

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 4

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

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Attorneys for Petitioner Ali Kia, M.D.

CERTIFICATE OF SERVICE

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

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Respondent

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

Deborah Rocha

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

Yes, thanks.

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

[EXTERNAL EMAIL]

Good afternoon:

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

Thank you,

Linda



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

An electronic copy by email works for us as well.

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From: Tyson Dobbs [mailto:tdobbs@HPSLAW.COM]
Sent: Monday, August 09, 2021 12:42 PM
To: Vogel, Brent <Brent.Vogel@lewisbrisbois.com>; Linda K. Rurangirwa <Linda.Rurangirwa@cdiglaw.com>; Daniel Marks <DMarks@danielmarks.net>; Stryker, Eric K. <Eric.Stryker@wilsonelser.com>; Jordan, Erin <Erin.Jordan@lewisbrisbois.com>; Mike Prangle <mprangle@HPSLAW.COM>
Cc: Deborah Rocha <deborah.rocha@cdiglaw.com>; Nicole Young <NYoung@danielmarks.net>; Foley, Brigitte E. <Brigitte.Foley@wilsonelser.com>; Clark, Angela <Angela.Clark@wilsonelser.com>; Lord, Nicole N. <Nicole.Lord@wilsonelser.com>; Office <office@danielmarks.net>; Nicole M. Etienne <netienne@HPSLAW.COM>
Subject: RE: Green v. Sunrise Hospital

Fine with us as well.



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Sent: Monday, August 9, 2021 12:29 PM
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Cc: Deborah Rocha <deborah.rocha@cdiglaw.com>; Nicole Young <NYoung@danielmarks.net>; Foley, Brigitte E. <Brigitte.Foley@wilsonelser.com>; Clark, Angela <Angela.Clark@wilsonelser.com>; Lord, Nicole N. <Nicole.Lord@wilsonelser.com>; Office <office@danielmarks.net>; Nicole M. Etienne <netienne@HPSLAW.COM>
Subject: RE: Green v. Sunrise Hospital

[External Email] CAUTION!.

Yes, that's fine. Thank you.



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From: Linda K. Rurangirwa <Linda.Rurangirwa@cdiglaw.com>
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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

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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

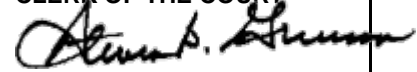
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DISTRICT COURT
CLARK COUNTY, NEVADA

CHOLOE GREEN, an individual,

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

Plaintiff,

v.

Date of Hearing: February 23, 2021
Time of Hearing: 9:30 a.m.

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

Defendants.

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

COMES NOW the Plaintiff Choloe Green, by and through her undersigned counsel, Daniel Marks,
Esq., and Nicole M. Young, Esq., of the Law Office of Daniel Marks, and hereby submits her Opposition
to Defendant Ali Kia M.D.'s Motion to Dismiss Plaintiff's Amended Complaint.

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

3 DATED this 4th day of February, 2021.

4 LAW OFFICES OF DANIEL MARKS

5 /s/ Nicole M. Young

6 DANIEL MARKS, ESQ.
Nevada State Bar No. 002003
7 NICOLE M. YOUNG, ESQ.
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8 610 South Ninth Street
Las Vegas, Nevada 89101
9 Attorneys for Plaintiff

10 **MEMORANDUM OF POINTS AND AUTHORITIES**

11 **I. PROCEDURAL HISTORY**

12 Plaintiff Choloe Green ("Choloe") filed her initial Complaint for Medical Malpractice against
13 Defendants Frank J. Delee, M.D., and Frank J. Delee, M.D., P.C. ("Delee") and Sunrise Hospital and
14 Medical Center, LLC ("Sunrise Hospital") on June 30, 2017. Delee and Sunrise Hospital both filed
15 answers to her complaint and the parties began discovery. Delee's deposition was taken on September
16 20, 2018.

17 In her attempt to obtain more information regarding Sunrise Hospital's breach of the standard of
18 care, Choloe properly noticed and served Dr. Ali Kia ("Kia") with a Notice of Deposition to be taken on
19 September 21, 2018. (*See* Certified Copy of Scheduled Deposition of Ali Kia, M.D., attached hereto as
20 Exhibit 6.) Kia did not appear for that deposition. Kia's deposition was ultimately taken on November
21 14, 2018. During his deposition, he testified that he works at Sunrise Hospital through Nevada
22 Hospitalist Group ("NHG"). (*See* Certified Copy of Deposition of Ali, Kia, M.D., attached hereto as
23 Exhibit 7, at 11:15-20 & 12:21-24.)

24 On January 15, 2019, Sunrise Hospital filed its original partial motion for summary judgment on
25 the issue of ostensible agency. The district court denied that motion because it found there was a genuine
26 issue of material fact regarding the ostensible agency relationship between Sunrise Hospital and Kia.

27 ////

28 ////

1 (See Order From March 12, 2019 Hearing, filed on March 6, 2020.) Judge Smith decided the original
2 motion for partial summary judgment, which was heard on March 12, 2019. He then retired from the
3 bench, and this case was assigned to Judge Silva on April 29, 2019.

4 After Judge Smith denied the partial motion for summary judgment, Sunrise Hospital sought
5 leave to add Kia and NHG, Kia's "employer," to a third-party complaint for indemnity, which was
6 granted by the district court. (See Order Granting Sunrise Hospital and Medical Center, LLC's Motion to
7 File Third Party Complaint for Contribution and Indemnity (Ali Kia, M.D.), filed on June 14, 2019.)
8 Sunrise Hospital's third-party complaint was filed on June 14, 2019. This complaint was filed less than
9 three years after Chloe's second discharge from Sunrise Hospital and less than one year after the
10 discovery of Choloe's legal injury by Kia. Kia filed his answer to that complaint on August 2, 2019.
11 NHG did not file its answer until December 27, 2019. It is unknown why NHG took so long to file any
12 responsive pleading.

13 NHG filed a motion for judgment on the pleadings on March 25, 2020, which Kia joined. When
14 Judge Silva granted that motion, she invited reconsideration of the ostensible agency relationship issue
15 in her minute order. (See Court Minutes regarding Third-Party Defendant Nevada Hospitalist Group,
16 LLP's Motion for Judgment on the Pleadings and Joinder, dated May 11, 2020.) Sunrise Hospital then
17 renewed its motion for partial summary judgment regarding ostensible agency on May 20, 2020.

18 Choloe opposed that motion and also filed a motion seeking leave to amend her complaint to add
19 ostensible agency and corporate negligence/negligent supervision theories of liability against Sunrise
20 Hospital on June 3, 2020.

21 Judge Silva granted Sunrise Hospital's renewed motion for partial summary judgment on the
22 issue of ostensible agency and denied Choloe leave to amend her complaint to add ostensible agency and
23 corporate negligence/negligent supervision to her complaint. (See Three (3) Part Order: (1) Granting
24 Partial Summary Judgment Dismissing Ostensible Agency; (2) Denying Sanctions; and (3) Denying
25 Plaintiff's Motion to Amend Complaint in Part with Prejudice and in Part Without Prejudice, filed on
26 September 28, 2020.)

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28 ////

Choloe sought reconsideration of that order on October 12, 2020, and also filed a new motion for leave to amend her complaint to add Kia and NHG back into the case on October 16, 2020. Judge Silva denied reconsideration but granted leave to add Kia and NHG back into the case. (*See* Order Denying Plaintiff's "Motion for Reconsideration" Regarding Denial of Additional Claims of "Ostensible Agency" and "Corporate Negligence/Negligent Supervision," filed on December 8, 2020; *see* Order Granting in Part and Denying in Part Plaintiff's Motion for Leave to Amend Complaint, filed on December 15, 2020.)

Choloe filed her Amended Complaint on December 16, 2020. Both Kia and NHG accepted service of that complaint. (*See* Acceptance of Service, filed on December 28, 2020.)

Choloe filed a Writ of Mandamus with the Nevada Supreme Court on January 21, 2021, which was also noticed on this Court that same date, regarding the issues of ostensible agency and corporate negligence/negligent supervision. That writ is still pending with the Court.

II. FACTUAL BACKGROUND

On July 9, 2016, Frank Delee, M.D. ("Delee"), performed a cesarean section on Choloe at Sunrise Hospital. Choloe is an African-American female, who was 29 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, M.D., dated June 29, 2017¹, attached hereto as Exhibit 1, at ¶ 4; *see* Amended Affidavit of Lisa Karamardian, M.D., dated November 8, 2020², attached hereto as Exhibit 2, at ¶ 4.)

On July 14, 2016, Choloe presented at Sunrise Hospital's emergency room because she was in extreme pain. She was admitted into Sunrise Hospital's "medical/surgical unit because of the diagnosis of sepsis." She was five days post-partum and experiencing "severe abdominal pain and reports of

¹ This affidavit was attached to Plaintiff's Complaint for Medical Malpractice, filed on June 30, 2017, as Exhibit 1.

² This affidavit was attached to Plaintiff's Reply in Support of Motion for Reconsideration and reply in Support of Motion for Leave of Court to Amend Complaint, filed on November 11, 2020, as Exhibit 4.

1 nausea, vomiting, fever, and chills." (See Ex. 1, at ¶ 5; see Ex. 2, at ¶ 5.) She had various conversations
2 with doctors arranged by Sunrise Hospital. Ali Kia, M.D. ("Kia"), was assigned to provide Choloe care.
3 (See Ex. 7, at 12:21 - 13:3 & 18:3-12.) She had never met him before and did not know who he was. She
4 was treated by various nurses and other doctors, as well. (See Affidavit of Choloe Green, dated January
5 30, 2019, attached hereto as Exhibit 3, at ¶ 5.)

6 Choloe was discharged two days later, on July 16, 2016, by Ali Kia, M.D. (Kia"). (See Ex. 2, at ¶
7 5.) Choloe's discharge was discussed between Delee and the doctors treating her at Sunrise Hospital.
8 (See Ex. 1, at ¶ 5; see Ex. 2, at ¶ 5; see Affidavit of Robert S. Savluk, M.D., dated October 16, 2020³,
9 attached hereto as Exhibit 4, at ¶ 13.)

10 This discharge violated the standard of care because "[1] she was not able to tolerate a regular
11 diet[,] . . . [2] her KUB showed multiple dilated loops of bowel, thought to be related to a small bowel
12 obstruction, . . . [and] [3] [a]n intraperitoneal abscess was suspected on a CT scan." Despite these
13 issues, both Sunrise Hospital, through Kia, and Delee agreed to discharge Choloe home. (See Ex. 1, at ¶
14 5; see Ex. 2, at ¶ 5; see Ex. 4, at ¶¶ 12-13.)

15 Dr. Savluk opined Dr. Kia's care of Choloe violated the standard of care, as follows:

- 16 1. Failure to continue appropriate antibiotics during the patients hospitalizations
17 when she was clearly fighting an infection.
- 18 2. Failure to continue antibiotics post-discharge in a patient clearly not having
19 recovered from her infection.
- 20 3. Failure to follow up the radiographic studies which were clearly suspicious for an
21 intra-abdominal abscess.
- 22 4. Discharging a patient with evidence of a small bowel obstruction or ileus without
23 any explanation or resolution.
- 24 5. Pre maturely discharging the patient before she had adequately recovered from the
25 septic process.

26 (See Ex. 4, at ¶ 15.)

27
28

³ This affidavit was attached to Plaintiff's Amended Complaint for Medical Malpractice, filed on
December 16, 2020, as Exhibit B.

1 One day after her second discharge from Sunrise Hospital, July 17, 2016, Choloe was admitted
2 into Centennial Hills Hospital ("Centennial"), again in severe pain and with no real bowel movement.
3 The imaging studies at Centennial showed her condition had worsened in the one day since her discharge
4 from Sunrise Hospital. (*See* Ex. 1, at ¶ 6; *see* Ex. 2, at ¶ 6; *see* Ex. 4, at ¶ 14.) Choloe remained
5 hospitalized at Centennial through September 2, 2016. (*See* Complaint for Medical Malpractice, filed on
6 June 30, 2017, at ¶ 9.) She was then discharged to a rehabilitation facility. (*See* Ex. 1, at ¶ 7; *see* Ex. 2, at
7 ¶ 7; *see* Ex. 4, at ¶ 14.)

8 Dr. Karamardian opined that based on the above breaches to the standard of care by Delee,
9 Sunrise Hospital, and Kia, Choloe's "hospital course was protracted with multiple complications and . . .
10 [then] discharged to a step down facility once her antibiotic course was felt to be completed, still on a
11 feeding tube and in need of rehabilitation." (*See* Ex. 2, at ¶¶ 5-7.) Dr. Savluk opined that due to Kia's
12 failures to follow the standard of care, "Choloe Green went on to develop an acute abdomen requiring
13 surgery, intra-abdominal abscess requiring percutaneous drainage and sepsis related ARDS (severe)
14 which required 6 plus weeks in the ICU and resulted in severe physical deconditioning and prolonged
15 sub-acute care." (*See* Ex. 4, at ¶ 16.)

16 Choloe turned 30 years old during her second admission at Sunrise Hospital. (*See* Response to
17 Defendant Frank J. Delee, M.D.'s First Set of Interrogatories to Plaintiff, attached hereto as Exhibit 5, at
18 Response to Interrogatory No. 1.) After she was discharged from Centennial and then the rehabilitation
19 facility, she had to undergo a huge change of lifestyle, especially for a 30-year-old, single woman with
20 four children. During her time at Centennial and the rehabilitation facility, she was diagnosed with
21 chronic obstructive pulmonary disease ("COPD") and now requires constant, 24-hour use of oxygen
22 tanks. She also suffers other health issues related to COPD. (*See* Ex. 5, at Response to Interrogatory No.
23 4.) Choloe was not discharged from the rehabilitation facilities until October 25, 2016, more than three
24 months after the cesarian section that lead to her prolonged hospitalization. (*See* Pre-Admission
25 Information, attached hereto as Exhibit 9.) Choloe needed rehabilitation care because it was determined
26 she "require[d] 24hr physician oversight for medical management." (*See* Ex. 9, at CG1730.)

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1 These health issues caused by Delee, Kia, NHG, and Sunrise Hospital burden the State of Nevada
2 through Medicaid, her insurance provider. (*See* Ex. 5, at Response to Interrogatory No. 2.) These health
3 issues also prevent Choloe from obtaining meaningful employment to care for her family. (*See* Ex. 5, at
4 Response to Interrogatory No. 11.)

5 **III. LEGAL ARGUMENT**

6 A plaintiff's complaint may be dismissed only when it fails "to state a claim upon which relief
7 may be granted." NRCP 12(b)(5). Under Rule 8(a)(1) of the Nevada Rules of Civil Procedure
8 ("NRCP"), a complaint, when properly pled, must provide "a short and plain statement of the claim
9 showing that the pleader is entitled to relief." When a court evaluates whether to dismiss a claim
10 pursuant to NRCP 12(b)(5), all allegations of material fact made by the plaintiff must be taken as true
11 and construed in favor of the plaintiff. *Simpson v. Mars Inc.*, 113 Nev. 188, 190, 929 P.2d 966 (1997).
12 This is a rigorous standard to overcome, as every fair inference must be construed in the nonmoving
13 party's favor. *Id.* Dismissal is only appropriate if the moving party can prove "beyond a doubt" that
14 under no set of facts would the plaintiff be entitled to relief. *Id.*

15 There is a strong presumption against dismissal for failure to state a claim. *See Gilligan v. Jamco*
16 *Development Corp.*, 108 F.3d 246, 249 (9th Cir.1997). The issue is not whether the plaintiff ultimately
17 will prevail, but whether the plaintiff is entitled to offer evidence in support of her claims. *See Jackson*
18 *v. Carey*, 353 F.3d 750, 755 (9th Cir. 2003).

19 Here, Kia's motion, and NHG's joinder thereto, seeks dismissal for "failure to state a claim"
20 based on a procedural technicality, not based on the substance of the allegations. Kia/NHG do not argue
21 the affidavits in support of Choloe's claim are lacking or violate NRS 41A.071's affidavit requirement.
22 Kia has been on notice of the instant lawsuit since he was first served with his Notice of Deposition on
23 August 24, 2018, although he did not appear for the original deposition or notify counsel of his inability
24 to appear. (*See* Ex. 6.) Ultimately, Kia and NHG became parties to this action on June 14, 2019, less
25 than three years after Choloe's second discharge from Sunrise Hospital, which was the discharge that
26 was approved by Kia, and less than one year after discovery of Choloe's legal injury by Kia.

27 *////*

28 *////*

1 Because Kia/NHG became parties to this action within the applicable statute of limitations,
2 although they were improperly dismissed by Judge Silva, and Choloe's Amended Complaint properly
3 relates back to her original complaint to allow adding Kia and NHG back into this case, this Court
4 should deny the instant motion.

5 **A. Kia and NHG were properly brought into this case well-within the statute of**
6 **limitations.**

7 Under NRS 41A.097(2), an action for professional negligence must be brought within three years
8 of the date of injury or within one year after the plaintiff discovers the injury. "Injury," as used in that
9 statute includes both physical damage and the negligence causing the damage, which the Nevada
10 Supreme Court refers to as "legal injury." *Massey v. Litton*, 99 Nev. 723, 726, 669 P.2d 248, 250
11 (1983). The existence of a "legal injury" is important in the professional negligence context because not
12 all injuries suffered give rise to a professional negligence claim. The *Massey* Court reasoned:

13 [W]hen injuries are suffered that have been caused by an unknown act of negligence by
14 an expert, the law ought not to be construed to destroy a right of action before a person
15 even becomes aware of the existence of that right.

16 Furthermore, to adopt a construction that encourages a person who experiences an injury,
17 dysfunction or ailment, and has no knowledge of its cause, to file a lawsuit against a
18 health care provider to prevent a statute of limitations from running is not consistent with
19 the unarguably sound proposition that unfounded claims should be strongly discouraged.

20 *Id.* at 727.

21 The expert affidavit requirement of NRS 41A.071 only requires the affidavit contain the
22 following:

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

(Emphasis added).

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1 NRS 41A.071, a procedural rule, governs the threshold initial pleading requirements in
2 professional negligence actions, including the expert affidavit requirement. *Borger v. Eighth Jud. Dist.*
3 *Ct.*, 120 Nev. 1021, 1028, 102 P.3d 600, 605 (2004). That statute does not govern the ultimate trial, so
4 this Court is required to “liberally construe this procedural rule of pleading in a manner that is consistent
5 with our NRCP 12 jurisprudence.” *Id.*

6 Here, the only reason Judge Silva granted judgment on the pleadings, dismissing Kia and NHG
7 from the instant suit, was based on her incorrect interpretation of NRS 41A.071's affidavit requirement.
8 Judge Silva did not believe the affidavit attached to Sunrise Hospital's complaint, Dr. Karamardian's
9 affidavit attached to Choloe's original complaint, did not describe Kia/NHG's conduct because they
10 were not listed by name. Counsel for Choloe, Delee, and Sunrise Hospital all agreed that Kia/NHG's
11 conduct was properly described in that affidavit to keep Kia and NHG in the case. At that time,
12 Kia/NHG did not argue any statute of limitations issues.

13 A few months later, Judge Silva invited Choloe to file a motion to amend her complaint to add
14 Kia and NHG back into this case. (*See Court Minutes*, dated July 23, 2020.) Choloe then had to incur the
15 expense of obtaining expert affidavits to add Kia and NHG back into the case. She obtained an affidavit
16 from Dr. Savluk to detail Kia's violations of the standard of care. (*See Ex. 4.*) Dr. Karamardian also
17 amended her affidavit to clarify that the second discharge from Sunrise Hospital was ordered by Kia.
18 (*See Ex. 2.*) Judge Silva granted Choloe leave to add Kia and NHG back into the case despite dismissing
19 them less than one year prior. Additionally, Judge Silva denied Kia's request for costs related to his
20 motion for judgment on the pleadings because Choloe's motion to add Kia and NHG back into the case
21 was pending. (*See Order Denying, Without Prejudice, Third-Party Defendant Dr. Kia's Verified*
22 *Memorandum of Costs and Disbursements*, filed on December 3, 2020.)

23 When Choloe originally brought this case, it was unclear who the main actors at Sunrise Hospital
24 were relative to Choloe's care. She was treated by various doctors and nurses, and she did not want to
25 bring multiple individuals into this case when their involvement was not clear based on the pre-litigation
26 medical records she received from Sunrise Hospital. The *Massey* court's interpretation of the applicable
27 statute of limitations confirms this decision because a plaintiff should not be encouraged to add every
28 single healthcare provider to the lawsuit to avoid a statute of limitations issue. 99 Nev. at 727.

1 Choloe discovered she suffered a “legal injury” by Kia during his November 14, 2018,
2 deposition. She would have discovered that injury earlier if Kia had shown up to his original deposition.
3 Sunrise Hospital then added Kia and NHG into this action less than one year later, on June 14, 2019.
4 NHG then delayed this lawsuit by waiting until December 27, 2019, to answer that complaint.

5 If Kia had shown up to his original deposition and NHG had not waited over six months to
6 answer Sunrise Hospital’s third-party complaint, then timing would not be at issue. Kia and NHG
7 created this issue to avoid liability on the merits of this case.

8 **B. Even if this Court finds the instant suit against Kia and NHG was brought outside**
9 **the statute of limitations, NRCP prevents dismissal because the addition of those**
10 **parties relates back to the original complaint.**

11 NRCP 15 governs amendments to pleadings, including “relation back amendments, and states:

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

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

16 (2) the amendment changes a party or the naming of a party against whom
17 a claim is asserted, if Rule 15(c)(1) is satisfied and if, within the period
18 provided by Rule 4(e) for serving the summons and complaint, the party to
19 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.

20 NRCP 15(c). “An amended pleading adding a defendant that is filed after the statute of limitations has
21 run will relate back to the date of the original pleading under NRCP 15(c) if “the proper defendant (1)
22 receives actual notice of the action; (2) knows that it is the proper party; and (3) has not been misled to
23 its prejudice by the amendment.” *Costello v. Casler*, 127 Nev. 436, 440-41, 254 P.3d 631, 634 (2011)
24 (citing *Echols v. Summa Corp.*, 95 Nev. 720, 722, 601 P.2d 716, 717 (1979). The district court must
25 liberally construe NRCP 15(c) “to to allow relation back of the amended pleading where the opposing
26 party will be put to no disadvantage.” *Id.* (citing *E.W. French & Sons. Inc. v. General Portland Inc.*, 885

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1 F.2d 1392, 1396 (9th Cir. 1989) ("[C]ourts should apply the relation back doctrine of [Federal] Rule
2 15(c) liberally."). "Modern rules of procedure are intended to allow the court to reach the merits, as
3 opposed to disposition on technical niceties." *Id.*

4 First, the claims brought against Kia and NHG arose out of the same conduct, transaction, and
5 occurrence that Choloe attempted to set out in her original complaint and affidavit attached to the
6 complaint. *See* NRCP 15(c)(1). Choloe complained her second discharge from Sunrise Hospital violated
7 the standard of care in her original complaint, and it was Kia/NHG's conduct that resulted in Choloe's
8 second discharge from Sunrise Hospital. (*See* Ex. 1, at ¶ 5; *see* Ex. 2, at ¶ 5.) There should be no
9 question whether Kia/NHG's involvement in this case arose out of the same conduct, transaction, and
10 occurrence complained of in the original complaint.

11 Second, Kia and NHG were served with the Amended Complaint and Summons in accordance
12 with NRCP 4(e). (*See* Acceptances of Service, filed on December 28, 2020.) Kia/NHG argue they
13 somehow did not receive service properly under this rule arguing the time should be calculated based on
14 the filing of the original complaint, but that argument defies common sense. The very fact an amendment
15 had to first be obtained shows that the NRCP 4(e) timing for service must be based on the date the
16 amended complaint was filed, not the original complaint.

17 Third, both Kia and NHG received notice of this case prior to the instant Amended Complaint.
18 Kia first received notice when he was served the Notice of Deposition on August 24, 2018. Kia received
19 notice as to his actual involvement in the substance of this case during his deposition on November 14,
20 2018. Finally, he was an actual party to this case beginning June 14, 2019, when Sunrise Hospital filed
21 its third-party complaint. There is no question, based on these facts, that he knows he is a proper party to
22 this case.

23 While it is unknown whether Kia informed NHG, his "employer," of this case prior to the third-
24 party complaint, NHG has been on notice of this case since 2019. The exact date NHG was served is
25 unknown because a proof of service was never filed. However, NHG delayed this case further by
26 preventing the deposition of Choloe until it answered the third-party complaint. Erin Jordan, Esq.,
27 counsel for NHG was included in emails relating to setting the deposition of Choloe dating back to
28 October 30, 2019. The parties agreed to take Choloe's deposition on December 17, 2019. Ms. Jordan did

1 not respond to that email stream until one day before Choloe's deposition, stating, "Sunrise Hospital
2 informed us on Thursday that they would not be dismissing NHG from their Third Party Complaint. As
3 we have not appeared and we do not have a single medical record, we request that the Plaintiff's
4 deposition set for tomorrow be postponed." The parties agreed to postpone Choloe's deposition to avoid
5 duplicative discovery. It is unknown why NHG thought Sunrise Hospital would dismiss it from the case.
6 NHG never filed a motion to dismiss Sunrise Hospital's third-party complaint prior to filing its answer
7 on December 27, 2019. Because NHG was a party to this case, it has actual notice of this case and
8 knows it's a proper party based on its relationship to Kia.

9 Neither Kia or NHG have been misled to their prejudice regarding being added back into this
10 case. Judge Silva denied their request for costs because she planned on granting Choloe leave to add
11 them back in.

12 Finally, the reason why Kia and NHG were not included in the original complaint is because it
13 was not clear that Choloe suffered a legal injury by Kia based on the pre-litigation medical records.
14 Choloe did not want to sue multiple healthcare providers on the off chance that they could be liable.
15 NRS 41A discourages including parties simply to avoid statute of limitations issues. *See Massey*, 99
16 Nev. at 727. Choloe did not discover Kia caused her legal injury until his November of 2018 deposition.
17 She further did not learn of Kia's affiliation with NHG until that deposition.

18 Neither Kia nor NHG are disadvantaged by their addition to this case. When they were in this
19 case, they received a copy of all discovery conducted and even engaged in the discovery process. Kia and
20 NHG's actions in this case have actually worked to the disadvantage of Choloe, Delee, and Sunrise
21 Hospital. Choloe would have discovered Kia caused her legal injury sooner if he had actually shown up
22 to his original deposition. NHG caused this case to be delayed over six months, including delaying
23 Choloe's deposition, because it simply refused to file an answer or any other kind of responsive pleading
24 prior to its December 27, 2019, answer to Sunrise Hospital's third-party complaint. Kia and NHG
25 omitted those facts from their instant motion. Because they suffer no disadvantage, and actually
26 disadvantaged all other parties in this case, this Court must liberally construe NRCP 15(c) because the
27 modern rules of procedure intend this case be heard on the merits and not dismissed on "technical
28 niceties." *See Costello*, 127 Nev. at 441.

1 At the end of the day, this case should be heard on the merits. The affidavits filed in support of
2 the original complaint and Amended Complaint show Choloe has a good faith basis to have her case
3 heard on the merits, as NRS 41A.071 contemplates, and there should be no further procedural delays in
4 this case.

5 **IV. CONCLUSION**

6 Based on the foregoing, this Court should deny Kia/NHG's instant motion because the claims
7 against Kia and NHG were brought well-within the statute of limitations and those claims relate back to
8 Choloe's original complaint, specifically the allegation regarding her second discharge from Sunrise
9 Hospital.

10 DATED this 4th day of February, 2021.

11 LAW OFFICE OF DANIEL MARKS

12 /s/ Nicole M. Young

13 DANIEL MARKS, ESQ.
14 Nevada State Bar No. 002003
15 NICOLE M. YOUNG, ESQ.
16 Nevada State Bar No. 12659
17 610 South Ninth Street
18 Las Vegas, Nevada 89101
19 Attorneys for Plaintiff
20
21
22
23
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25
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27
28

1 **CERTIFICATE OF SERVICE**

2 I hereby certify that I am an employee of the Law Office of Daniel Marks and that on the 4th
3 day of February, 2021, pursuant to NRCP 5(b) and Administrative Order 14-2, I electronically
4 transmitted a true and correct copy of the above and foregoing **OPPOSITION TO DEFENDANT ALI**
5 **KIA, M.D.'S MOTION TO DISMISS PLAINTIFF'S AMENDED COMPLAINT** by way of Notice
6 of Electronic Filing provided by the court mandated E-file & Serve System, as follows:
7 following:

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

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

14 Linda K. Rurangirwa, Esq.
15 Collinson, Daehnke, Inlow & Greco
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16 Las Vegas, Nevada 89119
Attorney for Ali Kia, M.D.

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

20
21
22 /s/ Nicole M. Young

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

EXHIBIT 1

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.

- 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
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

23
24 _____
 LISA KARAMARDIAN, MD.

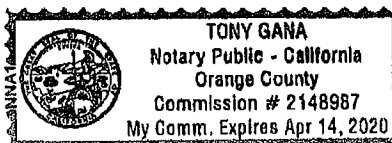


EXHIBIT 2

AMENDED 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, Sunrise Hospital and Medical Center, and **Ali Kia, M.D.**
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, **Ali Kia, M.D.**, 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, by **Ali Kia, M.D.** 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

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

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

22 ////

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

FURTHER YOUR AFFIANT SAYETH NAUGHT.

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


LISA KARAMARDIAN, MD.

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


NOTARY PUBLIC in and for said
COUNTY and STATE



EXHIBIT 3

AFFIDAVIT OF CHLOE GREEN

STATE OF NEVADA)
) ss:
COUNTY OF CLARK)

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

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

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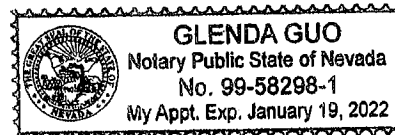
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1 induced coma. I was eventually discharged from that hospital on September 2, 2016. I
2 now suffer from COPD and require constant use of an oxygen tank. I also suffer from
3 additional health issues relating to the COPD.

4 FURTHER YOUR AFFIANT SAYETH NAUGHT.

5
6 
7 _____
8 CHOLOE GREEN

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



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

AFFIDAVIT OF ROBERT S. SAVLUK, M.D.

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

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

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

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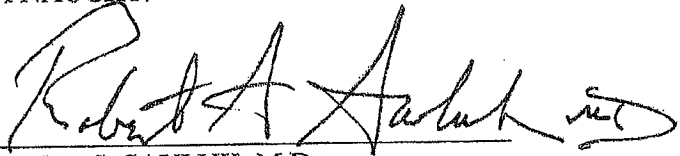
- 1 8. In preparation for this affidavit, I have reviewed summaries of the two hospitalizations at
2 Sunrise Hospital between August 9 and August 16, 2016 consisting of 33 pages plus an
3 additional 45 pages of organized records related to medications and vital signs. I also
4 reviewed 337 pages of Centennial Hills hospital records and the affidavit of Dr. Lisa
5 Karamardian.
6
- 7 9. That Choloe Green was a 29 year old G5 P3 obese individual at the time she was
8 admitted to Sunrise Hospital on 7/09/2016 for repeat c-section for a transverse
9 presentation. She underwent the procedure through the previous surgical scar (low
10 transverse), under spinal anesthesia, delivering a 6 lb 7 oz male child.
11
- 12 10. Post operatively she developed itching secondary to the spinal anesthetic. By the next day
13 she was ambulatory and taking a regular diet. No mention of bowel activity or urination.
14 She was deemed ready for discharge and sent home on Norco and Ibuprofen for pain.
15
- 16 11. That on July 14, 2016 she presented to the Sunrise Hospital ED with 2 days history of
17 nausea, vomiting, and abdominal pain. She had 2 BM's that day. She was febrile and
18 tachycardic with a marked leucocytosis. She met the criteria for sepsis and the sepsis
19 bundle was initiated. She had blood cultures drawn, a fluid bolus given and a broad
20 spectrum antibiotics initialed appropriately for an intra-abdominal source. An ultra sound
21 of the pelvis and CT scan of the abdomen and pelvis were ordered. The ultra sound
22 showed no retained products of conception but a moderate amount of complex free fluid
23 in the cul-de-sac. The CT scan showed a gastric band in place, distention of doudenum
24 and jejunum and free fluid with small amount of gas in the peritoneal cavity in the lower
25 abdomen, anterior to an enlarged uterus. The impressions were 1) small bowel
26 obstruction and 2) intraperitonal abscess suspected.
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 4. Discharging a patient with evidence of a small bowel obstruction or ileus without
- 5 any explanation or resolution.
- 6
- 7 5. Pre maturely discharging the patient before she had adequately recovered from the
- 8 septic process.
- 9
- 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 ROBERT S. SAVLUK, M.D.
7

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

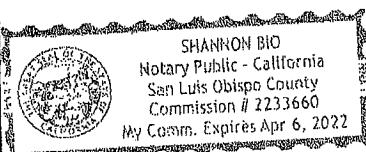
10 see attached
11 NOTARY PUBLIC in and for said
12 COUNTY and STATE
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A notary public or other officer completing this certificate verifies only the identity of the individual who signed the document to which this certificate is attached, and not the 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 black ink, appearing to read "Robert S. Savluk", written over a horizontal line.

EXHIBIT 5

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. VIII

Plaintiff,

v.

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

Defendants.

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

COMES NOW the Plaintiff Choloe Green, by and through her attorney, Daniel Marks, Esq., of the
Law Office of Daniel Marks, and hereby submits her Response to Defendants Frank J. DeLee, M.D.'s First
Set of Interrogatories to Plaintiff as follows:

INTERROGATORY NO. 1:

Please provide the following information personal identification information:

- (a) Your full name;
- (b) All names by which you have ever been known or names/aliases which you have used;
- (c) Your date of birth;
- (d) Your place of birth;

////

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

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

- 8 (a) Choloe Shacana Green
9 (b) Cece
10 (c) July 15, 1986
11 (d) Las Vegas, Nevada
12 (e) Betty Jimerson, 50s, Mother
13 Brandon Green, 17, child
14 Tamyah Green, 9, child
15 Kai Hanks, 6, child
16 Israel Hanks, 2, child
17 (f) Present Address: 4828 Golden Shimmer, Las Vegas, Nevada 89139 (1 ½ years)
18 Past Addresses: 5434 Lavender Grove Court, Las Vegas, Nevada 89103 (2 years)
19 3213 Denvers Dream, North Las Vegas, Nevada (1 year)
20 3668 Asbury Hill Ave., Las Vegas, NV 89110
21 Plaintiff does not remember the addresses of all other prior residences.
22 (g) Present: 702-628-0392; Metro PCS
23 (h) [REDACTED]

24 **INTERROGATORY NO. 2:**

25 Please identify your health care insurer and/or coordinator of benefits, any health insurance claim
26 number (HICN), any Medicare number, and whether you have been diagnosed with end stage renal disease.
27 (Your social security number from Interrogatory No. 1 will be provided to Medicare and/or Medicaid for
28 determination of Plaintiff's Medicare and/or Medicaid eligibility for reporting purposes mandated by Section

1 111 of the Medicare, Medicaid and SCHIP Extension Act of 2007.) IF YOU HAVE EVER APPLIED FOR
2 OR RECEIVED BENEFITS FROM MEDICARE OR MEDICAID AT ANY TIME, WHETHER PRIOR
3 TO OR AFTER THE ACCIDENT AT ISSUE, OR IF YOU HAVE EVER APPLIED FOR OR RECEIVED
4 BENEFITS FROM THE SOCIAL SECURITY ADMINISTRATION, PLEASE SO INDICATE IN YOUR
5 RESPONSE REGARDLESS OF ANY RELATIONSHIP TO THE INCIDENT(S) AT ISSUE.

6 **RESPONSE TO INTERROGATORY NO. 2:**

7 Plaintiff is on Medicaid, Recipient Number [REDACTED] 007. Plaintiff has not been diagnosed with end
8 stage renal disease.

9 **INTERROGATORY NO. 3:**

10 Please describe the details of the incident, in your own words, describing factually, without legal
11 conclusions, with as much specificity as possible, the circumstances of the Incident (i.e., who, what, when,
12 where, and how).

13 **RESPONSE TO INTERROGATORY NO. 3:**

14 Plaintiff was a long-time patient of Defendant Dr. Delee. He had delivered, via C-Section, all of
15 Plaintiff's children. On July 9, 2016, Dr. Delee delivered Plaintiff's fourth child, Israel Hanks, via C-Section.
16 Even though Plaintiff had not had a bowel movement since the C-Section on July 9, 2016, Dr. Delee
17 discharged Plaintiff from Sunrise Hospital on July 10, 2016. That was only one day after the C-section. After
18 Plaintiff got home she soon discovered that her recovery from the C-section was nothing like her recovery
19 from her prior three (3) C-Sections. On July 13, 2016, Plaintiff went to Valley Hospital because she was
20 experiencing pain because she still had not had a bowel movement since the C-Section. Her pain was so
21 severe that she had to have her 15 year old son help her get dressed. Valley Hospital gave her an injection
22 in her abdomen and discharged her that same day because she had an appointment with Dr. Delee the
23 following day.

24 On July 14, 2016, Plaintiff was scheduled to see Dr. Delee in the afternoon. However, Plaintiff's pain
25 was so severe that she arrived at his office that morning hoping to be seen sooner. Plaintiff told Dr. Delee
26 that she was in severe pain, had not had a bowel movement, and that something was not right. In response,
27 Dr. Delee, prescribed her a stool softener, patted her on the back and said she would be fine. Plaintiff also
28 remembers that Dr. Delee removed her staples that morning.

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

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

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

14 **INTERROGATORY NO. 4:**

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

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

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

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

28 ////

1 **INTERROGATORY NO. 5:**

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

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

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

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

9 **INTERROGATORY NO. 6:**

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

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

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

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

28 ////

1 5. Health South Rehabilitation

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

3 6. Axis Healthcare Clinic (Primary Care)

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

5 7. Dr. Leonard Parilak of Silver State Cardiology

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

7 8. Pulmonary Associates

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

9 9. Center for Wellness and Pain Care

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

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

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

13 11. Dignity Health ER on Blue Diamond and Decatur

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

17 **INTERROGATORY NO. 7:**

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

21 (a) The name of each care provider;

22 (b) The address of each care provider;

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

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

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

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

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

7 **INTERROGATORY NO. 8:**

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

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

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

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

25 **INTERROGATORY NO. 9:**

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

28 ////

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

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

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

11 **INTERROGATORY NO. 10:**

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

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

17 See Response to Interrogatory No. 6.

18 **INTERROGATORY NO. 11:**

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

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

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

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

6 **INTERROGATORY NO. 12:**

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

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

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

13 **INTERROGATORY NO. 13:**

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

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

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

23 **INTERROGATORY NO. 14:**

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

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

1 (d) The dollar amount of each expense;

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

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

8 The only expenses incurred by Plaintiff as the result of the incident at issue are the medical bills,
9 which were paid by Medicaid. Those bills have already been produced in this case.

10 **INTERROGATORY NO. 15:**

11 For each expense paid as a benefit, as defined in interrogatory 14(e) above, please state the identity
12 of each insurer, contract or agreement provider, disability agency or other office that made such payments
13 on your behalf, including the address, telephone number, policy number and group number sufficient to
14 allow service of a subpoena to obtain all records relating to same.

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

16 All medical bills were paid by Medicaid.

17 **INTERROGATORY NO. 16:**

18 If you have incurred any out of pocket expenses for health care or other treatment which was not paid
19 by your insurance or other benefits (including medical expenses, pharmacy co-pays, travel costs for
20 treatment, etc.) that you claim to have incurred as a result of the incident, please itemize all out-of-pocket
21 expenses that you claim to have incurred as a result of the incident that is the subject of this litigation,
22 including medical expenses, specifically listing:

23 (a) A description of each expense claimed;

24 (b) The name of the person or entity to whom or which each expense was paid;

25 (c) Whether each expense is paid or unpaid; and

26 (d) The dollar amount of each expense.

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

28 None.

1 **INTERROGATORY NO. 17:**

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

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

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

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

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

23 **INTERROGATORY NO. 18:**

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

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

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

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

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

28 ////

1 **INTERROGATORY NO. 19:**

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

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

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

6 **INTERROGATORY NO. 20:**

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

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

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

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

22 **INTERROGATORY NO. 21:**

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

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

26 No.

27 ////

28 ////

1 **INTERROGATORY NO. 22:**

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

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

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

9 **INTERROGATORY NO. 23:**

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

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

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

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

17 **INTERROGATORY NO. 24:**

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

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

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

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

25 **INTERROGATORY NO. 25:**

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

28 ////

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

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

4 **INTERROGATORY NO. 26:**

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

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

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

10 **INTERROGATORY NO. 27:**

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

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

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

19 **INTERROGATORY NO. 28:**

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

27 ////

28 ////

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

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

4 **INTERROGATORY 29:**

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

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

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

10 **INTERROGATORY NO. 30:**

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

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

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

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

8 **INTERROGATORY NO. 31:**

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

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

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

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

28 ////

1 **INTERROGATORY NO. 32:**

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

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

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

8 DATED this 14 day of December 2018.

9 LAW OFFICE OF DANIEL MARKS

10 
DANIEL MARKS, ESQ.

11 Nevada Bar No. 002003

12 NICOLE M. YOUNG, ESQ.

13 Nevada Bar No. 12659

14 610 South Ninth Street

15 Las Vegas, Nevada 89101


16 Attorneys for Plaintiff

1 VERIFICATION


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

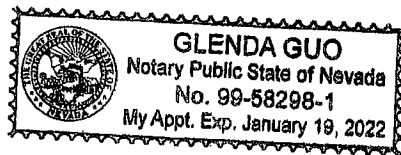
4 CHLOE GREEN, being first duly sworn, deposes and says:

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

10
11 
12 CHLOE GREEN

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

16
17 
18 NOTARY PUBLIC in and for said
19 COUNTY and STATE



CERTIFICATE OF SERVICE BY ELECTRONIC SERVICE

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

Erik Stryker, Esq.
WILSON, ELSE, 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.

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

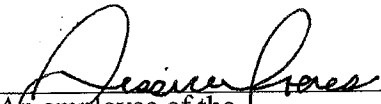

An employee of the
LAW OFFICE OF DANIEL MARKS

EXHIBIT 6

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DISTRICT COURT
CLARK COUNTY, NEVADA
* * * * *
CHOLOE GREEN, an individual,)
Plaintiff,)
vs.) Case No.: A-17-757722-C
Dept. No.: VIII
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.)
_____)

**CERTIFIED
COPY**

SCHEDULED DEPOSITION OF ALI KIA, M.D.
Taken on Friday, September 21, 2018
At 9:55 a.m.
Taken at 610 South Ninth Street
Las Vegas, Nevada

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

1 SCHEDULED DEPOSITION OF ALI KIA, M.D., taken at the Law
2 Office of Daniel Marks, 610 South Ninth Street, Las Vegas,
3 Nevada, on Friday, September 21, 2018, at 9:55 a.m.,
4 before Terri M. Hughes, Certified Court Reporter, in and
5 for the State of Nevada.

6 APPEARANCES:

7 For the Plaintiff:

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

11 For the Defendants, Frank J. DeLee, M.D. and Frank J.
12 DeLee, M.D., P.C.:

13 ERIC K. STRYKER, ESQ.
14 Wilson Elser Moskowitz Edelman & Dicker LLP
300 South Fourth Street
11th Floor
15 Las Vegas, Nevada 89101
(702) 727-1400

16 For the Defendant, Sunrise Hospital and Medical Center,
17 LLC:

18 TYSON J. DOBBS, ESQ.
19 Hall Prangle and Schoonveld LLC
1160 North Town Center Drive
Suite 200
20 Las Vegas, Nevada 89144
(702) 212-1457

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E X H I B I T S

Page

1 - Deposition Subpoena; Proof of Service.....

4

1 MR. MARKS: Okay. On the record.

2 This is the time, place and notary for the
3 deposition of Ali Kia. We have the deposition subpoena
4 and the return of service for today's deposition who was
5 served Friday, August 24th at 11:58 a.m. and setting the
6 depo for today at 9:30. I have 9:55 a.m.

7 Counsel, we all agree?

8 MR. STRYKER: I concur and agree.

9 MR. DOBBS: Concur.

10 MR. MARKS: All right. But we've all agreed
11 that we're not going to wait more than 25 minutes for the
12 doctor. He hasn't called, so we'll just move forward and
13 try to get him to show next time.

14 MR. DOBBS: Thank you very much.

15 MR. MARKS: All right. Thank you.

16 (Exhibit 1 was marked for identification.)

17 (Thereupon, the taking of the scheduled
18 deposition was concluded at 9:56 a.m.)

19 * * * * *

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1 CERTIFICATE OF REPORTER

2

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

6

7 I, Terri M. Hughes, CCR No. 619, do hereby
8 certify: That I reported the scheduled deposition of ALI
9 KIA, M.D., commencing on Friday, September 21, 2018, at
10 9:55 a.m.

11 That I thereafter transcribed my said shorthand
12 notes into typewritten form, and that the typewritten
13 transcript of said scheduled deposition is a complete,
14 true and accurate transcription of my said shorthand
15 notes.

16 I further certify that I am not a relative or
17 employee of counsel of any of the parties, nor a relative
18 or employee of the parties involved in said action, nor a
19 person financially interested in said action.

20 IN WITNESS WHEREOF, I have set my hand in my
21 office in the County of Clark, State of Nevada, this 1st
22 day of October, 2018.

23

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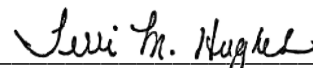
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Terri M. Hughes, CCR No. 619

A	DeLee 1:7,7 2:11 2:12 depo 4:6 deposition 1:16 2:1 3:3 4:3,3,4,18 5:6 5:9 Dept 1:6 Dicker 2:13 DISTRICT 1:1 DOBBS 2:18 4:9 4:14 doctor 4:12 Domestic 1:8 Drive 2:19	Hall 2:18 hand 5:12 Hospital 1:9 2:16 Hughes 1:25 2:4 5:6,20	Nevada 1:2,20 2:3 2:5,10,15,20 5:3 5:13 NICOLE 2:8 Ninth 1:19 2:2,9 North 2:19 notary 4:2 notes 5:8,10	service 3:3 4:4 set 5:12 setting 4:5 shorthand 5:8,9 show 4:13 South 1:19 2:2,9 2:14 ss 5:3 State 2:5 5:3,13 Street 1:19 2:2,9 2:14 STRYKER 2:13 4:8 subpoena 3:3 4:3 Suite 2:19 Sunrise 1:9 2:16
B	E	I	O	T
B 3:1	E 3:1 Edelman 2:13 Elser 2:13 employee 5:11,11 ERIC 2:13 ESQ 2:8,8,13,18 Exhibit 4:16	J	October 5:13 office 2:2,9 5:13 Okay 4:1	T 3:1 taken 1:17,19 2:1 Terri 1:25 2:4 5:6 5:20 Thank 4:14,15 time 4:2,13 today 4:6 today's 4:4 Town 2:19 transcribed 5:8 transcript 5:9 transcription 5:9 true 5:9 try 4:13 typewritten 5:8,8 TYSON 2:18
C	F	K	P	U
called 4:12 Case 1:6 CCR 1:25 5:6,20 Center 1:9 2:16,19 CERTIFICATE 5:1 Certified 2:4 certify 5:6,10 CHOLOE 1:4 Clark 1:2 5:4,13 commencing 5:7 Company 1:10 complete 5:9 concluded 4:18 concur 4:8,9 Corporation 1:8 counsel 4:7 5:11 County 1:2 5:4,13 Court 1:1 2:4	financially 5:12 Floor 2:14 Foreign 1:9 form 5:8 forward 4:12 Fourth 2:14 Frank 1:7,7 2:11 2:11 Friday 1:17 2:3 4:5 5:7 further 5:10	J 1:7,7 2:11,11,18	P.C 2:12 Page 3:2 parties 5:11,11 PC 1:8 person 5:12 place 4:2 Plaintiff 1:5 2:7 Prangle 2:18 Professional 1:8 Proof 3:3	V
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Daniel 2:2,8,9 day 5:13 Defendant 2:16 Defendants 1:11 2:11	going 4:11 GREEN 1:4	Las 1:20 2:2,10,15 2:20 Law 2:1,9 Limited-Liability 1:10 LLC 1:9 2:17,18 LLP 2:13	R	
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	H 3:1	M 1:25 2:4,8 5:6 5:20 M.D 1:7,16 2:1,11 2:12 5:7 marked 4:16 Marks 2:2,8,9 4:1 4:10,15 MD 1:8 Medical 1:9 2:16 minutes 4:11 Moskowitz 2:13 move 4:12	record 4:1 relative 5:10,11 reported 1:25 5:6 Reporter 2:4 5:1 return 4:4 right 4:10,15	
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WHEREOF 5:12	702 2:10,15,20			
Wilson 2:13	727-1400 2:15			
WITNESS 5:12	8			
	89101 2:10,15			
X	89144 2:20			
X 3:1				
Y	9			
YOUNG 2:8	9:30 4:6			
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386-0536 2:10				
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Steven D. Grierson

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. VIII

Plaintiff,

v.

Date of Deposition: September 21, 2018
Time of Deposition: 9:30 a.m.

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

Defendants.

DEPOSITION SUBPOENA

THE STATE OF NEVADA SENDS GREETINGS TO:

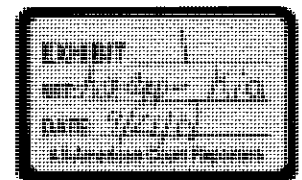
Ali Kia, M.D.
2470 E. Flamingo Road
Las Vegas, Nevada 89119

YOU ARE HEREBY COMMANDED, that all and singular, business and excuses set aside, you
appear and attend on the 21st day of September, 2018, at the hour of 9:30 a.m. at the **Law Office of Daniel
Marks, 610 South Ninth Street, Las Vegas, Nevada 89101.**

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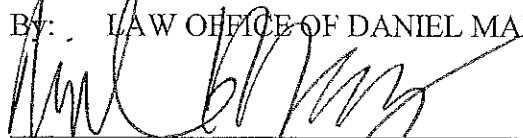
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1 If you fail to attend, you will be deemed guilty of contempt of Court and liable to pay all losses and damages
2 caused by your failure to appear.

3 Please see Exhibit "A" attached hereto for information regarding the rights of the person subject to
4 this Subpoena.

5 By: LAW OFFICE OF DANIEL MARKS



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

EXHIBIT "A"

NEVADA RULES OF CIVIL PROCEDURE

Rule 45

(c) Protection of Persons Subject to Subpoena.

(1) A party or an attorney responsible for the issuance and service of a subpoena shall take reasonable steps to avoid imposing undue burden or expense on a person subject to that subpoena. The court on behalf of which the subpoena was issued shall enforce this duty and impose upon the party or attorney in breach of this duty an appropriate sanction, which may include, but is not limited to, lost earnings and a reasonable attorney's fee.

(2)(A) A person commanded to produce and permit inspection and copying of designated books, papers, documents or tangible things, or inspection of premises need not appear in person at the place of production or inspection unless commanded to appear for deposition, hearing or trial.

(B) Subject to paragraph (d)(2) of this rule, a person commanded to produce and permit inspection and copying may, within 14 days after service of the subpoena or before the time specified for compliance if such time is less than 14 days after service, serve upon the party or attorney designated in the subpoena written objection to inspection or copying of any or all of the designated materials or of the premises. If objection is made, the party serving the subpoena shall not be entitled to inspect and copy the materials or inspect the premises except pursuant to an order of the court by which the subpoena was issued. If objection has been made, the party serving the subpoena may, upon notice to the person commanded to produce, move at any time for an order to compel the production. Such an order to compel production shall protect any person who is not a party or an officer of a party from significant expense resulting from the inspection and copying commanded.

(3)(A) On timely motion, the court by which a subpoena was issued shall quash or modify the subpoena if it

(i) fails to allow reasonable time for compliance

(ii) requires a person who is not a party or an officer of a party to travel to a place more than 100 miles from the place where that person resides, is employed or regularly transacts business in person, except that such a person may in order to attend trial be commanded to travel from any such place within the state in which the trial is held, or

(iii) requires disclosure of privileged or other protected matter and no exception or waiver applies, or

(iv) subjects a person to undue burden.

(B) If a subpoena

(i) requires disclosure of a trade secret or other confidential research, development, or commercial information, or

(ii) requires disclosure of an unretained expert's opinion or information not describing specific events or occurrences in dispute and resulting from the expert's study made not at the request of any party, the court may, to protect a person subject to or affected by the subpoena, quash or modify the subpoena or, if the party in whose behalf the subpoena is issued shows a substantial need for the testimony or material that cannot be otherwise met without undue hardship and assures that the person to whom the subpoena is addressed will be reasonably compensated, the court may order appearance or production only upon

specified conditions.

(d) Duties in Responding to Subpoena.

- (1) A person responding to a subpoena to produce documents shall produce them as they are kept in the usual course of business or shall organize and label them to correspond with the categories in the demand.
- (2) When information subject to a subpoena is withheld on a claim that it is privileged or subject to protection as trial preparation materials, the claim shall be made expressly and shall be supported by a description of the nature of the documents, communications, or things not produced that is sufficient to enable the demanding party to contest the claim.



P SER
Law Offices Of: DANIEL MARKS
610 So. NINTH St.
Las Vegas, NV 89101
702 386-0536
Attorney for: Plaintiff

DISTRICT COURT
CLARK COUNTY NEVADA

CHLOE GREEN

Plaintiff

FRANK J. DELEE, M.D., ET AL.

Defendant

Case Number: **A-17-757722-C**

Dept/Div: **8**

PROOF OF SERVICE

BRENT ALLEN REID, being duly sworn deposes and says: that at all times herein affiant was and is a citizen of the United States, over 18 years of age, licensed to serve civil process in the state of Nevada under license #389, and not a party to or interested in the proceeding in which this affidavit is made. The affiant received on Wednesday August 22 2018; 1 copy(ies) of the:

DEPOSITION SUBPOENA; NEVADA RULES OF CIVIL PROCEDURE; NOTICE OF TAKING DEPOSITION

I served the same on Friday August 24 2018 at 11:58AM by:

Serving Witness ALI KIA, M.D.

Substituted Service, by leaving the copies with or in the presence of: KRIS OBERSHAW, SUPERVISOR Authorized Agent. at the Witness's Business located at 3022 S. DURANGO DR. #100, Las Vegas, NV 89117.

Pursuant to NRS 53.045, I declare under the penalty of perjury under the law of the State of Nevada that the forgoing is true and correct.
Executed: Tuesday August 28 2018



Affiant: BRENT ALLEN REID #R-061962
LEGAL WINGS, INC. - NV LIC #389
1118 FREMONT STREET
Las Vegas, NV 89101
(702) 384-0305, FAX (702) 384-8638

EXHIBIT 7

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

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

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

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

6 APPEARANCES:

7 For the Plaintiff:

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

11
12 For the Defendants, Frank J. DeLee, M.D. and Frank J.
DeLee, M.D., P.C.:

13 ERIC K. STRYKER, ESQ.
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14 300 South Fourth Street
11th Floor
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(702) 727-1400

16
17 For the Defendant, Sunrise Hospital and Medical Center,
LLC:

18 MICHAEL E. PRANGLE, ESQ.
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19 1160 North Town Center Drive
Suite 200
20 Las Vegas, Nevada 89144
(702) 212-1457

21
22 For the Deponent:

23 LAURA S. LUCERO, ESQ.
Collinson, Daehnke, Inlow & Greco
24 2110 East Flamingo Road
Suite 305
25 Las Vegas, Nevada 89119
(702) 979-2132

1 I N D E X

2 Witness: ALI KIA, M.D.

3		Examination	Further Examination
4	By Mr. Marks	4	62, 70, 73
5	By Mr. Prangle	48	68
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7

8

9

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

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

10 EXAMINATION

11 BY MR. MARKS:

12 Q. State your name, please.

13 A. Ali Kia.

14 Q. And what's your business address?

15 A. 3022 South Durango Drive, 89119.

16 Q. And who are --

17 A. Las Vegas.

18 Q. Who are you employed by?

19 A. I'm self-employed.

20 Q. Okay. Have you had your deposition taken before?

21 A. No, first time.

22 Q. Okay. So you had an opportunity to discuss the
23 rules of a deposition with your attorney?

24 A. I have.

25 Q. Okay. So just in addition to what she told you,

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

7 A. Okay.

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

12 A. I do.

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

19 A. I do.

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

24 A. I do.

25 Q. All right. If you don't understand a question,

1 tell me, I'll rephrase it. Your attorney could make
2 objections from time to time. Unless she would instruct
3 you not to answer a question, normally the objections are
4 preserved and you would answer. Do you understand?

5 A. I do.

6 Q. Okay. So when you say you're self-employed, do
7 you have your own professional practice?

8 A. I do.

9 Q. Can you give us the name?

10 A. Ali Kia, M.D., Inc., Incorporated.

11 Q. And how long have you had that?

12 A. Since 2008, February.

13 Q. Okay. And what's your -- do you have a specialty
14 in medicine?

15 A. Internal medicine.

16 Q. Okay. Are you board certified?

17 A. I am.

18 Q. And when did you become board certified?

19 A. 2006 and renewed in 2016.

20 Q. Okay. And I'm going to ask a little about your
21 educational background. Your attorney said she could
22 supplement with your CV, but I'll hit the highlights.
23 Where did you go to college?

24 A. UC -- University of California-Riverside.

25 Q. Okay. UNLV played them last night.

1 A. I missed that one.

2 Q. Right. And then what year did you graduate?

3 A. 1997.

4 Q. And I assume you got a Bachelor of Science in a
5 field?

6 A. In biology and minored in psychology.

7 Q. Okay. And then you went to -- did you go to
8 medical school right away?

9 A. In 1998 I did, yes.

10 Q. Okay. And what medical school did you go to?

11 A. Ross University.

12 Q. Which one?

13 A. Ross University.

14 Q. And where is that?

15 A. It's a Caribbean-based school.

16 Q. Which island?

17 A. Dominica.

18 Q. Okay. And how many years were you in Dominica?

19 A. Two years on the island and then two years
20 clinical rotations in Chicago and Southern California.

21 Q. Okay. And when did you get your -- you got an
22 M.D. degree; correct?

23 A. In June of 2002.

24 Q. Okay. And after that did you have to take any
25 sort of exam as an international student?

1 A. No, just the USMLE, the board exam. There's three
2 total, and I took and passed all of them on the first
3 attempt.

4 Q. Okay. And then did you -- after medical school
5 did you start your internship/residency?

6 A. I did. At UMC, University of Nevada School of
7 Medicine, which now it's UNLV as of this last year.

8 Q. Okay. So you started your residency I assume July
9 of '02 right after you graduated?

10 A. July of -- July of '03.

11 Q. Okay.

12 A. Uh-huh. I did a cardiology research fellowship in
13 Southern California prior to that.

14 Q. Okay. All right. We'll come back to that
15 fellowship. Well, why don't you explain that fellowship?

16 A. It was a research-based fellowship.

17 Q. At what school?

18 A. University of Southern California.

19 Q. USC?

20 A. The county, USC County.

21 Q. And was it in cardiology?

22 A. In the cardiology department.

23 Q. Okay. And then you went to -- you did your
24 internship/residency. Was it considered University of
25 Nevada-Reno at that point?

1 A. It was.

2 Q. Okay. But you were based here in Las Vegas at UMC
3 Hospital?

4 A. Yes, that's correct.

5 Q. And how long was that -- is your residency/
6 internship combined four years?

7 A. Three years for internal medicine.

8 Q. Three years?

9 A. Uh-huh.

10 Q. Okay. And then after that you passed your boards?

11 A. I did. So I took my boards August of 2006 and got
12 the results, passed it in September and --

13 Q. Sorry. Go ahead.

14 A. Yeah, and then started my practice October of
15 2006.

16 Q. And I was going to ask, did you do any other
17 training before you started your practice?

18 A. No.

19 Q. Okay. The fellowship that you did, how does that
20 relate to residency and internship?

21 A. It increases your credibility in trying to obtain
22 a specialty after residency. So I had the opportunity to
23 do approximately eight months. It was a research trial
24 that we did at USC through the cardiology department.

25 Q. Okay.

1 A. So we were enrolling patients and randomizing
2 them to do two different medications.

3 Q. So then when you started your -- so in '06 did you
4 then start your private practice?

5 A. I did, yes.

6 Q. And were you employed by anyone in private
7 practice?

8 A. At the time it was a group called Rancho Internal
9 Medicine.

10 Q. Okay. And did you see patients in the office as
11 well as the hospital?

12 A. Just in the hospital.

13 Q. Okay. And for how long did you work at Rancho
14 Internal Medicine?

15 A. For one year.

16 Q. And then where did you work?

17 A. And then we were solo practitioners, so we were
18 independent contractors helping out other groups.

19 Q. Okay. What is your relationship then with Sunrise
20 Hospital. Did you work as a hospitalist at Sunrise?

21 A. Yes, I did. I started there in -- at the end of
22 2007.

23 Q. And are you still there?

24 A. I am.

25 Q. And is that the only hospital you generally work

1 at?

2 A. It's not. I also cover University Medical Center.

3 I'm on teaching staff at UNLV for the School of Medicine.

4 Q. When did you get on teaching staff?

5 A. July of 2017.

6 Q. And what do you do as teaching staff?

7 A. My title is an adjunct professor of medicine.

8 Q. So adjunct means clinical?

9 A. Clinical, teaching rounds with the residents and
10 seeing patients, admitting and --

11 Q. So how often do you do UMC versus Sunrise?

12 A. I'm at UMC every day now, so not too many
13 patients, but we break up our teaching weeks. Whenever
14 they need, I help them out.

15 Q. And how often are you at Sunrise?

16 A. Every day.

17 Q. So you're at both every day?

18 A. I alternate a little. I cover the Pioneer Group,
19 which is a group at UMC, and then Nevada Hospitalist Group
20 at Sunrise Hospital.

21 Q. Okay. So in terms of your interaction at Sunrise,
22 calling your attention to the year 2016, is it the same
23 now as it was in 2016, your interactions or working at
24 Sunrise?

25 A. I'm not quite sure I understand the question.

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

2 A. Uh-huh.

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

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

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

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

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

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

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

17 A. Roughly.

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

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

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

24 A. That's correct.

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

1 through Sunrise was assigned to you?

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

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

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

11 Q. You mean for patient care?

12 A. That's correct, yes.

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

14 A. I'm not quite sure.

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

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

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

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

1 I'm a consulting physician.

2 Q. And why would you be consulting versus attending?

3 How do you explain the difference?

4 A. Some of the times patients are in the intensive
5 care unit, and Sunrise Hospital has a closed ICU. So the
6 intensivist, the ICU physicians would consult me for
7 medicine, and then I typically take over the case and
8 discharge the patient from that point.

9 Q. If it's not an ICU patient, then effectively you'd
10 be the attending at Sunrise if the patient is assigned to
11 you?

12 A. No. The only other case is if I'm consulted by a
13 surgeon that the patient is under their service, I'm still
14 a consultant.

15 Q. Okay. And you're paid directly Sunrise to you or
16 through Nevada Hospitalist?

17 A. Through Nevada Hospitalist Group.

18 Q. So it goes Sunrise, Nevada Hospitalist to you?

19 A. No. Sunrise is separate. I do my billing through
20 Nevada Hospitalist Group.

21 Q. Okay. And they bill Sunrise?

22 A. No, they don't. They bill the insurance of the
23 patient.

24 Q. Okay. What about Medicare and Medicaid, how does
25 that work?

1 A. I'll get those as my private patients, and then I
2 bill through -- not through Nevada Hospitalist Group. I
3 have a billing company, Management Solutions, that I bill
4 through.

5 Q. So if a patient has Medicare or Medicaid, you are
6 their doctor, not through another agency, it's through
7 your own private practice?

8 A. Typically under the umbrella of another group.

9 Q. Nevada Hospitalist?

10 A. Nevada Hospitalist. Sometimes I cover for
11 physicians that are out of town through Pioneer Group or
12 there's also the other physicians that would round at
13 Sunrise Hospital are primary physicians that have office
14 outpatient, so they're not -- they do hospitalist type
15 work but they ask me to follow their patients.

16 Q. Okay. Let me ask -- you have records in front of
17 you. Did you review some records?

18 A. For?

19 Q. In preparation for this deposition?

20 A. For our case I have, yes.

21 Q. Could you tell us what you reviewed?

22 MS. LUCERO: And before we dive into that, I
23 just want to put something on the record. I did request
24 the hospital chart in preparation for the doctor to
25 prepare for his deposition. I wasn't given those records.

1 I was supplied the records that he authored, and he did
2 review those. However, as a hospitalist and seeing
3 patients in the hospital, he has access generally while
4 he's seeing the patient to all of the records. So his
5 answers today to questions that you ask are going to be
6 somewhat limited to the documents he's seeing in front of
7 him because he doesn't have access to all of the records
8 that I had requested.

9 MR. MARKS: Okay.

10 BY MR. MARKS:

11 Q. Let's see -- Doctor, if there's something in a
12 different record, let me know and we'll have to try to
13 deal with it, but I intend to ask you questions about
14 records that I thought you had signed off on so that you'd
15 be familiar with. But my question was really, what did
16 you review? Did someone provide you a stack of records?
17 You have something in front of you?

18 A. Yes.

19 Q. So could I see what records you have?

20 A. Sure.

21 MR. STRYKER: Counsel, could you perhaps read
22 the Bates numbers so all of us know what those documents
23 are?

24 MR. MARKS: Sure. I'm just trying to see if
25 this is all in order.

1 MS. LUCERO: They're not in order I don't
2 believe.

3 MR. MARKS: They're not in order?

4 MS. LUCERO: I don't believe so. I was only
5 provided documents that he authored.

6 MR. MARKS: Did you get them from Sunrise
7 counsel?

8 MS. LUCERO: Yes, and only the documents he
9 authored.

10 MR. MARKS: They're not in order. I can make
11 copies and give them to everybody.

12 MR. STRYKER: That'd be great. Thank you.

13 MR. MARKS: Because --

14 MS. LUCERO: I believe they're his orders as
15 well.

16 MR. MARKS: All right. Just so the record is
17 clear, I guess we'll mark as Exhibit 1 records that Dr.
18 Kia's counsel obtained from Sunrise.

19 BY MR. MARKS:

20 Q. And then, Doctor, if I ask you about records, I'll
21 obviously give you a chance to read it. It's not going to
22 be a closed book exam or anything like that, okay?

23 So I'm just trying to see if these are the same
24 that I copied so we don't duplicate everything. All
25 right. So at a break we'll mark your set as Exhibit 1.

1 A. Thank you.

2 Q. And then everyone can get a copy.

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

5 A. I do.

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

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

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

10 A. Yes, correct.

11 Q. So they really assigned her to you?

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

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

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

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

19 A. July 14th.

20 Q. July 14th, 2016; correct?

21 A. Yes, correct.

22 Q. And was she admitted?

23 A. She was, to inpatient status.

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

1 A. She was.

2 Q. Okay. So once she was assigned to you on July
3 14th, 2016, could you give me an overview of what you did
4 medically?

5 A. Initially we did --

6 MS. LUCERO: An overview just on July 14th or
7 her whole hospitalization?

8 BY MR. MARKS:

9 Q. Well, start with July 14th.

10 A. Uh-huh.

11 Q. I don't want you to go for three days. Why don't
12 you kind of start what you -- you saw her, you know, if
13 you examined her, your plan, and then at some point I'll
14 ask follow-up questions.

15 A. Sure. So I was called through the emergency
16 department around 20 hundred on the evening of the 14th of
17 July, and I typically review the records, labs prior to
18 seeing the patient.

19 Q. Right.

20 A. At that time they moved Ms. Green up to the floor,
21 to the medical floor, and then I saw her that evening with
22 her nurse present and asked her about her symptoms. So
23 she came in with abdominal pain, and she did have a fever
24 on admission, just a single temperature, and we admitted
25 her, gave her IV fluids, pain medications and some nausea

1 medications in case she did have some nausea, vomiting.
2 And in the emergency department what was ordered was a CAT
3 scan, an ultrasound, and those were the two imaging
4 studies that we had.

5 MR. MARKS: All right. Let me mark some
6 exhibits. So this, I guess, would be number 2, because
7 we'll mark his as number 1.

8 (Plaintiff's Exhibit 2 was marked for
9 identification.)

10 BY MR. MARKS:

11 Q. So, Doctor, Exhibit 2, which is Bates stamped
12 SH000706 may be part of what was produced to you, but it
13 will be easier, I think, if we just go through this.

14 MR. PRANGLE: What's the exhibit?

15 MS. YOUNG: 2.

16 MR. PRANGLE: This is 2?

17 MS. YOUNG: Yes.

18 BY MR. MARKS:

19 Q. So this indicates 7/14 at 6:50 p.m. Would this be
20 from the emergency room and then she was assigned to you?

21 A. Yes, correct.

22 Q. And Wayne Jacobs is in the emergency room?

23 A. He's a radiologist that works at Sunrise Hospital.

24 Q. And what about Dr. Lev?

25 A. Dr. Lev is an interventional -- a

1 neurointerventional radiologist at Sunrise Hospital, works
2 in the same group.

3 Q. Okay. So she appeared increasing abdominal pain,
4 nausea, vomiting and bloating for several days following
5 cesarean section. Is that what you recall?

6 A. I recalled abdominal pain.

7 Q. Okay. And you recall being contacted at about
8 8:00 p.m., which is 20 hundred hours --

9 A. Yes.

10 Q. -- or 20 hours?

11 A. Around the time of 8:00 p.m. on the 14th of July.

12 Q. Okay.

13 A. Correct.

14 Q. And the impression was gas and fluid distention of
15 stomach and proximal small bowel compatible small bowel
16 obstruction, moderate amount of free fluid in the abdomen
17 and pelvis with several small gas bubbles anterior to the
18 uterus, intraperitoneal abscess suspected. Was that
19 communicated to you?

20 A. Yes, it was.

21 Q. Okay. So based on that did you undertake certain
22 medical plans and treatment of Ms. Green?

23 A. I did at the time.

24 Q. Okay. And what did you do then?

25 A. We kept her NPO, nothing by mouth.

1 Q. Right.

2 A. Gave her IV fluids, IV antibiotics empirically,
3 pain control, nausea control, admitted her to the medical
4 floor.

5 Q. Right.

6 A. Initially she coded. She had a fever and elevated
7 white blood cell count.

8 Q. And what is that indicative of?

9 A. It could be indicative of a sepsis and --
10 although --

11 Q. Do you recall -- I'm sorry. Do you recall her
12 fever, how high it was?

13 A. The highest throughout the entire three days was
14 38.1 degrees Celsius.

15 Q. What does that --

16 A. That's a low grade fever.

17 Q. Okay. All right. So did you -- what tests, if
18 any, did you do?

19 A. She had a CBC, complete blood count, she had a
20 comprehensive metabolic panel. So it's basically a
21 chemistry panel including liver enzymes and liver studies.
22 She had a urinalysis, and the CAT scan ultrasound she had
23 declined to have.

24 Q. So did you reach a conclusion as to what her
25 medical condition was?

1 A. She had post -- she was five days post C-section,
2 abdominal pain. We thought -- we admitted her for a
3 possible small bowel obstruction or ileus, and then there
4 was fluid collection in her abdomen, so I kept her on
5 antibiotics.

6 Q. Okay.

7 A. So sepsis possibly related to --

8 Q. Small bowel obstruction?

9 A. Or the fluid within her abdomen.

10 Q. Okay.

11 A. Abdominal pain, low grade fever and sepsis and
12 leukocytosis, so elevated white blood cell count was also
13 on my problem list.

14 Q. Your what list, I'm sorry?

15 A. My problem list.

16 Q. Okay. So you go through a list of what it could
17 be, you get the results of the tests. Did you reach a
18 conclusion as to what was wrong with her?

19 A. Not that night. We were -- we had just a working
20 diagnosis.

21 Q. What about later over the three days; did you ever
22 reach a conclusion?

23 A. We did. Abdominal pain was resolving, she had
24 better pain. Small bowel obstruction I thought became an
25 ileus. She was passing gas and had bowel movements, and

1 her white blood cell count stay elevated, but her fever
2 resolved. She only had one episode of elevation in her
3 temperature.

4 Q. But you thought still that she -- at the time of
5 discharge you thought she still had a small bowel
6 obstruction?

7 A. That --

8 MR. STRYKER: Object to the form. Misstates
9 the testimony. Go ahead.

10 MR. MARKS: You can answer.

11 BY MR. MARKS:

12 Q. In other words, people can object.

13 A. Okay.

14 Q. There's no judge in the room. So I know it's
15 distracting, but they're allowed to object.

16 A. Okay.

17 Q. And unless your attorney tells you, "Don't
18 answer," we would say, "Please answer."

19 A. Okay.

20 Q. And that may happen from time to time.

21 A. Okay. Sure.

22 Q. All right. So I can repeat the question.

23 A. Can you?

24 Q. At the time of discharge she still had a small
25 bowel obstruction?

1 MR. STRYKER: Same objection.

2 THE WITNESS: She -- which seemed to be
3 resolving.

4 BY MR. MARKS:

5 Q. Okay. Tell me about -- but -- so she did have it,
6 you thought it was resolving?

7 A. Yes. Sometimes an ileus type picture can -- a
8 small bowel obstruction or ileus sometimes go hand-in-
9 hand.

10 Q. What's an ileus?

11 A. Ileus, it's the intestinal wall, it's not
12 contracting. It doesn't have the normal or typical
13 peristalsis that we see for different reasons. Sometimes
14 postoperative, sometimes medication related. And so
15 sometimes what's an ileus is read or thought of as a small
16 bowel obstruction.

17 Q. Okay. Did you think there might be a perforation
18 in the bowel?

19 A. No, I had not.

20 Q. Okay. Does small bowel obstructions not resolve
21 where surgery is needed?

22 A. Yes.

23 Q. What did you base your opinion that this one was
24 resolving?

25 A. Clinically how the patient is doing, their level

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

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

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

9 BY MR. MARKS:

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

12 A. This is my discharge summary, correct.

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

15 A. Yes.

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

18 A. Yes, that's correct.

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

21 A. Yes, it was.

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

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

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

3 A. I did.

4 Q. And do you recall how many calls?

5 A. I'm sorry?

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

8 A. What I recall was three phone calls.

9 Q. Do you recall what days?

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

12 Q. Okay. And are those calls documented?

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

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

16 A. No.

17 Q. So where would they be?

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

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

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

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

1 or --

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

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

5 A. I did.

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

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

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

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

13 Q. And those are computerized?

14 A. Yes.

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

18 A. I do.

19 Q. Okay. What do you recall?

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

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

5 Q. Okay. Anything else about that call?

6 A. No.

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

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

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

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

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

23 A. I'm not aware.

24 Q. What about the third call?

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

1 Q. Was there a third call? Do you recall the
2 conversation, the second call on the 16th with Dr. DeLee?

3 A. I believe I spoke with the patient, her sister and
4 then called the patient's mother and then called Dr. DeLee
5 to give him a second update on the 16th prior to her being
6 discharged.

7 Q. And do you recall any of the substance of that
8 call?

9 A. Not -- no, it's been quite a while. I don't.

10 Q. Okay. Did you ever get an OB/G consult for
11 Ms. Green?

12 A. I'm sorry?

13 Q. Did you ever obtain an OB/G consult, an OB/GYN
14 consult?

15 A. Dr. DeLee was consulted.

16 Q. Okay. But anybody that actually in the hospital
17 came to see her?

18 A. He was her OB, so he was consulted.

19 Q. So you're saying you consulted him by phone?

20 A. Initially the emergency room physician who
21 admitted the patient to me placed a call to Dr. DeLee as
22 well.

23 Q. Right.

24 A. And then I placed a follow-up call on the 15th and
25 16th.

1 Q. Okay. But all contact with Dr. DeLee was by
2 phone?

3 A. Yes.

4 Q. Okay. So nobody -- there are no OB/Gs that saw
5 the patient in the hospital between July 14th and July
6 16th?

7 A. I'm not aware.

8 Q. Okay. What about did you request a surgical
9 consult?

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

13 Q. Okay. And who -- did a surgeon see her?

14 A. I consulted Dr. Kitae Kim who was the trauma
15 surgeon/general surgeon on for that night.

16 Q. Did that person examine Ms. Green?

17 A. I'm not aware.

18 MS. LUCERO: Objection. Calls for speculation.
19 Only answer if you know.

20 THE WITNESS: Oh, okay.

21 I'm not aware. Yeah, I don't know.

22 BY MR. MARKS:

23 Q. Did you ever get a report from Dr. Kim, a surgical
24 report?

25 A. We spoke on the -- well, there was nothing

1 surgical, but I did have surgery on the case as a
2 consultant, but she did not require surgery, so there was
3 no surgical report.

4 Q. Okay.

5 A. Or op note, is that what you're --

6 Q. Let me rephrase it or just ask another question.

7 Dr. Kim was the trauma surgeon on call in the emergency
8 room or just on call?

9 A. On call throughout the hospital.

10 Q. Okay. So on the 14th you requested a surgical
11 consult with Dr. Kim?

12 A. I did, yes.

13 Q. Do you know whether Dr. Kim ever saw the patient?

14 A. I'm not aware.

15 Q. Okay. Did you ever get any sort of report orally
16 or in writing from Dr. Kim?

17 A. Via telephone consultation.

18 Q. And what was Dr. Kim's telephone call to you?
19 What did he say?

20 A. I gave him a brief history of Ms. Green to Dr. Kim
21 stating that she came in, presented with abdominal pain
22 and we had a CT scan that showed a small bowel
23 obstruction, gave him her vitals, her history, she was
24 C-section. And typically the way we manage medically with
25 a small bowel obstruction or ileus is keep the patient NPO

1 or nothing by mouth, sometimes we place an NG tube that
2 goes in through the nose into the stomach. She did not
3 require that. IV fluid hydration, repleting her
4 electrolytes, and sometimes we give IV antibiotics.
5 Because she had a fever when she came in, we gave her IV
6 antibiotics.

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

9 A. His recommendation was to keep her NPO, so nothing
10 by mouth, no food, no liquids, and if I recall, it was
11 strict NPO, so no water, no ice chips. If she was to get
12 worse throughout the night, my instruction was to order an
13 NG tube, a nasogastric tube, which she did not require, to
14 give her IV fluids and repeat imaging. So that would have
15 been a KUB, an x-ray of her abdomen within the next 24 to
16 48 hours, which we did obtain.

17 Q. Did you ever call the surgeon back after --

18 A. I did. I spoke with Dr. Kim the following day,
19 which was on 7/15 --

20 Q. Right.

21 A. -- and gave him updates as to how she was doing.

22 Q. But you don't know if he ever saw her, saw Choloe
23 Green?

24 A. I'm not aware.

25 Q. Okay. And there are times a small bowel

1 obstruction doesn't resolve itself; correct?

2 A. Correct.

3 Q. And then you need surgery?

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

6 Q. Okay. And also if you don't get better, you can
7 become septic, right, because there's a blockage?

8 A. That's correct, that would be a complication.

9 Q. And if you become septic, often you need emergency
10 surgery; correct?

11 A. If that's the true source, then, yes, you would
12 need emergency surgery.

13 Q. All right. Returning to Exhibit 3, to follow-up
14 with Dr. DeLee by Monday, in two days. Do you know what
15 day of the week 7/16 was?

16 A. I would have to look at the calendar. I don't.

17 Q. Okay. All right. So discharge diagnosis, she
18 still had abdominal pain; correct?

19 A. She -- yes, correct.

20 Q. Everything in the discharge diagnosis is what you
21 think she has at discharge; correct?

22 A. Yes, correct.

23 Q. So she had an ileus, possible partial small bowel
24 obstruction you said resolving; correct?

25 A. So my clinical judgment was that it was more an

1 ileus rather than a small bowel obstruction.

2 Q. Post C-section five days prior to admission. So
3 we're now on seven or eight days?

4 A. That would be correct.

5 Q. Status post abscess, you're saying she came in
6 septic?

7 A. She came in with triggering sepsis parameters.

8 Q. Okay. What's the leukocytosis?

9 A. Leukocytosis is elevated white blood cell count.

10 Q. So when she was discharged she still had that?

11 A. That's correct.

12 Q. And then what's the next thing, number 6?

13 A. Number 6 is hypokalemia, so a low potassium level.

14 Q. And what is the significance of that?

15 A. Sometimes lack of fluid, dehydration, fluid
16 shifts, a number of different causes. Medications can
17 cause that.

18 Q. And then you say possible narcotic dependence.
19 What did you base that on?

20 A. When the patient came in, she was requesting IV
21 pain medication, specifically Dilaudid, and she was
22 requesting increasing IV pain medications. However, in my
23 clinical judgment I felt given her age and circumstance I
24 thought it would be safe to cap her Dilaudid at one
25 milligram IV every four hours, not scheduled PRN, meaning

1 as needed.

2 Q. But she was in pain?

3 A. She was in pain.

4 Q. Okay. So I'm going to look at the hospital
5 course. The patient was claiming she was in pain and the
6 medicine wasn't what, helping her pain?

7 A. I believe it was. She was on two different pain
8 medications. Dilaudid was the IV pain medication and then
9 the -- she was also given an oral pain medication as well.

10 Q. The white count was high; right?

11 A. Yes.

12 Q. So that was -- white count high is an indication
13 of infection; right?

14 A. It can be.

15 MR. STRYKER: Object to the form.

16 THE WITNESS: Not -- there are times where the
17 white blood cell count is high in the setting of no
18 infection.

19 BY MR. MARKS:

20 Q. Okay. But you said she does have ileus and small
21 bowel obstruction in the narrative section at the bottom
22 of the page of Exhibit 3; correct?

23 A. She did have ileus and small bowel obstruction.
24 Yes, correct, uh-huh.

25 Q. Now, what was her creatine of 0.47, what is that

1 significance?

2 A. Oh, creatinine is -- it's a number of -- a measure
3 of kidney function.

4 Q. Right.

5 A. And it's a substance that our body excretes.

6 Q. Okay.

7 A. Typically the normal creatinine would be around
8 1.0.

9 Q. So this is low?

10 A. She was in the normal range.

11 Q. Okay. And you say trace bacteria, what does that
12 mean?

13 A. She had a urinalysis on admission, only one that
14 I'm aware, and the urinalysis give us a spectrum or a
15 picture as to if a urinary tract infection could have been
16 causing abdominal pain, which that's a possibility. So
17 the urinalysis typically just looks at how much white
18 blood cell counts there are, the cell counts, the red
19 blood cells, and there's also two -- two additional
20 components that would indicate a urine infection, a
21 nitrite and leukocyte esterase, which were both negative,
22 so that would not -- it did not indicate a urinary tract
23 infection at the time.

24 Q. Okay. If you go to page 2 of the exhibit,
25 radiographic imaging, a KUB. That's a type of imaging?

1 A. Yes, it is.

2 Q. On July 16th showed multiple dilated left small
3 bowel abdominal loops related to a small bowel obstruction
4 versus ileus, gastric banding. What does that mean?

5 A. A KUB is a kidney ureter bladder. It's an x-ray
6 of the abdomen. It's a very useful short study that we
7 look at, and we typically do serial imaging. So it's a
8 good, easy, quick test to assess whether her bowel
9 obstruction was getting worse, was there more loops of
10 bowel or another thing the KUB picks up is if there's any
11 free air, that would indicate a perforation of bowel.

12 Q. Okay. This is saying multiple dilated left small
13 bowel abdominal loops related to small bowel obstruction?

14 A. Which are typically seen with an ileus and/or a
15 small bowel obstruction.

16 Q. Okay. Then you say later on in that narrative, CT
17 abdomen and pelvis showed a gas and fluid filled
18 distention of the stomach and proximal small bowel
19 compatible to a small bowel obstruction. Do you see that?

20 A. I do.

21 Q. Then you say, moderate amount of free fluid in the
22 abdomen and pelvis with several small gas bubbles anterior
23 to the uterus. What does that signify?

24 A. The CT scan, it -- this was the CT scan on
25 admission, so the small bowel loops are typically seen

1 with an ileus or a small bowel obstruction. And then the
2 second component, bubbles anterior to the uterus, would be
3 typical of post C-section.

4 Q. What is intraperitoneal abscess suspected, what
5 does that mean?

6 A. I believe that was referring to fluid collection
7 within the abdomen.

8 Q. Okay. Which is a sign of what?

9 A. Typically postoperative after a C-section or any
10 type of abdominal surgery.

11 Q. For how long would there be fluid in the abdomen?

12 A. It varies per patient.

13 Q. But would it be -- would you have fluid in the
14 abdomen eight days after C-section?

15 A. I can't --

16 MR. STRYKER: Incomplete hypothetical. Go
17 ahead.

18 THE WITNESS: I can't comment from an OB
19 standpoint, but from an internal medicine standpoint I've
20 seen fluid collection one to two weeks after surgical
21 intervention, yes.

22 BY MR. MARKS:

23 Q. So after she was discharged, your idea was she'd
24 go back to Dr. DeLee two days later?

25 A. That's correct.

1 Q. In terms of the treatment, you did all these
2 tests, your conclusion was was a small bowel obstruction
3 was there but would resolve itself?

4 A. Yes, correct.

5 Q. Is that it?

6 And you thought she wasn't -- even though she had
7 an elevated white count, you thought she was no longer
8 septic?

9 A. No, she did not meet criteria for sepsis on
10 discharge.

11 Q. Okay. Let me show you -- is this the -- okay.

12 MR. MARKS: Let's mark this next in order.

13 (Plaintiff's Exhibit 4 was marked for
14 identification.)

15 THE REPORTER: Exhibit 4.

16 BY MR. MARKS:

17 Q. Doctor, I found some records from Sunrise that I
18 think referenced one of your comments. Do you recognize
19 these as computer-generated notes or chart notes?

20 A. I do.

21 Q. For this patient, Ms. Green?

22 A. I do.

23 Q. Okay. There's a Bates stamp at the bottom on the
24 right-hand side, but if you go to 782, in the middle of
25 the page under Re-Evaluation & MDM, is this you or was

1 this the emergency room or someone else? It says general
2 surgeon called, stated to consult OB and then will be
3 reconsulted if needed. Dr. Frank DeLee will see patient,
4 requested admission to OB?

5 A. I believe this was emergency department.

6 Q. Okay.

7 MR. MARKS: Could you mark this next in order?
8 (Plaintiff's Exhibit 5 was marked for
9 identification.)

10 THE REPORTER: Exhibit 5.

11 BY MR. MARKS:

12 Q. I'm showing you Exhibit 5. Are those additional
13 chart notes for Choloe Green?

14 Is that correct? I didn't hear an answer.

15 A. Yes, this is -- this is my -- this would be my
16 note.

17 Q. And are these the chart notes for 7/15 of 2016?

18 A. Yes, that's correct.

19 Q. Okay. So on page 1 of the exhibit under patient
20 reports, she was not passing gas and no bowel movement;
21 correct?

22 A. That's correct.

23 Q. And then if you go to the last page, 7/15 where it
24 says Plan, what does CPM mean?

25 A. Continue present management.

1 Q. So hold discharge, meaning she wasn't going to be
2 released on the 15th; correct?

3 A. I'm sorry?

4 Q. Hold discharge, meaning she wasn't going to be
5 released on the 15th?

6 A. That's correct, yes.

7 Q. Then it says, patient not passing gas, no bowel
8 movement; correct?

9 A. That's correct.

10 Q. Optimize symptom control. What does SUPP care
11 mean?

12 A. Supportive care. So with the IV fluids, pain
13 management and keeping her on a medical floor and
14 continuing ongoing nursing care that she required.

15 Q. Then it says, trial of clears tonight to tomorrow.
16 What does it mean, trial of clears tonight to tomorrow?

17 A. We were going to see how she would tolerate a
18 clear liquid diet. Typically we denote it as "clears".

19 Q. Then it says DC home tomorrow. What does DC mean?

20 A. Discharge.

21 Q. Well, so you were planning on the 15th to
22 discharge her on the 16th even though she still wasn't
23 passing gas?

24 A. We were anticipating a discharge within 24 hours.

25 Q. I had lengthy -- what is DW?

1 A. Discussion with.

2 Q. Patient, patient sister at bedside. I also
3 discussed with patient's OB, Dr. DeLee, recommends
4 discharge when patient stable and to follow up in
5 outpatient in Dr. DeLee's office. I explained this to
6 patient. She is agreeable to trial clears, requesting
7 Dilaudid for pain. So you're saying in this note she's
8 going to be treated by Dr. DeLee in his office for this?

9 A. Yes, we were anticipating that.

10 Q. And what were you waiting for, just to see if she
11 passed gas?

12 A. I wanted to make sure she was stable as far as not
13 requiring inpatient hospitalization any longer. So that
14 would be waiting to pass gas, have a bowel movement, have
15 better pain control and continue to have normal vital
16 signs, which she did on 7/15.

17 MR. MARKS: Can you mark this next in order?

18 (Patient's Exhibit 6 was marked for
19 identification.)

20 THE REPORTER: Exhibit 6.

21 BY MR. MARKS:

22 Q. So this is your history and physical?

23 A. Yes, it is.

24 Q. And do you know when you would have done this?

25 A. On 7/14/2016.

1 Q. Well, look at a page 2. It looks like it was
2 electronically signed by you on 7/17?

3 A. That's correct.

4 Q. So this is something you did after she was
5 discharged?

6 A. No.

7 MR. PRANGLE: Just object.

8 THE WITNESS: Yeah.

9 MR. PRANGLE: It has a different date for the
10 dictation.

11 MS. LUCERO: Join.

12 MR. MARKS: You can answer.

13 THE WITNESS: Oh, yeah.

14 My dictation was on 7/14/2016, and typically
15 within 48 hours of discharge we have our patient's chart
16 review for our history and physical, discharge summary
17 that we do sign electronically.

18 BY MR. MARKS;

19 Q. Okay. But -- so the top part showing discharge
20 date, that -- is that on a form that's automatically
21 printed? In other words, you're saying you dictated this
22 on the 14th, but it's showing the discharge date of the
23 16th?

24 MR. PRANGLE: Just object to foundation.

25 MS. LUCERO: Objection. Join. Calls for

1 speculation.

2 MR. MARKS: Okay. I'm just asking him. He
3 signed the document.

4 BY MR. MARKS:

5 Q. So can you explain it to me?

6 A. Was there --

7 Q. Is this a document --

8 A. -- a question?

9 Q. All right. Let me rephrase it. Did you draft
10 this document on the 14th?

11 A. On July 14th I did, yes, electronically.

12 Q. And then it wasn't transcribed till the 17th?

13 A. I'm not aware of when it was actually transcribed.
14 However, typically they're transcribed much sooner than
15 that.

16 Q. Okay. So when you say review of symptoms under --
17 towards the bottom of page 1 where it says review of
18 systems --

19 A. Correct.

20 Q. -- it says she has severe abdominal pain. Is that
21 as of the 14th?

22 A. Yes, on admission. So my history, physical exam,
23 one component would be the review of systems, and that was
24 on the date of admission, which, yes, would have been July
25 14th of 2016.

1 Q. Okay. And under history, which is towards the
2 top, you say she was found to have a partial small bowel
3 obstruction?

4 A. Yes, correct.

5 MR. MARKS: Would you mark that, please?
6 (Plaintiff's Exhibit 7 was marked for
7 identification.)

8 THE REPORTER: Exhibit 7.

9 BY MR. MARKS:

10 Q. This is another document. I think it was produced
11 by Sunrise, SH638 Bates stamped at the bottom. Towards
12 the top it says, Comment: Per Dr. Kia, do not call for KUB
13 result. M.D. will follow up in a.m., 7/16/16. Can you
14 explain that?

15 A. I couldn't recall. I'm sorry.

16 Q. Do you know what M.D. will follow up in a.m.?

17 A. I'm not --

18 Q. Okay. Did you see -- as the hospitalist you saw
19 Choloe Green on the 14th, 15th and 16th?

20 A. I did, yes.

21 Q. And you agreed that she should be discharged?

22 A. On the 16th of July, yes.

23 Q. And she was discharged on the 16th; correct?

24 A. I believe she was, yes.

25 Q. All right.

1 A. Uh-huh.

2 Q. Did you -- just so I'm clear, so she came in with
3 a small bowel obstruction, she left with a small bowel
4 obstruction; is that right?

5 MS. LUCERO: Objection. Mischaracterizes the
6 testimony.

7 MR. STRYKER: Join.

8 BY MR. MARKS:

9 Q. Didn't she leave with a small bowel obstruction?
10 Isn't that in your discharge diagnosis?

11 A. I stated that it had resolved.

12 Q. Didn't it say resolving?

13 A. Yes.

14 Q. But she still had a small bowel obstruction;
15 correct?

16 If you go to Exhibit 3, she still had abdominal
17 pain, she still had ileus, possible partial small bowel
18 obstruction resolving; correct?

19 A. Discharge summary. Yes, correct.

20 Q. And she had a high white count?

21 A. Yes, correct.

22 Q. All right. Do you know what happened to her
23 shortly thereafter she was released from Sunrise,
24 discharged from Sunrise Hospital?

25 A. I do not.

1 Q. Did you ever review the records from Centennial
2 Hospital?

3 A. I was not aware she was at another hospital.

4 Q. You know nothing about that?

5 A. I had not followed up after this.

6 Q. And you never saw her or saw any records of her?

7 A. I'm sorry?

8 Q. You never saw her or saw any records regarding
9 what happened after?

10 A. I don't understand.

11 Q. After Sunrise, after she was discharged?

12 A. After Sunrise I'm not aware of what transpired.

13 MR. MARKS: Okay. I'll pass the witness.

14 MR. STRYKER: Go ahead.

15 EXAMINATION

16 BY MR. PRANGLE:

17 Q. Doctor, my name is Mike Prangle. I represent
18 Sunrise. And I think you told us this earlier, but is it
19 correct to say that you were not an employee of Sunrise
20 Hospital while you cared for this patient?

21 A. That's correct.

22 Q. You were an independent contractor?

23 A. Yes, correct.

24 Q. The group that you were affiliated with was Nevada
25 Hospitalist Group?

1 A. That's correct.

2 Q. When did you begin your affiliation with that
3 group?

4 A. Nevada Hospitalist Group?

5 Q. Yes.

6 A. That would have been January of 2016.

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

11 A. Yes, correct.

12 Q. And who prepared that call schedule?

13 A. It would have been Nevada Hospitalist Group.

14 Q. And so --

15 A. They have a team that they set up the call
16 schedule for the HPN or --

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

19 A. Yes.

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

23 A. I wasn't aware, no.

24 Q. Okay. Because that scheduling -- that
25 decision-making process was done by Nevada Hospitalist

1 Group; true?

2 A. Yes, correct.

3 Q. And then just lastly, with regard to -- it was
4 your decision to discharge this patient?

5 A. It was.

6 Q. In your opinion was it reasonable within the
7 standard of care to discharge this patient notwithstanding
8 the fact that she still had symptoms consistent with
9 either an ileus or a resolving small bowel obstruction?

10 A. I felt at that point that she would -- was
11 reasonably safe for discharge.

12 Q. And, Doctor, considering all of your care over
13 those three days, would you agree with me that all of your
14 care fully complied with the standard of care?

15 A. I do.

16 MR. PRANGLE: Thank you, Doctor.

17 I'm done.

18 EXAMINATION

19 BY MR. STRYKER:

20 Q. Doctor, my name is Eric Stryker.

21 A. Sure.

22 Q. I represent defendant, Dr. DeLee. He's an
23 obstetrician who I think you discussed some telephonic
24 discussions with earlier in the course of your deposition.
25 I'm going to have you, please, fish out of the stack of

1 exhibits in front of you what I believe has been marked
2 for identification as Exhibit 5. And if I numbered it
3 correctly, it would be the progress note from July 14th.
4 It looks a little like this. I'll show you page 1 of my
5 document, and you tell me if it matches page 1 of your
6 document.

7 A. It looks different.

8 Q. I may have mismarked it. I apologize.

9 MR. PRANGLE: This is our 5.

10 MR. STRYKER: It's SH000775 is the Bates number
11 on the bottom.

12 MR. MARKS: That's 4, Counsel.

13 MR. STRYKER: Oh, my apologies.

14 MR. MARKS: It's our Exhibit 4.

15 MR. STRYKER: Okay. If I can have you turn to
16 Plaintiff's Exhibit 4, please.

17 MS. LUCERO: This one.

18 THE WITNESS: Oh, okay.

19 BY MR. STRYKER:

20 Q. And before I get too far into the document, during
21 your discussion with Dr. DeLee, do you recall anything
22 else that you told him that you haven't already described
23 for us today?

24 A. Not that I recall.

25 Q. Were you calling him to keep him updated on his

1 patient?

2 A. I was.

3 Q. Because his patient had presented to Sunrise
4 Hospital?

5 A. Yes, correct.

6 Q. Okay. Were you calling him formally to have him
7 come to the hospital and walk into the room and treat the
8 patient at the bedside?

9 A. Not necessarily.

10 Q. Okay.

11 A. Just a consult.

12 Q. And just a telephonic informal consult?

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

15 Q. And you do that as a courtesy?

16 A. I typically do.

17 Q. Okay. Could I have you direct your attention to
18 Exhibit 4 again?

19 A. Sure.

20 Q. I apologize. I'm going to have you turn to page 9
21 of 11. It's two pages from the end.

22 A. Uh-huh. I got it.

23 Q. I apologize, three pages from the end.

24 A. Uh-huh.

25 Q. But it's Bates stamped SH000783. Is it common

1 practice for practitioners at Sunrise Hospital to make a
2 note of consultants that they call on a patient?

3 A. I'm sorry. I didn't hear you. I apologize.

4 Q. I apologize. Let me rephrase the question.

5 A. Uh-huh.

6 Q. Is it common for physicians at Sunrise Hospital to
7 make a notation of consultants that they call on a
8 patient?

9 A. It varies based on the practitioner.

10 Q. Okay. Looking at what we see under consultant at
11 the bottom of the page, Consultation 1, it says
12 Referral/Consultant Name, Frank -- DeLee, Frank J M.D.?

13 A. Yes, correct.

14 Q. And it looks like a requested call time was at
15 1920 hours or 7:20 p.m. That would be prior to your
16 involvement with the patient care?

17 A. Yes.

18 Q. Because I think you testified earlier you came on
19 board at approximately 2000 hours?

20 A. Correct.

21 Q. Okay. And it indicates at the bottom of the page,
22 Call returned?

23 A. Yes.

24 Q. Would that indicate to you that Dr. DeLee returned
25 the call?

1 A. Not to me. These are not --

2 Q. But to whoever called him?

3 A. Yes.

4 Q. Okay. Next page. Top line of Bates SH000784

5 would seem to indicate to me that the call was returned at

6 1933 hours. Would that be in layperson's terms 7:33 p.m.?

7 A. Yes.

8 Q. So that's 13 minutes after he got the call?

9 A. My math. Yes, it would.

10 Q. Would you consider that to be a timely response if

11 you had called an obstetrician?

12 A. A reasonable response.

13 Q. Okay. And then under Call Returned Date, it was

14 returned the same date, July 14, 2016?

15 A. I'm sorry?

16 Q. I apologize. Right under the 1933, the Call

17 Returned Date was July 14, 2016?

18 A. Oh, okay. Correct.

19 Q. Okay. And under Consultant it reads, and I'll

20 read slowly, quote, Will see patient, agrees with eval,

21 agrees with plan, says to admit to medicine, for he will

22 be out of town, close quote.

23 Did I read that correctly?

24 A. You did, yes.

25 Q. Would that indicate to you based on your

1 understanding of the Sunrise Hospital medical
2 recordkeeping system that Dr. DeLee communicated to
3 whoever it was that called him that the patient should be
4 admitted to the medicine floor because he would be out of
5 town?

6 A. I don't understand the question.

7 Q. Sure. Based on your review of that document,
8 would that indicate to you that my client, Dr. DeLee, told
9 whoever it was that called him that the patient should be
10 admitted to the medicine floor because Dr. DeLee would be
11 out of town?

12 MR. MARKS: Calls for speculation.

13 THE WITNESS: His -- that would tell me the
14 instruction was to admit the patient to medicine, and I
15 happened to be on call for this patient's insurance during
16 that time, which she was admitted under my service,
17 correct.

18 BY MR. STRYKER:

19 Q. And what is the medical floor?

20 A. A non-ICU, a non-PACU or postanesthesia recovery
21 floor. So typically if there's two tiers, there's a
22 medical-surgical floor and a medical-telemetry floor.
23 Telemetry we just monitor heart rate.

24 Q. Is there an obstetrics unit?

25 A. There is, yes.

1 Q. And the patient was not administered -- the
2 patient was not admitted to the obstetrics unit?

3 A. She would not require -- typically it's a labor
4 and delivery. So she would not be -- they -- we typically
5 don't admit patients to labor and delivery.

6 Q. And based on this chart entry, it would indicate
7 that Dr. DeLee informed the treatment team that he was out
8 of town; correct?

9 MR. MARKS: Calls for speculation.

10 BY MR. STRYKER:

11 Q. Is that your interpretation of that note?

12 A. Yes.

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

16 A. Yes, correct.

17 Q. Okay. Thank you very much. Do you recall Dr.
18 DeLee ever telling you that he would come in and see the
19 patient at Sunrise Hospital?

20 A. I don't recall.

21 Q. Okay. If a small bowel obstruction does not --
22 strike that.

23 Sitting here today do you know for a fact whether
24 or not this patient actually had a small bowel
25 obstruction?

1 A. I don't.

2 Q. For example, findings can appear on medical
3 imaging that might be consistent with an ileus or a small
4 bowel obstruction, but does that mean a hundred percent of
5 the time that the patient always has a small bowel
6 obstruction or an ileus?

7 A. Medically in my expertise, no, not one hundred
8 percent of the time.

9 Q. Okay. Dr. DeLee never saw any medical records for
10 this patient, did he, to your knowledge?

11 A. I'm not aware.

12 Q. Okay. You've never given him any?

13 A. I have not provided Dr. DeLee any medical records.

14 Q. And to clarify, you never gave him any of this
15 patient's medical records during her July 14, 2016
16 admission to Sunrise Hospital?

17 A. I don't understand the question. I apologize.

18 Q. You never provided Dr. DeLee with copies of any
19 medical records or copies of any medical imaging for this
20 patient's admission to Sunrise Hospital during her July
21 14, 2016 admission?

22 A. No, I did not.

23 Q. Okay. He never issued any orders for this patient
24 during her admission at Sunrise Hospital July 14th, 2016,
25 did he?

1 A. Telephonically?

2 Q. In any way?

3 A. I don't understand the question.

4 Q. Did he write any orders or issue any orders for
5 this patient's treatment?

6 MS. LUCERO: I'm just going to object, because
7 it may call for speculation, that he hasn't seen all of
8 the records.

9 MR. STRYKER: Fair enough.

10 BY MR. STRYKER:

11 Q. And that's a fair point. You have not seen all of
12 the medical records from this patient's admission at
13 Sunrise Hospital on July 14th, 2016, have you?

14 A. I have not.

15 Q. Okay. And you would reserve your right to offer
16 additional testimony or opinions at trial if you were
17 shown additional pages of the medical records you have not
18 seen today, wouldn't you?

19 A. Yes.

20 MS. LUCERO: Yes.

21 BY MR. STRYKER:

22 Q. Okay. Given the documents that you have been
23 shown regarding this patient's presentation at Sunrise
24 Hospital on July 14 through her discharge in 2016, have
25 you seen any orders that were issued by Dr. DeLee for

1 patient treatment?

2 A. I'm not aware. I -- the records I was provided, I
3 did not have access to knowing that.

4 Q. To your knowledge did Dr. DeLee have any direct
5 communication with this patient during her admission at
6 Sunrise Hospital from July 14, 2016 until her discharge?

7 A. Uhm --

8 Q. To your knowledge?

9 A. Can you clarify that question?

10 Q. Sure. Are you aware of any direct communications
11 by telephone or e-mail or text message between this
12 patient and my client, Dr. DeLee, during the time she was
13 at Sunrise Hospital from July 14, 2016 until she was
14 discharged?

15 A. I'm not certain. I believe the patient did
16 mention that she did speak with Dr. DeLee at some time
17 during her hospital stay between July 14 to July 16.

18 Q. And what did she tell you about that?

19 A. She said she spoke with Dr. DeLee and gave him
20 updates and that he was aware that she was in the
21 hospital.

22 Q. Did she say specifically what updates she gave
23 him?

24 A. No.

25 Q. Did she say what day that phone call was made?

1 A. No.

2 Q. Did she say who called who, whether she called Dr.
3 DeLee or whether Dr. DeLee called her?

4 A. She did not specify, no.

5 Q. Do you have any other information regarding any of
6 those conversations that the patient may have had with my
7 client?

8 A. I don't.

9 Q. Okay. Are you aware of any instance in which Dr.
10 DeLee came to Sunrise Hospital during that admission of
11 July 14, 2016 to discharge to physically examine this
12 patient?

13 A. I'm not aware.

14 Q. Are you aware of any compensation or payment Dr.
15 DeLee received to provide care and treatment to this
16 patient during her admission at Sunrise Hospital from July
17 14, 2016 to the date of her discharge?

18 A. I'm not aware.

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

23 A. Control? I'm not quite understanding.

24 Q. For example, if you wanted her to see a consultant
25 of any particular medical specialty, that's something that

1 you could have made happen if you considered it to be
2 necessary?

3 A. I felt I was, yes.

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

6 A. I did, yes.

7 Q. Okay. Do you recall any other conversations with
8 my client, Dr. DeLee, that we have not already covered
9 during the course of this deposition?

10 A. No.

11 Q. How many patients have you treated with a small
12 bowel -- strike that.

13 How many patients have you treated with a suspected
14 small bowel obstruction or ileus prior to July 14, 2016?

15 Hundreds?

16 A. I don't know the number, but there's -- I've seen
17 it quite a lot. I've been in practice since 2006, so...

18 Q. Would it be over a hundred patients?

19 A. Yes.

20 Q. With that type of condition?

21 A. Yes.

22 Q. Have some of them done well after discharge when
23 they've had a resolving small bowel -- suspected small
24 bowel obstruction or ileus?

25 A. Yes.

1 MR. STRYKER: No further questions. I thank
2 you for your time.

3 FURTHER EXAMINATION

4 BY MR. MARKS:

5 Q. I have a couple of follow-up.

6 Doctor, did you ever tell Dr. DeLee not to show up?

7 A. I'm sorry?

8 Q. Did you ever tell Dr. DeLee not to show up --

9 A. Not to show up?

10 Q. -- at Sunrise Hospital from July 14th to July
11 16th?

12 A. No.

13 Q. In fact, do you recall Dr. DeLee ever telling you
14 he was going out of town --

15 A. No.

16 Q. -- personally?

17 If Dr. DeLee was going out of town, wouldn't the
18 normal practice be he would have coverage with another
19 OB/G?

20 MR. STRYKER: Foundation. Speculation.

21 MR. MARKS: You can answer.

22 BY MR. MARKS:

23 Q. If he's a one-man OB/G and was going out of town,
24 wouldn't he have coverage?

25 MR. STRYKER: Same objection.

1 THE WITNESS: I'm not aware.

2 BY MR. MARKS:

3 Q. Okay. Regarding the medical records, you keep
4 saying about you haven't seen all the records. The
5 records that you were prevented from seeing, you were
6 prevented from seeing by Sunrise Hospital; correct?

7 A. No, that's not correct.

8 Q. Who prevented you from seeing the records?

9 MS. LUCERO: For the record, I requested them
10 of plaintiff's counsel, of you, and I was provided a
11 discharge summary was the only thing I was provided. And
12 in light of that, Sunrise Hospital was kind enough to
13 provide at least the medical records that he authored.
14 But in light of the fact that you were unwilling to
15 provide my office with medical records, Sunrise counsel
16 was unwilling to provide the complete set of medical
17 record.

18 MR. MARKS: All right. I don't think that
19 we're not willing to provide.

20 MS. LUCERO: I spoke with Ms. Young.

21 MR. MARKS: This is kind of an unfortunate
22 process.

23 MS. LUCERO: She refused to give them to me.

24 MR. MARKS: All right.

25 MS. YOUNG: No, incorrect statement, but that's

1 fine.

2 BY MR. MARKS:

3 Q. I mean, I think we -- I thought we got you
4 everything that we were going to show you for the depo,
5 but I think you got it from Sunrise or from someone
6 anyway. This stuff that we gave that you had your name on
7 it, you either authored or dealt with; correct?

8 A. Just what I was provided.

9 Q. Right. And I didn't ask you anything that you
10 didn't author or sign or provide; correct?

11 A. I don't --

12 Q. We never asked you questions about anything that
13 you didn't author or see, it all had your name on it?

14 A. That's not correct.

15 Q. We showed you things that you didn't -- that were
16 not signed by you?

17 A. Yes.

18 Q. What did we show you that was not signed by you?

19 A. Namely Exhibit --

20 MS. LUCERO: This one.

21 THE WITNESS: Oh, Exhibit 4, Exhibit 2.

22 BY MR. MARKS:

23 Q. Well, let's take Exhibit 4. Isn't Exhibit 4 we
24 showed you because it related to a note of a conversation
25 with Dr. DeLee that you referenced?

1 A. Is this a question?

2 Q. Yeah. Exhibit 4 references a note of a phone call
3 with Dr. DeLee.

4 A. Where in my --

5 MS. LUCERO: Objection. Mischaracterizes his
6 testimony.

7 BY MR. MARKS:

8 Q. Exhibit 2 is something you would have had access
9 to at the time you received the patient from the emergency
10 room; correct?

11 A. That's correct.

12 Q. Okay. And I thought Exhibit 4 was your chart
13 notes?

14 A. No, not Exhibit 4.

15 Q. Okay. It's the emergency room record that you
16 would have seen on or about the 14th of July?

17 A. I believe so.

18 Q. Okay. Regarding how you got involved in the care
19 of Ms. Green, I think you said you worked for Nevada
20 Hospitalist?

21 A. Yes.

22 Q. Okay. They have a regular contract with Sunrise
23 to provide hospitalist care in July of 2016; correct?

24 A. For a particular insurance.

25 MS. LUCERO: Objection. Calls for speculation.

1 BY MR. MARKS:

2 Q. For particular insurance. And you regularly go to
3 Sunrise and provide that care; correct?

4 A. Can you rephrase?

5 Q. In other words, I think you said earlier in the
6 deposition you regularly go to Sunrise, provide
7 hospitalist care pursuant to arrangements between Nevada
8 Hospitalist and Sunrise?

9 A. Correct.

10 Q. And you're the attending for a certain amount of
11 patients including Ms. Green in July of 2016?

12 A. For some of the patients, correct.

13 Q. But including Ms. Green, you were the attending
14 physician for Ms. Green --

15 A. That is correct.

16 Q. -- in July of 2016?

17 A. Yes.

18 Q. Okay. And you're saying -- counsel asked you, do
19 some people that have a small bowel obstruction, it
20 resolves without surgery; correct?

21 A. They're -- that can be an outcome of small bowel
22 obstruction.

23 Q. Others don't resolve without surgery and need
24 surgery, can become septic and don't have a great recovery
25 or a great outcome; correct?

1 A. Correct.

2 MR. STRYKER: Incomplete hypothetical.

3 BY MR. MARKS:

4 Q. And you don't know what the outcome was for Ms.
5 Green?

6 MR. STRYKER: Compound.

7 BY MR. MARKS:

8 Q. You don't know what the outcome was because you
9 didn't -- no one told you what happened?

10 A. Not after July -- not after the patient was
11 discharged.

12 Q. And you never talked to Dr. DeLee about what
13 happened?

14 A. No, I have not.

15 Q. Had you ever worked with Dr. DeLee before this
16 patient?

17 A. I believe so, yes.

18 Q. Okay. And as far as you know, there was no OB/G,
19 OB/GYN doctor who saw Ms. Green at Sunrise Hospital
20 between the 14th and the 16th?

21 A. I'm not aware.

22 Q. Okay. And you're not aware of whether the surgeon
23 actually examined Ms. Green between the 14th and the 16th;
24 correct?

25 A. I'm not aware. I was limited the medical records

1 I was provided.

2 Q. I'm just saying, you're not aware sitting here
3 today --

4 A. I'm not aware.

5 Q. -- whether the surgeon actually examined
6 Ms. Green?

7 A. I'm not aware.

8 MR. MARKS: Okay. That's all I have.

9 FURTHER EXAMINATION

10 BY MR. PRANGLE:

11 Q. Doctor, I have two quick things.

12 A. Sure.

13 Q. And I apologize. On this issue of why it was that
14 you were called to care for this patient, earlier I asked
15 you about the scheduling for call. Counsel raised an
16 interesting point, and I think you did allude to this
17 earlier, but that there were something to do with
18 Ms. Green's insurance that dictated that you would become
19 her attending physician; is that correct?

20 A. Yes, correct.

21 Q. And do you know what insurance she had?

22 A. It's been a while. I believe it was Health Plan
23 of Nevada, and it would have been a Medicaid product under
24 Smart Choice.

25 Q. Gotcha. So let's assume that you're correct, that

1 it was Health Plan of Nevada. There was some, and I'll
2 call it requirement that because this patient had Health
3 Plan of Nevada as insurance they had to pick you as the
4 physician who would be her attending?

5 A. Yes.

6 Q. Lastly, you alluded earlier to a consultation you
7 made with a surgeon, and I believe you told us it was Dr.
8 Kim?

9 A. Dr. Kitae Kim, yes.

10 Q. And what prompted me to this is -- you still have
11 Exhibit 4 in front of you?

12 A. I do.

13 Q. If you can turn to page 784, which is the third to
14 last page or second to last page.

15 A. Sure.

16 Q. Do you see the reference to Dr. Kim on this?

17 MS. LUCERO: (Indicating.)

18 THE WITNESS: Yes, I do.

19 BY MR. PRANGLE:

20 Q. Okay. So -- and it's Kitae Kim?

21 A. Yes.

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

23 A. Yes, a general and trauma surgeon.

24 Q. Okay. And so in leaving this aside, I believe you
25 told us that on at least two occasions during the

1 admission you had conversations with Dr. Kim, the surgeon,
2 as to how to manage this patient; true?

3 A. I consulted him for the patient, not -- and I was
4 looking for feedback from his --

5 Q. Sure.

6 A. -- point of view.

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

9 A. Correct.

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

13 A. I believe so, yes.

14 MR. PRANGLE: All right. Thank you, Doctor.

15 FURTHER EXAMINATION

16 BY MR. MARKS:

17 Q. Let me just follow up. You don't recall Dr. Kim
18 ever examining the patient?

19 A. I'm not aware.

20 Q. Regarding the whole issue of how you were
21 assigned, I think counsel said she or they chose you. You
22 were assigned through arrangements between the company,
23 Nevada Hospitalist, and Sunrise to be assigned to
24 Ms. Green; correct?

25 MR. PRANGLE: Objection. Misstates the

1 testimony.

2 MR. MARKS: Isn't that correct, sir?

3 THE WITNESS: Can I answer that?

4 MS. LUCERO: You can answer.

5 THE WITNESS: Oh, okay.

6 Yes, I was. I was actually on call.

7 BY MR. MARKS:

8 Q. Right. Ms. Green never called you, you were
9 assigned?

10 A. That's correct.

11 Q. Okay. Regarding her insurance, HPN, did that
12 affect the amount of days she was allowed to be in the
13 hospital for something like a small bowel obstruction?

14 A. No.

15 Q. Okay. So you felt she was ready to be discharged
16 based on your medical judgment?

17 A. I did.

18 Q. Okay. And you don't know what happened the next
19 day?

20 A. No.

21 MR. MARKS: All right. That's all I have.
22 Thank you for coming.

23 MR. STRYKER: I have more. I apologize.

24 MR. MARKS: You do? Oh, sorry. Okay.

25 That's fine. Just jump right in. That's fine.

1 Do you want us to make copies, Counsel? So while we're
2 waiting should we -- do you want copies of what's Exhibit
3 1 or you just want it attached?

4 MR. PRANGLE: Attached is fine for me.

5 MR. STRYKER: Attached is fine for me.

6 MR. MARKS: Okay.

7 FURTHER EXAMINATION

8 BY MR. STRYKER:

9 Q. Doctor, you were taught in medical school how to
10 treat a suspected small bowel obstruction or ileus; true?

11 A. I was.

12 Q. Okay. And at the same time you reached out to a
13 general surgeon because if the suspected small bowel
14 obstruction or ileus were to get worse, you would want to
15 have someone available to perform surgery to surgically
16 address that condition?

17 A. Yes, correct.

18 Q. Okay. Did you ever tell my client, Dr. DeLee,
19 that an obstetric examination was essential prior to this
20 patient's discharge?

21 A. I'm not aware. I could not recall.

22 Q. Is that something that you would tell an
23 obstetrician in this type of patient's presentation, that
24 she needs to have an obstetrical examination before
25 discharge?

1 A. That would be their judgment, an obstetrician's
2 judgment.

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

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

10 Q. Okay.

11 A. And so the general surgeon.

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

14 A. Yes.

15 MR. STRYKER: Okay. Thank you very much.

16 MR. PRANGLE: Nothing further from me.

17 MR. MARKS: I just have one clarification.

18 FURTHER EXAMINATION

19 BY MR. MARKS:

20 Q. Dr. Kim -- you would be calling whoever's on call
21 that day, right, Dr. Kim who was on call just different
22 days?

23 A. On call for that shift, yes, correct.

24 Q. Okay.

25 A. For that day.

1 Q. And, again, you talked to Dr. Kim by phone, but
2 you don't know whether Dr. Kim ever examined the patient?

3 A. I spoke with Dr. Kim.

4 Q. But you don't know whether he ever examined the
5 patient?

6 A. I'm not aware.

7 MR. MARKS: Okay. That's all I have.

8 MR. PRANGLE: Nothing.

9 MR. MARKS: Okay. You'll take care of the
10 reading and signing, Counsel?

11 MS. LUCERO: Yes, we'll read and sign.

12 MR. STRYKER: E-Tran.

13 THE REPORTER: Mr. Prangle, E-Tran; right?

14 MR. PRANGLE: E-Tran only for me.

15 (Plaintiff's Exhibit 1 was marked for
16 identification.)

17 (Thereupon, the taking of the deposition was
18 concluded at 3:03 p.m.)

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1 CERTIFICATE OF DEPONENT

2

3 PAGE LINE CHANGE REASON

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16 I, ALI KIA, M.D., deponent herein, do hereby
 17 certify and declare the within and foregoing transcription
 18 to be my deposition in said action; that I have read,
 19 corrected and do hereby affix my signature to said
 20 deposition.

21

22 _____
 23 Ali Kia, M.D., Deponent

24

25

1 CERTIFICATE OF REPORTER

2

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

6

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

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

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

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

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25

Terri M. Hughes

Terri M. Hughes, CCR No. 619

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EXHIBIT 8

From: Jordan, Erin <Erin.Jordan@lewisbrisbois.com>
Sent: Monday, December 16, 2019 12:05 PM
To: 'Kelli N. Wightman'; Stryker, Eric K.; Office; Laura Lucero; Nicole Young; Patricia Daehnke
Cc: Adrina.Harris@wilsonelser.com; Linda K. Rurangirwa; Vogel, Brent; Whitbeck, Johana; Sherman Mayor; Tyson Dobbs; Brittany A. Lewis; Diana J. Samora; Camie DeVoge; Nicole M. Etienne
Subject: RE: Choloe Green v. Frank J.Delee, M.D., et al., Case No. A-17-757722-C
Importance: High

All,
Sunrise Hospital informed us on Thursday that they would not be dismissing NHG from their Third Party Complaint. As we have not appeared and we do not have a single medical record, we request that the Plaintiff's deposition set for tomorrow be postponed.

In the event that it is not postponed, we will possibly need to set the Plaintiff for a second deposition after we have received medical records.

Please advise.

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

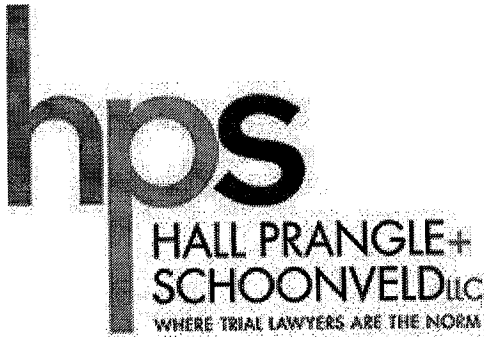
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From: Kelli N. Wightman [mailto:kwightman@HPSLAW.COM]
Sent: Wednesday, December 11, 2019 2:41 PM
To: Stryker, Eric K.; Office; Laura Lucero; Nicole Young; Patricia Daehnke; Jordan, Erin
Cc: Adrina.Harris@wilsonelser.com; Linda K. Rurangirwa; Vogel, Brent; Whitbeck, Johana; Sherman Mayor; Tyson Dobbs; Brittany A. Lewis; Diana J. Samora; Camie DeVoge; Nicole M. Etienne
Subject: [EXT] RE: Choloe Green v. Frank J.Delee, M.D., et al., Case No. A-17-757722-C

Hi Mr. Stryker:

We'll go ahead and notice it for 1:00 p.m. start time. Mr. Mayor indicated that, should the Plaintiff answer questions in a regular/timely manner, he doesn't think his questioning should take more than 2 hours.



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Mari Schaan
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Kevin Peterson

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

Sent: Wednesday, December 11, 2019 1:16 PM

To: Office <office@danielmarks.net>; Kelli N. Wightman <kwightman@HPSLAW.COM>; Laura Lucero <Laura.Lucero@cdiglaw.com>; Nicole Young <NYoung@danielmarks.net>; Patricia Daehnke <Patricia.Daehnke@cdiglaw.com>; Erin.Jordan@lewisbrisbois.com

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Subject: RE: Choloe Green v. Frank J.Delee, M.D., et al., Case No. A-17-757722-C

[External Email] CAUTION!

I am available for deposition that afternoon and have no objection to moving it to the afternoon, but I have to reserve my right to a thorough examination of her. My concern with starting at 1:00 pm is that all three defense counsel might not finish asking their questions by 5:00 pm.

My client provided outpatient care, so my questions will differ in many respects from the questions by counsel for Sunrise Hospital.

To postpone the deposition I'd like a stipulation to a second deposition session, if a second session is needed.

If Plaintiff wants her deposition completed in a single day, then moving the depo to a different day with a morning start time is the best solution.

Thank you,

Eric K. Stryker
Attorney at Law

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300 South 4th Street - 11th Floor
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From: Office [<mailto:office@danielmarks.net>]

Sent: Tuesday, December 10, 2019 4:28 PM

To: Kelli N. Wightman <kwightman@HPSLAW.COM>; Stryker, Eric K. <Eric.Stryker@wilsonelser.com>; Laura Lucero <Laura.Lucero@cdiglaw.com>; Nicole Young <NYoung@danielmarks.net>; Patricia Daehnke <Patricia.Daehnke@cdiglaw.com>; Erin.Jordan@lewisbrisbois.com

Cc: Adrina.Harris@wilsonelser.com; Linda K. Rurangirwa <Linda.Rurangirwa@cdiglaw.com>; Brent.Vogel@lewisbrisbois.com; Johana.Whitbeck@lewisbrisbois.com; Sherman Mayor <smayor@HPSLAW.COM>; Tyson Dobbs <tdobbs@HPSLAW.COM>; Brittany A. Lewis <blewis@HPSLAW.COM>; Diana J. Samora <DSamora@HPSLaw.com>; Camie DeVoge <cdevoge@HPSLAW.COM>; Nicole M. Etienne <netienne@HPSLAW.COM>
Subject: RE: Choloe Green v. Frank J.Delee, M.D., et al., Case No. A-17-757722-C

Ok. Thank you.

Kind Regards,

Jessica Flores, Receptionist
Law Office of Daniel Marks
610 South Ninth Street
Las Vegas, Nevada 89101
O: (702) 386-0536; F: (702) 386-6812

From: Kelli N. Wightman [<mailto:kwightman@HPSLAW.COM>]

Sent: Tuesday, December 10, 2019 4:17 PM

To: Stryker, Eric K.; Office; Laura Lucero; Nicole Young; Patricia Daehnke; Erin.Jordan@lewisbrisbois.com

Cc: Adrina.Harris@wilsonelser.com; Linda K. Rurangirwa; Brent.Vogel@lewisbrisbois.com; Johana.Whitbeck@lewisbrisbois.com; Sherman Mayor; Tyson Dobbs; Brittany A. Lewis; Diana J. Samora; Camie DeVoge; Nicole M. Etienne

Subject: RE: Choloe Green v. Frank J.Delee, M.D., et al., Case No. A-17-757722-C

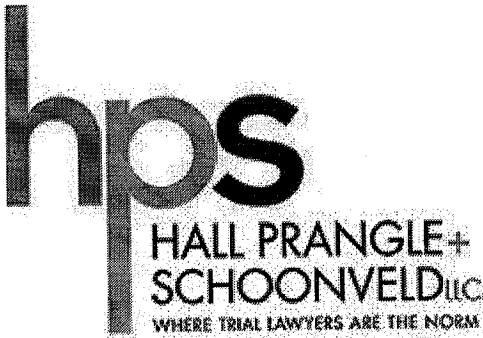
Counsel:

The deposition of Choloe Green (Plaintiff) is presently set for Tuesday, December 17, 2019 at 10:00 a.m. at our office.

We would like to move it to start at 1:00 p.m. if that works for everyone's schedule.

Please advise and, if so, I'll get an Amended Depo notice out.

Kelli Wightman
Legal Assistant



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Legal Assistant to:
Mari Schaan
Sherman Mayor
Kevin Peterson

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Sent: Wednesday, November 13, 2019 8:51 AM
To: Stryker, Eric K. <Eric.Stryker@wilsonelser.com>; Office <office@danielmarks.net>; Laura Lucero <Laura.Lucero@cdiglaw.com>; Nicole Young <NYoung@danielmarks.net>; Patricia Daehnke <Patricia.Daehnke@cdiglaw.com>; Erin.Jordan@lewisbrisbois.com
Cc: Adrina.Harris@wilsonelser.com; Linda K. Rurangirwa <Linda.Rurangirwa@cdiglaw.com>; Brent.Vogel@lewisbrisbois.com; Johana.Whitbeck@lewisbrisbois.com; Sherman Mayor <smayor@HPSLAW.COM>; Tyson Dobbs <tdobbs@HPSLAW.COM>; Brittany A. Lewis <blewis@HPSLAW.COM>; Diana J. Samora <DSamora@HPSLaw.com>; Camie DeVoge <cdevoge@HPSLAW.COM>; Nicole M. Etienne <netienne@HPSLAW.COM>
Subject: RE: Choloe Green v. Frank J.Delee, M.D., et al., Case No. A-17-757722-C

Counsel:

We will be setting the deposition for Tuesday, December 17, 2019 at 10:00 a.m. at our office.

We will be e-serving the deposition notice shortly.

Thanks for coordinating the date with us.

From: Stryker, Eric K. <Eric.Stryker@wilsonelser.com>
Sent: Tuesday, November 12, 2019 6:11 PM
To: Office <office@danielmarks.net>; Laura Lucero <Laura.Lucero@cdiglaw.com>; Kelli N. Wightman <kwightman@HPSLAW.COM>; Nicole Young <NYoung@danielmarks.net>; Patricia Daehnke <Patricia.Daehnke@cdiglaw.com>; Erin.Jordan@lewisbrisbois.com
Cc: Adrina.Harris@wilsonelser.com; Linda K. Rurangirwa <Linda.Rurangirwa@cdiglaw.com>; Brent.Vogel@lewisbrisbois.com; Johana.Whitbeck@lewisbrisbois.com; Sherman Mayor <smayor@HPSLAW.COM>; Tyson Dobbs <tdobbs@HPSLAW.COM>; Brittany A. Lewis <blewis@HPSLAW.COM>; Diana J. Samora <DSamora@HPSLaw.com>; Camie DeVoge <cdevoge@HPSLAW.COM>; Nicole M. Etienne <netienne@HPSLAW.COM>
Subject: RE: Choloe Green v. Frank J.Delee, M.D., et al., Case No. A-17-757722-C

[External Email] CAUTION!

I am in court the morning of December 12th, but December 16 and 17 are currently open.
Calendar is filling up though, seems everyone wants depositions in December.

Thx

Eric K. Stryker
Attorney at Law
Wilson Elser Moskowitz Edelman & Dicker LLP
300 South 4th Street - 11th Floor
Las Vegas, NV 89101-6014
702.727.1242 (Direct)
702.727.1400 (Main)
702.727.1401 (Fax)
eric.stryker@wilsonelser.com

From: Office [<mailto:office@danielmarks.net>]
Sent: Wednesday, November 6, 2019 4:51 PM
To: Laura Lucero <Laura.Lucero@cdiglaw.com>; Kelli N. Wightman <kwightman@HPSLAW.COM>; Stryker, Eric K. <Eric.Stryker@wilsonelser.com>; Nicole Young <NYoung@danielmarks.net>; Patricia Daehnke <Patricia.Daehnke@cdiglaw.com>; Erin.Jordan@lewisbrisbois.com
Cc: Adrina.Harris@wilsonelser.com; Linda K. Rurangirwa <Linda.Rurangirwa@cdiglaw.com>; Brent.Vogel@lewisbrisbois.com; Johana.Whitbeck@lewisbrisbois.com; Sherman Mayor <smayor@HPSLAW.COM>; Tyson Dobbs <tdobbs@HPSLAW.COM>; Brittany A. Lewis <blewis@HPSLAW.COM>; Diana J. Samora <DSamora@HPSLAW.COM>; Camie DeVoge <cdevoge@HPSLAW.COM>; Nicole M. Etienne <netienne@HPSLAW.COM>
Subject: RE: Choloe Green v. Frank J.Delee, M.D., et al., Case No. A-17-757722-C

Hi all:

Our soonest availability for Ms. Green's deposition is December 12 and December 16-18 at 10:00 a.m. Please let us know if any of these dates work.

Kind Regards,

Jessica Flores, Receptionist
Law Office of Daniel Marks
610 South Ninth Street
Las Vegas, Nevada 89101
O: (702) 386-0536; F: (702) 386-6812

From: Laura Lucero [<mailto:Laura.Lucero@cdiglaw.com>]
Sent: Monday, November 04, 2019 11:55 AM
To: Kelli N. Wightman; Eric.Stryker@wilsonelser.com; Nicole Young; Patricia Daehnke; Erin.Jordan@lewisbrisbois.com
Cc: Adrina.Harris@wilsonelser.com; Office; Linda K. Rurangirwa; Brent.Vogel@lewisbrisbois.com; Johana.Whitbeck@lewisbrisbois.com; Sherman Mayor; Tyson Dobbs; Brittany A. Lewis; Diana J. Samora; Camie DeVoge; Nicole M. Etienne
Subject: RE: Choloe Green v. Frank J.Delee, M.D., et al., Case No. A-17-757722-C

Hi!

I apologize for not responding sooner, however, I thought it might be easier to coordinate if we had Plaintiff's availability first. Notwithstanding, I am generally available the weeks of November 11th, 18th and 25th. I will be unavailable the week of December 2nd.

Thanks!



Laura S. Lucero | Attorney
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
laura.lucero@cdiglaw.com | www.cdiglaw.com

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From: Kelli N. Wightman <kwightman@HPSLAW.COM>

Sent: Monday, November 4, 2019 11:04 AM

To: Eric.Stryker@wilsonelser.com; NYoung@danielmarks.net; Patricia Daehnke <Patricia.Daehnke@cdiglaw.com>; Erin.Jordan@lewisbrisbois.com

Cc: Adrina.Harris@wilsonelser.com; office@danielmarks.net; Linda K. Rurangirwa <Linda.Rurangirwa@cdiglaw.com>; Laura Lucero <Laura.Lucero@cdiglaw.com>; Brent.Vogel@lewisbrisbois.com; Johana.Whitbeck@lewisbrisbois.com; Sherman Mayor <smayor@HPSLAW.COM>; Tyson Dobbs <tdobbs@HPSLAW.COM>; Brittany A. Lewis <blewis@HPSLAW.COM>; Diana J. Samora <DSamora@HPSLAW.COM>; Camie DeVoge <cdevoge@HPSLAW.COM>; Nicole M. Etienne <netienne@HPSLAW.COM>

Subject: RE: Choloe Green v. Frank J.Delee, M.D., et al., Case No. A-17-757722-C

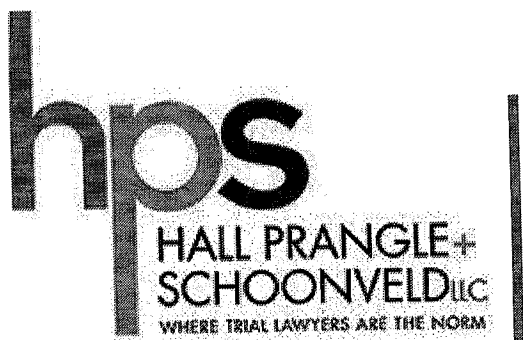
Importance: High

Counsel:

Following up on my email below from last week.

We would like to schedule the deposition of Plaintiff, Choloe Green, in this matter.

If you can please provide me with your availability for this deposition for the next 4 weeks, that would be greatly appreciated.



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

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

Legal Assistant to:
Mari Schaan
Sherman Mayor
Kevin Peterson

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From: Kelli N. Wightman

Sent: Wednesday, October 30, 2019 11:12 AM

To: Eric.Stryker@wilsonelser.com; NYoung@danielmarks.net; Patricia Daehnke <Patricia.Daehnke@cdiglaw.com>; Erin.Jordan@lewisbrisbois.com

Cc: Adrina.Harris@wilsonelser.com; office@danielmarks.net; Linda K. Rurangirwa <Linda.Rurangirwa@cdiglaw.com>; Laura Lucero <Laura.Lucero@cdiglaw.com>; Brent.Vogel@lewisbrisbois.com; Johana.Whitbeck@lewisbrisbois.com

Subject: Choloe Green v. Frank J.Delee, M.D., et al., Case No. A-17-757722-C

Counsel:

We would like to schedule the deposition of Plaintiff, Choloe Green, in this matter.

If you can please provide me with your availability for this deposition for the next 4 weeks, that would be greatly appreciated.

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

Thank you.

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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.

EXHIBIT 9

Encompass Health Rehabilitation Hospital of Las Vegas

Patient: GREEN, CHLOE S

MRN: 125837

FIN#: 745179

DOB/Age/Gender: 7/15/1986 32 years Female

Admit Date: 10/12/2016

Discharge Date: 10/25/2016

Attending Phys: Pernell M.D., Andrea

Pre-Admission Information

DOCUMENT NAME:

Prescreening Admission Form

SERVICE DATE/TIME:

10/12/2016 18:43 PDT

RESULT STATUS:

Auth (Verified)

PERFORM INFORMATION:

SIGN INFORMATION:

Reneau MD, John (10/12/2016 16:59 PDT)

Prescreening Admission Form

GREEN; 7/15/1986

HEALTHSOUTH

Name: GREEN, CHLOE

ID: 688090

Date of Birth: 7/15/1986

Referring Hospital: Royal Springs SNF

Sex: Female

Room #: 117A ROYAL SPRINGS

Phone: 7026280392

Referral Credit: Gaerlan, GabrielleMarie

Next of Kin: BETTY JIMMERSON
no 106097406 X 7 days from 10/12 to 10/18

CM/SW/DP: JOAN OF AMERIGROUP EXT 59807 AUTH

Phone: 7028189067

Referring Physician: DR. SHILGEVORKYAN, OGANES

Patcom MRN: 125837

Patcom Account #: 745179

Pre-Screen Admission Form

Basic

Demographics

First Name: CHLOE

Middle Name: S

Last Name: GREEN

Sex: Female

Street: 5434 LAVENDER GROVE

City: NORTH LAS VEGAS

State: NV

Zip: 89031

County: CLARK

Street Verified: Yes

US Citizen: Yes

SSN: *****

Phone: 7026280392

Date of Birth: 07/15/1986

Age: 30

Race: Black

Religion: UNKNOWN

Interpretive Services: No

Preferred Language: ENGLISH

Marital Status: SINGLE

Encompass Health Rehabilitation Hospital of Las Vegas

Patient: GREEN, CHLOE S

MRN: 125837

FIN#: 745179

DOB/Age/Gender: 7/15/1986 32 years Female

Admit Date: 10/12/2016

Discharge Date: 10/25/2016

Attending Phys: Pernell M.D., Andrea

Pre-Admission Information

Primary Contact First Name: BETTY

Last Name: JIMMERSON

Home Phone: 7028189067

Relationship: PARENT

Secondary Contact First Name: ALANA

Last Name: WATKINS

Home Phone: 7023087110

Relationship: RELATIVE

Health Care Proxy: No

Organ Donor: No

Currently Hospice: No

ESRD: No

Dialysis: No

Durable Medical POA: No

DNR Code Status: No

Hospital Stay in Last Sixty Days: No

Core Program/RIC: OTHER CONDITIONS

Estimated Admit Date: 12-OCT-16

Type of Admit: Initial Rehab

Referring Info

Referring Facility: Royal Springs SNF

Referral Credit: Gaerlan, GabrielleMarie

HealthSouth Hospital: Las Vegas

HealthSouth Hospital ID: 03013400

Location/Room #: 117A ROYAL SPRINGS

Referral Type: 1

Admit Date: 09/09/2016

Onset Date: 07/11/2016

Case Manager: JOAN OF AMERIGROUP EXT 59807 AUTH no 106097406 X 7 days from 10/12 to 10/18

Phone #: 7022281308

Referral Source Driver: CM

Volume Vehicle: Hospital

Physician

Referring: DR. SHILGEVORKYAN, OGANES

Comments: PMR DR PERNELL

Insurance

Primary Insurance

Name: AMERIGROUP

Policy Holder: SELF

Id: 00000035007

Pre-Cert Required: Yes

Encompass Health Rehabilitation Hospital of Las Vegas

Patient: GREEN, CHLOE S

MRN: 125837

FIN#: 745179

DOB/Age/Gender: 7/15/1986 32 years Female

Admit Date: 10/12/2016

Discharge Date: 10/25/2016

Attending Phys: Pernell M.D., Andrea

Pre-Admission Information

Secondary Insurance

Medicare Advantage Replacement Policy: No

Injury Due to Accident: No

MVA: No

Accident Other: No

Medical

Social History

Lives Family: Yes

Home Levels: 1

Number of Steps to Enter: 0

Number of Steps Within: 0

Unemployed: Yes

Cultural Educational Issues: No

OP / HH / SNF Services immediately preceding hospitalization: No

Assistive Device None: Yes

Assistive Device Mechanical Lift: No

Assistive Device Motorized Wheelchair: No

Assistive Device Orthotics/Prosthetics: No

DC Caregiver: family

Support System: FAMILY

Anticipated DC Destination: HOME

Hospitalization History

Primary Acute Diagnosis: OTHER

Other Diagnosis: Generalized Weakness

Other Diagnosis: Malnutrition

Other Diagnosis: HTN

Description of Onset / Current Surgical Procedures: Pt. is a 30y, with a PMHX of Lap band who was initially admitted to Centennial Hills Hospital on July 2016 after she developed an omental infarct and ascites following a C-section. Pt. underwent a second surgery and subsequently developed respiratory failure and was intubated and developed ARDS. Pt. was placed in ICU for further care. Her condition improved slowly. She also required a trach and PEG, remained on the vent for support and was transferred over to Complex care for long term care where she was being managed for ARDS, VDRF, Anemia, Bacteremia, Pneumothorax and Sepsis. From there, she was transferred to Royal springs rehab for continuation of care as her condition continues to improve. Currently pt is AAO x 4, Continent of bowel and Bladder with LBM on 10/11, On a regular diet with small portion feedings, On 2L at 96% to 97%. No Iso, PEG and Tracheostomy has been removed and decannulated, no foley, no open wounds. Pt. has also continued to have regular bowel and tolerating regular diet. Pt. still presents w/ generalilzed weakness. Pt requires 24hr physician oversight for medical management, medication adjustment and rehab program. Pt. still presents for impaired strength, pain, balance, gait, endurance and has difficulty

Encompass Health Rehabilitation Hospital of Las Vegas

Patient: GREEN, CHLOE S

MRN: 125837

FIN#: 745179

DOB/Age/Gender: 7/15/1986 32 years Female

Admit Date: 10/12/2016

Discharge Date: 10/25/2016

Attending Phys: Pernell M.D., Andrea

Pre-Admission Information

for self care and ADL's. Pt. had decreased independence for bed mobility, transfers and ambulation. A decrease in ROM and strength is also noted. Pt. is not safe to enter/exit home in case of emergency. PT/OT recommends Acute Rehab. PLOF-independent of gait and

ADL's CLOF-Bed Mob and Transfers-Min A, Gait-10 ft x 3 w/ fww at Mod A, Tends to lean backwards. ADL's-Grooming-Set up, Per RN- UB dressing-Min A, LB dressing-Mod A Pt. has impaired strength, pain, balance, gait, endurance and has difficulty for self care and

ADL's. Pt. had decreased independence for bed mobility, transfers and ambulation. A decrease in ROM and strength is also noted. Pt. is not safe to enter/exit home in case of emergency. A/P 1) ARDS-pt. decannulated, on 2L 96% to 98% 2) Iatrogenic

Pneumothorax-Solu medrol 3) Generalized Weakness 4) VDRF, S/p Tracheostomy 5) Dysphagia

S/p PEG tube placement and removal 10/11/16 6) Recent Cesarean section 7) Recent

Sepsis-resolved 8) Malnutrition-small portions d/t hx of lapband sx 9) H/o ARDS 10)

Neck wound-healed 11) HTN

Hand Dominance: Unknown

Other Medical Issues and Active Treatments: A/P 1) ARDS-pt. decannulated, on 2L 96% to 98% 2) Iatrogenic Pneumothorax-Solu medrol 3) Generalized Weakness 4) VDRF, S/p Tracheostomy 5) Dysphagia S/p PEG tube placement and removal 10/11/16 6) Recent Cesarean

section 7) Recent Sepsis-resolved 8) Malnutrition-small portions d/t hx of lapband sx

9) H/o ARDS 10) Neck wound-healed 11) HTN

Medical History

Medical History

HTN: Yes

Surgical History

Other Surgical History: Yes

- Lap band sx

Co-morbidities

Acute Resp Failure: Yes

Tracheostomy: Yes

Baseline Data, Diagnostics and Labs

Vitals

10/12/2016

Temp: 97

Blood Pressure: 126/82

Pulse: 84

Resp: 20

Diagnostics

Allergies / Reactions: SEAFOOD IODINE PCN MORPHINE OXYCODONE

Patient: GREEN, CHLOE S

MRN: 125837

FIN#: 745179

DOB/Age/Gender: 7/15/1988 32 years Female

Admit Date: 10/12/2016

Discharge Date: 10/25/2016

Attending Phys: Pernell M.D., Andrea

Pre-Admission Information

Height (in): 63

Height (cm): 160.02

Current Weight (lb): 170

Current Weight (kg): 77.11

BMI: 30.11

Chest X-Ray: CXR 9/27-MILD CARDIOMEGLAY W/OUT CHF, MARKED IMPROVEMENT IN PATCHY INTERSTITIAL INFILTRATES BOTH LUNGS, IMPROVED POSITIONING OF PICC ON L ARM

Labs

9/28/2016

WBC: 9

RBC: 4.49

HGB: 13.1

HCT: 39.3

PLATELETS: 306

NA: 136

K: 3.6

Cl: 93

Glucose: 90

Bun: 21

CREAT: .26

Albumin: 3.6

Infection Control

Infection Control

Infectious Disease Risk Screening

Factors/Symptoms

Chills: No

Fever: No

Fatigue: No

Headache: No

Runny or Stuffy Nose: No

Sore Throat: No

Shortness of Breath: No

New or Worsening Cough: No

Vomiting: No

Diarrhea: No

Muscle Pain: No

Recent Exposure to Communicable Disease: No

Illness with Generalized Rash: No

Recent Seizures: No

Recent Travel History: No Recent Travel

Isolation: No

Antibiotic Resistant Infections MRSA: No

Antibiotic Resistant Infections VRE: No

Encompass Health Rehabilitation Hospital of Las Vegas

Patient: GREEN, CHLOE S

MRN: 125837

IN#: 745179

DOB/Age/Gender: 7/15/1986 32 years Female

Admit Date: 10/12/2016

Discharge Date: 10/25/2016

Attending Phys: Pernell M.D., Andrea

Pre-Admission Information

VRE: No

Flu Vaccine: No

Pneumonia Vaccine: No

Respiratory

Oxygen: Yes

Oxygen amount: 2

Oxygen via: NC

O2 sat: 96%

ABG's: No

Home O2: No

Trach: No

Wound Care

Wounds or Incisions: Yes

Wound Description: CLOSED WOUND ON NECK. S/P TRACH

Pharmacy / Medications

Type of IV Access: Not Applicable

DVT Prophylaxis: Yes

Anticoagulant: Yes

Diet

Diet General: Yes

Consistency Regular: Yes

Consistency Other: Yes

Consistency Other Comment: SMALL FREQUENT FEEDING D/T LAP BAND SX

Liquids Regular: Yes

Tube Feeding : No

TPN/PP: No

Dentures: No

Food Allergies: Yes

Food Allergies: SEAFOOD

Nursing

History of Falls: No

Fall Precautions: Yes

Two or more falls in the last year: No

Pain Issues: No

Bladder/Bowel Management

Bladder Continent: Yes

Encompass Health Rehabilitation Hospital of Las Vegas

Patient: GREEN, CHLOE S

MRN: 125837

FIN#: 745179

DOB/Age/Gender: 7/15/1986 32 years Female

Admit Date: 10/12/2016

Discharge Date: 10/25/2016

Attending Phys: Pernell M.D., Andrea

Pre-Admission Information

Bladder Devices:

BSC: Yes

Bed Pan: Yes

Bowel Devices:

BSC: Yes

Last Bowel Movement: 10/11/2016

Bowel Continent: Yes

Bowel Last Date Device Used: 10/12/2016

Comprehension/Communication

Follows Simple Commands

Prior: Intact

Current: Intact

Follows Complex Commands

Prior: Intact

Current: Intact

Hearing

Prior: Intact

Current: Intact

Vision

Prior: Intact

Current: Intact

Verbal Communication

Prior: Intact

Current: Intact

Auditory Comprehension

Prior: Intact

Current: Intact

Orientation: AAO X 4

Dementia: No

Therapy Precautions and Restrictions

Weight Bearing Status FWB: Yes

Therapy Device Used: No

Therapy Device Type:

Functions And Goals

Prior Level of Function

Ambulation: Independent

ADL's: Independent

Prior Cognitive Status: Independent

Prior Physical Level of Activity: Active

Encompass Health Rehabilitation Hospital of Las Vegas

Patient: GREEN, CHLOE S

MRN: 125837

FIN#: 745179

DOB/Age/Gender: 7/15/1986 32 years Female

Admit Date: 10/12/2016

Discharge Date: 10/25/2016

Attending Phys: Pernell M.D., Andrea

Pre-Admission Information

Require Assistance for Stairs: No

Home Equipment: NONE

Current Level of Function

Bed Mobility: Minimal Assistance

Minimal Assistance Comments: SUPINE TO SIT

Transfers: Minimal Assistance

Minimal Assistance Comments: SIT TO STAND

Ambulation: Moderate Assistance

Moderate Assistance Comments: 10 FT X 3 W/ FW, TENDS TO HAVE A BACKWARD LEAN

Basic ADL's: Supervision

Supervision Comments: GROOMING

Dressing: Minimal Assistance

Minimal Assistance Comments: PER RN UE DRESSING

Dressing: Moderate Assistance

Moderate Assistance Comments: PER RN LB DRESSING

Balance

Static Sitting: Fair

Dynamic Sitting: Fair

Static Standing: Fair

Dynamic Standing: Poor

Strength

Comments: PLOF-independent of gait and ADL's CLOF-Bed Mob and Transfers-Min A,

Gait-10 ft x 3 w/ fw at Mod A, Tends to lean backwards. ADL's-Grooming-Set up, Per RN-UB dressing-Min A, LB dressing-Mod A

Goals

Patient/Family Goals: To Increase functional mobility/ADL's, To return to near PLOF c least restrictive AD, To increase strength and endurance. To be able to manage safely at home.

This patient is expected to make measurable improvement that will be of practical value to the patient related to the following goals:

Patient Will:

- Improve Functional Ambulation Pattern
- Improve Strength and Endurance
- Improve Balance
- Improve Safety and Awareness and Reduce Fall Risk
- Ambulate 200 Feet with/without Assistive Device and
- Be Mod Independent in Toilet Transfers
- Be Mod Independent in Bathing and Dressing Activities
- Be Independent in Feeding Self

Encompass Health Rehabilitation Hospital of Las Vegas

Patient: GREEN, CHLOE S

MRN: 125837

FIN#: 745179

DOB/Age/Gender: 7/15/1986 32 years Female

Admit Date: 10/12/2016

Discharge Date: 10/25/2016

Attending Phys: Pernell M.D., Andrea

Pre-Admission Information

- Improve Communication
- Resume Normal Bowel and Bladder Function
- Improve Fine Motor Skills
- Improve Pain Control
- Return to Prior Level of Function
- Improve Safety and Effectiveness Swallowing

Patient/Family Will:

- Be Educated in Disease Process and Recognize when to Seek Medical Interventions

Data Collector Signature

Summary

Designated Clinician Screener Conclusions

Expected Level of Improvement: To Increase functional mobility/ADL's, To return to near PLOF & least restrictive AD, To increase strength and endurance. To be able to manage safely at home.

Potential Risks for Clinical Complications:

- Fall Risk
- Resp Complications
- Skin Breakdown
- DVT
- Hyper/Hypoglycemic Episode
- Hyper/Hypotension
- Nutritional Issues

Other Risks: Sepsis, Infection, Skin Integrity, Edema, Anemia, SOB, PNA, Respiratory distress/Failure, DVT. Pt requires 24hr physician oversight for medical management, medication adjustment and rehab program

Expected Frequency and Duration of Treatment: 3 hours a day, 5 days a week

The following therapies will likely be required as part of a necessary multidisciplinary program:

- Physical Therapy
- Occupational Therapy

Anticipated Length of Stay: 14 Days

Discharge Destination: Home with Services

Comments: Follow up & PCP, HHC vs Out patient rehab

Anticipated Post Discharge Treatment Needs

- Case Management
- Home Health
- Nursing
- Occupational Therapy
- Outpatient Services

Encompass Health Rehabilitation Hospital of Las Vegas

Patient: GREEN, CHLOE S

MRN: 125837

FIN#: 745179

DOB/Age/Gender: 7/15/1986 32 years Female

Admit Date: 10/12/2016

Discharge Date: 10/25/2016

Attending Phys: Pernell M.D., Andrea

Pre-Admission Information

Physical Therapy

Registered Dietician

Therapeutic Recreation

Conclusions:

- Patient Meets Guidelines for Admission

Referral Source Notified: Yes

Patient/Family Contacted: Yes

Designated Clinician Screener Signature: Graziadeisimon, Theresa RN

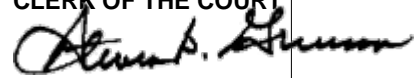
Designated Clinician Screener Signature Date/Time: 10/12/2016 16:41:24 PDT

Physician Section

Upon review of information from the designated screener, I have concluded this patient should be admitted to an inpatient rehabilitation hospital for medically necessary care.

Electronically Signed By: 10/12/16 16:59 PDT

Reneau MD, John



RPLY

Patricia Egan Daehnke
Nevada Bar No. 4976

Patricia.Daehnke@cdiglaw.com

Linda K. Rurangirwa
Nevada Bar No. 9172

Linda.Rurangirwa@cdiglaw.com

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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 REPLY
IN SUPPORT OF MOTION TO
DISMISS PLAINTIFF'S AMENDED
COMPLAINT**

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 Reply in Support of Motion to Dismiss Plaintiff's Complaint pursuant to NRCP 12
(b) (5) and NRS 41A.097 (2).

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1 This Reply is made and based upon the Memorandum of Points and Authorities set
2 forth below together with all files, pleadings and records on file herein, and any and all
3 evidence and argument made at the time of the hearing on this Motion.

4 DATED: February 16, 2021

COLLINSON, DAEHNKE, INLOW & GRECO

/s/ Linda K. Rurangirwa

6 BY: _____

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MEMORANDUM OF POINTS AND AUTHORITIES

I.

INTRODUCTION

Defendant Ali Kia, M.D. filed the instant Motion to Dismiss Plaintiff's Amended Complaint on the grounds that it was filed after the expiration of the statute of limitations, and the amendment does not relate back to the original filing of the Complaint. In Opposition, Plaintiff argues that Plaintiff learned of her legal injury during Dr. Kia's November 14, 2018 deposition.¹ Defendant **disputes** this timeline with regard to the one year statute of limitations as set forth in further detail below. Nevertheless, it is undisputed that Plaintiff did not file her Amended Complaint until December 16, 2020.

Plaintiff makes note that in the interim Sunrise Hospital filed a Third Party Complaint against Dr. Kia in an attempt to allege that somehow this saves her claim. This is clearly a naked attempt to make an end-run around the fact that Plaintiff sat on her hands and watched the statute of limitations run with regard to any potential claim against Dr. Kia and Nevada Hospitalist Group (NHG) for medical malpractice. It should be noted the Third Party Complaint was for indemnification and contribution. The Third-Party Complaint was filed on June 14, 2019. Even though the Third-Party Complaint alleged that if there was a finding of negligence, Dr. Kia and Nevada Hospitalist Group (NHG) should indemnify and/or provide contribution for any recovery against Sunrise Hospital, **at no time** during the pendency of this Third-Party Complaint did Plaintiff move to amend her Complaint to add Dr. Kia and NHG as Defendants with regard to a potential medical malpractice claim. Plaintiff now argues, without support from any case law, that because Dr. Kia and NHG were brought in as Third-Party Defendants within a year after she allegedly discovered her legal injury, she can now assert a claim for medical malpractice that would otherwise have been time barred. This novel position is contrary to all Nevada statutory and case law.

¹ See Opposition to Defendant Ali Kia, M.D.'s Motion to Dismiss Plaintiff's Amended Complaint ("Opposition"), p. 10 lines 1-2.

Plaintiff appears to assert that her one year claim for medical malpractice was tolled by Sunrise Hospital filing a Third-Party Complaint for indemnification and contribution against Dr. Kia and NHG. However, Plaintiff cites no legal precedent for this. According to NRS 41A.097, the only available reason for tolling the statute of limitations is concealment of any act, error or omission by the provider of health care. There has been no such allegation this occurred. Additionally, any alleged delay in answering the Third-Party Complaint by NHG does not impact the fact that Plaintiff was already aware of her legal injury and had a duty to assert her claim within the statute of limitations period. Furthermore, the tolling provision only applies to the one year statute of limitations. As Defendant's motion sets forth (and Plaintiff has not addressed in her Opposition) **the three-year statute of limitation** had also long since expired by the time Plaintiff filed her Amended Complaint.

Of note, Plaintiff skirts around the issue that this Court found that the expert affidavit used by Sunrise Hospital in filing its Third-Party Complaint did not meet the expert affidavit requirements of NRS 41A.071 as to Dr. Kia and NHG. As such the Third Party Complaint is considered void ab initio – as if it never existed. *Washoe Med. Ctr. v. Second Judicial Dist. Court*, 122 Nev. 1298, 1304 (2006). (“We conclude that, under NRS 41A.071, a complaint filed without a supporting medical expert affidavit is void ab initio and must be dismissed. Because a void complaint does not legally exist, it cannot be amended.”). Thus, any contention that the filing of the Third-Party Complaint somehow alleviated Plaintiff's duty to file her own claim for medical negligence within the requisite time period must fail as it is deemed to have never legally existed.

As such, the relevant timeline (excluding the void ab initio Third-Party Complaint which would not have tolled the statute of limitations in any event) is as follows:

1. Plaintiff had appreciable injury: September 2016².

² This is relevant to determining the running of the three year statute of limitations, and was not contested in Plaintiff's Opposition.

2. Plaintiff had notice of her legal injury: November 14, 2018 per plaintiff; June 30, 2017 per Dr. Kia.
3. Expiration of the 3 year statute of limitations: September 2019.
4. Expiration of the 1 year statute of limitations: November 14, 2019 per plaintiff; June 30, 2018 per Dr. Kia.
5. Plaintiff filed her First Amended Complaint: December 16, 2020.

It is patently clear that Plaintiff's filing of the First Amended Complaint was far outside the one and three year medical malpractice statute of limitations and is time barred.

Plaintiff next argues that the filing of the First Amended Complaint relates back to the filing of the original Complaint. As set forth in Dr. Kia's Motion to Dismiss, the inclusion of Dr. Kia and NHG cannot relate back to the filing of the original Complaint as this Court has already deemed the expert affidavit that was attached to that Complaint does not support any allegations against Dr. Kia and NHG. In keeping with *Baxter v. Dignity Health*, 131 Nev. 759, 763, 357 P.3d 927, 929-930 (2015) the Amended Complaint cannot relate back to the filing of the original complaint because it is a nullity as to Dr. Kia and NHG to which NRCP 15 (a) and the relation back doctrine does not apply.

Additionally, just like in *Garvey v. Clark County*, as cited to in *Badger v. Eighth Judicial Dist. Court*, 132 Nev. 396, 403-404, 373 P.3d 89, 94 (2016), Plaintiff is seeking relation back to the original complaint when Plaintiff, aware of her legal injury for at least 2 years, elected not to name Dr. Kia and NHG as parties in the original action. As in *Garvey*, this Court should also expressly refuse to allow the Amended Complaint to relate back to the filing of the original Complaint.

II.

LEGAL ARGUMENT

A. Plaintiff's Claims are Barred By the Statute of Limitations

Plaintiff contends that she learned of her legal injury with regard to Dr. Kia during his November 14, 2018 deposition. The applicable statute of limitations for medical malpractice/professional negligence claims that accrue on or after October 1, 2002 is set forth

1 in NRS 41A.097(2) which provides in pertinent part:

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

5 With regard to the one year discovery period, a plaintiff "discovers" his injury when
6 "he knows or, through the use of reasonable diligence, **should have known** of facts that
7 would put a reasonable person on **inquiry notice** of his cause of action." *Massey v. Litton*, 99
8 Nev. 723, 728, 669 P.2d 248, 252 (1983). A person is placed on "inquiry notice" when he or
9 she "should have known of facts that would lead an ordinarily prudent person to investigate
10 the matter further." *Winn v. Sunrise Hosp. & Med. Ctr.*, 128 Nev. 246, 251-52, 277 P.3d 458,
11 462 (2012) (internal quotation marks omitted). ***The accrual period does not refer to when***
12 ***the plaintiff discovers the precise facts pertaining to his legal theory, but only to the general***
13 ***belief that someone's negligence may have cause the injury.*** *Id.* (citing *Massey*, 99 Nev. at
14 728, 669 P.2d at 252). The plaintiff "discovers" the injury when "he had facts before him that
15 would have led an ordinarily prudent person to investigate further into whether [the] injury
16 may have been caused by someone's negligence." *Id.* Thus, Plaintiff's claim that she learned
17 of the "legal injury" when Dr. Kia was deposed is the incorrect measurement of when the one
18 year statute of limitations begins to run.

19 The statute of limitations begins to run when the patient has before him the facts
20 which would put a reasonable person on inquiry notice of his possible cause of action,
21 whether or not it has occurred to the particular patient to seek further medical advice.
22 *Massey*, 99 Nev. at 727-28. ***The focus is on the access to facts and knowledge of facts,***
23 ***rather than on knowledge of legal theories.*** *Id.* Plaintiffs cannot "close their eyes" to the
24 information available to them. *See Siragusa v. Brown*, 114 Nev. 1384, 1394, 971 P.2d 801,
25 807 (1988)(quoting *Spitler v. Dean*, 436 N.W.2d 308, 310-11 (Wis. 1989) ("Plaintiffs may not
26 close their eyes to means of information reasonably available to them and must in faith apply
27 their attention to those particulars within their reach.")).
28

1 NRS 41A.097 (3) allows for the tolling of the one year statute of limitation if the
2 "provider of health care has concealed any act, error or omission upon which the action is
3 based and which is known or through the use of reasonable diligence should have been known
4 to the provider of health care." A plaintiff who alleges that the limitations period should be
5 tolled for concealment must satisfy a two-prong test: (1) that the physician intentionally
6 withheld information (2) that was "material," meaning the information would have objectively
7 hindered a reasonably diligent plaintiff from timely filing suit. *Winn*, 128 Nev. at 254-55, 277
8 P.3d at 464. The Nevada Supreme Court specifically noted that "[a] tolling-for-concealment
9 provision included within a generally applicable statute of limitations is an exception to the
10 general rule, meant to prevent a defendant from taking affirmative action to prevent the
11 plaintiff from filing suit." *Id.* at 466. In other words, Plaintiff must prove that Dr. Kia
12 intentionally withheld information from them to prevent her from filing suit. Concealment for
13 tolling purposes requires "affirmative acts or representations that are calculated to lull or
14 induce a claimant into delaying her claim or to prevent her from discovering her claim; mere
15 silence on the part of the defendant and failure by claimant to learn of a cause of action is not
16 enough." *Wolf v. Bueser*, 664 N.E.2d 197, 205 (1st Dist. Ill. 1996) (doctor's interpretation of
17 mammogram did not give rise to level of affirmative act that was intended to lull plaintiff into
18 delaying discovery of the claim).

19 Here, there is no allegation Dr. Kia intentionally withheld information that was
20 material. In addition there is no alleged concealment. Thus the one year statute of limitations
21 is not tolled.

22 In *Winn* the Court noted that determining the accrual date is ordinarily a question of
23 fact for the jury, unless the facts are "uncontroverted" and "irrefutably demonstrate" the
24 accrual date, in which case the district court may determine it as a matter of law. *Id.* at 463.

25 With regard to the one year statute of limitations, assuming for purposes of this
26 Motion that Plaintiff discovered her injury at the time she filed her Complaint on June 30,
27 2017. Pursuant to the expert affidavit of Dr. Karamardian, Plaintiff was aware of not only the
28 facts pertaining to her legal theory, but had sufficient facts that would lead an ordinary

1 prudent person to investigate the matter further as to who it was that was involved in the
2 discharge. In fact, Dr. Karamardian explicitly stated there was alleged negligence in
3 discharging Plaintiff from Sunrise Hospital on July 14, 2016.³ Plaintiff had the obligation to
4 investigate further as to who was involved in the discharge, but did not do so. Instead,
5 Plaintiff waited until August 24, 2018⁴, after the expiration of the one year statute of
6 limitations on June 30, 2018 to serve Dr. Kia with a Notice of Deposition.

7 Plaintiff has not disputed that the three year limitation period provided in NRS
8 41A.087(2) “begins to run when a plaintiff suffers appreciable harm [appreciable
9 manifestation of the plaintiff’s injury], regardless of whether the plaintiff is aware of the
10 injury’s cause.” *Libby v. Eighth Judicial Dist. Ct.*, 130 Nev. Adv. Rep. 39, 325 P.3d 1276,
11 1280 (2014). Plaintiff in this case became aware of her alleged injury when she was
12 hospitalized at Centennial Hills Hospital from July 17, 2016 through September 2, 2016
13 where she underwent surgery and postoperative complications. Commencement of the three
14 year limitation period does not require that Plaintiff be aware of the *cause* of her injury. Such
15 a requirement would “render NRS 41A.097(2)’s three year limitation period irrelevant.”
16 *Libby*, 277 P.3d at 1280. Any attempt by Plaintiff to impose a “discovery” rule on the three-
17 year statute of limitations provided in NRS 41A.097(2) is incorrect and directly contrary to
18 the holding in *Libby*.

19 In *Libby*, the Nevada Supreme Court looked to California authority for guidance on
20 application of the three-year limitation period for medical malpractice matters (as the
21 California and Nevada statutes are identical). The Court noted California cases have reasoned
22 the purpose for the three-year limitation period is “to put an outside cap on the
23 commencements of actions of medical malpractice, to be measured from the date of injury,
24 regardless of whether or when the plaintiff discovered its negligent cause.” *Libby*, 277 P.3d at
25

26 ³ See June 29, 2017 Affidavit of Lisa Karamardian, M.D., attached to Plaintiff’s Amended Complaint as Exhibit
27 A to Defendant’s Motion to Dismiss.

28 ⁴ See Opposition p. 7, lines 22-23.

1 1280.

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

9 Plaintiff contends that as Dr. Kia and NHG were brought into the lawsuit as Third-
10 Party Defendants by Sunrise Hospital on June 14, 2019 (almost a year after the expiration of
11 the one year statute of limitations), they were brought in before the expiration of the three-
12 year statute of limitations. However, as set forth above, the one year statute of limitations had
13 already expired and thus any claim by Plaintiff was already time barred. Furthermore,
14 Plaintiff has not provided any precedent that states that the running of the one or three year
15 statute of limitations on a medical malpractice claim is tolled because a
16 contribution/indemnification claim is filed. As early as June 30, 2017, Plaintiff had access to
17 facts and knowledge of facts that pertained to her belief that someone was negligent with
18 regard to the discharge from Sunrise Hospital on July 14, 2016. Plaintiff chose to do nothing
19 with that knowledge. After Dr. Kia's November 14, 2018 deposition when Plaintiff claims
20 she was aware of her "legal injury" regarding Dr. Kia's alleged negligence, she again chose to
21 do nothing. When Sunrise Hospital filed a Third-Party Complaint on June 14, 2019 for
22 indemnification and contribution, Plaintiff once again chose to do nothing. It was not until
23 December 16, 2020 that Plaintiff filed her Amended Complaint to add Dr. Kia and NHG as
24 Defendants. Plaintiff sat on her hands and watched the statute of limitations expire.

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

27 Pursuant to NRCP 15 (c):

28 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).

This amendment absolutely causes prejudice to Ali Kia, M.D. Dr. Kia’s name was not mentioned in the initial Complaint or affidavit and he was not deposed until November 14, 2018, over a year after the Complaint was filed⁵ and after the expiration of the one year statute of limitations. Additionally, he was not a party to this case until after Sunrise Hospital filed its Third-Party Complaint on June 14, 2019. Thus, he would not have had notice of

⁵ See Face page of deposition transcript of Ali Kia, M.D., attached as Exhibit “I” to Defendant’s Motion to Dismiss.

1 potentially being a party in this suit until **after** the one year statute of limitations had expired
2 and long after the time limit set forth in Rule 4 (e). Furthermore, after Dr. Kia's deposition
3 on November 14, 2018, Plaintiff elected **not** to name him as a Defendant until almost **two**
4 **years later** when she filed her Motion for Leave to Amend Complaint on October 16, 2020.
5 Plaintiff waited an additional two years, long after the statute had run. Allowing the
6 amendment to relate back would be extremely prejudicial to Dr. Kia as he only received such
7 notice **after** the statute of limitations expired and the claim was time barred, and he would
8 have no expectation of incurring the expense of defending against this suit.

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

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

25 To date, this court has mediated the tension between NRS 41A.071 and the
26 Nevada Rules of Civil Procedure according to the perceived strength of the
27 competing policies at stake. Thus, in *Washoe Medical Center v. Second*
28 *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

1 complaint, to which she appended the belated affidavit of merit, and argued
2 that NRC 15(a) entitled her to amend as of right, that the amendment related
3 back to the original filing date, and that her claims therefore were timely. *Id.* A
4 divided supreme court disagreed, deeming the original complaint a nullity to
5 which NRC 15(a) and the relation-back doctrine did not apply. *Id.* at 1306,
6 148 P.3d at 795 (4-2-1 decision). ***We held that, in requiring dismissal of an***
7 ***action filed without a supporting affidavit, NRS 41A.071 trumps NRC***
8 ***15(a), which allows liberal amendment of pleadings, given the substantive***
9 ***policy expressed in NRS 41A.071 against a plaintiff bringing a malpractice***
10 ***action without a medical expert first reviewing and validating the claims. Id.***
11 ***at 1304, 148 P.3d at 794.***

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

14 The Amended Complaint cannot relate back to the filing of the original Complaint as
15 Dr. Kia did not have notice of the Complaint within 120 days of filing of same, nor could he
16 have been aware he was a proper party as the Complaint did not mention his name and the
17 affidavit did not state any allegations against him. The earliest he could potentially have been
18 put on notice of the lawsuit was when he was deposed ***after*** the expiration of the statute of
19 limitations.

20 Plaintiff was put on notice of her legal injury and duty to make further inquiry on
21 June 30, 2017 at the latest, but failed to do so. Dr. Kia had no notice of anything regarding
22 this lawsuit until August 2018, after the one year statute of limitations had expired. Dr. Kia
23 will be severely prejudiced in having to defend against a lawsuit that would ordinarily be
24 barred by the statute of limitations should the Court allow the amendment to relate back to the
25 filing of the original Complaint, which would be *void ab initio* against him in any event as
26 this Court has already determined that the expert affidavit is insufficient to support any claims
27 against him as required by NRS 41A.071. What Plaintiff is clearly seeking to do with this
28 filing is contrary to the statute of limitations and Nevada's affidavit requirement. Plaintiff
failed to investigate who discharged Plaintiff from Sunrise Hospital on July 14, 2016 when
her own expert opined in June 2017 that the discharge was allegedly negligent. Once Plaintiff
definitively ascertained at Dr. Kia's deposition on November 14, 2018 that Dr. Kia discharged
Plaintiff from that hospitalization, Plaintiff sat on her hands and did **absolutely nothing** with
regard to asserting a potential claim for medical malpractice against Dr. Kia and NHG for

1 over two years. Plaintiff did not file her Amended Complaint until December 16, 2020.

2 Most importantly, Plaintiff was actually aware as late as November 2018 that Dr. Kia
3 could be a potential Defendant in this matter and did **nothing** whatsoever to allege a claim for
4 medical negligence against him until December 2020. Plaintiff sat on her hands, aware of a
5 potential claim and waited until after the expiration of both the one and three year statute of
6 limitations to attempt to add both Dr. Kia and NHG to this claim. Just like in *Garvey v. Clark*
7 *County*, Plaintiff was aware of her legal injury for at least 2 years, elected not to name Dr. Kia
8 and NHG as parties in the original action and as in *Garvey*, this Court should also expressly
9 decline to allow the Amended Complaint to relate back to the filing of the original Complaint.

10 **III**

11 **CONCLUSION**

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

15 DATED: February 16, 2021

COLLINSON, DAEHNKE, INLOW & GRECO

16
17 */s/ Linda K. Rurangirwa*

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24 ALI KIA, M.D.

CERTIFICATE OF SERVICE

I hereby certify that on this 16TH day of February, 2021, a true and correct copy of
DEFENDANT ALI KIA, M.D.'S REPLY IN SUPPORT OF 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.

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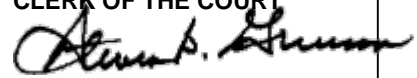
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9 DISTRICT COURT
10 CLARK COUNTY, NEVADA

11 CHOLOE GREEN, an individual,
12
13 Plaintiff,

14 vs.

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

18 Defendants.
19

CASE NO. A-17-757722-C
Dept. No.: 23

**DEFENDANT NEVADA HOSPITALIST
GROUP, LLC'S REPLY IN SUPPORT OF
MOTION TO DISMISS**

20
21
22 Defendant NEVADA HOSPITALIST GROUP, LLP, ("NHG") 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 its Reply in Support of Motion to Dismiss.

25 ///

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28 ///

1 This Reply is based upon the papers and pleadings on file herein, the arguments contained
2 in the previously filed Motion to Dismiss and NHG's Joinder thereto, the attached exhibit and the
3 oral argument regarding this matter.

4 DATED this 16th day of February, 2021

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18 **I. ARGUMENT**

19 In addition to the arguments set forth in co-Defendant Dr. Kia's Reply in Support of
20 Motion to Dismiss, Defendant NHG offers the following additional arguments.

21 **A. Plaintiff Admits Her Claims Are Barred by the Statute of Limitations**

22 The most important part of Plaintiff's Opposition is that she contends that she discovered
23 her alleged legal injury by Dr. Kia during his deposition on November 14, 2018. Opposition, p.
24 10.

25 Choloé discovered she suffered a "legal injury" by Kia during his November 14, 2018,
26 deposition. She would have discovered that injury earlier if Kia had shown up to his original deposition.

27 Plaintiff's discovery date in this case likely much earlier than the date of Dr. Kia's deposition, as
28 he appears in the medical records. However, Plaintiff's concession that she discovered her legal
injury on November 14, 2018 definitively establishes that her claims against Dr. Kia, and therefore
NHG were filed after the statute of limitations expired. The statute of limitations is one year from
the date of discovery or three years from the date of injury, whichever occurs first. NRS

1 41A.097. Here, Plaintiff's own concession establishes that the statute of limitations expired on
2 November 14, 2019. Plaintiff did not file a claim against Dr. Kia and NHG until December 16,
3 2020. Thus, Plaintiff's claims against Dr. Kia and NHG were filed, at a minimum, over a year
4 after the statute of limitations expired. The fact that Sunrise Hospital previously filed a claim
5 against Dr. Kia and NHG does not affect the statute of limitations for Plaintiff's claims against Dr.
6 Kia and NHG. Additionally, as Sunrise failed to attach an expert affidavit to its Third Party
7 Complaint, its claims against Dr. Kia and NHG were *void ab initio*. The Third Party Complaint
8 was void and never legally existed as a result. *Washoe Med. Ctr. v. Second Judicial Dist. Court*,
9 122 Nev. 1298, 1304 (2006). ("We conclude that, under NRS 41A.071, a complaint filed without a
10 supporting medical expert affidavit is void ab initio and must be dismissed. Because a void
11 complaint does not legally exist, it cannot be amended.").

12 Lastly, it is Plaintiff's position that Dr. Kia was employed by NHG and this alleged
13 employment relationship is the basis for Plaintiff's claim against NHG. NHG is not and never has
14 been Dr. Kia's employer. However, even if Plaintiff's allegation is taken as true for the purposes
15 of this Motion, this alleged fact was discovered during Dr. Kia's deposition, which also took place
16 on November 14, 2018.

17 **B. NHG Did Not Delay This Case**

18 Plaintiff also repeatedly claims that NHG delayed the case by not answering Sunrise
19 Hospital's Third Party Complaint in a timely fashion. NHG did not delay this case. In fact,
20 Sunrise Hospital's counsel stated that they were considering dismissing NHG from the case and
21 that NHG did not need to respond to the Third Party Complaint until Sunrise Hospital decided if it
22 was going to maintain a claim against NHG. Correspondence, attached hereto as **Exhibit A**.

23 ///

24 ///

25 ///

26 ///

27 ///

28 ///

1 There was no delay by NHG, and even if there was, it had nothing to do with Plaintiff's own
2 ability to decide to bring claims against Dr. Kia and NHG or not.

3 DATED this 16th day of February, 2021

4 LEWIS BRISBOIS BISGAARD & SMITH LLP

5
6
7 By /s/ Erin E. Jordan

8 S. BRENT VOGEL

9 Nevada Bar No. 6858

10 ERIN E. JORDAN

11 Nevada Bar No. 10018

12 6385 S. Rainbow Boulevard, Suite 600

13 Las Vegas, Nevada 89118

14 Tel. 702.893.3383

15 *Attorneys for Defendant Nevada Hospitalist*
16 *Group, LLP*
17
18
19
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21
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28

CERTIFICATE OF SERVICE

I hereby certify that on this 16th day of February, 2021, a true and correct copy of DEFENDANT NEVADA HOSPITALIST GROUP, LLC'S REPLY IN SUPPORT OF MOTION TO DISMISS was served by electronically filing with the Clerk of the Court using the Electronic Service system and serving all parties with an email-address on record, who have agreed to receive Electronic Service in this action.

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Nicole M. Young, Esq.
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Attorneys for Defendant Ali Kia, M.D.

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

Exhibit A



1140 North Town Center Drive
Suite 350
Las Vegas, NV 89144

P: 702.889.6400
F: 702.384.6025
hpslaw.com

smayor@hpslaw.com

Via email: Erin.Jordan@lewisbrisbois.com

December 12, 2019

Erin E. Jordan, Esq.
LEWIS BRISBOIS
6385 South Rainbow Blvd., Suite 600
Las Vegas, NV 89118

Re: *Green v. Sunrise Hospital, et al.*
Case No.: A-17-757722-C
HPS No.: 39-564

Dear Erin,

Our law firm represents Sunrise Hospital and Medical Center with regard to the hospital's Third-Party Complaint against Ali Kia, M.D. and Nevada Hospitalists Group. I have reviewed much of the email chain between you and attorney Mike Prangle, of this office.

In some initial discovery done in this case, Dr. Kia indicated he was employed with Nevada Hospitalists Group. He is listed with Sunrise Hospital as being employed at the address of Nevada Hospitalists Group. Further, Dr. Kia has testified that he came to treat the Plaintiff, Choloe Green, as a result of the on-call schedule for the group. That is, a call was made to Nevada Hospitalists Group for a hospitalist to provide care for Choloe Green. Apparently, Dr. Kia responded to that call.

In preparing this letter to you, we are aware that Nevada Hospitalists Group has indicated that Dr. Kia was not employed with the group during July 2016 when the care at issue took place. We have also received the Norcal Mutual policy that you have submitted to us.

Nevertheless, it appears that a primary reason Sunrise Hospital is an original defendant in this case relates to Dr. Kia's care of Ms. Green. We did attempt to dismiss potential claims of ostensible agency against Sunrise Hospital for Dr. Kia's care, but that Motion was denied without prejudice.

At this point, Sunrise Hospital will move forward with its Third-Party Complaint against both Dr. Kia and Nevada Hospitalists Group. For that reason, Nevada Hospitalists Group should answer the Third-Party Complaint (please accept a 20-day period from the date of this letter in which to file that Answer or a responsive pleading). We will attempt to perform discovery to clarify these issues. If such clarification demonstrates that Nevada Hospitalists Group should be dismissed, voluntarily, we will certainly consider doing so.

Erin Jordan, Esq.
LEWIS BRISBOIS

December 12, 2019

Lastly, the deposition of the Plaintiff, Choloe Green, is scheduled to take place on December 17, 2019 at 1:00 p.m. at our office. You are invited to attend and participate on behalf of both Dr. Kia and Nevada Hospitalists Group.

Very truly yours,

HALL PRANGLE AND SCHOONVELD

/s/ Sherman B. Mayor, Esq.

Sherman B. Mayor, Esq.
SBM/knw

Whitbeck, Johana

From: Jordan, Erin
Sent: Tuesday, February 16, 2021 2:53 PM
To: Jordan, Erin
Subject: FW: RE: Sunrise v. NHG re Green

Erin E. Jordan
Partner
Las Vegas Rainbow
702.693.4354 or x7024354

From: Jordan, Erin <Erin.Jordan@lewisbrisbois.com>
Sent: Tuesday, December 10, 2019 4:45 PM
To: mprangle@HPSLAW.COM; smayor@HPSLAW.COM; tdobbs@HPSLAW.COM
Cc: Johana.Whitbeck@lewisbrisbois.com; Brent.Vogel@lewisbrisbois.com; jwinter@HPSLAW.COM; rclaus@HPSLAW.COM
Subject: RE: Sunrise v. NHG re Green

Hi Mike and Sherman,
I'm checking in on this as the Plaintiff's depo is set for 12/17. Please advise.

Thanks,
Erin

From: Mike Prangle [mailto:mprangle@HPSLAW.COM]
Sent: Friday, November 22, 2019 2:46 PM
To: Jordan, Erin; Sherman Mayor; Tyson Dobbs
Cc: Whitbeck, Johana; Vogel, Brent; Jennifer Winter; Reina Claus
Subject: [EXT] Re: Sunrise v. NHG re Green

Erin,

I've asked Sherman Mayor to respond to this. Thanks.

Mike P.

Get [Outlook for iOS](#)

Mike Prangle
Partner



**200 South Wacker Drive
Suite 3300
Chicago, IL 60606
F: 312.345.9608**

O: 312.267.6202
Email: mprangle@HPSLAW.COM

Legal Assistant: Jennifer Winter
O: 312.267.6215
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From: Jordan, Erin <Erin.Jordan@lewisbrisbois.com>
Sent: Friday, November 22, 2019 3:49:53 PM
To: Mike Prangle <mprangle@HPSLAW.COM>; Sherman Mayor <smayor@HPSLAW.COM>; Tyson Dobbs <tdobbs@HPSLAW.COM>
Cc: Whitbeck, Johana <Johana.Whitbeck@lewisbrisbois.com>; Vogel, Brent <Brent.Vogel@lewisbrisbois.com>; Jennifer Winter <jwinter@HPSLAW.COM>; Reina Claus <rclaus@HPSLAW.COM>
Subject: RE: Sunrise v. NHG re Green

[External Email] CAUTION!.

Hi Mike,
I wanted to touch base with you on this matter. Have you decided whether to dismiss NHG from this case?

Thanks,
Erin

From: Jordan, Erin
Sent: Wednesday, August 14, 2019 11:02 AM
To: 'Mike Prangle'; Sherman Mayor; Tyson Dobbs
Cc: Whitbeck, Johana; Vogel, Brent; Jennifer Winter; Reina Claus
Subject: RE: Sunrise v. NHG re Green

Hi Mike,
Here's the policy. Please let us know if this resolves the issue or if you would prefer we file a responsive document.

Thanks,
Erin

From: Mike Prangle [mailto:mprangle@HPSLAW.COM]
Sent: Monday, July 29, 2019 12:38 PM
To: Jordan, Erin; Sherman Mayor; Tyson Dobbs

Cc: Whitbeck, Johana; Vogel, Brent; Jennifer Winter; Reina Claus
Subject: [EXT] Re: Sunrise v. NHG re Green

Erin,

I mean the NHG contract, not the NAP contract. I have acronyms on the brain. Sorry for any confusion.

Mike P.



**200 South Wacker Drive
Suite 3300
Chicago, IL 60606
F: 312.345.9608**

Mike Prangle
Partner
O: 312.267.6202
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From: Mike Prangle
Sent: Monday, July 29, 2019 12:37:18 PM
To: Jordan, Erin <Erin.Jordan@lewisbrisbois.com>; Sherman Mayor <smayor@HPSLAW.COM>; Tyson Dobbs <tdobbs@HPSLAW.COM>
Cc: Whitbeck, Johana <Johana.Whitbeck@lewisbrisbois.com>; Vogel, Brent <Brent.Vogel@lewisbrisbois.com>; Jennifer Winter <jwinter@HPSLAW.COM>; Reina Claus <rclaus@HPSLAW.COM>
Subject: Re: Sunrise v. NHG re Green

Erin,

I don't suppose you have the NAP contract with Sunrise. I don't think I have that yet. If you do, can you send it?

Thanks.

Mike P.

From: Jordan, Erin <Erin.Jordan@lewisbrisbois.com>
Sent: Monday, July 29, 2019 12:35 PM
To: Mike Prangle <mprangle@HPSLAW.COM>; Sherman Mayor <smayor@HPSLAW.COM>; Tyson Dobbs <tdobbs@HPSLAW.COM>
Cc: Whitbeck, Johana <Johana.Whitbeck@lewisbrisbois.com>; Vogel, Brent <Brent.Vogel@lewisbrisbois.com>; Jennifer Winter <jwinter@HPSLAW.COM>; Reina Claus <rclaus@HPSLAW.COM>
Subject: RE: Sunrise v. NHG re Green

I have the policy. I will send it over. I believe the confusion stems from him simply covering a shift for someone employed by NHG vs. being employed there.

Thanks,
Erin

From: Mike Prangle [mailto:mprangle@HPSLAW.COM]
Sent: Monday, July 29, 2019 12:21 PM
To: Jordan, Erin; Sherman Mayor; Tyson Dobbs
Cc: Whitbeck, Johana; Vogel, Brent; Jennifer Winter; Reina Claus
Subject: [EXT] Re: Sunrise v. NHG re Green

External Email

Erin,

Welcome to the party. I confess I don't recall ever having a case before where a doc says he's employed by a group and the group saying that he is not theirs. Further, I'm told that when Dr. Kia applied for privileges at Sunrise that the address he gave them was the NHG address. If we can establish that NHG does not belong in the case, we will dismiss them. I'm not exactly sure how we get to that point though.

FYI Dr. Kia is represented by Tricia Daehnke. We have reached out to her to see if she can shed some light on this. I will see if we can get a copy of the NHG contract, and insurance policy.

Mike P.



**200 South Wacker Drive
Suite 3300
Chicago, IL 60606
F: 312.345.9608**

Mike Prangle
Partner
O: 312.267.6202
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From: Jordan, Erin <Erin.Jordan@lewisbrisbois.com>
Sent: Monday, July 29, 2019 10:51 AM
To: Mike Prangle <mprangle@HPSLAW.COM>; Sherman Mayor <smayor@HPSLAW.COM>; Tyson Dobbs <tdobbs@HPSLAW.COM>
Cc: Whitbeck, Johana <Johana.Whitbeck@lewisbrisbois.com>; Vogel, Brent <Brent.Vogel@lewisbrisbois.com>
Subject: Sunrise v. NHG re Green

Mr. Prangle and Mr. Mayor,
We have been retained to represent NHG in the recently served Third Party Complaint matter regarding patient Green. I'm aware that you've been communicating with Mr. Nelson about this matter and I've seen the references to NHG in Dr. Kia's deposition. I am hoping that we can clear this matter up without having to proceed to motion practice. Would it assist you to see the NHG insurance policy for the time in question? NHG has insurance for all of its providers and the policy in question does not include Dr. Kia. Please let me know your thoughts.

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

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1 RTRAN

2 DISTRICT COURT
3 CLARK COUNTY, NEVADA

4 CHOLOE GREEN,

5 Plaintiff,

6 vs.

7 FRANK DELEE, M.D.,

8 Defendant.

CASE: A-17-757722-C

DEPT. XXIII

Transcript of Proceedings

9
10 BEFORE THE HONORABLE JASMIN LILLY-SPELLS,
11 DISTRICT COURT JUDGE

12 TUESDAY, MARCH, 16, 2021

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

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

16
17 ALL APPEARANCES VIA BLUEJEANS:

18 For the Plaintiff:

DANIEL MARKS, ESQ.
NICOLE M. YOUNG, ESQ.

19 For Dr. Delee:

ERIC K. STRYKER, ESQ.

20 For Dr. Kia:

LINDA K. RURANGIRWA, ESQ.

21 For Sunrise Hospital:

SHERMAN B. MAYOR, ESQ.

22 For Nevada Hospitalist Group, LLP:

STEPHEN B. VOGEL, ESQ.

23
24
25 RECORDED BY: MARIA GARIBAY, COURT RECORDER

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Tuesday, March 16, 2021 at 11:14 a.m.

THE CLERK: Page nine, A757722, Green versus Delee.

[Colloquy between the Court and Court staff]

THE COURT: Good morning, everyone.

MR. MARKS: Good morning, Your Honor.

MR. VOGEL: Good morning, Your Honor.

MS. RURANGIRWA: Good morning, Your Honor.

THE CLERK: Can we get appearances?

MR. MARKS: Your Honor, Daniel Marks and Nicole Young for
the plaintiff.

MS. RURANGIRWA: Good morning, Your Honor, Linda
Rurangirwa on behalf of Dr. Kia.

THE COURT: This is defendant --

MR. VOGEL: Stephen Vogel on behalf of doctor -- on behalf
of Nevada Hospitalist Group.

MR. STRYKER: Eric Stryker on behalf of Dr. Delee and his
professional corporation.

MR. MAYOR: This is Sherman Mayor for Sunrise Hospital.

THE CLERK: Sherman Mayor? Was that --

MR. MAYOR: Yes, Sherman Mayor.

THE CLERK: Okay, Mr. Mayor, you're really light, you'll need
to speak up, okay.

MR. MAYOR: Yes.

THE CLERK: Thank you.

1 THE COURT: Good morning, everyone. Thank you so much
2 for your patience this morning. I know the calendar is running a little bit
3 long.

4 This is Defendant Ali Kia's M.D.'s Motion to Dismiss Plaintiff's
5 Amended Complaint, and then Nevada Hospitalist Group filed a joinder.

6 So, counsel for Ms. Kia, do you wish to be heard?

7 MS. RURANGIRWA: Your Honor, I believe that we've briefed
8 the issue and statute of limitations pretty thoroughly. I don't have
9 anything substantive to add to the pleadings unless there's something
10 Your Honor would --

11 THE COURT: Okay, I'm going to interrupt --

12 MS. RURANGIRWA: -- like me to address further.

13 THE COURT: -- you just briefly. I believe you're saying you
14 don't have anything substantive to add, but I just want to let you know
15 that it's very difficult to hear you.

16 MS. RURANGIRWA: I'm sorry, is this any better?

17 THE COURT: A little bit.

18 MS. RURANGIRWA: Okay.

19 THE COURT: If you just --

20 MS. RURANGIRWA: How's this?

21 THE COURT: -- speak up just a tad bit and I will try to do the
22 same.

23 MS. RURANGIRWA: Sure.

24 Okay, I don't have anything substantive to add to the
25 pleadings unless there's something that Your Honor would like me to

1 address further.

2 THE COURT: No, I've read through both of the pleadings, as
3 well as pulled some of the case law, and so on this one I don't have any
4 additional questions.

5 Does counsel for Nevada Hospitalist Group wish to add
6 anything?

7 MR. VOGEL: Good morning, Your Honor, this is Brent Vogel.
8 If you're familiar with everything and read all the case law,
9 then no, I don't think any additional argument is needed. Thank you.

10 THE COURT: Thank you.

11 So the defense is submitting it.

12 Does plaintiff wish to add anything?

13 MR. MARKS: Yes, Your Honor. Can you hear me? It's
14 Daniel Marks.

15 THE COURT: Yes.

16 MR. MARKS: Your Honor, I feel I have to argue this because
17 you're the third judge that's had this case in the approximate three plus
18 years. And there had -- the case goes back to rulings that were made
19 originally with -- when Doug -- Judge Smith had the case and then those
20 rulings were significantly changed by Judge Silva. And my opponent
21 now is arguing law of the case, but there had been two different laws of
22 the case.

23 So if I could briefly, I think the procedural posture is very
24 important. Ali Kia's depo was taken after he failed to show for his depo
25 in 2018. It was taken later in 2018. And the evidence appeared to us to

1 be that he was a hospitalist at Sunrise and that under the *McCroskey*
2 case and the *Charter Hospital* case, whether he was a 1099 or W-2, his
3 actions would be imputed to Sunrise because when you're in the
4 hospital and you're in, you know, sort of a very sick state, doctors come
5 to your bedside who you don't hire. It's not like going to an office where
6 you chose your doctor. And the evidence was by affidavit and through
7 deposition testimony; Ms. Green had not chosen her doctor.

8 That was argued in front of Judge Smith in early 2019 and we
9 prevailed on the issue that the issue of ostensible agency was a
10 question of fact for the trier of fact and that was the law of the case. The
11 Court, Judge Smith, then allowed Sunrise to bring in Ali Kia as a third
12 party defendant, and Ali Kia, just so the Court knows, was in the case for
13 approximately one year. Ali Kia was present at the plaintiff's deposition
14 and litigated. And even after they were dismissed, I think, they're on the
15 service list.

16 Judge Smith retires and then subsequent to that, obviously,
17 we have the pandemic. During the pandemic, the -- Ali Kia's counsel,
18 Nevada Hospitalist, file a motion for judgment on the pleadings. And
19 essentially grant -- which was granted against Sunrise. And during the
20 oral argument, Judge Silva expresses the opinion that she disagrees
21 with the decisions of Judge Smith on ostensible agency and essentially
22 encourages Sunrise to file a new motion for summary judgment. Even
23 though the ostensible agency was law of the case, and we opposed it
24 both on procedural and substantive grounds, we believe that she was
25 just wrong, that Judge Smith was correct based on the Supreme Court

1 law. Judge Silva granted that motion; we filed for reconsideration and a
2 countermotion to amend to bring in Dr. Kia.

3 Now what's significant -- and I know there's a lot of material,
4 Your Honor, and I know, you know, from your prior conversations that
5 you obviously read everything -- in -- after probably six, seven months of
6 motion practice, Judge Silva issues an order on September 25th of 2020.
7 That's a significant date because in that order, while affirming the
8 dismissal of the ostensible agency theory the Court made extensive
9 findings of fact and conclusions of law and essentially looked at all the
10 issues that are being raised today, because we had argued in front of
11 Judge Silva the whole rule NRCP 15(c) relation-back. Obviously any
12 time you're dealing with relation-back, it's a situation where the statute of
13 limitations has run.

14 We briefed the issue both ways, one, that the statute hadn't
15 run, but primarily let me deal with the issue of the statute running.
16 15(c) is a rule and the case law that follows it, which allows the plaintiff
17 to go back when the issue arose and the same transaction occurs.

18 And if you look at the order from Judge Silva, back on
19 September 25th, it's just not like a one page order, motion granted,
20 motion denied, they're extensive findings. And the judge found that the
21 Court has to determine whether it was good cause under Rule 16(b) and
22 15(c), and the Court specifically found at page 6, as a conclusion of law,
23 good cause.

24 So Judge Silva essentially already found good cause. She
25 went through the *Nutton* case and the *Echols* case, which are two of the

1 leading cases on Rule 15(c), and she found that we met the three part
2 test, the actual notice, knew that it was the proper party, and has not
3 been misled. The Court was aware that Ali Kia had been in the case for
4 a year. The Court was also aware that he wasn't named originally
5 because the number of doctors were at Sunrise. And under the
6 *Massey/Litton* case, you don't have to name every doctor.

7 And the Court found that under Rule 15(c) it's to be liberally
8 construed to allow relation-back when there's no disadvantage. Here,
9 because Ali Kia was already in the case, there clearly was no
10 disadvantage.

11 Also, it's important, you can't have law of the case only
12 running one way. The judge felt clearly, because it was part of the same
13 order on September 25th, that if she was going to allow Sunrise's motion
14 for summary judgment on ostensible agency, part and parcel of that was
15 to allow the naming of Ali Kia who had been referenced in the sense
16 everyone knew that the lawsuit involved the discharge from Sunrise. So
17 you can't just have it one way, you have to have it both ways.

18 After more motion practice, later in the fall, there was an order
19 issued on 12-15-2020, and that order again reiterates that we can name
20 Ali Kia, the Court cited the three prong test under *Echols* that we met,
21 the Court cited the *French* case, which had been a Ninth Circuit case,
22 which Nevada Supreme Court had previously cited with approval saying
23 Rule 15(c) is liberally construed, and various other findings that support
24 us including that the attached affidavit is in compliance with 41A.071 as
25 to Ali Kia and Nevada Hospitalist.

1 Your Honor, it would be a terrible result if Judge Smith's order
2 is reversed by Judge Silva and then you would reverse Judge Silva only
3 in part leaving no remedy there. These rulings by Judge Silva we
4 litigated it from, I think, April of 2020, through the pandemic, to finally
5 December, and then, obviously, I think, January 5th the case was
6 transferred to Your Honor. And now essentially the defense wants to
7 undo what Judge Silva did.

8 So for consistency, for true law of the case, this motion should
9 be denied. The case they cite on the statute is a mortgage deficiency
10 case that was a separate special purpose statute of a six month statute.
11 It has nothing to do with tort law. The policy of Rule 15 is tort, even the
12 cases they're citing *Baxter*, I think, *Borger*, has said that on those facts
13 of those cases that we should be able to go forward against Ali Kia. So
14 *Costello* also and *Nelson* supports relation-back.

15 But if you go back to the September order, that's important
16 because you could see the judge is saying, I'm doing A, but I'm also
17 allowing the amendment. And there was reconsideration because all
18 counsel were somewhat confused by her order and that was then
19 clarified in two December orders. The most important for our purposes
20 is the December 15th order.

21 Now, obviously, you're taking over, it sounds like from
22 listening this morning, a number of Judge Silva cases.

23 THE COURT: Mm-hmm.

24 MR. MARKS: I think it would be -- it's only fair in taking it over
25 to leave intact what she did at this motion stage, otherwise we're left

1 where she reversed Judge Smith. And then if you reverse her, then
2 we're so -- then we're left with -- neither the Judge Smith -- benefit of
3 Judge Smith's order, which allows us to go forward, or the benefit of
4 Judge Silva's order, which allows us to go forward.

5 And she adequately, they're extensive findings in both the
6 September and December order that shouldn't likely be reversed.
7 Nothing that the defense filed is different than what was already
8 considered by Judge Silva when she found that we clearly met the
9 requirements of Rule 15(c) as well as the case law.

10 So we would ask Your Honor that you deny their motion at this
11 stage.

12 THE COURT: Thank you.

13 Ms. Rurangirwa, any response?

14 MS. RURANGIRWA: Yes, Your Honor.

15 Judge Silva's order with regards to Rule 15(c) and amending
16 the Complaint did not touch on the issue of statute of limitations. It did
17 not deal with -- with any of the issues other than whether or not the
18 plaintiffs could amend the Complaint. And so I don't think that it's
19 appropriate to infer from the orders that the issue of whether or not the
20 statute of limitations issue has been addressed -- well, to infer that it had
21 been addressed when it clearly had not.

22 Your Honor, with regards to the relation-back, Judge Silva
23 already found that the affidavit of plaintiff's original Complaint was
24 deficient with regards to Dr. Kia and NHG, and felt it can't possibly relate
25 back to that Complaint as it's void as to Dr. Kia and NHG.

1 So, I guess, with that I will submit it.

2 THE COURT: Thank you.

3 Counsel for Nevada Hospitalist Group.

4 MR. VOGEL: Thank you, Your Honor.

5 A couple of very quick points, first of all, in the law of the case
6 doctrine is -- it just doesn't apply here. The law of the case doctrine is
7 when you have interlocutory appeal and the Appellate Court makes a
8 ruling and sends it back down to District Court. We don't have that here.
9 You know, a district court judge can overrule or change any ruling from a
10 co-equal district court judge as they see fit, depending on the facts. So,
11 I think that's the first point.

12 The second point, kind of echoes Ms. Rurangirwa, the Third
13 Party Complaint, which the plaintiff seems to be relying on, was
14 dismissed as *void ab initio*, it never existed. So the whole relation-back
15 argument no longer applies.

16 And with that I will submit it. Thank you.

17 THE COURT: Thank you.

18 Defendant Ali Kia, M.D.'s Motion to Dismiss Plaintiff's
19 Amended Complaint and Defendant Nevada Hospitalist Group LLC's
20 joinder to said motion to dismiss is hereby denied. The Court does find
21 that this matter has been heard and decided before the Court previously;
22 however, I am going to rule on the merits.

23 Specifically in the Court's prior order by Judge Silva, I believe
24 it's line 2, she did consider the statute of limitations and she wrote, This
25 Court finds that amended pleadings arising out of the same transaction

1 or occurrence set forth in the original pleadings may relate back to the
2 date of the original filing, see NRCP 15(c). The same remains true when
3 an amended pleading adds a defendant that is filed after the statute of
4 limitations so long as the proper defendant; one, receives actual notice
5 of the action; two, knows that it is the proper party; and three, has not
6 been misled to prejudice by the amendment. And she cited *Echols v*
7 *Summa Corp.*, 95 Nev. 720, a 1979 case.

8 I found very interesting the argument with regard to
9 NRS 41A.071 by the defendants, and so I did spend quite some time
10 going back and researching that. The Court's understanding of that is
11 that the defendants are actually correct that under NRS 41A.071 a
12 med-mal case should be dismissed if it is filed without an expert affidavit.
13 A Complaint that does not comport with 41A.071 is *void ab initio* as
14 NRS 41A.071 appears to trump NRCP 15(a).

15 Here; however, plaintiff's original Complaint did include an
16 expert affidavit. Dr. Kia and NHG became a party to the instant case
17 through the Third Party Complaint filed on June 14th, 2019. So the Third
18 Party Complaint is what did not include a separate affidavit pursuant to
19 NRS 41A.071, but relied upon the original affidavit that plaintiff submitted
20 when initiating this case. Thus, it was the Third Party Complaint that
21 was the subject of the motion for summary judgment and summary
22 judgment was granted, correctly granted in the Court's view of that case
23 law. Considering NRS 41A.071, it would make the Third Party
24 Complaint *void ab initio*, not the original Complaint filed by the plaintiff
25 here.

1 So, based upon that, NRCP 15(a), these claims can relate
2 back. The Court finds that there is no violation of NRS 41A.071. And
3 notes that when the amended criminal Complaint was filed it took some
4 time from the filing, and specifically in the September 25th, 2020, order of
5 the Court, the Court says that it could not at that time amend any
6 criminal Complaint to add Dr. Kia and/or Nevada Hospitalist Group
7 because there were no affidavits on file compliant with NRS 41A.071.
8 And so it did take some time for the plaintiffs to get those requisite
9 documents and file the amended criminal Complaint.

10 The Court finds that there's no violation of NRS 41A.071 here
11 and that *Washoe Medical Center versus The Second Judicial District*
12 *Court* at 122 Nev.1298, (2006) is not applicable.

13 Furthermore, a proper defendant may be brought into the
14 action after the statute of limitations has run if the proper defendant; one,
15 receives actual notice of the action; two, knows that it is the proper party,
16 and three, has not been misled to its prejudice by the amendment. And
17 that is both cited in *Servatius versus United Resort Hotels*, and that's
18 S-E-R-V-A-T-I-U-S, cite is 85 Nev. 371 it's a 1969 case, and also cited in
19 the *Echols* case that Judge Silva cited in her prior order, and that's
20 *Echols versus Summa Corp.*, that's 95 Nev. 720, that's a 1979 case.

21 The Court finds that Dr. Kia and NHG received notice in
22 June 2019 when a Third Party Complaint was filed at that time, as well
23 as with their depositions. It was clear that Dr. Kia and NHG were proper
24 parties to the case.

25 The Court finds that Dr. Kia and Nevada Hospitalist Group

1 have not been misled to its prejudice because of the procedural default
2 here. I think that it was known to them that should plaintiff obtain the
3 necessary affidavits that they could be added to the case. It was known
4 to them that at the time that there was a Third Party Complaint. It was
5 known to them at the time that the motion for summary judgment would
6 have been granted based upon the reason that it was granted. And it
7 was further known to those parties at the time that Judge Silva issued
8 her order on September 25th, 2020.

9 Here the Court also relies upon the prior findings of facts and
10 conclusions of law as listed in Judge Silva's order from September 25th,
11 2020, as well as December 15th, 2020.

12 So based upon all of those things, the motions are going to be
13 denied. I'm going to ask Mr. Marks to prepare the order consistent with
14 today's ruling inclusive of findings of facts, conclusions of law. Please
15 submit it to both counsel for Dr. Kia, as well as counsel for Nevada
16 Hospitalist Group to approve as to form and content, and the motion
17 should be approved by the other side, as well as submitted to this Court,
18 within 14 days pursuant to EDCR.

19 Does either party have any questions or anything additional on
20 this case?

21 MR. MARKS: No, Your Honor.

22 MR. VOGEL: Your Honor, this is counsel for Nevada
23 Hospitalist Group.

24 I did just want to note that there is a -- there is another
25 distinction in that, the only reason Nevada Hospitalist Group was

1 brought into the case was based on being the employer for Dr. Kia. So
2 we would like to be able to reserve the right to bring a subsequent
3 motion because he was not -- Dr. Kia was not Nevada Hospitalist
4 Group's employee at the time or ever.

5 So once we develop additional evidence on that we would be
6 bringing a motion with that respect because we feel we are not a proper
7 party to this action in any way, shape, or form.

8 THE COURT: As long -- I mean, parties are always entitled to
9 bring a motion for reconsideration within the rules set forth through case
10 law and well as statutory law and most importantly the Rules of Civil
11 Procedure and the EDCR Rules.

12 And, additionally, you're always entitled to bring additional
13 motions outside of a motion to -- for reconsideration if supported by case
14 law. The Court will definitely considerate it at that time. So I don't think
15 that anything about this ruling precludes NHG or Dr. Kia, for that matter,
16 for bringing additional motions and continuing to litigate the case.

17 MR. VOGEL: Very good, thank you.

18 THE COURT: Thank you. Have a great day everyone.

19 MR. MARKS: Thank you very much, Your Honor.

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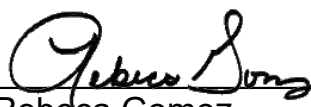
THE COURT: You're welcome.

UNIDENTIFIED SPEAKER: Thank you.

[Proceedings concluded at 11:38 a.m.]

* * * * *

ATTEST: I do hereby certify that I have truly and correctly transcribed the audio/video proceedings in the above-entitled case to the best of my ability.



Rebeca Gomez
Court Recorder/Transcriber

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. XXIII

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.

Defendants.

ORDER FROM MARCH 16, 2021 HEARING

This matter having come on for hearing on March 16, 2021, on Defendant Ali Kia, M.D.'s
Motion to Dismiss Plaintiff's Amended Complaint, and Defendant Nevada Hospitalist Group, LLP's
Joinder thereto; Plaintiff appearing by and through her counsel, Daniel Marks, Esq., and Nicole M.
Young, Esq., of the Law Office of Daniel Marks, via Blue Jeans; Defendant Ali Kia, M.D., appearing by
and through his counsel Linda Rurangirwa, Esq., of Collinson, Daehnke, Inlow & Greco, via Blue Jeans;
Defendant Nevada Hospitalist Group, LLP, appearing by and through its counsel Stephen B. Vogel,
Esq., of Lewis Brisbois Bisgaard & Smith, via Blue Jeans; Defendant Frank J. Delee, M.D., appearing
by and through its counsel Eric K. Stryker, Esq., of Wilson, Elser, Moskowitz, Edelman & Dicker, LLP,
via Blue Jeans; Defendant Sunrise Hospital and Medical Center, LLC, appearing by and through its

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counsel Sherman B. Mayor, Esq., of Hall Prangle & Schoonveld, LLC, via Blue Jeans; the Court having reviewed the papers and pleadings on file, having heard the arguments of counsel, and good cause appearing:

THIS COURT FINDS that the amended complaint arises out of the same transaction or occurrence set forth in the original complaint, relating back to the date of the original filing. *See* NRCP 15(c). The same remains true when an amended complaint adds a defendant that is filed after the statute of limitations so long as the proper defendant (1) receives actual notice of the action; (2) knows that it is the proper party; and (3) has not been misled to its prejudice by the amendment. *Echols v. Summa Corp.*, 95 Nev. 720, 722, 601 P.2d 716, 717 (1979).

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

THIS COURT FURTHER FINDS that Judge Cristina Silva found good cause to allow the filing of an amended complaint to add Dr. Ali Kia and Nevada Hospitalist Group, LLP, to the instant action in the Order Granting in Part and Denying in Part Plaintiff's Motion for Leave to Amend Complaint, entered on December 15, 2020, relying on *Nutton v. Sunset Station, Inc.*, 131 Nev. 279, 284, 357 P.3d 966, 970 (Nev. App. 2015).

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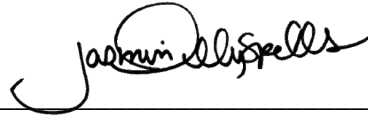
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IT IS HEREBY ORDERED, ADJUDGED, AND DECREED that Defendant Ali Kia, M.D.'s Motion to Dismiss Plaintiff's Amended Complaint, and Defendant Nevada Hospitalist Group, LLP's Joinder thereto, are DENIED.

Dated this 26th day of March, 2021



89B A41 86EC 0514
Jasmin Lilly-Spells
District Court Judge

Respectfully Submitted:

Approved as to Form and Content:

DATED this 24th day of March, 2021.
LAW OFFICE OF DANIEL MARKS

DATED this 24th day of March, 2021.
HALL PRANGLE & SCHOONVELD, LLC

/s/ Nicole M. Young

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

/s/ Sherman Mayor

SHERMAN MAYOR, ESQ.
Nevada State Bar No. 001491
CHARLOTTE BUYS, ESQ.
Nevada State Bar No. 14845
1140 N. Town Center Drive Suite #350
Las Vegas, Nevada 89144
Attorney for Sunrise Hospital

Approved as to Form and Content:

Approved as to Form and Content:

DATED this 24th day of March, 2021.
WILSON, ELSER, MOSKOWITZ,
EDELMAN & DICKER LLP

DATED this 24th day of March, 2021.
COLLINSON, DAEHNKE, INLOW & GRECO

/s/ Eric K. Stryker

ERIC K. STRYKER, ESQ.
Nevada State Bar No. 005793
300 South 4th Street, 11th floor
Las Vegas, Nevada 89101
Attorney for Frank DeLee, M.D. and
Frank DeLee, M.D., PC's

/s/ Linda Rurangirwa

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

////

////

////

1 Approved as to Form and Content:

2 DATED this 24th day of March, 2021.

3 LEWIS BRISBOIS BISGAARD & SMITH

4
5 /s/ Erin Jordan

6 S. BRENT VOGEL, ESQ.

7 Nevada State Bar No. 006858

8 ERIN JORDAN, ESQ.

9 Nevada State Bar No. 10018

10 6385 S. Rainbow Blvd., Suite 600

11 Las Vegas, Nevada 89118

12 Attorney for Nevada Hospitalist Group, LLP

From: Linda K. Rurangirwa <Linda.Rurangirwa@cdiglaw.com>
Sent: Tuesday, March 23, 2021 11:24 AM
To: Stryker, Eric K.; Jordan, Erin; Nicole Young; Charlotte Buys; Sherman Mayor; Vogel, Brent
Cc: Office; Foley, Brigitte E.; Clark, Angela; Lord, Nicole N.
Subject: RE: Green v. Delee- Discovery Deadlines

You may use my e-signature

Linda K. Rurangirwa
Collinson, Daehnke, Inlow & Greco

From: Stryker, Eric K. <Eric.Stryker@wilsonelser.com>
Sent: Tuesday, March 23, 2021 11:05 AM
To: Jordan, Erin <Erin.Jordan@lewisbrisbois.com>; Nicole Young <NYoung@danielmarks.net>; Charlotte Buys <cbuys@HPSLAW.COM>; Sherman Mayor <smayor@HPSLAW.COM>; Linda K. Rurangirwa <Linda.Rurangirwa@cdiglaw.com>; Vogel, Brent <Brent.Vogel@lewisbrisbois.com>
Cc: Office <office@danielmarks.net>; Foley, Brigitte E. <Brigitte.Foley@wilsonelser.com>; Clark, Angela <Angela.Clark@wilsonelser.com>; Lord, Nicole N. <Nicole.Lord@wilsonelser.com>
Subject: RE: Green v. Delee- Discovery Deadlines

You have my authority to e-sign for me with Erin's requested revision.
Thank you,

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

From: Jordan, Erin [<mailto:Erin.Jordan@lewisbrisbois.com>]
Sent: Monday, March 22, 2021 10:54 AM
To: Nicole Young <NYoung@danielmarks.net>; Charlotte Buys <cbuys@HPSLAW.COM>; Sherman Mayor <smayor@HPSLAW.COM>; Stryker, Eric K. <Eric.Stryker@wilsonelser.com>; Linda K. Rurangirwa <Linda.Rurangirwa@cdiglaw.com>; Vogel, Brent <Brent.Vogel@lewisbrisbois.com>
Cc: Office <office@danielmarks.net>
Subject: RE: Green v. Delee- Discovery Deadlines

[EXTERNAL EMAIL]

Hello,
Please remove the 5 year rule language from the SAO, as the 5 year rule was tolled for the covid shutdown and that date is no longer accurate. With that change, you may use my e-signature.

You may use my e-signature on the Order regarding the hearing.

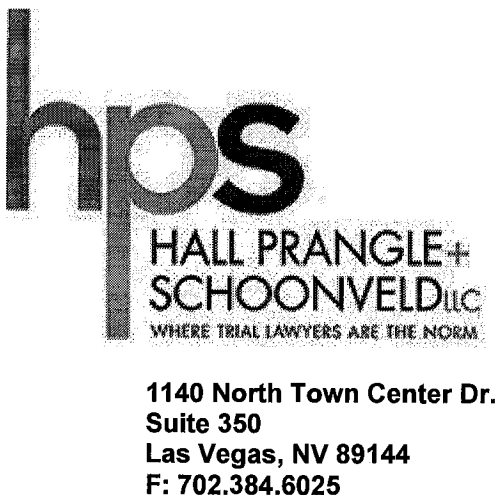
From: Charlotte Buys <cbuys@HPSLAW.COM>
Sent: Wednesday, March 24, 2021 2:54 PM
To: Stryker, Eric K.; Jordan, Erin; Nicole Young; Sherman Mayor; Linda K. Rurangirwa; Vogel, Brent
Cc: Office; Foley, Brigitte E.; Clark, Angela; Lord, Nicole N.
Subject: RE: Green v. Delee- Discovery Deadlines

Dear Ms. Young,

It appears that you may have our old address listed. Our current address is 1140 N. Town Center Drive, Suite 350, Las Vegas, NV 89144. With that revision and Ms. Jordan's revision, you have my authority to use my electronic signature on the Stipulation and Order Vacating Discovery Deadlines and you have Mr. Mayor's authority to use his electronic signature on the Order from the March 16, 2021 hearing.

Very truly yours,

Charlotte Buys



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

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

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From: Stryker, Eric K. <Eric.Stryker@wilsonelser.com>
Sent: Tuesday, March 23, 2021 11:05 AM
To: Jordan, Erin <Erin.Jordan@lewisbrisbois.com>; Nicole Young <NYoung@danielmarks.net>; Charlotte Buys <cbuys@HPSLAW.COM>; Sherman Mayor <smayor@HPSLAW.COM>; Linda K. Rurangirwa <Linda.Rurangirwa@cdiglaw.com>; Vogel, Brent <Brent.Vogel@lewisbrisbois.com>
Cc: Office <office@danielmarks.net>; Foley, Brigitte E. <Brigitte.Foley@wilsonelser.com>; Clark, Angela <Angela.Clark@wilsonelser.com>; Lord, Nicole N. <Nicole.Lord@wilsonelser.com>
Subject: RE: Green v. Delee- Discovery Deadlines

[External Email] CAUTION!

You have my authority to e-sign for me with Erin's requested revision.
Thank you,

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

From: Jordan, Erin [<mailto:Erin.Jordan@lewisbrisbois.com>]
Sent: Monday, March 22, 2021 10:54 AM
To: Nicole Young <NYoung@danielmarks.net>; Charlotte Buys <cbuys@HPSLAW.COM>; Sherman Mayor <smayor@HPSLAW.COM>; Stryker, Eric K. <Eric.Stryker@wilsonelser.com>; Linda K. Rurangirwa <Linda.Rurangirwa@cdiglaw.com>; Vogel, Brent <Brent.Vogel@lewisbrisbois.com>
Cc: Office <office@danielmarks.net>
Subject: RE: Green v. Delee- Discovery Deadlines

[EXTERNAL EMAIL]

Hello,
Please remove the 5 year rule language from the SAO, as the 5 year rule was tolled for the covid shutdown and that date is no longer accurate. With that change, you may use my e-signature.

You may use my e-signature on the Order regarding the hearing.

Thanks,
Erin

From: Nicole Young <NYoung@danielmarks.net>
Sent: Monday, March 22, 2021 10:06 AM
To: Jordan, Erin <Erin.Jordan@lewisbrisbois.com>; Charlotte Buys <cbuys@HPSLAW.COM>; Sherman Mayor <smayor@HPSLAW.COM>; Stryker, Eric K. <Eric.Stryker@wilsonelser.com>; Linda K. Rurangirwa <Linda.Rurangirwa@cdiglaw.com>; Vogel, Brent <Brent.Vogel@lewisbrisbois.com>
Cc: Office <office@danielmarks.net>
Subject: [EXT] RE: Green v. Delee- Discovery Deadlines

Hi all:

Attached is the order from last week's hearing.

Regarding the discovery deadlines, I was not sure how to proceed because 2 of you wanted to vacate and 2 requested extensions without the amount of time for an extension. I drafted a stip to vacate pending a case conference after Kia and NHG file their answers.

Please let me know if you have any changes to either so that we can get them submitted to the court.

Thank you!
Nicole

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

From: Jordan, Erin [<mailto:Erin.Jordan@lewisbrisbois.com>]
Sent: Wednesday, March 17, 2021 3:16 PM
To: Charlotte Buys <cbuys@HPSLAW.COM>; Nicole Young <NYoung@danielmarks.net>; Sherman Mayor <smayor@HPSLAW.COM>; Stryker, Eric K. <Eric.Stryker@wilsonelser.com>; Linda K. Rurangirwa <Linda.Rurangirwa@cdiglaw.com>; Vogel, Brent <Brent.Vogel@lewisbrisbois.com>
Subject: RE: Green v. Delee- Discovery Deadlines

We would like an extension regarding all deadlines.

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

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From: Charlotte Buys <cbuys@HPSLAW.COM>
Sent: Tuesday, March 16, 2021 7:46 PM
To: Nicole Young <NYoung@danielmarks.net>; Sherman Mayor <smayor@HPSLAW.COM>; Stryker, Eric K. <Eric.Stryker@wilsonelser.com>; Linda K. Rurangirwa <Linda.Rurangirwa@cdiglaw.com>; Jordan, Erin <Erin.Jordan@lewisbrisbois.com>; Vogel, Brent <Brent.Vogel@lewisbrisbois.com>
Subject: [EXT] Re: Green v. Delee- Discovery Deadlines

Dear Ms. Young,

We have received your email about extending discovery deadlines. If Dr. Kia and Nevada Hospitalist Group seek discovery deadline extensions, we would agree to same. However, if they do not seek such extensions, we would be fine with moving forward with all deadlines as currently scheduled.

Thank you,

Charlotte



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

Charlotte Buys

Associate

O: 702.212.1478

Email: cbuys@HPSLAW.COM

Legal Assistant: Casey Henley

O: 702.212.1449

Email: chenley@hpslaw.com

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From: Nicole Young <NYoung@danielmarks.net>

Sent: Tuesday, March 16, 2021 4:59 PM

To: Sherman Mayor <smayor@HPSLAW.COM>; Stryker, Eric K. <Eric.Stryker@wilsonelser.com>; Linda K. Rurangirwa <Linda.Rurangirwa@cdiglaw.com>; Charlotte Buys <cbuys@HPSLAW.COM>; Jordan, Erin <Erin.Jordan@lewisbrisbois.com>; Vogel, Brent <Brent.Vogel@lewisbrisbois.com>

Subject: Green v. Delee- Discovery Deadlines

[External Email] CAUTION!

Hi All:

I wanted to touch base because the initial expert disclosure deadline is on March 30, 2021. In light of today's ruling, the discovery deadlines will need to be extended. The current firm trial setting is October 11, 2021, with a Calendar Call on September 28, 2021. Please let me know how each party would like to proceed. We technically would not do a new scheduling order until Dr. Kia and NHG file their answers. Would you be agreeable to vacating the deadlines until we do a new 16.1 conference or we could do a new scheduling order now?

I believe I included all attorneys actively litigating this case. Please send this email to anyone I may have missed.

Please let me know if you have any questions.

Thank you!

Nicole

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

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

Thank you.

1 **CSERV**

2
3 DISTRICT COURT
CLARK COUNTY, NEVADA

4
5
6 Choloe Green, Plaintiff(s)

CASE NO: A-17-757722-C

7 vs.

DEPT. NO. Department 23

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

9
10 **AUTOMATED CERTIFICATE OF SERVICE**

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

14 Service Date: 3/26/2021

15 E-File Admin

efile@hpslaw.com

16 S. Vogel

brent.vogel@lewisbrisbois.com

17 Eric Stryker

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18 Erin Jordan

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19 Efile LasVegas

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20 Angela Clark

angela.clark@wilsonelser.com

21 Daniel Marks

office@danielmarks.net

22 Patricia Daehnke

patricia.daehnke@cdiglaw.com

23 Linda Rurangirwa

linda.rurangirwa@cdiglaw.com

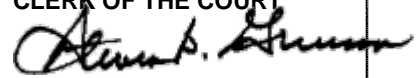
24 Amanda Rosenthal

amanda.rosenthal@cdiglaw.com

25 Laura Lucero

laura.lucero@cdiglaw.com

1	Tyson Dobbs	tdobbs@hpslaw.com
2	Alia Najjar	alia.najjar@wilsonelser.com
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5	Sherman Mayor	smayor@hpslaw.com
6	Casey Henley	chenley@hpslaw.com
7	Nicole Lord	nicole.lord@wilsonelser.com
8	Nicole Young	nyoung@danielmarks.net
9	Reina Claus	rclaus@hpslaw.com
10	Camie DeVoge	cdevoge@hpslaw.com
11	Deborah Rocha	deborah.rocha@cdiglaw.com
12	Brigette Foley	Brigette.Foley@wilsonelser.com
13	Richean Martin	richean.martin@cdiglaw.com
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15	Elsa Amoroso	elsa.amoroso@lewisbrisbois.com
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LAW OFFICE OF DANIEL MARKS
DANIEL MARKS, ESQ.
Nevada State Bar No. 002003
NICOLE M. YOUNG, ESQ.
Nevada State Bar No. 12659
610 South Ninth Street
Las Vegas, Nevada 89101
(702) 386-0536; Fax (702) 386-6812
Office@danielmarks.net
Attorneys for Plaintiff

DISTRICT COURT
CLARK COUNTY, NEVADA

CHLOE GREEN, an individual,

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

Plaintiff,

v.

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

Defendants.

NOTICE OF ENTRY OF ORDER FROM MARCH 16, 2021 HEARING

PLEASE TAKE NOTICE that an order from March 16, 2021 hearing was entered in the above-entitled action on the 29th day of March, 2021, a copy of which is attached hereto.

DATED this 29 day of March, 2021.

LAW OFFICE OF DANIEL MARKS

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

- 1
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Erik Stryker
WILSON, ELSE, 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.

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

2

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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. XXIII

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.

Defendants.

ORDER FROM MARCH 16, 2021 HEARING

This matter having come on for hearing on March 16, 2021, on Defendant Ali Kia, M.D.'s
Motion to Dismiss Plaintiff's Amended Complaint, and Defendant Nevada Hospitalist Group, LLP's
Joinder thereto; Plaintiff appearing by and through her counsel, Daniel Marks, Esq., and Nicole M.
Young, Esq., of the Law Office of Daniel Marks, via Blue Jeans; Defendant Ali Kia, M.D., appearing by
and through his counsel Linda Rurangirwa, Esq., of Collinson, Daehnke, Inlow & Greco, via Blue Jeans;
Defendant Nevada Hospitalist Group, LLP, appearing by and through its counsel Stephen B. Vogel,
Esq., of Lewis Brisbois Bisgaard & Smith, via Blue Jeans; Defendant Frank J. Delee, M.D., appearing
by and through its counsel Eric K. Stryker, Esq., of Wilson, Elser, Moskowitz, Edelman & Dicker, LLP,
via Blue Jeans; Defendant Sunrise Hospital and Medical Center, LLC, appearing by and through its

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counsel Sherman B. Mayor, Esq., of Hall Prangle & Schoonveld, LLC, via Blue Jeans; the Court having reviewed the papers and pleadings on file, having heard the arguments of counsel, and good cause appearing:

THIS COURT FINDS that the amended complaint arises out of the same transaction or occurrence set forth in the original complaint, relating back to the date of the original filing. *See* NRCP 15(c). The same remains true when an amended complaint adds a defendant that is filed after the statute of limitations so long as the proper defendant (1) receives actual notice of the action; (2) knows that it is the proper party; and (3) has not been misled to its prejudice by the amendment. *Echols v. Summa Corp.*, 95 Nev. 720, 722, 601 P.2d 716, 717 (1979).

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

THIS COURT FURTHER FINDS that Judge Cristina Silva found good cause to allow the filing of an amended complaint to add Dr. Ali Kia and Nevada Hospitalist Group, LLP, to the instant action in the Order Granting in Part and Denying in Part Plaintiff's Motion for Leave to Amend Complaint, entered on December 15, 2020, relying on *Nutton v. Sunset Station, Inc.*, 131 Nev. 279, 284, 357 P.3d 966, 970 (Nev. App. 2015).

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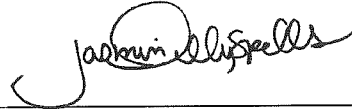
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1 IT IS HEREBY ORDERED, ADJUDGED, AND DECREED that Defendant Ali Kia, M.D.'s
2 Motion to Dismiss Plaintiff's Amended Complaint, and Defendant Nevada Hospitalist Group, LLP's
3 Joinder thereto, are DENIED.

4 Dated this 26th day of March, 2021

5 
6

7 89B A41 86EC 0514
8 Jasmin Lilly-Spells
District Court Judge

9 Respectfully Submitted:

Approved as to Form and Content:

10 DATED this 24th day of March, 2021.
11 LAW OFFICE OF DANIEL MARKS

DATED this 24th day of March, 2021.
HALL PRANGLE & SCHOONVELD, LLC

12 /s/ Nicole M. Young

13 DANIEL MARKS, ESQ.
14 Nevada State Bar No. 002003
15 NICOLE M. YOUNG, ESQ.
16 Nevada State Bar No. 12659
610 South Ninth Street
Las Vegas, Nevada 89101
Attorney for Plaintiff

/s/ Sherman Mayor

SHERMAN MAYOR, ESQ.
Nevada State Bar No. 001491
CHARLOTTE BUYS, ESQ.
Nevada State Bar No. 14845
1140 N. Town Center Drive Suite #350
Las Vegas, Nevada 89144
Attorney for Sunrise Hospital

17 Approved as to Form and Content:

Approved as to Form and Content:

18 DATED this 24th day of March, 2021.

DATED this 24th day of March, 2021.

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

COLLINSON, DAEHNKE, INLOW & GRECO

21 /s/ Eric K. Stryker

22 ERIC K. STRYKER, ESQ.
23 Nevada State Bar No. 005793
300 South 4th Street, 11th floor
24 Las Vegas, Nevada 89101
25 Attorney for Frank DeLee, M.D. and
Frank DeLee, M.D., PC's

/s/ Linda Rurangirwa

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

26 ////

27 ////

28 ////

1 Approved as to Form and Content:

2 DATED this 24th day of March, 2021.

3 LEWIS BRISBOIS BISGAARD & SMITH

4
5 /s/ Erin Jordan

6 S. BRENT VOGEL, ESQ.

7 Nevada State Bar No. 006858

8 ERIN JORDAN, ESQ.

9 Nevada State Bar No. 10018

10 6385 S. Rainbow Blvd., Suite 600

11 Las Vegas, Nevada 89118

12 Attorney for Nevada Hospitalist Group, LLP

From: Linda K. Rurangirwa <Linda.Rurangirwa@cdiglaw.com>
Sent: Tuesday, March 23, 2021 11:24 AM
To: Stryker, Eric K.; Jordan, Erin; Nicole Young; Charlotte Buys; Sherman Mayor; Vogel, Brent
Cc: Office; Foley, Brigitte E.; Clark, Angela; Lord, Nicole N.
Subject: RE: Green v. Delee- Discovery Deadlines

You may use my e-signature

Linda K. Rurangirwa
Collinson, Daehnke, Inlow & Greco

From: Stryker, Eric K. <Eric.Stryker@wilsonelser.com>
Sent: Tuesday, March 23, 2021 11:05 AM
To: Jordan, Erin <Erin.Jordan@lewisbrisbois.com>; Nicole Young <NYoung@danielmarks.net>; Charlotte Buys <cbuys@HPSLAW.COM>; Sherman Mayor <smayor@HPSLAW.COM>; Linda K. Rurangirwa <Linda.Rurangirwa@cdiglaw.com>; Vogel, Brent <Brent.Vogel@lewisbrisbois.com>
Cc: Office <office@danielmarks.net>; Foley, Brigitte E. <Brigitte.Foley@wilsonelser.com>; Clark, Angela <Angela.Clark@wilsonelser.com>; Lord, Nicole N. <Nicole.Lord@wilsonelser.com>
Subject: RE: Green v. Delee- Discovery Deadlines

You have my authority to e-sign for me with Erin's requested revision.
Thank you,

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

From: Jordan, Erin [<mailto:Erin.Jordan@lewisbrisbois.com>]
Sent: Monday, March 22, 2021 10:54 AM
To: Nicole Young <NYoung@danielmarks.net>; Charlotte Buys <cbuys@HPSLAW.COM>; Sherman Mayor <smayor@HPSLAW.COM>; Stryker, Eric K. <Eric.Stryker@wilsonelser.com>; Linda K. Rurangirwa <Linda.Rurangirwa@cdiglaw.com>; Vogel, Brent <Brent.Vogel@lewisbrisbois.com>
Cc: Office <office@danielmarks.net>
Subject: RE: Green v. Delee- Discovery Deadlines

[EXTERNAL EMAIL]

Hello,
Please remove the 5 year rule language from the SAO, as the 5 year rule was tolled for the covid shutdown and that date is no longer accurate. With that change, you may use my e-signature.

You may use my e-signature on the Order regarding the hearing.

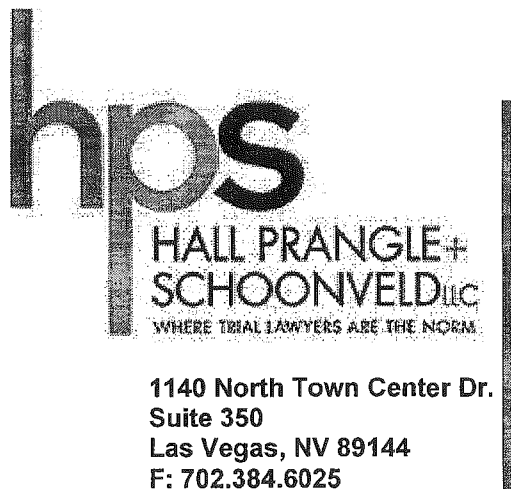
From: Charlotte Buys <cbuys@HPSLAW.COM>
Sent: Wednesday, March 24, 2021 2:54 PM
To: Stryker, Eric K.; Jordan, Erin; Nicole Young; Sherman Mayor; Linda K. Rurangirwa; Vogel, Brent
Cc: Office; Foley, Brigitte E.; Clark, Angela; Lord, Nicole N.
Subject: RE: Green v. Delee- Discovery Deadlines

Dear Ms. Young,

It appears that you may have our old address listed. Our current address is 1140 N. Town Center Drive, Suite 350, Las Vegas, NV 89144. With that revision and Ms. Jordan's revision, you have my authority to use my electronic signature on the Stipulation and Order Vacating Discovery Deadlines and you have Mr. Mayor's authority to use his electronic signature on the Order from the March 16, 2021 hearing.

Very truly yours,

Charlotte Buys



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

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

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From: Stryker, Eric K. <Eric.Stryker@wilsonelser.com>
Sent: Tuesday, March 23, 2021 11:05 AM
To: Jordan, Erin <Erin.Jordan@lewisbrisbois.com>; Nicole Young <NYoung@danielmarks.net>; Charlotte Buys <cbuys@HPSLAW.COM>; Sherman Mayor <smayor@HPSLAW.COM>; Linda K. Rurangirwa <Linda.Rurangirwa@cdiglaw.com>; Vogel, Brent <Brent.Vogel@lewisbrisbois.com>
Cc: Office <office@danielmarks.net>; Foley, Brigitte E. <Brigitte.Foley@wilsonelser.com>; Clark, Angela <Angela.Clark@wilsonelser.com>; Lord, Nicole N. <Nicole.Lord@wilsonelser.com>
Subject: RE: Green v. Delee- Discovery Deadlines

[External Email] CAUTION!

You have my authority to e-sign for me with Erin's requested revision.
Thank you,

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

From: Jordan, Erin [<mailto:Erin.Jordan@lewisbrisbois.com>]
Sent: Monday, March 22, 2021 10:54 AM
To: Nicole Young <NYoung@danielmarks.net>; Charlotte Buys <cbuys@HPSLAW.COM>; Sherman Mayor <smayor@HPSLAW.COM>; Stryker, Eric K. <Eric.Stryker@wilsonelser.com>; Linda K. Rurangirwa <Linda.Rurangirwa@cdiglaw.com>; Vogel, Brent <Brent.Vogel@lewisbrisbois.com>
Cc: Office <office@danielmarks.net>
Subject: RE: Green v. Delee- Discovery Deadlines

[EXTERNAL EMAIL]

Hello,
Please remove the 5 year rule language from the SAO, as the 5 year rule was tolled for the covid shutdown and that date is no longer accurate. With that change, you may use my e-signature.

You may use my e-signature on the Order regarding the hearing.

Thanks,
Erin

From: Nicole Young <NYoung@danielmarks.net>
Sent: Monday, March 22, 2021 10:06 AM
To: Jordan, Erin <Erin.Jordan@lewisbrisbois.com>; Charlotte Buys <cbuys@HPSLAW.COM>; Sherman Mayor <smayor@HPSLAW.COM>; Stryker, Eric K. <Eric.Stryker@wilsonelser.com>; Linda K. Rurangirwa <Linda.Rurangirwa@cdiglaw.com>; Vogel, Brent <Brent.Vogel@lewisbrisbois.com>
Cc: Office <office@danielmarks.net>
Subject: [EXT] RE: Green v. Delee- Discovery Deadlines

Hi all:

Attached is the order from last week's hearing.

Regarding the discovery deadlines, I was not sure how to proceed because 2 of you wanted to vacate and 2 requested extensions without the amount of time for an extension. I drafted a stip to vacate pending a case conference after Kia and NHG file their answers.

Please let me know if you have any changes to either so that we can get them submitted to the court.

Thank you!
Nicole

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

From: Jordan, Erin [<mailto:Erin.Jordan@lewisbrisbois.com>]
Sent: Wednesday, March 17, 2021 3:16 PM
To: Charlotte Buys <cbuys@HPSLAW.COM>; Nicole Young <NYoung@danielmarks.net>; Sherman Mayor <smayor@HPSLAW.COM>; Stryker, Eric K. <Eric.Stryker@wilsonelser.com>; Linda K. Rurangirwa <Linda.Rurangirwa@cdiglaw.com>; Vogel, Brent <Brent.Vogel@lewisbrisbois.com>
Subject: RE: Green v. Delee- Discovery Deadlines

We would like an extension regarding all deadlines.

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.

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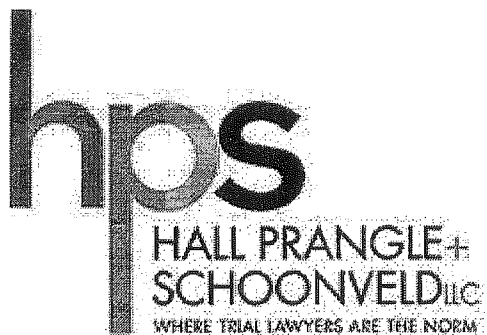
From: Charlotte Buys <cbuys@HPSLAW.COM>
Sent: Tuesday, March 16, 2021 7:46 PM
To: Nicole Young <NYoung@danielmarks.net>; Sherman Mayor <smayor@HPSLAW.COM>; Stryker, Eric K. <Eric.Stryker@wilsonelser.com>; Linda K. Rurangirwa <Linda.Rurangirwa@cdiglaw.com>; Jordan, Erin <Erin.Jordan@lewisbrisbois.com>; Vogel, Brent <Brent.Vogel@lewisbrisbois.com>
Subject: [EXT] Re: Green v. Delee- Discovery Deadlines

Dear Ms. Young,

We have received your email about extending discovery deadlines. If Dr. Kia and Nevada Hospitalist Group seek discovery deadline extensions, we would agree to same. However, if they do not seek such extensions, we would be fine with moving forward with all deadlines as currently scheduled.

Thank you,

Charlotte



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

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

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

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From: Nicole Young <NYoung@danielmarks.net>

Sent: Tuesday, March 16, 2021 4:59 PM

To: Sherman Mayor <smayor@HPSLAW.COM>; Stryker, Eric K. <Eric.Stryker@wilsonelser.com>; Linda K. Rurangirwa <Linda.Rurangirwa@cdiglaw.com>; Charlotte Buys <cbuys@HPSLAW.COM>; Jordan, Erin <Erin.Jordan@lewisbrisbois.com>; Vogel, Brent <Brent.Vogel@lewisbrisbois.com>

Subject: Green v. Delee- Discovery Deadlines

[External Email] CAUTION!

Hi All:

I wanted to touch base because the initial expert disclosure deadline is on March 30, 2021. In light of today's ruling, the discovery deadlines will need to be extended. The current firm trial setting is October 11, 2021, with a Calendar Call on September 28, 2021. Please let me know how each party would like to proceed. We technically would not do a new scheduling order until Dr. Kia and NHG file their answers. Would you be agreeable to vacating the deadlines until we do a new 16.1 conference or we could do a new scheduling order now?

I believe I included all attorneys actively litigating this case. Please send this email to anyone I may have missed.

Please let me know if you have any questions.

Thank you!

Nicole

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

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

Thank you.

1 CSERV

2 DISTRICT COURT
3 CLARK COUNTY, NEVADA

4
5
6 Choloe Green, Plaintiff(s)

CASE NO: A-17-757722-C

7 vs.

DEPT. NO. Department 23

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

9
10 **AUTOMATED CERTIFICATE OF SERVICE**

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

14 Service Date: 3/26/2021

15 E-File Admin	efile@hpslaw.com
16 S. Vogel	brent.vogel@lewisbrisbois.com
17 Eric Stryker	eric.stryker@wilsonelser.com
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19 Efile LasVegas	efilelasvegas@wilsonelser.com
20 Angela Clark	angela.clark@wilsonelser.com
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22 Patricia Daehnke	patricia.daehnke@cdiglaw.com
23 Linda Rurangirwa	linda.rurangirwa@cdiglaw.com
24 Amanda Rosenthal	amanda.rosenthal@cdiglaw.com
25 Laura Lucero	laura.lucero@cdiglaw.com

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15	Elsa Amoroso	elsa.amoroso@lewisbrisbois.com