Rule 4 (e) is with regard to the time limit for service and states that “[t]he summons and complaint must be served upon a defendant no later than 120 days after the complaint is filed, unless the court grants an extension of time under this rule.”

In *Badger v. Eighth Judicial District Court*, the Nevada Supreme Court noted:

Under NRCP 15(c), “[w]henver the claim or defense asserted in the amended pleading arose out of the conduct, transaction, or occurrence set forth or attempted to be set forth in the original pleading, the amendment relates back to the date of the original pleading.” The relation-back doctrine applies to both the addition and substitution of parties, and will be liberally construed unless the opposing party is disadvantaged by relation back. However, in *Garvey v. Clark County*, this court expressly refused to allow an amended complaint to relate back after a limitations period had run where the plaintiff elected not to name the proposed defendant as a party in the original action.

Badger v. Eighth Judicial Dist. Court, 132 Nev. 396, 403-404, 373 P.3d 89, 94 (2016).

(internal citations omitted).

Plaintiff in her motion to amend the Complaint contends the amendment “does not cause any prejudice to Ali Kia, M.D., because he was already a party to this case and has been

1 deposed.”¹³ However, Dr. Kia’s name was not mentioned in the initial Complaint or affidavit
2 and he was not deposed until November 14, 2018, over a year after the Complaint was filed.¹⁴
3 Additionally, he was not a party to this case until after Sunrise filed its Third-Party Complaint
4 on June 14, 2019. Thus, he would not have had notice of potentially being a party in this suit
5 until **after** the one year statute of limitations had expired and long after the time limit set forth
6 in Rule 4 (e). Furthermore, after Dr. Kia’s deposition on November 14, 2018, Plaintiff
7 elected **not** to name him as a Defendant until almost **two years later** when she filed her
8 Motion for Leave to Amend Complaint on October 16, 2020. Plaintiff waited an additional
9 two years, long after the statute had run. Allowing the amendment to relate back would be
10 extremely prejudicial to Dr. Kia as he only received such notice **after** the statute of limitations
11 expired and the claim was time barred, and he would have no expectation of incurring the
12 expense of defending against this suit.

13 Finally, pursuant to *Washoe Med. Ctr. v. Second Judicial Dist. Court* the addition of
14 Dr. Kia to the Amended Complaint cannot relate back to the original Complaint because such
15 Complaint would be considered **void ab initio** as this Court has already deemed the expert
16 affidavit of Dr. Karamardian insufficient with regard to Dr. Kia. The law-of-the-case doctrine
17 "refers to a family of rules embodying the general concept that a court involved in later
18 phases of a lawsuit should not re-open questions decided (i.e., established as law of the case)
19 by that court or a higher one in earlier phases." *Recontrust Co. v. Zhang*. 130 Nev.Ad.Op. 1,
20 317 P.3d 814, 818 (2014), *quoting Crocker v. Piedmont Aviation, Inc.* 49 F.3d 735, 739 (D.C.
21 Cir. 1995). For the law-of-the-case doctrine to apply, this Court must have actually addressed
22 and decided the issue explicitly or by necessary implication. *Id.*, *citing Dictor v. Creative*
23 *Management Services, LLC*, 126 Nev. 41, 44, 223 P.3d 332, 334 (2010). Here, this Court has
24 already established that the Affidavit of Dr. Karamardian fails to meet the affidavit
25 requirement as to Dr. Kia.

26 In *Baxter v. Dignity Health*, the Nevada Supreme Court stated:

27

¹³ See Motion for Leave of Court to Amend Complaint, p. 4 lines 9-11, attached as Exhibit “H.”

28 ¹⁴ See Face page of deposition transcript of Ali Kia. M.D., attached as Exhibit “I.”

To date, this court has mediated the tension between NRS 41A.071 and the Nevada Rules of Civil Procedure according to the perceived strength of the competing policies at stake. Thus, in *Washoe Medical Center v. Second Judicial District Court*, 122 Nev. 1298, 1301, 148 P.3d 790, 792 (2006), the plaintiff filed her complaint the day before the statute of limitations ran. She did not obtain an affidavit of merit until the defendants moved to dismiss, by which time the statute of limitations had run. *Id.* The plaintiff filed an amended complaint, to which she appended the belated affidavit of merit, and argued that NRCP 15(a) entitled her to amend as of right, that the amendment related back to the original filing date, and that her claims therefore were timely. *Id.* A divided supreme court disagreed, deeming the original complaint a nullity to which NRCP 15(a) and the relation-back doctrine did not apply. *Id.* at 1306, 148 P.3d at 795 (4-2-1 decision). ***We held that, in requiring dismissal of an action filed without a supporting affidavit, NRS 41A.071 trumps NRCP 15(a), which allows liberal amendment of pleadings, given the substantive policy expressed in NRS 41A.071 against a plaintiff bringing a malpractice action without a medical expert first reviewing and validating the claims. Id.*** at 1304, 148 P.3d at 794.

Baxter v. Dignity Health, 131 Nev. 759, 763, 357 P.3d 927, 929-930 (2015) (emphasis added).

The Amended Complaint cannot relate back to the filing of the original Complaint as Dr. Kia did not have notice of the Complaint within 120 days of filing of same, nor could he have been aware he was a proper party as the Complaint did not mention his name and the affidavit did not state any allegations against him. The earliest he could potentially have been put on notice of the lawsuit was when he was deposed *after* the expiration of the statute of limitations. Dr. Kia will be severely prejudiced in having to defend against a lawsuit that would otherwise be barred by the statute of limitations should the Court allow the amendment to relate back to the filing of the original Complaint, which would be void ab initio against him in any event as this Court has already determined that the expert affidavit is insufficient to support any claims against him as required by NRS 41A.071.

///

///

///

///

///

///

IV.

CONCLUSION

Based on the foregoing, Dr. Kia respectfully requests this Court dismiss Plaintiff's Complaint, with prejudice, as it was filed in violation of the applicable statute of limitations set forth in NRS 41A.097(2).

DATED: January 21, 2021

COLLINSON, DAEHNKE, INLOW & GRECO

/s/ Linda K. Rurangirwa

BY: _____

PATRICIA EGAN DAEHNKE

Nevada Bar No. 4976

LINDA K. RURANGIRWA

Nevada Bar No. 9172

2110 E. Flamingo Road, Suite 212

Las Vegas, Nevada 89119

Tel. (702) 979-2132

Fax (702) 979-2133

Attorneys for Defendant

ALI KIA, M.D.

CERTIFICATE OF SERVICE

I hereby certify that on this 21st day of January 2021, a true and correct copy of
**DEFENDANT ALI KIA, M.D.'S MOTION TO DISMISS PLAINTIFF'S AMENDED
COMPLAINT** was served by electronically filing with the Clerk of the Court using the
Odyssey File & Serve system and serving all parties with an email address on record, who
have agreed to receive Electronic Service in this action.

DANIEL MARKS, ESQ.
NICOLE M. YOUNG, ESQ.
Law Office of Daniel Marks
610 South Ninth Street
Las Vegas, Nevada 89101
(702) 386-0536
Attorneys for Plaintiff Cholo Green

ERIC K. STRYKER, ESQ.
BRIGETTE FOLEY, ESQ.
WILSON ELSER MOSKOWITZ EDELMAN & DICKER LLP
6689 Las Vegas Blvd., Suite 200
Las Vegas, NV 89119
11th Floor
(702) 727-1400
*Attorneys for Defendants
Frank J. Delee, M.D. and Frank J. Delee, M.D., P.C.*

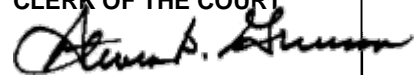
MICHAEL E. PRANGLE, ESQ.
TYSON J. DOBBS, ESQ.
SHERMAN B. MAYOR, ESQ.
HALL PRANGLE AND SCHOONVELD LLC
1140 North Town Center Drive
Suite 350
20 Las Vegas, Nevada 89144
*Attorneys for Defendant and Third-Party Plaintiff
Sunrise Hospital and Medical Center, LLC*

S. BRENT VOGEL, ESQ.
ERIN E. JORDAN
LEWSI BRISBOIS BISGAARD & SMITH, LLP
6385 Rainbow Boulevard, Suite 600
Las Vegas, Nevada 89118
*Attorneys for Third-Party Defendant
Nevada Hospitalist Group, LLP*

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

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

EXHIBIT A



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

DISTRICT COURT
CLARK COUNTY, NEVADA

CHLOE GREEN, an individual,

Case No.
Dept. No.

A-17-757722-C

Plaintiff,

Department 8

v.

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

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

Defendants.

COMPLAINT FOR MEDICAL MALPRACTICE

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

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

////

////

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

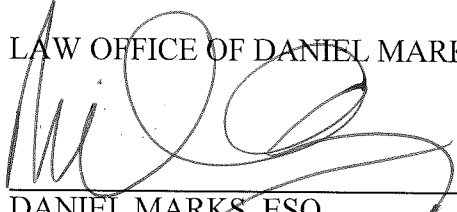
11. That as a direct and proximate result of all of the Defendants' negligence, Choloe has been damaged in an amount in excess of \$15,000.00.
12. This Complaint is supported by the Affidavit of Lisa Karamardian, M.D., a copy of which is attached hereto as Exhibit "1".
13. Choloe has been forced to retain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

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

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

DATED this 30 day of June, 2017.

LAW OFFICE OF DANIEL MARKS


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

1 VERIFICATION

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

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

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

8 
9 _____
10 CHLOE GREEN

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

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

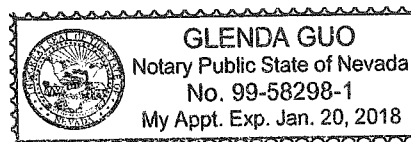


EXHIBIT 1

AFFIDAVIT OF DR. LISA KARAMARDIAN

STATE OF California }
COUNTY OF Orange }

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

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

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

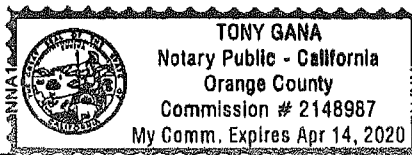
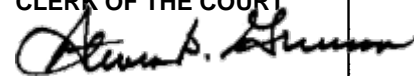


EXHIBIT B



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

**DISTRICT COURT
CLARK COUNTY, NEVADA**

CHLOE GREEN, an individual,

Plaintiff,

vs.

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

Defendants.

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

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

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

...

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

DATED this 24th day of April, 2019.

HALL PRANGLE & SCHOONVELD, LLC

By: _____

MICHAEL E. PRANGLE, ESQ.

Nevada Bar No.: 8619

TYSON J. DOBBS, ESQ.

Nevada Bar No.: 11953

SHERMAN B. MAYOR, ESQ.

Nevada Bar No. 1491

1160 N. Town Center Dr., Ste. 200

Las Vegas, NV 89144

Attorneys for Defendant

Sunrise Hospital and Medical Center, LLC

ORDER SHORTENING TIME

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

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

DATED April 29, 2019.

DISTRICT COURT JUDGE

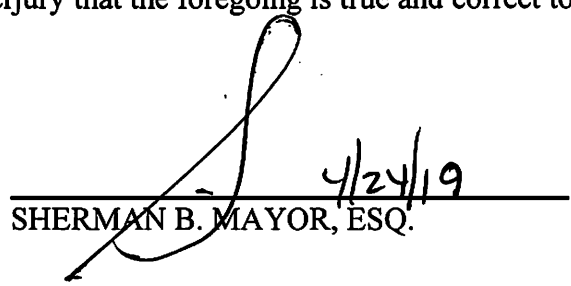
1 **DECLARATION OF SHERMAN B. MAYOR, ESQ., IN SUPPORT OF ORDER**
2 **SHORTENING TIME FOR SUNRISE HOSPITAL'S MOTION**
3 **FOR LEAVE TO FILE THRID PARTY COMPLAINT**

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

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

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

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

20
21
22
23
24
25
26
27
28

SHERMAN B. MAYOR, ESQ.

PREFATORY NOTE

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

POINTS AND AUTHORITIES

I. FACTS

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

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

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

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

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

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

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

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

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

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

16 II. 17 ARGUMENT

18 NRCP 14 provides in relevant part:

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

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

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

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

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

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

19 DATED this 24th day of April, 2019.

20
21 HALL PRANGLE & SCHOONVELD, LLC

22 By: _____

23 MICHAEL E. PRANGLE, ESQ.

24 Nevada Bar No.: 8619

25 TYSON J. DOBBS, ESQ.

26 Nevada Bar No.: 11953

27 SHERMAN B. MAYOR, ESQ.

28 Nevada Bar No. 1491

1160 N. Town Center Dr., Ste. 200

Las Vegas, NV 89144

Attorneys for Defendant

Sunrise Hospital and Medical Center, LLC

EXHIBIT A

EXHIBIT A

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

Press <Enter> for Order Details below

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

Order's Audit Trail of Events

```

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

```

Electronics

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

Other Provider : Sig Lvl Provider :

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

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

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

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

Other Specific Reason:

Antithrombotic at Discharge?
 Antithrombotic Contraindications:

Other Specific Reason:
 Antiplatelet Therapy at Discharge?

PERMANENT MEDICAL RECORD COPY

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

MEDITECH FACILITY: COCSZ
IDEV - Discharge Report

PAGE 52

PATIENT: GREEN, CHLOE S
ACCOUNT NO: D00113938887

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

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

ATTEND DR: Kia, Ali MD
REPORT STATUS: FINAL

Antiplatelet Contraindications:

Other Specific Reason:

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

Anticoagulation Contraindications:

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

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

What anticoagulation med is patient being sent home on:

List reason for medication choice:

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

Return to Work/School:
OK to Drive:

Call Your Doctor If -
Fever Greater Than: 101.5

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

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

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

PERMANENT MEDICAL RECORD COPY

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

MEDITECH FACILITY: COCSZ
IDEV - Discharge Report

PAGE 53

PATIENT: GREEN, CHLOE S
ACCOUNT NO: 000113938887

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

ADMIT: 07/14/16
DISCH/DEP: 07/16/16
STATUS: IN
UNIT NO: 0001315049

ATTEND DR: Kia, Ali MD
REPORT STATUS: FINAL

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

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

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

== INFANT/NICU ==

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

Provide Pre-printed Mother/Infant Instructions:

== Outpatient Services Needs ==

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

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

Order's Audit Trail of Events

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

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

PERMANENT MEDICAL RECORD COPY

EXHIBIT B

EXHIBIT B

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

Good Afternoon,

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

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

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

Thank you,

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

EXHIBIT C

EXHIBIT C

TPC

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

**DISTRICT COURT
CLARK COUNTY, NEVADA**

CHOLOE GREEN, an individual,

Plaintiff,

vs.

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

Defendants.

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

Third-Party Plaintiff,

vs.

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

Third-Party Defendants.

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

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

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

GENERAL ALLEGATIONS

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

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

4 **STATEMENTS OF FACTS**

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

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

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

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

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

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

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

9 DATED this 24th day of April, 2019.

10 HALL PRANGLE & SCHOONVELD, LLC

11 By: _____

12 MICHAEL E. PRANGLE, ESQ.

13 Nevada Bar No.: 8619

14 TYSON J. DOBBS, ESQ.

15 Nevada Bar No.: 11953

16 SHERMAN B. MAYOR, ESQ.

17 Nevada Bar No. 1491

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

19 Las Vegas, NV 89144

20 *Attorneys for Defendant*

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

Steven D. Grierson

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

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

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

Case No.
Dept. No.

A-17-757722-C y

Department 8

12 **v.**

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

Arbitration Exempt -- Action
for Medical Malpractice

16 **Defendants.**

18 **COMPLAINT FOR MEDICAL MALPRACTICE**

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

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

27 **////**

28 **////**

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

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

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

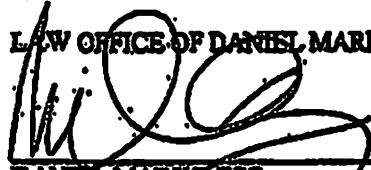
5 13. Cholee has been forced to retain counsel to bring this action and should be awarded his
6 reasonable attorneys fees and costs.

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

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

12 DATED this 30 day of June, 2017.

13 LAW OFFICE OF DANIEL MARKS

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

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

VERIFICATION

STATE OF NEVADA }
COUNTY OF CLARK } ss:

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

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

Chloe Green
CHLOE GREEN

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

Glenda Guo
NOTARY PUBLIC in and for said
COUNTY and STATE

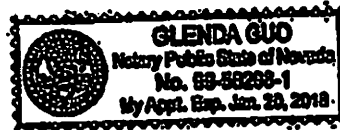


EXHIBIT 1

AFFIDAVIT OF DR. LISA KARAMARDIAN

STATE OF California
COUNTY OF Orange } ss.

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

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

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

22 FURTHER YOUR AFFIANT SAYETH NAUGHT.

23 
24 LISA KARAMARDIAN, MD.

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

27 
28 NOTARY PUBLIC in and for said
COUNTY and STATE

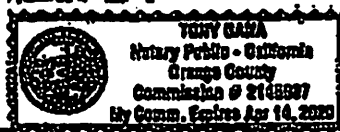
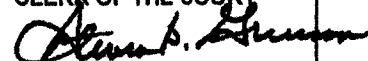


EXHIBIT C

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

Electronically Filed
6/14/2019 11:04 AM
Steven D. Grierson
CLERK OF THE COURT



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

DISTRICT COURT
CLARK COUNTY, NEVADA

CHLOE GREEN, an individual,

Plaintiff,

vs.

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

Defendants.

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

Third-Party Plaintiff,

vs.

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

Third-Party Defendants.

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

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

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

GENERAL ALLEGATIONS

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

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

4 **STATEMENTS OF FACTS**

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

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

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

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

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

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

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

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

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

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

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

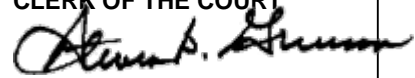
4 26. WHEREFORE, Third-Party Plaintiff Sunrise Hospital and Medical Center prays that
5 judgment be entered in its favor and against Third-Party Defendants, Ali Kia, M.D.,
6 and Nevada Hospitalist Group, LLP, in an amount commensurate with the relative
7 degree of fault by Dr. Kia in causing the Plaintiff's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

9 DATED this 14th day of June, 2019.

10 HALL PRANGLE & SCHOONVELD, LLC
11

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

EXHIBIT D



1 S. BRENT VOGEL
Nevada Bar No. 006858
2 E-Mail: Brent.Vogel@lewisbrisbois.com
ERIN E. JORDAN
3 Nevada Bar No. 10018
E-Mail: Erin.Jordan@lewisbrisbois.com
4 LEWIS BRISBOIS BISGAARD & SMITH LLP
6385 S. Rainbow Boulevard, Suite 600
5 Las Vegas, Nevada 89118
702.893.3383
6 FAX: 702.893.3789
*Attorneys for Third-Party Defendant Nevada
Hospitalist Group, LLP*

8
9 DISTRICT COURT

10 CLARK COUNTY, NEVADA

11 CHOLOE GREEN, an individual,
12 Plaintiff,

13 vs.

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

16 Defendants.

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

19 Third-Party Plaintiff,

20 vs.

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

24 Third-Party Defendants.

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

HEARING REQUESTED

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

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

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

4 DATED this 19th day of March, 2020.

5 LEWIS BRISBOIS BISGAARD & SMITH LLP
6
7

8 By /s/ Erin E. Jordan

9 S. BRENT VOGEL

10 Nevada Bar No. 006858

11 ERIN E. JORDAN

12 Nevada Bar No. 10018

13 6385 S. Rainbow Boulevard, Suite 600

14 Las Vegas, Nevada 89118

15 Tel. 702.893.3383

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

17 **MEMORANDUM OF POINTS AND AUTHORITIES**

18 **I. FACTUAL BACKGROUND**

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

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

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

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

11 II. ARGUMENT

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

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

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

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

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

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

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

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

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

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

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

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

1 Nevada Hospitalist Group, LLP is warranted.

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

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

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

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

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

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

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

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

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

25 *Id.*

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

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

2
3
4
5
6

7

8

9
10
11
12
13
14
15
16

CERTIFICATE OF SERVICE

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

Daniel Marks, Esq.
Nicole M. Young, Esq.
LAW OFFICE OF DANIEL MARKS
610 S. 9th St.
Las Vegas, NV 89101
Tel: 702.386.0536
Fax: 702.386.6812
nyoung@danielmarks.net
Attorneys for Plaintiff

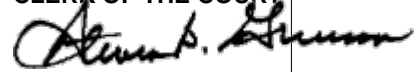
Erik Stryker, Esq.
WILSON ELSEER MOSKOWITZ EDELMAN
& DICKER LLP
300 S. 4th St.
Las Vegas, NV 89101
Tel: 702.727.1400
Fax: 702.727.1401
eric.stryker@wilsonelser.com
*Attorneys for Defendants Frank J. Delee, M.D.
and Frank J. Delee, M.D., PC*

Michael E. Prangle, Esq.
Tyson J. Dobbs, Esq.
Sherman B. Mayor, Esq.
HALL PRANGLE & SCHOONVELD, LLC
1160 N. Town Center Dr., Suite 200
Las Vegas, NV 89144
Tel: 702.889.6400
Fax: 702.384.6025
smayor@hpslaw.com
tdobbs@hpslaw.com
*Attorneys for Defendant/Third-Party Plaintiff
Sunrise Hospital and Medical Center, LLC*

Patricia E. Daehnke, Esq.
Linda K. Rurangirwa, Esq.
COLLINSON, DAEHNKE, INLOW, GRECO
2110 E. Flamingo Road, Suite 212
Las Vegas, NV 89119
Tel: 702.979.2132
Fax: 702.979.2133
patricia.daehnke@cdiglaw.com
linda.rurangirwa@cdiglaw.com
*Attorneys for Third-Party Defendant Ali Kia,
M.D.*

By /s/ Johana Whitbeck
An Employee of
LEWIS BRISBOIS BISGAARD & SMITH LLP

EXHIBIT E



JOIN

Patricia Egan Daehnke
Nevada Bar No. 4976

Patricia.Daehnke@cdiglaw.com

Linda K. Rurangirwa
Nevada Bar No. 8843

Linda.Rurangirwa@cdiglaw.com

COLLINSON, DAEHNKE, INLOW & GRECO
2110 E. Flamingo Road, Suite 212
Las Vegas, Nevada 89119
(702) 979-2132 Telephone
(702) 979-2133 Facsimile

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

DISTRICT COURT

CLARK COUNTY, NEVEDA

CHLOE GREEN, an individual,

Plaintiffs,

vs.

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

Defendants.

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

Third-Party Plaintiff,

vs.

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

Third-Party Defendants.

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

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

**DATE: APRIL 21, 2020
TIME: 8:30 A.M.**

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

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

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

DATED: April 13, 2020

COLLINSON, DAEHNKE, INLOW & GRECO

BY: /s/ Linda K. Rurangirwa

PATRICIA EGAN DAEHNKE

Nevada Bar No. 4976

LINDA K. RURANGIRWA

Nevada Bar No.

2110 E. Flamingo Road, Suite 212

Las Vegas, Nevada 89119

Tel. (702) 979-2132

Fax (702) 979-2133

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

1 **CERTIFICATE OF SERVICE**

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

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

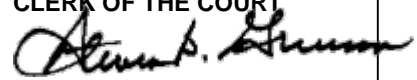
16 ERIC K. STRYKER, ESQ.
17 Wilson Elser Moskowitz Edelman & Dicker LLP
18 300 South Fourth Street
19 11th Floor
20 Las Vegas, Nevada 89101
21 (702) 727-1400
22 *Attorneys for Defendants*
23 *Frank J. DeLee, M.D. and Frank J. DeLee, M.D., P.C.:*

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

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

6 By /s/ Linda K. Rurangirwa
7 An employee of COLLINSON, DAEHNKE,
INLOW & GRECO
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28

EXHIBIT F



1 **NEOJ**
S. BRENT VOGEL
2 Nevada Bar No. 006858
E-Mail: Brent.Vogel@lewisbrisbois.com
3 ERIN E. JORDAN
Nevada Bar No. 10018
4 E-Mail: Erin.Jordan@lewisbrisbois.com
LEWIS BRISBOIS BISGAARD & SMITH LLP
5 6385 S. Rainbow Boulevard, Suite 600
Las Vegas, Nevada 89118
6 702.893.3383
FAX: 702.893.3789
7 *Attorneys for Third-Party Defendant Nevada*
Hospitalist Group, LLP

8
9 DISTRICT COURT
10 CLARK COUNTY, NEVADA
11

12 CHOLOE GREEN, an individual,
13 Plaintiff,

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

NOTICE OF ENTRY OF ORDER

14 vs.

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

18 Defendants.

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

22 Third Party Plaintiff,

23 vs.

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

26 Third Party Defendants.
27
28

1 PLEASE TAKE NOTICE that an ORDER was entered with the Court in the above-
2 captioned matter on the 1st day of September 2020, a copy of which is attached hereto.

3
4 DATED this 1st day of September, 2020

5 LEWIS BRISBOIS BISGAARD & SMITH LLP

6
7
8 By /s/ Erin E. Jordan

9 S. BRENT VOGEL

10 Nevada Bar No. 006858

11 ERIN E. JORDAN

12 Nevada Bar No. 10018

13 6385 S. Rainbow Boulevard, Suite 600

14 Las Vegas, Nevada 89118

15 Tel. 702.893.3383

16 *Attorneys for Third-Party Defendant Nevada*
17 *Hospitalist Group, LLP*
18
19
20
21
22
23
24
25
26
27
28

CERTIFICATE OF SERVICE

I hereby certify that on this 1st day of September, 2020, a true and correct copy of **NOTICE OF ENTRY OF ORDER** was served by electronically filing with the Clerk of the Court using the Electronic Service system and serving all parties with an email-address on record, who have agreed to receive Electronic Service in this action.

Daniel Marks, Esq.
Nicole M. Young, Esq.
LAW OFFICE OF DANIEL MARKS
610 S. 9th St.
Las Vegas, NV 89101
Tel: 702.386.0536
Fax: 702.386.6812
nyoung@danielmarks.net
Attorneys for Plaintiff

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

Michael E. Prangle, Esq.
Tyson J. Dobbs, Esq.
Sherman B. Mayor, Esq.
HALL PRANGLE & SCHOONVELD, LLC
1160 N. Town Center Dr., Suite 200
Las Vegas, NV 89144
Tel: 702.889.6400
Fax: 702.384.6025
smayor@hpslaw.com
tdobbs@hpslaw.com
*Attorneys for Defendant/Third-Party Plaintiff
Sunrise Hospital and Medical Center, LLC*

Patricia E. Daehnke, Esq.
Linda K. Rurangirwa, Esq.
COLLINSON, DAEHNKE, INLOW, GRECO
2110 E. Flamingo Road, Suite 212
Las Vegas, NV 89119
Tel: 702.979.2132
Fax: 702.979.2133
patricia.daehnke@cdiglaw.com
linda.rurangirwa@cdiglaw.com
*Attorneys for Third-Party Defendant Ali Kia,
M.D.*

By /s/ Roya Rokni
An Employee of
LEWIS BRISBOIS BISGAARD & SMITH LLP

1 S. BRENT VOGEL
Nevada Bar No. 6858
2 E-Mail: Brent.Vogel@lewisbrisbois.com
ERIN E. JORDAN
3 Nevada Bar No. 10018
E-Mail: Erin.Jordan@lewisbrisbois.com
4 LEWIS BRISBOIS BISGAARD & SMITH LLP
6385 S. Rainbow Boulevard, Suite 600
5 Las Vegas, Nevada 89118
702.893.3383
6 FAX: 702.893.3789
Attorneys for Third-Party Defendant Nevada
7 *Hospitalist Group, LLP*

8
9 DISTRICT COURT
10 CLARK COUNTY, NEVADA

11 CHOLOE GREEN, an individual,
12
13 Plaintiff,

14 vs.

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

17 Defendants.
18

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

21 Third Party Plaintiff,

22 vs.

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

25 Third Party Defendants.
26

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

**JUDGMENT UPON THE PLEADINGS IN
FAVOR OF THIRD-PARTY DEFENDANT
NEVADA HOSPITALIST GROUP, LLP'S
AND AGAINST SUNRISE HOSPITAL
MEDICAL CENTER, LLC**

27 PLEASE TAKE NOTICE that the above-entitled matter came before the Court for
28 decision on Third-Party Defendant NEVADA HOSPITALIST GROUP, LLP'S MOTION FOR

1 JUDGMENT ON THE PLEADINGS AND THIRD-PARTY DEFENDANT ALI KIA, M.D.'S
2 JOINDER THERETO. The Court heard and considered oral argument and evidence presented by
3 the parties. The Court thereafter issued its Order granting Judgment on the Pleadings in favor of
4 Nevada Hospitalist Group, LLP and against Sunrise Hospital and Medical Center. A copy of the
5 Notice of Entry of Order Regarding Third-Party Defendant Nevada Hospitalist Group, LLP's
6 Motion for Judgment on the Pleadings and Third-Party Defendant Ali Kia, M.D.'s Joinder
7 Thereto, filed on June 3, 2020, is attached as Exhibit A.

8 IT IS THEREFORE ORDERED, ADJUDGED AND DECREED that Judgment on the
9 Pleadings is hereby entered in favor of Third-Party Defendant Nevada Hospitalist Group, LLP and
10 against Sunrise Hospital and Medical Center, LLC.

11 ~~DATED this ____ day of August, 2020.~~

Dated this 1st day of September, 2020

12
13
14 
DISTRICT COURT JUDGE

ec

15
16 Respectfully submitted by:

41B FB8 3A22 4188
Cristina D. Silva
District Court Judge

17 LEWIS BRISBOIS BISGAARD & SMITH LLP

18 By /s/ Erin E. Jordan

19 S. BRENT VOGEL

Nevada Bar No. 6858

20 ERIN E. JORDAN

Nevada Bar No. 10018

21 6385 S. Rainbow Boulevard, Suite 600

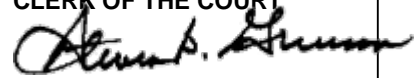
Las Vegas, Nevada 89118

22 Tel. 702.893.3383

23 *Attorneys for Third-Party Defendant Nevada
Hospitalist Group, LLP*
24
25
26
27
28

EXHIBIT A

EXHIBIT A



1 S. BRENT VOGEL
Nevada Bar No. 6858
2 E-Mail: Brent.Vogel@lewisbrisbois.com
ERIN E. JORDAN
3 Nevada Bar No. 10018
E-Mail: Erin.Jordan@lewisbrisbois.com
4 LEWIS BRISBOIS BISGAARD & SMITH LLP
6385 S. Rainbow Boulevard, Suite 600
5 Las Vegas, Nevada 89118
702.893.3383
6 FAX: 702.893.3789
Attorneys for Third-Party Defendant Nevada
7 *Hospitalist Group, LLP*

8
9 DISTRICT COURT
10 CLARK COUNTY, NEVADA

11 CHOLOE GREEN, an individual,
12
13 Plaintiff,

14 vs.

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

17 Defendants.
18

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

21 Third Party Plaintiff,

22 vs.

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

25 Third Party Defendants.
26

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

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

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

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

4 DATED this 3rd day of June, 2020

5 LEWIS BRISBOIS BISGAARD & SMITH LLP
6
7

8 By /s/ Erin E. Jordan

9 S. BRENT VOGEL

10 Nevada Bar No. 6858

11 ERIN E. JORDAN

12 Nevada Bar No. 10018

13 6385 S. Rainbow Boulevard, Suite 600

14 Las Vegas, Nevada 89118

15 Tel. 702.893.3383

16 *Attorneys for Third-Party Defendant Nevada*
17 *Hospitalist Group, LLP*
18
19
20
21
22
23
24
25
26
27
28

1 **CERTIFICATE OF SERVICE**

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

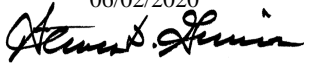
9 Daniel Marks, Esq.
10 Nicole M. Young, Esq.
11 LAW OFFICE OF DANIEL MARKS
12 610 S. 9th St.
13 Las Vegas, NV 89101
14 Tel: 702.386.0536
15 Fax: 702.386.6812
16 nyoung@danielmarks.net
17 *Attorneys for Plaintiff*

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

15 Michael E. Prangle, Esq.
16 Sherman B. Mayor, Esq.
17 HALL PRANGLE & SCHOONVELD, LLC
18 1160 N. Town Center Dr., Suite 200
19 Las Vegas, NV 89144
20 Tel: 702.889.6400
21 Fax: 702.384.6025
22 smayor@hpslaw.com
23 *Attorneys for Defendant/Third-Party Plaintiff*
24 *Sunrise Hospital and Medical Center, LLC*

Patricia E. Daehnke, Esq.
Linda K. Rurangirwa, Esq.
COLLINSON, DAEHNKE, INLOW, GRECO
2110 E. Flamingo Road, Suite 212
Las Vegas, NV 89119
Tel: 702.979.2132
Fax: 702.979.2133
patricia.daehnke@cdiglaw.com
linda.rurangirwa@cdiglaw.com
*Attorneys for Third-Party Defendant Ali Kia,
M.D.*

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


CLERK OF THE COURT

1 S. BRENT VOGEL
Nevada Bar No. 006858
2 E-Mail: Brent.Vogel@lewisbrisbois.com
ERIN E. JORDAN
3 Nevada Bar No. 10018
E-Mail: Erin.Jordan@lewisbrisbois.com
4 LEWIS BRISBOIS BISGAARD & SMITH LLP
6385 S. Rainbow Boulevard, Suite 600
5 Las Vegas, Nevada 89118
702.893.3383
6 FAX: 702.893.3789
Attorneys for Third-Party Defendant Nevada
7 *Hospitalist Group, LLP*

8
9 DISTRICT COURT

10 CLARK COUNTY, NEVADA

11 CHOLOE GREEN, an individual,
12
13 Plaintiff,

14 vs.

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

17 Defendants.
18

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

21 Third Party Plaintiff,

22 vs.

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

25 Third Party Defendants.
26

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

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

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

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

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

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

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

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

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

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

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

8 Dated this _____ day of May, 2020.

9
10 
DISTRICT COURT JUDGE

MK
28B 6D1 A711 ED7D
Cristina D. Silva

11 Submitted by:

12 LEWIS BRISBOIS BISGAARD & SMITH LLP

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

19 Approved as to Form:

20 LAW OFFICE OF DANIEL MARKS

HALL PRANGLE & SCHOONVELD, LLC

21
22 /s/ Nicole M. Young
23 Daniel Marks, Esq.
24 Nicole M. Young, Esq.
610 S. 9th St.
Las Vegas, NV 89101
25 nyoung@danielmarks.net
26 *Attorneys for Plaintiff*

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

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

WILSON ELSEER MOSKOWITZ EDELMAN
& DICKER LLP

COLLINSON, DAEHNKE, INLOW,
GRECO

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

/s/ Linda K. Rurangirwa

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

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

Whitbeck, Johana

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

You may use my electronic signature. Thanks.

Linda K. Rurangirwa
Collinson, Daehnke, Inlow & Greco

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

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

Thanks,
Erin

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

Hi Erin:

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

Nicole M. Young, Esq.
Associate Attorney

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

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

Erin:

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



Kelli Wightman
Legal Assistant
O: 702.212.1445
Email: kwightman@HPSLAW.COM

Legal Assistant to:
Mari Schaan
Sherman Mayor

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

[External Email] CAUTION!.

All,

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

Thanks,

Erin

From: Stryker, Eric K. <Eric.Stryker@wilsonelser.com>

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

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

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

Cc: Vogel, Brent <Brent.Vogel@lewisbrisbois.com>; Whitbeck, Johana <Johana.Whitbeck@lewisbrisbois.com>

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

No changes from me – thanks for sending.

Eric K. Stryker

Attorney at Law

Wilson Elser Moskowitz Edelman & Dicker LLP

Attorney at Law

Wilson Elser Moskowitz Edelman & Dicker LLP

6689 Las Vegas Blvd. South, Suite 200

Las Vegas, NV 89119

702.727.1242 (Direct)

702.727.1400 (Main)

702.727.1401 (Fax)

eric.stryker@wilsonelser.com

PLEASE NOTE OUR NEW ADDRESS

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

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

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

Patricia.Daehnke@cdiglaw.com; Laura Lucero (Laura.Lucero@cdiglaw.com) <Laura.Lucero@cdiglaw.com>

Cc: Vogel, Brent <Brent.Vogel@lewisbrisbois.com>; Whitbeck, Johana <Johana.Whitbeck@lewisbrisbois.com>

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

[EXTERNAL EMAIL]

All,

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

Thanks,
Erin



Erin E. Jordan

Partner

Erin.Jordan@lewisbrisbois.com

T: 702.693.4354 F: 702.893.3789

6385 South Rainbow Blvd., Suite 600, Las Vegas, NV 89118 | LewisBrisbois.com

Representing clients from coast to coast. View our locations nationwide.

This e-mail may contain or attach privileged, confidential or protected information intended only for the use of the intended recipient. If you are not the intended recipient, any review or use of it is strictly prohibited. If you have received this e-mail in error, you are required to notify the sender, then delete this email and any attachment from your computer and any of your electronic devices where the message is stored.

CONFIDENTIALITY NOTICE: This electronic message is intended to be viewed only by the individual or entity to whom it is addressed. It may contain information that is privileged, confidential and exempt from disclosure under applicable law. Any dissemination, distribution or copying of this communication is strictly prohibited without our prior permission. If the reader of this message is not the intended recipient, or the employee or agent responsible for delivering the message to the intended recipient, or if you have received this communication in error, please notify us immediately by return e-mail and delete the original message and any copies of it from your computer system.

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

Thank you.

1 **CSERV**

2
3 DISTRICT COURT
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 Judgment of Dismissal was served via the court's electronic eFile
13 system to all recipients registered for e-Service on the above entitled case as listed below:

14 Service Date: 9/1/2020

15 E-File Admin

efile@hpslaw.com

16 S. Vogel

brent.vogel@lewisbrisbois.com

17 Eric Stryker

eric.stryker@wilsonelser.com

18 Johana Whitbeck

johana.whitbeck@lewisbrisbois.com

19 Erin Jordan

erin.jordan@lewisbrisbois.com

20 Efile LasVegas

efilelasvegas@wilsonelser.com

21 Angela Clark

angela.clark@wilsonelser.com

22 Daniel Marks

office@danielmarks.net

23 Tyson Dobbs

tdobbs@hpslaw.com

24 Alia Najjar

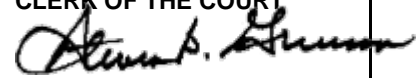
alia.najjar@wilsonelser.com

25 Charlotte Buys

cbuys@hpslaw.com

1	Patricia Daehnke	patricia.daehnke@cdiglaw.com
2	Nicolle Etienne	netienne@hpslaw.com
3	Trisha Grijalva	trisha.grijalva@wilsonelser.com
4	Sherman Mayor	smayor@hpslaw.com
5	Nicole Lord	nicole.lord@wilsonelser.com
6	Linda Rurangirwa	linda.rurangirwa@cdiglaw.com
7	Amanda Rosenthal	amanda.rosenthal@cdiglaw.com
8	Laura Lucero	laura.lucero@cdiglaw.com
9	Nicole Young	nyoung@danielmarks.net
10	Reina Claus	rclaus@hpslaw.com
11	Deborah Rocha	deborah.rocha@cdiglaw.com
12	Brigette Foley	Brigette.Foley@wilsonelser.com
13	Richean Martin	richean.martin@cdiglaw.com
14	Joshua Daor	joshua.daor@lewisbrisbois.com
15		
16		
17		
18		
19		
20		
21		
22		
23		
24		
25		
26		
27		
28		

EXHIBIT G



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.

////

////

- 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

19

20

21

22

23

24

25

26

27

28

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

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

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

15
16
17
18
19
20
21
22
23
24
25
26
27
28

EXHIBIT A

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.

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

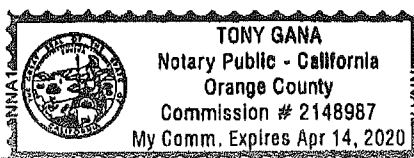
7. Because of the violations of the standard of care, her hospital course was protracted with multiple complications and she was apparently discharged to a step down facility once her antibiotic course was felt to be completed, still on a feeding tube and in need of rehabilitation.

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

FURTHER YOUR AFFIANT SAYETH NAUGHT.


LISA KARAMARDIAN, MD.

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



NOTARY PUBLIC in and for said
COUNTY and STATE

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.

////

////

- 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 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

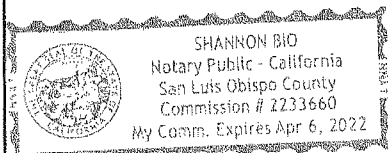
NOTARY PUBLIC in and for said
COUNTY and STATE

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.

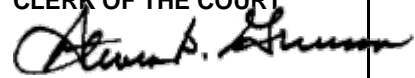


(Seal)

Signature

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

EXHIBIT H



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
18
19
20
21
22
23
24
25
26
27
28

- 1
- 2
- 3
- 4
- 5
- 6
- 7
- 8
- 9
- 0
- 1
- 2
- 3
- 4
- 5
- 6
- 7
- 8
- 9
- 0
- 1
- 2
- 3
- 4
- 5
- 6
- 7
- 8

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

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

15

16 /s/ Nicole M. Young

17 An employee of the
LAW OFFICE OF DANIEL MARKS

EXHIBIT 1

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

7 DISTRICT COURT
8 CLARK COUNTY, NEVADA

9 CHOLOE GREEN, an individual,

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

11 Plaintiff,

12 v.

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

////

////

- 1 11. On July 14, 2016, after still not having a bowel movement post C-section, Choloe went to
2 the emergency room at Sunrise Hospital, with severe abdominal pain and reports of nausea,
3 vomiting, fever, and chills. She was admitted to the medical/surgical unit because of the
4 diagnosis of sepsis. Sunrise Hospital, through Ali Kia, M.D., discharged Choloe on July 16,
5 2016, despite having a small bowel obstruction. The discharge was discussed and confirmed
6 by Dr. DeLee.
- 7 12. That Choloe presented at Sunrise Hospital on July 14, 2016, seeking treatment from the
8 hospital, not a specific doctor. Upon her admission, Sunrise Hospital provided various
9 healthcare professionals, including doctors and nurses to provide emergency care/treatment
10 to Choloe. Throughout her stay from July 14-16, 2016, Choloe believed all healthcare
11 professionals that provided her care/treatment were employees and/or agents of the hospital.
12 She was never provided the opportunity to affirmatively chose who provided her
13 care/treatment. She was never informed the doctors or nurses providing care/treatment were
14 not employees and/or agents of the hospital.
- 15 13. On July 17, 2016, Choloe went to the emergency room at Centennial Hills Hospital where
16 she was admitted until she was finally discharged on September 2, 2016. Centennial Hills
17 admitted Choloe with the diagnosis of small bowel obstruction. She had an NG Tube placed,
18 underwent surgery, had diffuse pulmonary infiltrates, suggestive of pulmonary edema or ARDS,
19 and eventually needed a tracheostomy and PEG tube placement.

20 **COUNT I**

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

- 22 14. Plaintiff restates and incorporates the allegations set forth in Paragraphs 1 through 13 herein
23 by reference.
- 24 15. That Defendant Dr. DeLee, Sunrise Hospital, Dr. Kia, and Nevada Hospitalist Group, LLP,
25 breached the standard of care in their treatment of Choloe and as a direct and proximate
26 result of that breach, Choloe has been damaged.
- 27 16. That as a direct and proximate result of all of the Defendants' negligence, Choloe has been
28 damaged in an amount in excess of \$15,000.00.

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

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

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

7 **COUNT II**

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

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

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

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

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

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

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

28 ////

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

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

6 DATED this _____ day of October, 2020.

7 LAW OFFICE OF DANIEL MARKS

8

9 _____

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

14

15

16

17

18

19

20

21

22

23

24

25

26

27

28

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
16
17
18
19
20
21
22
23
24
25
26
27
28

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.

////

////

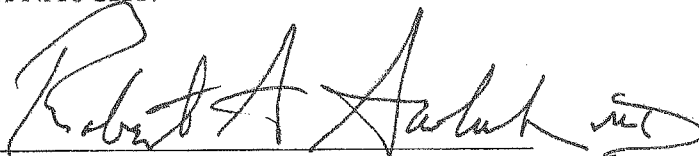
- 1 8. In preparation for this affidavit, I have reviewed summaries of the two hospitalizations at
2 Sunrise Hospital between August 9 and August 16, 2016 consisting of 33 pages plus an
3 additional 45 pages of organized records related to medications and vital signs. I also
4 reviewed 337 pages of Centennial 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

1 20. I hereby reserve the right to amend or supplement my opinions in a report and/or
2 deposition or as information is provided.

3 FURTHER YOUR AFFIANT SAYETH NAUGHT.

4
5
6 
7 ROBERT S. SAVLUK, M.D.

8 SUBSCRIBED and SWORN TO
9 Before me this ____ day of October, 2020.

10 *See attached*

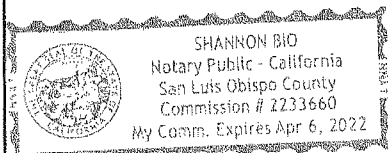
11 NOTARY PUBLIC in and for said
12 COUNTY and STATE

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

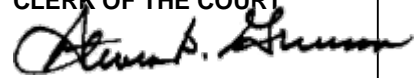
A handwritten signature in dark ink, appearing to read "Robert S. Savluk", written over a horizontal line.

EXHIBIT I

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

**CONDENSED
TRANSCRIPT**

26 DEPOSITION OF ALI KIA, M.D.
27 Taken on Wednesday, November 14, 2018
28 At 1:35 p.m.
29 Taken at 610 South Ninth Street
30 Las Vegas, Nevada
31
32
33
34
35
36
37
38
39
40
41
42
43
44
45
46
47
48
49
50
51
52
53
54
55
56
57
58
59
60
61
62
63
64
65
66
67
68
69
70
71
72
73
74
75
76
77
78
79
80
81
82
83
84
85
86
87
88
89
90
91
92
93
94
95
96
97
98
99
100
101
102
103
104
105
106
107
108
109
110
111
112
113
114
115
116
117
118
119
120
121
122
123
124
125
126
127
128
129
130
131
132
133
134
135
136
137
138
139
140
141
142
143
144
145
146
147
148
149
150
151
152
153
154
155
156
157
158
159
160
161
162
163
164
165
166
167
168
169
170
171
172
173
174
175
176
177
178
179
180
181
182
183
184
185
186
187
188
189
190
191
192
193
194
195
196
197
198
199
200
201
202
203
204
205
206
207
208
209
210
211
212
213
214
215
216
217
218
219
220
221
222
223
224
225
226
227
228
229
230
231
232
233
234
235
236
237
238
239
240
241
242
243
244
245
246
247
248
249
250
251
252
253
254
255
256
257
258
259
260
261
262
263
264
265
266
267
268
269
270
271
272
273
274
275
276
277
278
279
280
281
282
283
284
285
286
287
288
289
290
291
292
293
294
295
296
297
298
299
300
301
302
303
304
305
306
307
308
309
310
311
312
313
314
315
316
317
318
319
320
321
322
323
324
325
326
327
328
329
330
331
332
333
334
335
336
337
338
339
340
341
342
343
344
345
346
347
348
349
350
351
352
353
354
355
356
357
358
359
360
361
362
363
364
365
366
367
368
369
370
371
372
373
374
375
376
377
378
379
380
381
382
383
384
385
386
387
388
389
390
391
392
393
394
395
396
397
398
399
400
401
402
403
404
405
406
407
408
409
410
411
412
413
414
415
416
417
418
419
420
421
422
423
424
425
426
427
428
429
430
431
432
433
434
435
436
437
438
439
440
441
442
443
444
445
446
447
448
449
450
451
452
453
454
455
456
457
458
459
460
461
462
463
464
465
466
467
468
469
470
471
472
473
474
475
476
477
478
479
480
481
482
483
484
485
486
487
488
489
490
491
492
493
494
495
496
497
498
499
500
501
502
503
504
505
506
507
508
509
510
511
512
513
514
515
516
517
518
519
520
521
522
523
524
525
526
527
528
529
530
531
532
533
534
535
536
537
538
539
540
541
542
543
544
545
546
547
548
549
550
551
552
553
554
555
556
557
558
559
560
561
562
563
564
565
566
567
568
569
570
571
572
573
574
575
576
577
578
579
580
581
582
583
584
585
586
587
588
589
590
591
592
593
594
595
596
597
598
599
600
601
602
603
604
605
606
607
608
609
610
611
612
613
614
615
616
617
618
619
620
621
622
623
624
625
626
627
628
629
630
631
632
633
634
635
636
637
638
639
640
641
642
643
644
645
646
647
648
649
650
651
652
653
654
655
656
657
658
659
660
661
662
663
664
665
666
667
668
669
670
671
672
673
674
675
676
677
678
679
680
681
682
683
684
685
686
687
688
689
690
691
692
693
694
695
696
697
698
699
700
701
702
703
704
705
706
707
708
709
710
711
712
713
714
715
716
717
718
719
720
721
722
723
724
725
726
727
728
729
730
731
732
733
734
735
736
737
738
739
740
741
742
743
744
745
746
747
748
749
750
751
752
753
754
755
756
757
758
759
760
761
762
763
764
765
766
767
768
769
770
771
772
773
774
775
776
777
778
779
780
781
782
783
784
785
786
787
788
789
790
791
792
793
794
795
796
797
798
799
800
801
802
803
804
805
806
807
808
809
810
811
812
813
814
815
816
817
818
819
820
821
822
823
824
825
826
827
828
829
830
831
832
833
834
835
836
837
838
839
840
841
842
843
844
845
846
847
848
849
850
851
852
853
854
855
856
857
858
859
860
861
862
863
864
865
866
867
868
869
870
871
872
873
874
875
876
877
878
879
880
881
882
883
884
885
886
887
888
889
890
891
892
893
894
895
896
897
898
899
900
901
902
903
904
905
906
907
908
909
910
911
912
913
914
915
916
917
918
919
920
921
922
923
924
925
926
927
928
929
930
931
932
933
934
935
936
937
938
939
940
941
942
943
944
945
946
947
948
949
950
951
952
953
954
955
956
957
958
959
960
961
962
963
964
965
966
967
968
969
970
971
972
973
974
975
976
977
978
979
980
981
982
983
984
985
986
987
988
989
990
991
992
993
994
995
996
997
998
999
1000
1001
1002
1003
1004
1005
1006
1007
1008
1009
1010
1011
1012
1013
1014
1015
1016
1017
1018
1019
1020
1021
1022
1023
1024
1025
1026
1027
1028
1029
1030
1031
1032
1033
1034
1035
1036
1037
1038
1039
1040
1041
1042
1043
1044
1045
1046
1047
1048
1049
1050
1051
1052
1053
1054
1055
1056
1057
1058
1059
1060
1061
1062
1063
1064
1065
1066
1067
1068
1069
1070
1071
1072
1073
1074
1075
1076
1077
1078
1079
1080
1081
1082
1083
1084
1085
1086
1087
1088
1089
1090
1091
1092
1093
1094
1095
1096
1097
1098
1099
1100
1101
1102
1103
1104
1105
1106
1107
1108
1109
1110
1111
1112
1113
1114
1115
1116
1117
1118
1119
1120
1121
1122
1123
1124
1125
1126
1127
1128
1129
1130
1131
1132
1133
1134
1135
1136
1137
1138
1139
1140
1141
1142
1143
1144
1145
1146
1147
1148
1149
1150
1151
1152
1153
1154
1155
1156
1157
1158
1159
1160
1161
1162
1163
1164
1165
1166
1167
1168
1169
1170
1171
1172
1173
1174
1175
1176
1177
1178
1179
1180
1181
1182
1183
1184
1185
1186
1187
1188
1189
1190
1191
1192
1193
1194
1195
1196
1197
1198
1199
1200
1201
1202
1203
1204
1205
1206
1207
1208
1209
1210
1211
1212
1213
1214
1215
1216
1217
1218
1219
1220
1221
1222
1223
1224
1225
1226
1227
1228
1229
1230
1231
1232
1233
1234
1235
1236
1237
1238
1239
1240
1241
1242
1243
1244
1245
1246
1247
1248
1249
1250
1251
1252
1253
1254
1255
1256
1257
1258
1259
1260
1261
1262
1263
1264
1265
1266
1267
1268
1269
1270
1271
1272
1273
1274
1275
1276
1277
1278
1279
1280
1281
1282
1283
1284
1285
1286
1287
1288
1289
1290
1291
1292
1293
1294
1295
1296
1297
1298
1299
1300
1301
1302
1303
1304
1305
1306
1307
1308
1309
1310
1311
1312
1313
1314
1315
1316
1317
1318
1319
1320
1321
1322
1323
1324
1325
1326
1327
1328
1329
1330
1331
1332
1333
1334
1335
1336
1337
1338
1339
1340
1341
1342
1343
1344
1345
1346
1347
1348
1349
1350
1351
1352
1353
1354
1355
1356
1357
1358
1359
1360
1361
1362
1363
1364
1365
1366
1367
1368
1369
1370
1371
1372
1373
1374
1375
1376
1377
1378
1379
1380
1381
1382
1383
1384
1385
1386
1387
1388
1389
1390
1391
1392
1393
1394
1395
1396
1397
1398
1399
1400
1401
1402
1403
1404
1405
1406
1407
1408
1409
1410
1411
1412
1413
1414
1415
1416
1417
1418
1419
1420
1421
1422
1423
1424
1425
1426
1427
1428
1429
1430
1431
1432
1433
1434
1435
1436
1437
1438
1439
1440
1441
1442
1443
1444
1445
1446
1447
1448
1449
1450
1451
1452
1453
1454
1455
1456
1457
1458
1459
1460
1461
1462
1463
1464
1465
1466
1467
1468
1469
1470
1471
1472
1473
1474
1475
1476
1477
1478
1479
1480
1481
1482
1483
1484
1485
1486
1487
1488
1489
1490
1491
1492
1493
1494
1495
1496
1497
1498
1499
1500
1501
1502
1503
1504
1505
1506
1507
1508
1509
1510
1511
1512
1513
1514
1515
1516
1517
1518
1519
1520
1521
1522
1523
1524
1525
1526
1527
1528
1529
1530
1531
1532
1533
1534
1535
1536
1537
1538
1539
1540
1541
1542
1543
1544
1545
1546
1547
1548
1549
1550
1551
1552
1553
1554
1555
1556
1557
1558
1559
1560
1561
1562
1563
1564
1565
1566
1567
1568
1569
1570
1571
1572
1573
1574
1575
1576
1577
1578
1579
1580
1581
1582
1583
1584
1585
1586
1587
1588
1589
1590
1591
1592
1593
1594
1595
1596
1597
1598
1599
1600
1601
1602
1603
1604
1605
1606
1607
1608
1609
1610
1611
1612
1613
1614
1615
1616
1617
1618
1619
1620
1621
1622
1623
1624
1625
1626
1627
1628
1629
1630
1631
1632
1633
1634
1635
1636
1637
1638
1639
1640
1641
1642
1643
1644
1645
1646
1647
1648
1649
1650
1651
1652
1653
1654
1655
1656
1657
1658
1659
1660
1661
1662
1663
1664
1665
1666
1667
1668
1669
1670
1671
1672
1673
1674
1675
1676
1677
1678
1679
1680
1681
1682
1683
1684
1685
1686
1687
1688
1689
1690
1691
1692
1693
1694
1695
1696
1697
1698
1699
1700
1701
1702
1703
1704
1705
1706
1707
1708
1709
1710
1711
1712
1713
1714
1715
1716
1717
1718
1719
1720
1721
1722
1723
1724
1725
1726
1727
1728
1729
1730
1731
1732
1733
1734
1735
1736
1737
1738
1739
1740
1741
1742
1743
1744
1745
1746
1747
1748
1749
1750
1751
1752
1753
1754
1755
1756
1757
1758
1759
1760
1761
1762
1763
1764
1765
1766
1767
1768
1769
1770
1771
1772
1773
1774
1775
1776
1777
1778
1779
1780
1781
1782
1783
1784
1785
1786
1787
1788
1789
1790
1791
1792
1793
1794
1795
1796
1797
1798
1799
1800
1801
1802
1803
1804
1805
1806
1807
1808
1809
1810
1811
1812
1813
1814
1815
1816
1817
1818
1819
1820
1821
1822
1823
1824
1825
1826
1827
1828
1829
1830
1831
1832
1833
1834
1835
1836
1837
1838
1839
1840
1841
1842
1843
1844
1845
1846
1847
1848
1849
1850
1851
1852
1853
1854
1855
1856
1857
1858
1859
1860
1861
1862
1863
1864
1865
1866
1867
1868
1869
1870
1871
1872
1873
1874
1875
1876
1877
1878
1879
1880
1881
1882
1883
1884
1885
1886
1887
1888
1889
1890
1891
1892
1893
1894
1895
1896
1897
1898
1899
1900
1901
1902
1903
1904
1905
1906
1907
1908
1909
1910
1911
1912
1913
1914
1915
1916
1917
1918
1919
1920
1921
1922
1923
1924
1925
1926
1927
1928
1929
1930
1931
1932
1933
1934
1935
1936
1937
1938
1939
1940
1941
1942
1943
1944
1945
1946
1947
1948
1949
1950
1951
1952
1953
1954
1955
1956
1957
1958
1959
1960
1961
1962
1963
1964
1965
1966
1967
1968
1969
1970
1971
1972
1973
1974
1975
1976
1977
1978
1979
1980
1981
1982
1983
1984
1985
1986
1987
1988
1989
1990
1991
1992
1993
1994
1995
1996
1997
1998
1999
2000
2001
2002
2003
2004
2005
2006
2007
2008
2009
2010
2011
2012
2013
2014
2015
2016
2017
2018
2019
2020
2021
2022
2023
2024
2025
2026
2027
2028
2029
2030
2031
2032
2033
2034
2035
2036
2037
2038
2039
2040
2041
2042
2043
2044
2045
2046
2047
2048
2049
2050
2051
2052
2053
2054
2055
2056
2057
2058
2059
2060
2061
2062
2063
2064
2065
2066
2067
2068
2069
2070
2071
2072
2073
2074
2075
2076
2077
2078
2079
2080
2081
2082
2083
2084
2085
2086
2087
2088
2089
2090
2091
2092
2093
2094
2095
2096
2097
2098
2099
2100
2101
2102
2103
2104
2105
2106
2107
2108
2109
2110
2111
2112
2113
2114
2115
2116
2117
2118
2119
2120
2121
2122
2123
2124
2125
2126
2127
2128
2129
2130
2131
2132
2133
2134
2135
2136
2137
2138
2139
2140
2141
2142
2143
2144
2145
2146
2147
2148
2149
2150
2151
2152
2153
2154
2155
2156
2157
2158
2159
2160
2161
2162
2163
2164
2165
2166
2167
2168
2169
2170
2171
2172
2173
2174
2175
2176
2177
2178
2179
2180
2181
2182
2183
2184
2185
21



1 S. BRENT VOGEL
Nevada Bar No. 6858
2 E-Mail: Brent.Vogel@lewisbrisbois.com
ERIN E. JORDAN
3 Nevada Bar No. 10018
E-Mail: Erin.Jordan@lewisbrisbois.com
4 LEWIS BRISBOIS BISGAARD & SMITH LLP
6385 S. Rainbow Boulevard, Suite 600
5 Las Vegas, Nevada 89118
702.893.3383
6 FAX: 702.893.3789
Attorneys for Defendant Nevada Hospitalist
7 *Group, LLP*

8
9 DISTRICT COURT
10 CLARK COUNTY, NEVADA

11 CHOLOE GREEN, an individual,
12
13 Plaintiff,

14 vs.

15 FRANK J. DELEE, M.D., an individual;
FRANK J. DELEE, MD, PC, a Domestic
16 Professional Corporation, SUNRISE
HOSPITAL AND MEDICAL CENTER, LLC,
a Foreign Limited-Liability Company; ALI
17 KIA, M.D., an individual; and NEVADA
HOSPITALIST GROUP, LLP,
18
19 Defendants.

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

**DEFENDANT NEVADA HOSPITALIST
GROUP, LLP'S JOINDER TO
DEFENDANT ALI KIA, M.D.'S MOTION
TO DISMISS PLAINTIFF'S AMENDED
COMPLAINT**

20
21
22 Defendant NEVADA HOSPITALIST GROUP, LLP, ("Defendant") by and through its
23 attorneys of record, S. Brent Vogel, Esq. and Erin E. Jordan, Esq. of LEWIS BRISBOIS
24 BISGAARD & SMITH LLP, hereby files this Joinder to Defendant Ali Kia, M.D.'S Motion To
25 Dismiss Plaintiff's Amended Complaint.

26 ///

27 ///

28 ///

1 Defendant Nevada Hospitalist Group, LLP hereby incorporates, as though fully set forth
2 herein, all arguments made in support of Defendant Ali Kia, M.D.'S Motion To Dismiss
3 Plaintiff's Amended Complaint as they apply equally to this Defendant.

4 DATED this 25th day of January, 2021

5 LEWIS BRISBOIS BISGAARD & SMITH LLP
6
7

8 By /s/ Erin E. Jordan

9 S. BRENT VOGEL

10 Nevada Bar No. 6858

11 ERIN E. JORDAN

12 Nevada Bar No. 10018

13 6385 S. Rainbow Boulevard, Suite 600

14 Las Vegas, Nevada 89118

15 Tel. 702.893.3383

16 *Attorneys for Defendant Nevada Hospitalist*
17 *Group, LLP*
18
19
20
21
22
23
24
25
26
27
28

1 **CERTIFICATE OF SERVICE**

2 I hereby certify that on this 25th day of January, 2021, a true and correct copy
3 of DEFENDANT NEVADA HOSPITALIST GROUP, LLP'S JOINDER TO DEFENDANT ALI
4 KIA, M.D.'S MOTION TO DISMISS PLAINTIFF'S AMENDED COMPLAINT was served by
5 electronically filing with the Clerk of the Court using the Electronic Service system and serving all
6 parties with an email-address on record, who have agreed to receive Electronic Service in this
7 action.

8 Daniel Marks, Esq.
9 Nicole M. Young, Esq.
10 LAW OFFICE OF DANIEL MARKS
11 610 S. 9th St.
12 Las Vegas, NV 89101
13 Tel: 702.386.0536
14 Fax: 702.386.6812
15 nyoung@danielmarks.net
16 *Attorneys for Plaintiff*

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

15 Michael E. Prangle, Esq.
16 Tyson J. Dobbs, Esq.
17 Sherman B. Mayor, Esq.
18 T. Charlotte Buys, Esq.
19 HALL PRANGLE & SCHOONVELD, LLC
20 1160 N. Town Center Dr., Suite 200
21 Las Vegas, NV 89144
22 Tel: 702.889.6400
23 Fax: 702.384.6025
24 mprangle@hpslaw.com
25 tdobbs@hpslaw.com
26 smayor@hpslaw.com
27 cbuys@hpslaw.com
28 *Attorneys for Defendant Sunrise Hospital and
Medical Center, LLC*

Patricia E. Daehnke, Esq.
Linda K. Rurangirwa, Esq.
COLLINSON, DAEHNKE, INLOW, GRECO
2110 E. Flamingo Rd., Suite 212
Las Vegas, NV 89119
Tel: 702.979.2132
Fax: 702.979.2133
patricia.daehnke@cdiglaw.com
linda.rurangirwa@cdiglaw.com
Attorneys for Defendant Ali Kia, M.D.

By /s/ Johana Whitbeck
Johana Whitbeck, an Employee of
LEWIS BRISBOIS BISGAARD & SMITH LLP