

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 08:38 a.m.
Elizabeth A. Brown
Clerk of Supreme Court

Supreme Court No.:

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

PETITIONER'S APPENDIX – Volume 6

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Attorney for Petitioner Ali Kia, M.D.

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Amended Complaint for Medical Malpractice	PA0310- PA0324
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<u>Volume 3</u>	Bates No.
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Order from March 16, 2021 Hearing	PA0696- PA0707
Notice of Entry of Order from March 16 2021 Hearing	PA0708- PA0721

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Order Denying Ali Kia, M.D.'s Motion for Reconsideration	PA1196- PA1204
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<u>Volume 7</u>	Bates No.
Defendant Ali Kia, M.D.'s Answer to Plaintiff's Amended Complaint	PA1216- PA1226

CERTIFICATE OF COMPLIANCE

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

Dated: August 11, 2021

COLLINSON, DAEHNKE, INLOW & GRECO

/s/ Linda Rurangirwa

By _____
Patricia Egan Daehnke
Nevada Bar No. 4976
Linda K. Rurangirwa
Nevada Bar No. 9172
2110 E. Flamingo Road, Suite 212
Las Vegas, NV 89119
Attorneys for Petitioner Ali Kia, M.D.

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that I am an employee of COLLINSON, DAEHNKE, INLOW & GRECO; that service of the foregoing **PETITIONER'S APPENDIX – VOLUME 6** 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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THE HONORABLE JASMIN LILLY-SPEARS
The Eighth Judicial District Court
Department 23
Regional Justice Center
200 Lewis Avenue
Las Vegas, NV 89155
dept23lc@clarkcountycourts.us
Respondent

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

Deborah Rocha

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

Yes, thanks.

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

[EXTERNAL EMAIL]

Good afternoon:

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

Thank you,

Linda



Linda K. Rurangirwa | Partner
Collinson, Daehnke, Inlow & Greco – Attorneys at Law
2110 E. Flamingo Road, Suite 212, Las Vegas, NV 89119
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linda.rurangirwa@cdiglaw.com | www.cdiglaw.com

Deborah Rocha

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

An electronic copy by email works for us as well.

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

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

Fine with us as well.



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Partner
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Email: tdobbs@HPSLAW.COM

Legal Assistant: Nicole Etienne
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From: Vogel, Brent <Brent.Vogel@lewisbrisbois.com>

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

To: Linda K. Rurangirwa <Linda.Rurangirwa@cdiglaw.com>; Daniel Marks <DMarks@danielmarks.net>; Stryker, Eric K. <Eric.Stryker@wilsonelser.com>; Jordan, Erin <Erin.Jordan@lewisbrisbois.com>; Tyson Dobbs <tdobbs@HPSLAW.COM>; Mike Prangle <mprangle@HPSLAW.COM>


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

Subject: RE: Green v. Sunrise Hospital

[External Email] CAUTION!.

Yes, that's fine. Thank you.



Brent Vogel 
Partner
Brent.Vogel@lewisbrisbois.com

T: 702.693.4320 F: 702.893.3789

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

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

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

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

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

Subject: [EXT] Green v. Sunrise Hospital

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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

Collinson, Daehnke, Inlow & Greco – Attorneys at Law

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EXHIBIT 7

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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**

DEPOSITION OF ALI KIA, M.D.
Taken on Wednesday, November 14, 2018
At 1:35 p.m.
Taken at 610 South Ninth Street
Las Vegas, Nevada

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

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

6 APPEARANCES:

7 For the Plaintiff:

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NICOLE M. YOUNG, ESQ.
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610 South Ninth Street
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12 For the Defendants, Frank J. DeLee, M.D. and Frank J.
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(702) 979-2132

1 I N D E X

2 Witness: ALI KIA, M.D.

3		Examination	Further Examination
	By Mr. Marks	4	62, 70, 73
4	By Mr. Prangle	48	68
	By Mr. Stryker	50	72

5

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

20 THE REPORTER: Exhibit 6.

21 BY MR. MARKS:

22 Q. So this is your history and physical?

23 A. Yes, it is.

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

25 A. On 7/14/2016.

1 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.)

19 * * * * *

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1 CERTIFICATE OF DEPONENT

2

3 PAGE LINE CHANGE REASON

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15 * * * * *

16 I, ALI KIA, M.D., deponent herein, do hereby
 17 certify and declare the within and foregoing transcription
 18 to be my deposition in said action; that I have read,
 19 corrected and do hereby affix my signature to said
 20 deposition.

21

22 _____
 23 Ali Kia, M.D., Deponent

24

25

1 CERTIFICATE OF REPORTER

2

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

6

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

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

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

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

18

19

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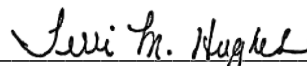
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Terri M. Hughes, CCR No. 619

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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

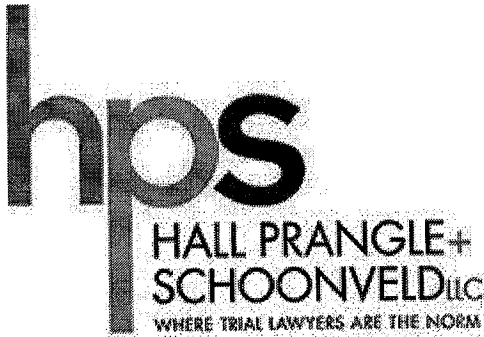
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From: Kelli N. Wightman [mailto:kwightman@HPSLAW.COM]
Sent: Wednesday, December 11, 2019 2:41 PM
To: Stryker, Eric K.; Office; Laura Lucero; Nicole Young; Patricia Daehnke; Jordan, Erin
Cc: Adrina.Harris@wilsonelser.com; Linda K. Rurangirwa; Vogel, 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.



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

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

Legal Assistant to:
Mari Schaan
Sherman Mayor
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

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 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

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: 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

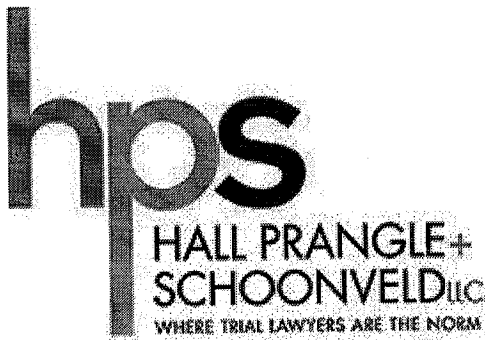
Counsel:

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



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

O: 702.212.1445
Email: kwightman@HPSLAW.COM

Legal Assistant to:
Mari Schaan
Sherman Mayor
Kevin Peterson

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From: Kelli N. Wightman
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
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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

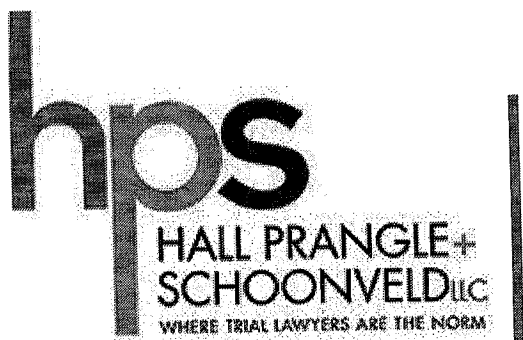
Importance: High

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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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

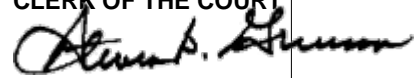
Physician Section

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

EXHIBIT E



RPLY

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Nevada Bar No. 4976

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(702) 979-2132 Telephone
(702) 979-2133 Facsimile

Attorneys for Defendant
Ali Kia, M.D.

DISTRICT COURT

CLARK COUNTY, NEVADA

CHLOE GREEN, an individual,

Plaintiffs,

vs.

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

///

///

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: _____

7 PATRICIA EGAN DAEHNKE

Nevada Bar No. 4976

8 LINDA K. RURANGIRWA

Nevada Bar No. 9172

9 2110 E. Flamingo Road, Suite 212

10 Las Vegas, Nevada 89119

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11 Fax (702) 979-2133

12 Attorneys for Defendant

13 ALI KIA, M.D.

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COLLINSON, DAEHNKE, INLOW & GRECO
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TEL. (702) 979-2132 | FAX (702) 979-2133

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.

1 Plaintiff appears to assert that her one year claim for medical malpractice was tolled
2 by Sunrise Hospital filing a Third-Party Complaint for indemnification and contribution
3 against Dr. Kia and NHG. However, Plaintiff cites no legal precedent for this. According to
4 NRS 41A.097, the only available reason for tolling the statute of limitations is concealment of
5 any act, error or omission by the provider of health care. There has been no such allegation
6 this occurred. Additionally, any alleged delay in answering the Third-Party Complaint by
7 NHG does not impact the fact that Plaintiff was already aware of her legal injury and had a
8 duty to assert her claim within the statute of limitations period. Furthermore, the tolling
9 provision only applies to the one year statute of limitations. As Defendant's motion sets forth
10 (and Plaintiff has not addressed in her Opposition) **the three-year statute of limitation** had
11 also long since expired by the time Plaintiff filed her Amended Complaint.

12 Of note, Plaintiff skirts around the issue that this Court found that the expert affidavit
13 used by Sunrise Hospital in filing its Third-Party Complaint did not meet the expert affidavit
14 requirements of NRS 41A.071 as to Dr. Kia and NHG. As such the Third Party Complaint is
15 considered void ab initio – as if it never existed. *Washoe Med. Ctr. v. Second Judicial Dist.*
16 *Court*, 122 Nev. 1298, 1304 (2006). (“We conclude that, under NRS 41A.071, a complaint
17 filed without a supporting medical expert affidavit is void ab initio and must be dismissed.
18 Because a void complaint does not legally exist, it cannot be amended.”). Thus, any
19 contention that the filing of the Third-Party Complaint somehow alleviated Plaintiff's duty to
20 file her own claim for medical negligence within the requisite time period must fail as it is
21 deemed to have never legally existed.

22 As such, the relevant timeline (excluding the void ab initio Third-Party Complaint
23 which would not have tolled the statute of limitations in any event) is as follows:

- 24 1. Plaintiff had appreciable injury: September 2016².
- 25
- 26

27 ² This is relevant to determining the running of the three year statute of limitations, and was not contested in
28 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*

18 BY: _____

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23 Attorneys for Defendant

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

EXHIBIT F



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.

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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.]

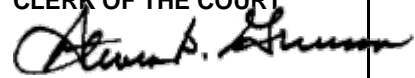
* * * * *

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

EXHIBIT G



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

DISTRICT COURT

CLARK COUNTY, NEVADA

CHOLOE GREEN, an individual,
Plaintiff,

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

v.

ORAL ARGUMENT REQUESTED

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

MOTION FOR LEAVE OF COURT TO AMEND COMPLAINT

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

DATED this 16th day of October, 2020.

LAW OFFICES OF DANIEL MARKS

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

1 MEMORANDUM OF POINTS AND AUTHORITIES

2 **I. FACTUAL BACKGROUND**

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

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

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

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

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

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

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

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

17 **II. LEGAL ARGUMENT**

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

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

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

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

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

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

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

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

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

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

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

4 **III. CONCLUSION**

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

7 DATED this 16th day of October, 2020.

8 LAW OFFICES OF DANIEL MARKS

9
10 /s/ Nicole M. Young

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

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

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

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

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

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

7 DISTRICT COURT
8 CLARK COUNTY, NEVADA

9 CHOLOE GREEN, an individual,

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

10
11 Plaintiff,

12 v.

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

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

17 Defendants.
18 _____/

19 **AMENDED COMPLAINT FOR MEDICAL MALPRACTICE**

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

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

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

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

20 **COUNT I**

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

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

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

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

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

7 **COUNT II**

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

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

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

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

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

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

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

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

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

6 DATED this _____ day of October, 2020.

7 LAW OFFICE OF DANIEL MARKS

8

9 _____

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

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1 VERIFICATION

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

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

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

8
9 _____
10 CHOLOE GREEN

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

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

AFFIDAVIT OF DR. LISA KARAMARDIAN


STATE OF California } : s.
COUNTY OF Orange }

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

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

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


LISA KARAMARDIAN, MD.

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

2.

EXHIBIT B

AFFIDAVIT OF ROBERT S. SAVLUK, M.D.

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

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

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

////

////


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

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

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

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*

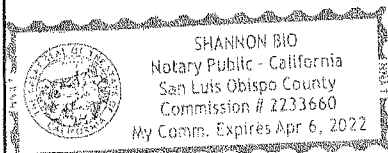
11 NOTARY PUBLIC in and for said
12 COUNTY and STATE
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A notary public or other officer completing this certificate verifies only the identity of the individual who signed the document to which this certificate is attached, and not the truthfulness, 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.

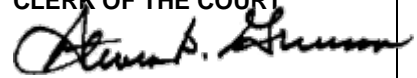


(Seal)

Signature

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

EXHIBIT H



TRAN

DISTRICT COURT

CLARK COUNTY, NEVADA

* * * * *

CHLOE GREEN,

Plaintiff,

vs.

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

Defendants.

CASE NO. A-17-757722-C

DEPT. NO. IX

Transcript of Proceedings

BEFORE THE HONORABLE CRISTINA D. SILVA, DISTRICT COURT JUDGE

ALL PENDING MOTIONS

TUESDAY, NOVEMBER 17, 2020

APPEARANCES [ALL VIA VIDEO CONFERENCE]:

For the Plaintiff:

DANIEL MARKS, ESQ.

NICOLE M. YOUNG, ESQ.

For Sunrise Hospital:

SHERMAN BENNETT MAYOR, ESQ.

For Dr. Delee:

ERIC K. STRYKER, ESQ.

For Dr. Kia:

LINDA RURANGIRWA, ESQ.

RECORDED BY:

GINA VILLANI, DISTRICT COURT

TRANSCRIBED BY:

KRISTEN LUNKWITZ

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

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

2

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

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

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

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

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

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

17 THE COURT: All right.

18 MR. STRYKER: My apologies.

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

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

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

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

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

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

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

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

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

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

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

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

23 MR. MARKS: Whether the hospital --

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

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

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

7 THE COURT: Sure.

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

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

11 MR. MARKS: *Zohar* --

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

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

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

21 MR. MARKS: Okay. So, --

22 THE COURT: Answer that question for me.

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

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

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

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

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

11 And that's the --

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

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

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

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

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

8 THE COURT: I agree.

9 MR. MARKS: And --

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

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

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

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

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

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

1 distinction between 1099 and W-2.

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

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

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

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

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

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

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

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

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

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

24 MR. MAYOR: Yes.

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

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

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

10 THE COURT: Yeah. I --

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

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

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

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

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

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

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

25 And when this matter was first argued before Judge

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

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

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

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

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

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

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

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

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

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

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

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

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

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

25 So, I am going to deny the Motion for

1 Reconsideration --

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

4 THE COURT: Sure. Go ahead.

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

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

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

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

11 MR. STRYKER: That's okay.

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

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

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

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

17 Now, --

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

20 MR. STRYKER: We have --

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

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

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

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

14 THE COURT: Well, --

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

16 THE COURT: Okay. Hold on, counsel.

17 MR. STRYKER: Yes.

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

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

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

23 THE COURT: Okay.

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

1 that's why we --

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

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

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

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

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

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

10 MR. MARKS: Your Honor --

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

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

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

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

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

8 THE COURT: Absolutely.

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

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

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

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

25 THE COURT: Hold on. Hold on.

1 MR. MARKS: And --

2 THE COURT: Hold on, counsel.

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

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

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

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

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

3 THE COURT: All right. And I --

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

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

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

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

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

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

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

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

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

7 THE COURT: Correct.

8 MR. MAYOR: Okay.

9 MR. MARKS: Your Honor, --

10 MR. MAYOR: We didn't --

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

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

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

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

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

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

3 MR. MARKS: It's still on.

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

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

10 [Pause in proceedings]

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

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

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

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

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

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

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

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

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

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

9 We did that.

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

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

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

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

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

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

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

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

19 MR. MAYOR: Yes.

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

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

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

1 Reconsider the Dismissal of the Ostensible Agency Claim.

2 That's one ruling. Is that correct?

3 THE COURT: Correct.

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

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

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

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

13 MR. MAYOR: Yes.

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

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

22 THE COURT: Right.

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

1 arguments, ostensible agency and the corporate negligence.

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

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

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

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

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

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

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

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

4 THE COURT: All right. Thank you.

5 MR. MARKS: Your Honor, just briefly.

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

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

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

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

23 MR. MARKS: Yeah.

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

25 THE COURT: Correct. Correct.

1 MR. MARKS: Correct.

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

3 THE COURT: Yes.

4 MR. MARKS: Thank you.

5 MR. STRYKER: Thank you, Your Honor.

6 THE COURT: Now, adding that --

7 MR. MAYOR: Thank you, Your Honor.

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

11 So, I would ask --

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

13 THE COURT: I'm sorry?

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

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

19 MR. MAYOR: And, --

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

21 MR. MAYOR: I'm sorry.

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

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

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

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

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

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

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

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

1 it was asking us to wait because --

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

5 THE COURT: Right.

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

11 THE COURT: Hold on here.

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

14 THE COURT: Good morning.

15 MS. RURANGIRWA: Good morning.

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

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

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

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

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

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

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

3 Any questions?

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

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

10 MR. MAYOR: Will do.

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

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

15 THE COURT: All right. Thank you.

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

17 MS. RURANGIRWA: Thank you, Your Honor.

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

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

20 THE COURT: All right.

21

22 PROCEEDING CONCLUDED AT 10:35 A.M.

23 * * * * *

24

25

1 **CERTIFICATION**

2

3

4 I certify that the foregoing is a correct transcript from

5 the audio-visual recording of the proceedings in the

6 above-entitled matter.

7

8 **AFFIRMATION**

9

10 I affirm that this transcript does not contain the social

11 security or tax identification number of any person or

12 entity.

13

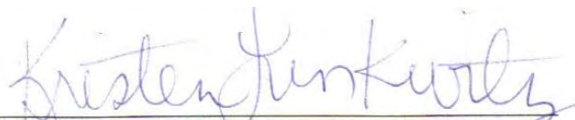
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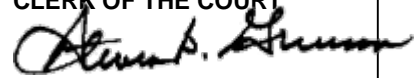
21 INDEPENDENT TRANSCRIBER

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25



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13 *Attorneys for Defendant Nevada Hospitalist*
14 *Group, LLP*

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
17 Professional Corporation, SUNRISE
18 HOSPITAL AND MEDICAL CENTER, LLC,
19 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.: 23

**DEFENDANT NEVADA HOSPITALIST
GROUP, INC.'S JOINDER TO
DEFENDANT ALI KAI, M.D.'S
MOTION FOR RECONSIDERATION
REGARDING MOTION TO DISMISS
PLAINTIFF'S AMENDED COMPLAINT**

20 Defendant, NEVADA HOSPITALIST GROUP, INC., by and through its attorneys,
21 LEWIS BRISBOIS BISGAARD & SMITH, LLP, hereby joins Defendant Ali Kai, M.D.'s Motion
22 for Reconsideration Regarding Motion to Dismiss Plaintiff's Amended Complaint ("Motion"),
23 entered on the Court's docket on April 8, 2021.

24 ...

25 ...

26 ...

27 ...

28 ...

1 NEVADA HOSPITALIST GROUP, INC. hereby joins and incorporates the arguments set
2 forth in said Motion as though fully set forth herein.

3 DATED this 8th day of April, 2021.

4 LEWIS BRISBOIS BISGAARD & SMITH LLP

5
6 By /s/ Erin E. Jordan

7 S. BRENT VOGEL

8 Nevada Bar No. 6858

9 ERIN E. JORDAN

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11 6385 S. Rainbow Boulevard, Suite 600

12 Las Vegas, Nevada 89118

13 *Attorneys for Defendant Nevada Hospitalist*
14 *Group, LLP*
15
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22
23
24
25
26
27
28

1 **CERTIFICATE OF SERVICE**

2 I hereby certify that on this 8th day of April, 2021, a true and correct copy of
3 **DEFENDANT NEVADA HOSPITALIST GROUP, INC.'S JOINDER TO DEFENDANT**
4 **ALI KAI, M.D.'S MOTION FOR RECONSIDERATION REGARDING MOTION TO**
5 **DISMISS PLAINTIFF'S AMENDED COMPLAINT** was served by electronically filing with
6 the Clerk of the Court using the Electronic Service system and serving all parties with an email-
7 address on record, who have agreed to receive Electronic Service in this action.

8 Daniel Marks, Esq.
9 Nicole M. Young, Esq.
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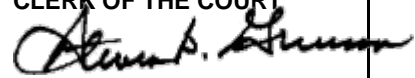
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28 By /s/ Elsa Amoroso
Elsa Amoroso, an Employee of
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DISTRICT COURT

CLARK COUNTY, NEVADA

CHOLOE GREEN, an individual,
Plaintiff,

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

v.

Date of Hearing: May 13, 2021
Time of Hearing: Chambers

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 FOR RECONSIDERATION
REGARDING MOTION TO DISMISS PLAINTIFF'S AMENDED COMPLAINT**

COMES NOW the Plaintiff, Choloe Green, by and through her counsel, Daniel Marks, Esq., and
Nicole M. Young, Esq., of the Law Office of Daniel Marks, and hereby oppose Defendant Ali Kia,
M.D.'s Motion for Reconsideration Regarding Motion to Dismiss Plaintiff's Amended Complaint, and
Defendant Nevada Hospitalist Group, LLP's joinder thereto.

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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 22nd day of April, 2021.

4 LAW OFFICES OF DANIEL MARKS

5 /s/ Nicole M. Young

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9 Attorneys for Plaintiff

10 **MEMORANDUM OF POINTS AND AUTHORITIES**

11 **I. FACTUAL BACKGROUND¹**

12 **A. The Court began considering the relation back doctrine and any potential statute of**
13 **limitations issues dating back to the Summer of 2020.**

14 The present issue before the Court dates back to July of 2020 when this Court granted Defendant
15 Sunrise Hospital's ("Sunrise") partial summary judgment on the issue of ostensible agency and denied
16 Plaintiff Choloe Green's ("Choloe") motion to amend her complaint. As part of that order, this Court
17 specifically found:

18 Amended pleadings arising out of the same transaction or occurrence set forth in the
19 original pleadings may relate back to the date of the original filing. See NRCP 15(c). The
20 same remains true when an amended pleading adds a defendant that is filed after the
21 statute of limitations so long as the proper defendant (1) receives actual notice of the
22 action; (2) knows that it is the proper party; and (3) has not been misled to its prejudice
23 by the amendment. *Echols v. Summa Corp.*, 95 Nev. 720, 722, 601 P.2d 716, 717 (1979).
NRCP 15(c) is to be liberally construed to allow relation back of the amended pleading
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).²

24 ¹ Plaintiff incorporates by reference all statements of fact previously made relating to this issue, including her Motion
25 for Leave to Amend Complaint, filed June 3, 2020 ("6/3/20 Motion to Amend"); her Reply in Support of Motion for Leave to
26 Amend Complaint, filed on June 30, 2020 ("6/30/20 Reply to Amend"); her Motion for Leave of Court to Amend Complaint, filed
27 October 16, 2020 ("10/16/20 Motion to Amend"); her Reply in Support of Motion for Reconsideration and Reply in Support of
28 Motion for Leave of Court to Amend Complaint, filed November 11, 2020 ("11/11/20 Reply to Amend"); and her Opposition
to Defendant Ali Kia M.D.'s Motion to Dismiss Plaintiff's Amended Complaint, filed February 4, 2021 ("2/4/21 Opposition to
Dismiss").

² See Court Minutes regarding Plaintiff's Motion to Leave to Amend and Defendant's Motion for Partial Summary
Judgment, dated July 23, 2020.

1 It was based on that finding that Choloe filed her second motion to amend to add Defendants Ali
2 Kia, M.D. (“Kia”), and Nevada Hospitalist Group, LLP (“NHG”). Judge Silva made those findings
3 regarding the relation back doctrine and liberal construction of NRCP 15(c) because she knew Kia and
4 NHG are proper parties to this action.

5 **B. Kia and NHG ignore their intentional delays of this case, which shows they have not**
6 **been misled to their prejudice.**

7 At the time Choloe filed her original complaint, it was unclear who, out of the many healthcare
8 providers that treated Choloe, made the decisions resulting in the negligent care. Choloe attempted to
9 gain additional information regarding Sunrise’s breach of the standard of care. Choloe properly noticed
10 and served Kia with a Notice of Deposition to be taken on September 21, 2018.³ Kia did not appear for
11 that deposition and does not explain why. Kia’s deposition was ultimately taken on November 14, 2018.
12 During his deposition, he testified that he works at Sunrise Hospital through NHG.⁴ Kia’s testimony,
13 during his deposition, put both himself and his counsel on notice that his care of Choloe was directly at
14 issue and his involvement in this case would be critical.

15 Sunrise filed its third-party complaint on June 14, 2019, after unsuccessfully seeking partial
16 summary judgment on the issue of ostensible agency relating to Kia’s care of Choloe. This complaint
17 was filed less than three years after Chloe’s second discharge from Sunrise and less than one year after
18 the discovery of Choloe’s legal injury by Kia.

19 Kia filed his answer to that complaint on August 2, 2019. NHG did not file its answer until
20 December 27, 2019. It remains unknown why NHG took so long to file any responsive pleading.

21 NHG filed a motion for judgment on the pleadings on March 25, 2020, which Kia joined. When
22 Judge Silva granted that motion, she invited reconsideration of the ostensible agency relationship issue
23 in her minute order.⁵

25 ³ See Certified Copy of Scheduled Deposition of Ali Kia, M.D., attached to 2/4/21 Opposition to Dismiss, as Exhibit
26 6.

27 ⁴ See Certified Copy of Deposition of Ali, Kia, M.D., attached to 2/4/21 Opposition to Dismiss, as Exhibit 7, at 11:15-20
& 12:21-24.

28 ⁵ See Court Minutes regarding Third-Party Defendant Nevada Hospitalist Group, LLP’s Motion for Judgment on the
Pleadings and Joinder, dated May 11, 2020.

1 Choloe discovered she suffered a legal injury by Kia during his November 14, 2018, deposition.
2 She would have discovered that injury earlier if Kia had shown up to his original deposition. Sunrise
3 added Kia and NHG into this action less than one year later, on June 14, 2019. NHG then delayed this
4 lawsuit by waiting until December 27, 2019, to answer that complaint. NHG could have simply filed a
5 motion to dismiss at that time claiming the third-party complaint was barred by the statute of limitations.
6 Instead, it chose to delay this case even longer by waiting until March 25, 2020, to file a motion for
7 judgment on the pleadings. This Court must remember, neither Kia nor NHG ever claimed any statute of
8 limitations issues when they were third-party defendants to this case.

9 If Kia had shown up to his original deposition and NHG had not waited over six months to
10 answer Sunrise's third-party complaint, only to seek judgment on the pleadings three months later, then
11 timing would not be at issue. Kia and NHG created this issue to avoid liability on the merits of this case.

12 **II. LEGAL ARGUMENT⁶**

13 A motion for reconsideration is only proper in very narrow circumstances. Reconsideration is
14 generally denied unless the movant is able to show "very rare instances in which new issues of fact or
15 law are raised supporting a ruling contrary to the ruling already reached." *Moore v. City of Las Vegas*, 92
16 Nev. 402, 405, 551 P.2d 244, 246 (1976). Reconsideration is not allowed when the moving party does
17 not show a proper reason to allow reconsideration, such as (1) newly discovered evidence, (2) the
18 Court's decision was clearly erroneous, or (3) an intervening change in the law. *Masonry and Tile*
19 *Contractors Assoc. of S. Nev. v. Jolly, Urga & Wirth LTD.*, 113 Nev. 737, 741, 941 P.2d 486 (1997); and
20 *See Brown v. Gold*, 378 F.Supp.2d 1280, 1288 (D. Nev. 2005).

21 **A. This Court's denial of Kia/NHG's motion to dismiss is supported by substantial** 22 **evidence.**

23 Kia seeks reconsideration of this Court's March 16, 2021, decision denying its motion to dismiss.
24 Kia does not claim newly discovered evidence or an intervening change of law in support of its request
25 for reconsideration. It claims this Court's March 16th decision is clearly erroneous. At the time of the
26 March 16th hearing Kia/NHG argued the same issue presented on reconsideration, whether the relation
27

28 ⁶ Choloe incorporates by reference all legal arguments previously made relating to this issue, including her 6/3/20
Motion to Amend; her 6/30/20 Reply to Amend; her 10/16/20 Motion to Amend; her 11/11/20 Reply to Amend; and her 2/4/21
Opposition to Dismiss.

1 back doctrine exists. Ms. Rurangirwa, counsel for Kia, argued:

2
3 Judge Silva's order with regards to Rule 15(c) and amending the
4 Complaint did not touch on the issue of statute of limitations. It did not
5 deal with -- with any of the issues other than whether or not the plaintiffs
6 could amend the Complaint. And so I don't think that it's appropriate to
7 infer from the orders that the issue of whether or not the statute of
8 limitations issue has been addressed -- well, to infer that it had been
9 addressed when it clearly had not.

10
11 Your Honor, with regards to the relation-back, Judge Silva already found
12 that the affidavit of plaintiff's original Complaint was deficient with
13 regards to Dr. Kia and NHG, and felt it can't possibly relate back to that
14 Complaint as it's void as to Dr. Kia and NHG.⁷

15 Mr. Vogel, counsel for NHG, argued:

16
17 A couple of very quick points, first of all, in the law of the case doctrine is
18 -- it just doesn't apply here. The law of the case doctrine is when you have
19 interlocutory appeal and the Appellate Court makes a ruling and sends it
20 back down to District Court. We don't have that here. You know, a district
21 court judge can overrule or change any ruling from a co-equal district
22 court judge as they see fit, depending on the facts. So, I think that's the
23 first point.

24
25 The second point, kind of echoes Ms. Rurangirwa, the Third Party
26 Complaint, which the plaintiff seems to be relying on, was dismissed as
27 void ab initio, it never existed. So the whole relation-back argument no
28 longer applies.⁸

These are the only arguments provided by Kia and NHG regarding their motion to dismiss. Kia and NHG should not be allowed a second bite at the apple when their actions in this case have only caused unnecessary delay. They ignore the liberal construction of NRCP 15(c) and failed to argue they had been misled to their prejudice, as required under the third prong of the *Echols* standard.

As such, this Court's denial of the motion to dismiss is supported by substantial evidence and is not clearly erroneous to allow reconsideration. NRCP 15(c)'s relation back standard applies to this case because all three elements of the *Echols* standard have been properly shown to allow amendment.

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⁷ See Trans. of Proceedings from Hearing held March 16, 2021, at 9:15-25.

⁸ See Trans. of Proceedings from Hearing held March 16, 2021, at 10:5-15.

1 **B. The relation back doctrine applies because Kia/NHG received actual notice they are**
2 **proper parties to this action prior to the expiration of the statute of limitations and**
3 **have not been misled to their prejudice.**

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

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

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

17 *Id.* at 727.

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

23 NRCP 15(a)(2) governs amendments to pleadings before trial upon leave of court, which is freely
24 given. NRCP 15(c) controls when such amendments relate back to the original complaint, stating:

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

26 (1) the amendment asserts a claim or defense that arose out of the conduct,
27 transaction, or occurrence set out--or attempted to be set out--in the
28 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:

////

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

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

5 Sections (a) and (c) of NRCP 15 are meant to be read together based on the rule's plain meaning. *See*
6 *MGM Mirage v. Nev. Ins. Guar. Ass'n.*, 125 Nev. 223, 228-29, 209 P.3d 766, 769 (2009). "An amended
7 pleading adding a defendant that is filed after the statute of limitations has run will relate back to the date
8 of the original pleading under NRCP 15(c) if "the proper defendant (1) receives actual notice of the
9 action; (2) knows that it is the proper party; and (3) has not been misled to its prejudice by the
10 amendment." *Costello v. Casler*, 127 Nev. 436, 440-41, 254 P.3d 631, 634 (2011) (citing *Echols v.*
11 *Summa Corp.*, 95 Nev. 720, 722, 601 P.2d 716, 717 (1979). The district court must liberally construe
12 NRCP 15(c) "to to allow relation back of the amended pleading where the opposing party will be put to
13 no disadvantage." *Id.* (citing *E.W. French & Sons. Inc. v. General Portland Inc.*, 885
14 F.2d 1392, 1396 (9th Cir. 1989) ("[C]ourts should apply the relation back doctrine of [Federal] Rule
15 15(c) liberally."). "Modern rules of procedure are intended to allow the court to reach the merits, as
16 opposed to disposition on technical niceties." *Id.*

17 Here, Choloe did not discover her legal injury caused by Kia/NHG until she took his deposition
18 on November 14, 2018. During that deposition, Kia was put on notice that Choloe had complaints
19 regarding her July 16, 2016, discharge from Sunrise. During his deposition, Kia confirmed he made the
20 decision to discharge Choloe.⁹ The deposition focused on why he would discharge her with a small
21 bowel obstruction and high white blood cell count (leukocytosis).¹⁰

22 At the time Dr. Karamardian executed her initial affidavit on this case, it was not clear who was
23 in charge of Choloe's care during her second stay at Sunrise. The relevant portion of her affidavit states:

24 She was discharged on July 16, 2016. The discharge was discussed and
25 confirmed by Dr. Delee. This discharge violated the standard of care. Ms.
26 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

27
28 ⁹ See Exhibit 7, at 60:19 to 61:6, attached to 2/4/21 Opposition to Dismiss.

¹⁰ See Exhibit 7, at 47:9-21, attached to 2/4/21 Opposition to Dismiss.

1 multiple dilated loops of bowel, thought to be related to a small bowel
2 obstruction, yet she was sent home. An intraperitoneal abscess was
3 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.¹¹

4 Kia's deposition confirmed he controlled her care. That is why Sunrise filed a third-party
5 complaint against Kia and NHG. When this Court dismissed Kia and NHG from this case, Choloe
6 immediately sought to rectify the situation, as can be seen through the motion practice that has occurred
7 over the past year. Dr. Karamardian amended her complaint to add Kia's involvement regarding
8 Choloe's discharge from Sunrise on July 16, 2016.¹²

9 When considering the application of a statute of limitations, this Court must consider when
10 Choloe discovered her legal injury by Kia/NHG. *Massey* cautions plaintiffs against filing professional
11 negligence claims against healthcare providers simply to prevent the running of the statute of limitations.
12 This Court must remember that after Choloe's second discharge from Sunrise, she was hospitalized from
13 July 17, 2016 to October 25, 2016, when she was released from the rehabilitation facility. She was in no
14 condition to comprehend what had happened to her and who was at fault that treated her. She was treated
15 by various doctors and nurses, and she did not want to bring multiple individuals into this case when
16 their involvement was not clear based on the pre-litigation medical records she received from Sunrise.
17 The *Massey* court's interpretation of the applicable statute of limitations confirms this decision because a
18 plaintiff should not be encouraged to add every single healthcare provider to the lawsuit to avoid a
19 statute of limitations issue. 99 Nev. at 727.

20 Kia's reliance on *Servatius v. United Resort Hotels*, 85 Nev. 371 (1969), is misplaced. This
21 Court's reference to that case when citing to the *Echols* standard was simply to show that standard's
22 long-term acceptance in Nevada. The issue in *Servatius* dealt with the dismissal of a complaint because
23 the wrong corporate identity was named. Kia confuses this legal issue. The *Echols* standard, in
24 accordance with NRCP 15(c)'s relation back standard, overcomes any potential statute of limitations
25 issues. *Servatius* does not change that exception.

26
27 ¹¹ See Affidavit of Dr. Lisa Karamardian, dated June 29, 2017, attached to 2/4/21 Opposition to Dismiss, as Exhibit 1,
at ¶ 5.

28 ¹² See Amended Affidavit of Dr. Lisa Karamardian, dated November 8, 2020, attached to 2/4/21 Opposition to Dismiss,
as Exhibit 2, at ¶ 5.

1 Choloe has fulfilled her duty under NRC 15(c) and *Echols*, showing Kia and NHG are proper
2 parties to this action. Kia and NHG had actual notice of this action since November 14, 2018, during
3 Kia's deposition. Kia and NHG have failed to provide any evidence they were ever misled to their
4 prejudice by the amendment. Kia now claims to suffer extreme prejudice, yet he is unable to articulate
5 the how's and why's in light of both his and NHG's extreme delays of this case. Neither Kia nor NHG
6 are disadvantaged by their addition to this case. When they parties to this case in 2019/2020, they
7 received a copy of all discovery conducted and even engaged in the discovery process.

8 Because Kia and NHG cannot reconcile their delays of this case to claim they have been misled
9 to their prejudice by the amendment, reconsideration of the motion to dismiss should be denied. The
10 third element is key, and Kia/NHG have failed to show how the denial to dismiss is clearly erroneous
11 based on that element.

12 **III. CONCLUSION**

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

17 DATED this 22nd day of April, 2021.

18 LAW OFFICE OF DANIEL MARKS

19 /s/ Nicole M. Young

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26 Attorneys for Plaintiff

1 **CERTIFICATE OF SERVICE**

2 I hereby certify that I am an employee of the Law Office of Daniel Marks and that on the 22nd
3 day of April, 2021, pursuant to NRCP 5(b) and Administrative Order 14-2, I electronically transmitted a
4 true and correct copy of the above and foregoing **OPPOSITION TO DEFENDANT ALI KIA, M.D.'S**
5 **MOTION FOR RECONSIDERATION REGARDING MOTION TO DISMISS PLAINTIFF'S**
6 **AMENDED COMPLAINT** by way of Notice of Electronic Filing provided by the court mandated E-
7 file & Serve System, as follows:
8 following:

9 Erik K. Stryker, Esq.
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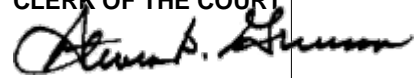
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21
22
23 /s/ Nicole M. Young

24 An employee of the
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25
26
27
28



RPLY

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Attorneys for Defendant

Ali Kia, M.D.

DISTRICT COURT

CLARK COUNTY, NEVEDA

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 FOR
RECONSIDERATION REGARDING
MOTION TO DISMISS PLAINTIFF'S
AMENDED COMPLAINT**

COMES NOW Defendant ALI KIA, M.D., by and through his attorneys of record,
and hereby files this Reply in Support of Motion for Reconsideration regarding Defendant's
Motion to Dismiss Plaintiff's Amended Complaint as follows:

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///

///

MEMORANDUM OF POINTS AND AUTHORITIES

I.

INTRODUCTION

Plaintiff does not dispute she did not seek an Order from the Court requesting that the amendment of the Complaint adding Dr. Kia relate back to the filing of the original Complaint. Plaintiff also does not dispute that at the hearing on the Motion to Amend on November 17, 2020, Justice Silva expressly had reservations about the statute of limitations and notice to Dr. Kia. Plaintiff also does not dispute that although Judge Silva raised the statute of limitations issue at that hearing, Plaintiff's counsel Daniel Marks argued that was an issue that should be briefed by the parties by filing a Motion to Dismiss.

Plaintiff continues to argue that Dr. Kia suffers no prejudice by being added to this party because he received notice of Plaintiff's complaint prior to the statute of limitations. However, as set forth in Dr. Kia's Motion and below, the one year medical malpractice statute of limitations had already run prior to him receiving any notice that he could potentially be a party to this lawsuit. Dr. Kia is definitely prejudiced by having to defend against a medical malpractice claim that was already stale. A medical malpractice claim carries with it additional burdens that are not present with dealing with a Third Party Complaint for indemnification/contribution, such as having to report the claim to the Nevada Board of Medical Examiners, having to report any settlement/judgment to the Nevada Board of Medical Examiners and the National Practitioner's Databank, having to report the claim to any professional liability insurance and the resultant increase in insurance premiums and having any settlement/judgment amount being publicly displayed on the Nevada Board of Medical Examiner's website for the public to view.

Allowing Plaintiff to amend the Complaint to add him as a Plaintiff is extremely prejudicial as it allows Plaintiff to make an end run around the statute of limitations and claim liability against Dr. Kia that Plaintiff would not otherwise have been able to do because she did not exert her due diligence in determining the appropriate Defendants in a timely manner.

///

II.

**PLAINTIFF'S AMENDMENT TO ADD DR. KIA AS A DEFENDANT DOES NOT
RELATE BACK PURSUANT TO *ECHOLS V. SUMMA CORP* AS DR. KIA DID NOT
RECEIVE NOTICE UNTIL AFTER EXPIRATION OF THE STATUTE OF
LIMITATIONS**

The Court cited to *Echols v. Summa Corp* in making its decision that the amendment adding Dr. Kia could relate back to the filing of the original Complaint. In *Echols*, the court determined that “a proper defendant may be brought into the action after the statute of limitations has run if 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. In *Echols* the Court noted that Summa Corp. received actual notice of the action before the expiration of the two years statute of limitations. “Having actual notice of the action ***before the expiration of the two-year period***, Summa was neither misled nor prejudiced by the subsequent amendment.” *Echols v. Summa Corp.*, 95 Nev. 720, 722, 601 P.2d 716, 717 (1979) (emphasis added). A plaintiff's right to have his or her claim heard on its merits despite technical difficulties must be balanced against “a defendant's right to be protected from stale claims and the attendant uncertainty they cause.” *Costello v. Casler*, 127 Nev. 436, 441, 254 P.3d 631, 635 (2011).

Here the Court found that Dr. Kia and NHG received notice in June 2019 when the Third-Party Complaint was filed as well as with their depositions. Dr. Kia was not deposed until November 14, 2018, over a year after the original Complaint had been filed and long after expiration of the one-year statute of limitations. The applicable statute of limitations for medical malpractice/professional negligence claims that accrue on or after October 1, 2002 is set forth in NRS 41A.097(2) which provides in pertinent part:

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

Plaintiff obfuscates by arguing that she did not discovery her legal injury until she took the deposition of Dr. Kia on November 14, 2018. However, with regard to the one-year

discovery period, a plaintiff "discovers" his injury when "he knows or, through the use of reasonable diligence, **should have known** of facts that would put a reasonable person on **inquiry notice** of his cause of action." *Massey v. Litton*, 99 Nev. 723, 728, 669 P.2d 248, 252 (1983). A person is placed on "inquiry notice" when he or she "should have known of facts that would lead an ordinarily prudent person to investigate the matter further." *Winn v. Sunrise Hosp. & Med. Ctr.*, 128 Nev. 246, 251-52, 277 P.3d 458, 462 (2012) (internal quotation marks omitted). *The accrual period does not refer to when the plaintiff discovers the precise facts pertaining to his legal theory, but only to the general belief that someone's negligence may have cause the injury.* *Id.* (citing *Massey*, 99 Nev. at 728, 669 P.2d at 252). The plaintiff "discovers" the injury when "he had facts before him that would have led an ordinarily prudent person to investigate further into whether [the] injury may have been caused by someone's negligence." *Id.*

The statute of limitations begins to run when the patient has before him the facts which would put a reasonable person on inquiry notice of his possible cause of action, whether or not it has occurred to the particular patient to seek further medical advice. *Massey*, 99 Nev. at 727-28. *The focus is on the access to facts and knowledge of facts, rather than on knowledge of legal theories.* *Id.* Plaintiffs cannot "close their eyes" to the information available to them. *See Siragusa v. Brown*, 114 Nev. 1384, 1394, 971 P.2d 801, 807 (1988) (*quoting Spitler v. Dean*, 436 N.W.2d 308, 310-11 (Wis. 1989) ("Plaintiffs may not close their eyes to means of information reasonably available to them and must in faith apply their attention to those particulars within their reach.")).

With regard to the one-year statute of limitations, Defendant assumed for the purpose of his Motion to Dismiss that Plaintiff discovered her injury at the time she filed her Complaint on June 30, 2017. Pursuant to the expert affidavit of Dr. Karamardian attached to the Complaint, Plaintiff was aware of not only the facts pertaining to her legal theory but had sufficient facts that would lead an ordinary prudent person to investigate the matter further as to who it was that was involved in the discharge. In fact, Dr. Karamardian explicitly stated there was alleged negligence in discharging Plaintiff from Sunrise Hospital on July 14, 2016.

1 Plaintiff had the obligation to investigate further as to who was involved in the discharge but
2 did not do so. If Plaintiff was not aware of the identity of any of the potential Defendants, she
3 should have asserted that such were Doe and/or Roe Defendants that could have been
4 substituted in later and pursuant to *Servatius v. United Resort Hotels*, this would then have
5 related back to the filing of the original Complaint.

6 As stated in Defendant's Motion, in *Servatius* the court noted that "[w]hile an
7 amendment may be made to correct a mistake in the name of a party, a new party may not be
8 brought into an action once the statute of limitations has run because such an amendment
9 amounts to a new and independent cause of action." *Servatius v. United Resort Hotels*, 85
10 Nev. 371, 372-73, 455 P.2d 621, 622 (1969). The court further stated:

11 There appear to be three factors governing the determination when a "proper
12 defendant" might be brought into an action by amendment even though the
13 statute of limitations might have run. They are that the proper party defendant
14 (1) have actual notice of the institution of the action; (2) knew that it was the
proper defendant in the action, and (3) was not in any way misled to its
prejudice.

15 *Id.*, 85 Nev. at 373, 455 P.2d at 622-23.

16 The court in *Servatius* found the factors to be present in that case as the amended
17 complaint **corrected** a mistake in the name of a party already before the court. The court
18 noted:

19 The record shows that Joan D. Hays was resident agent for both Aku Aku, Inc.,
20 the Nevada corporation, and United Resort Hotels, Inc., the Delaware
21 corporation, and was served in that capacity for both corporations; that both
22 corporations have the same principal place of business; that there are four
23 persons on the board of directors of Aku Aku, Inc.; that those same four
persons, plus two others, constitute the board of directors of United Resort
Hotels, Inc.; that the same law firm, at least for the purpose of this case,
represents both corporations.

24 *Id.*, 85 Nev. at 372, 455 P.2d at 622.

25 In *Bender v. Clark Equip. Co.*, the Nevada Supreme Court clarified the *Servatius* rule
26 stating:

27 Until *Nurenberger Hercules-Werke v. Virostek*, 107 Nev. 873, 822 P.2d 1100
28 (1991), all situations involving the amending of a complaint to name a new
party defendant after the statute of limitations had run were governed by a rule

announced by this court in *Servatius v. United Resort Hotels*, 85 Nev. 371, 455 P.2d 621 (1969), and modified by later cases. The general rule of *Servatius* is: "While an amendment may be made to correct a mistake in the name of a party, a new party may not be brought into an action once the statute of limitations has run because such an amendment amounts to a new and independent cause of action." Nevertheless, a defendant could be brought into an action even if the statute of limitations had run if the defendant: (1) had actual notice of the institution of the action; (2) knew it was the proper defendant in the action; and (3) was not misled to its prejudice.

In *Nurenberger*, this court concluded that *Servatius* had been misapplied to cases governed by NRCP 10(a), i.e. cases involving the utilization of fictitious defendants. ***Servatius remains applicable to cases where the plaintiff has not named "Doe" defendants.***

111 Nev. 844, 845, 897 P.2d 208, 208-09 (1995) (internal citations omitted) (emphasis added).

Nurenberger dealt with cases involving fictitious name pleadings and amended the *Servatius* rule for that particular situation.

The Court's interpretation of *Servatius* with regard to denying the Motion to Dismiss was clearly erroneous. Dr. Kia was a newly added Defendant. He was not added to correctly name a previously misidentified Defendant and he had no notice of this action until after the expiration of the one year statute of limitations. As Plaintiff did not name any Doe Defendants in the Amended Complaint, the *Servatius* rule applies precluding amending the Complaint to add Dr. Kia as a new Defendant.

III.

CONCLUSION

As set forth in Defendant's Motion, the Court's decision denying Dr. Kia's Motion to Dismiss based on *Echols v. Summa Corp* and *Servatius v. United Resorts Hotel* is clearly erroneous. Dr. Kia did not have any knowledge that he could be a proper party prior to the expiration of the statute of limitations and is clearly prejudiced as he now has to defend against a stale claim. Furthermore, as Plaintiff did not have any "Doe" defendants, pursuant to *Servatius*, she is precluded from adding him as a party after the expiration of the statute of limitations.

///

1 Based on the foregoing Defendant Dr. Kia respectfully requests this Court reconsider
2 its decision denying his Motion to Dismiss and enter an Order granting the Motion to
3 Dismiss.

4 DATED: May 6, 2021.

COLLINSON, DAEHNKE, INLOW & GRECO

/s/ Linda K. Rurangirwa

BY: _____

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Attorneys for Defendant
ALI KIA, M.D.

CERTIFICATE OF SERVICE

I hereby certify that on this 6th day of May, 2021 a true and correct copy of
**DEFENDANT ALI KIA, M.D.'S REPLY IN SUPPORT OF MOTION FOR
RECONSIDERATION REGARDING 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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By /s/ Linda K. Rurangirwa
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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 DENYING DEFENDANT ALI KIA, M.D.'S MOTION FOR RECONSIDERATION

This matter having come on for hearing in chambers on May 13, 2021, on Defendant Ali Kia, M.D.'s Motion for Reconsideration of this Court's Order From March 16, 2021, regarding Motion to Dismiss Plaintiff's Amended Complaint, and Defendant Nevada Hospitalist Group, LLP's joinder thereto; the Court having reviewed the papers and pleadings on file, having heard the arguments of counsel, and good cause appearing:

THE COURT FINDS that a motion for reconsideration is appropriate when: (1) there is newly discovered evidence, (2) the Court's decision was clearly erroneous, or (3) there is an intervening change in the law. *Masonry and Tile Contractors Assoc. of S. Nev. v. Jolly, Urga & Wirth LTD.*, 113 Nev. 737, 741, 941 P.2d 486 (1997); *Brown v. Gold*, 378 F.Supp.2d 1280, 1288 (D. Nev. 2005). The United States Supreme Court has defined the clearly erroneous standard under FRCP 52(a): "A finding is clearly erroneous' when although there is evidence to support it, the reviewing court on the entire evidence is

1 left with the definite and firm conviction that a mistake has been committed.” *United States v. Gypsum*
2 *Co.*, 333 U.S. 364, 395, 68 S.Ct. 525, 542, 92 L.Ed. 1147 (1948); *Unionamerica Mortg. & Equity Tr. v.*
3 *McDonald*, 97 Nev. 210, 211 12, 626 P.2d 1272, 1273 (1981). If the district court's findings are
4 supported by substantial evidence, they will be upheld. *Pandelis Constr. Co. v. Jones Viking Assoc.*, 103
5 Nev. 129, 130, 734 P.2d 1236, 1237 (1987). *See also, Nelson v. Peckham Plaza Partnerships*, 110 Nev.
6 23, 25, 866 P.2d 1138, 1139 (1994)

7 Here, Defendant Kia argues that the Court’s decision was clearly erroneous to the extent that it
8 relied on representation that the issue of relation back had already been determined by a prior judicial
9 officer in making its determination. While the Court did reference the prior judge’s findings, the Court
10 specifically stated that it was ruling on the merits of Defendant s Motion to Dismiss Plaintiff’s Amended
11 Complaint. In doing so, the Court made independent findings of fact and conclusions of law based upon
12 the pleadings, argument at the time of the hearing and the procedural history of the case. While
13 Defendant Kia’s argument suggests that he disagrees with this Court’s interpretation, Defendant Kia has
14 not shown that this Court’s reliance on *Echols v. Summa Corp.*, 95 Nev. 720, 601 P.2d 716 (1979) and
15 *Servatius v. United Resorts Hotel*, 85 Nev. 371, 45 P.2d 621 (1969), is misguided. Thus, Defendant Kia
16 has not established that the court’s ruling was clearly erroneous.

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18 ////

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24 ////

25 ////

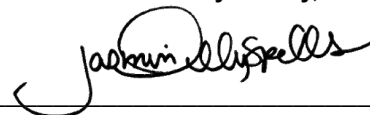
26 ////

27 ////

28 ////

IT IS HEREBY ORDERED, ADJUDGED, AND DECREED that Defendant Ali Kia, M.D.'s Motion for Reconsideration and Defendant Nevada Hospitalist Group, LLP's joinder thereto are DENIED.

Dated this 2nd day of July, 2021



7B9 906 0B56 0435
Jasmin Lilly-Spells
District Court Judge

Respectfully Submitted:

Approved as to Form and Content:

DATED this 8th day of June, 2021.

DATED this 8th day of June, 2021.

LAW OFFICE OF DANIEL MARKS

HALL PRANGLE & SCHOONVELD, LLC

/s/ Nicole M. Young

/s/ Tyson Dobbs

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Approved as to Form and Content:

Approved as to Form and Content:

DATED this 8th day of June, 2021.

DATED this 8th day of June, 2021.

WILSON, ELSER, MOSKOWITZ,
EDELMAN & DICKER LLP

COLLINSON, DAEHNKE, INLOW & GRECO

/s/ Eric K. Stryker

/s/ Linda K. Rurangirwa

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////

////

////

1 DATED this 8th day of June, 2021.

2 LEWIS BRISBOIS BISGAARD & SMITH, LLP

3
4 /s/ S. Brent Vogel

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11 Attorney for Nevada Hospitalist Group, LLP

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To: Nicole Young; Charlotte Buys; Sherman Mayor; Stryker, Eric K.; Jordan, Erin; Vogel, Brent
Cc: Amoroso, Elsa; Foley, Brigitte E.; Clark, Angela; Lord, Nicole N.; Richean Martin
Subject: RE: Green v. Delee

You may use my electronic signature

Linda K. Rurangirwa
Collinson, Daehnke, Inlow & Greco

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To: Linda K. Rurangirwa <Linda.Rurangirwa@cdiglaw.com>; Charlotte Buys <cbuys@HPSLAW.COM>; Sherman Mayor <smayor@HPSLAW.COM>; Stryker, Eric K. <Eric.Stryker@wilsonelser.com>; Jordan, Erin <Erin.Jordan@lewisbrisbois.com>; Vogel, Brent <Brent.Vogel@lewisbrisbois.com>
Cc: Amoroso, Elsa <Elsa.Amoroso@lewisbrisbois.com>; Foley, Brigitte E. <Brigitte.Foley@wilsonelser.com>; Clark, Angela <Angela.Clark@wilsonelser.com>; Lord, Nicole N. <Nicole.Lord@wilsonelser.com>; Richean Martin <richean.martin@cdiglaw.com>
Subject: Green v. Delee

Hi all:

Attached is the proposed order regarding the Motion for Reconsideration. Please let me know if you have any changes and/or approve as to form and content.

Thank you!
Nicole

Nicole M. Young, Esq.
Associate Attorney
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Cc: Amoroso, Elsa; Foley, Brigitte E.; Clark, Angela; Lord, Nicole N.; Richean Martin
Subject: RE: Green v. Delee

You can sign for me too – thanks.


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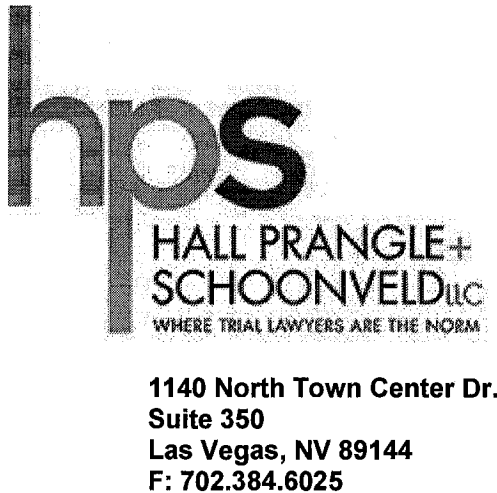
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Representing clients from coast to coast. View our locations nationwide.

This e-mail may contain or attach privileged, confidential or protected information intended only for the use of the intended recipient. If you are not the

From: Tyson Dobbs <tdobbs@HPSLAW.COM>
Sent: Thursday, June 3, 2021 3:30 PM
To: Nicole Young; Stryker, Eric K.; Linda K. Rurangirwa; Jordan, Erin; Vogel, Brent; Mike Prangle
Cc: Amoroso, Elsa; Foley, Brigitte E.; Clark, Angela; Lord, Nicole N.; Richean Martin
Subject: RE: Green v. Delee

You can e-sign on my behalf. Thanks.



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Cc: Amoroso, Elsa <Elsa.Amoroso@lewisbrisbois.com>; Foley, Brigitte E. <Brigitte.Foley@wilsonelser.com>; Clark, Angela <Angela.Clark@wilsonelser.com>; Lord, Nicole N. <Nicole.Lord@wilsonelser.com>; Richean Martin <richean.martin@cdiglaw.com>
Subject: RE: Green v. Delee

[External Email] CAUTION!

Hi All:

Attached is the revised order with the change requested by Mr. Stryker. Please provide your updated consent to submit to the judge.

Thank you!
Nicole

1 **CSERV**

2
3 DISTRICT COURT
4 CLARK COUNTY, NEVADA

5
6 Choloe Green, Plaintiff(s)

CASE NO: A-17-757722-C

7 vs.

DEPT. NO. Department 23

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

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10 **AUTOMATED CERTIFICATE OF SERVICE**

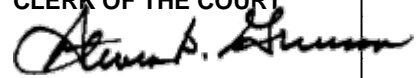
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Attorneys for Plaintiff

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 DENYING DEFENDANT ALI KIA, M.D.'S
MOTION FOR RECONSIDERATION**

PLEASE TAKE NOTICE that an order denying defendant Ali Kia, M.D.'s motion for reconsideration was entered in the above-entitled action on the 2nd day of July, 2021, a copy of which is attached hereto.

DATED this 6th day of July, 2021.

LAW OFFICE OF DANIEL MARKS

/s/ Daniel Marks
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NICOLE M. YOUNG, ESQ.
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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 DENYING DEFENDANT ALI KIA, M.D.'S MOTION FOR RECONSIDERATION

This matter having come on for hearing in chambers on May 13, 2021, on Defendant Ali Kia, M.D.'s Motion for Reconsideration of this Court's Order From March 16, 2021, regarding Motion to Dismiss Plaintiff's Amended Complaint, and Defendant Nevada Hospitalist Group, LLP's joinder thereto; the Court having reviewed the papers and pleadings on file, having heard the arguments of counsel, and good cause appearing:

THE COURT FINDS that a motion for reconsideration is appropriate when: (1) there is newly discovered evidence, (2) the Court's decision was clearly erroneous, or (3) there is an intervening change in the law. *Masonry and Tile Contractors Assoc. of S. Nev. v. Jolly, Urga & Wirth LTD.*, 113 Nev. 737, 741, 941 P.2d 486 (1997); *Brown v. Gold*, 378 F.Supp.2d 1280, 1288 (D. Nev. 2005). The United States Supreme Court has defined the clearly erroneous standard under FRCP 52(a): "A finding is clearly erroneous' when although there is evidence to support it, the reviewing court on the entire evidence is

1 left with the definite and firm conviction that a mistake has been committed.” *United States v. Gypsum*
2 *Co.*, 333 U.S. 364, 395, 68 S.Ct. 525, 542, 92 L.Ed. 1147 (1948); *Unionamerica Mortg. & Equity Tr. v.*
3 *McDonald*, 97 Nev. 210, 211 12, 626 P.2d 1272, 1273 (1981). If the district court’s findings are
4 supported by substantial evidence, they will be upheld. *Pandelis Constr. Co. v. Jones Viking Assoc.*, 103
5 Nev. 129, 130, 734 P.2d 1236, 1237 (1987). *See also, Nelson v. Peckham Plaza Partnerships*, 110 Nev.
6 23, 25, 866 P.2d 1138, 1139 (1994)

7 Here, Defendant Kia argues that the Court’s decision was clearly erroneous to the extent that it
8 relied on representation that the issue of relation back had already been determined by a prior judicial
9 officer in making its determination. While the Court did reference the prior judge’s findings, the Court
10 specifically stated that it was ruling on the merits of Defendant s Motion to Dismiss Plaintiff’s Amended
11 Complaint. In doing so, the Court made independent findings of fact and conclusions of law based upon
12 the pleadings, argument at the time of the hearing and the procedural history of the case. While
13 Defendant Kia’s argument suggests that he disagrees with this Court’s interpretation, Defendant Kia has
14 not shown that this Court’s reliance on *Echols v. Summa Corp.*, 95 Nev. 720, 601 P.2d 716 (1979) and
15 *Servatius v. United Resorts Hotel*, 85 Nev. 371, 45 P.2d 621 (1969), is misguided. Thus, Defendant Kia
16 has not established that the court’s ruling was clearly erroneous.

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1 IT IS HEREBY ORDERED, ADJUDGED, AND DECREED that Defendant Ali Kia, M.D.'s
2 Motion for Reconsideration and Defendant Nevada Hospitalist Group, LLP's joinder thereto are
3 DENIED.

Dated this 2nd day of July, 2021



7B9 906 0B56 0435
Jasmin Lilly-Spells
District Court Judge

8 Respectfully Submitted:

Approved as to Form and Content:

9 DATED this 8th day of June, 2021.

DATED this 8th day of June, 2021.

10 LAW OFFICE OF DANIEL MARKS

HALL PRANGLE & SCHOONVELD, LLC

11
12 /s/ Nicole M. Young

/s/ Tyson Dobbs

13 DANIEL MARKS, ESQ.
14 Nevada State Bar No. 002003
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1160 N. Town Center Drive Suite #200
Las Vegas, Nevada 89144
Attorney for Sunrise Hospital

17 Approved as to Form and Content:

Approved as to Form and Content:

18 DATED this 8th day of June, 2021.

DATED this 8th day of June, 2021.

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

COLLINSON, DAEHNKE, INLOW & GRECO

21 /s/ Eric K. Stryker

/s/ Linda K. Rurangirwa

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Las Vegas, Nevada 89119
Attorney for Ali Kia, M.D.

26 ////

27 ////

28 ////

1 DATED this 8th day of June, 2021.

2 LEWIS BRISBOIS BISGAARD & SMITH, LLP

3
4 /s/ S. Brent Vogel

5 S. BRENT VOGEL, ESQ.

6 Nevada State Bar No. 006858

7 ERIN E. JORDAN, ESQ.

8 Nevada State Bar No. 010018

9 6385 s. Rainbow Blvd., Suite 600

10 Las Vegas, Nevada 89118

11 Attorney for Nevada Hospitalist Group, LLP

From: Linda K. Rurangirwa <Linda.Rurangirwa@cdiglaw.com>
Sent: Monday, June 7, 2021 11:45 AM
To: Nicole Young; Charlotte Buys; Sherman Mayor; Stryker, Eric K.; Jordan, Erin; Vogel, Brent
Cc: Amoroso, Elsa; Foley, Brigitte E.; Clark, Angela; Lord, Nicole N.; Richean Martin
Subject: RE: Green v. Delee

You may use my electronic signature

Linda K. Rurangirwa
Collinson, Daehnke, Inlow & Greco

From: Nicole Young <NYoung@danielmarks.net>
Sent: Wednesday, June 2, 2021 12:43 PM
To: Linda K. Rurangirwa <Linda.Rurangirwa@cdiglaw.com>; Charlotte Buys <cbyus@HPSLAW.COM>; Sherman Mayor <smayor@HPSLAW.COM>; Stryker, Eric K. <Eric.Stryker@wilsonelser.com>; Jordan, Erin <Erin.Jordan@lewisbrisbois.com>; Vogel, Brent <Brent.Vogel@lewisbrisbois.com>
Cc: Amoroso, Elsa <Elsa.Amoroso@lewisbrisbois.com>; Foley, Brigitte E. <Brigitte.Foley@wilsonelser.com>; Clark, Angela <Angela.Clark@wilsonelser.com>; Lord, Nicole N. <Nicole.Lord@wilsonelser.com>; Richean Martin <richean.martin@cdiglaw.com>
Subject: Green v. Delee

Hi all:

Attached is the proposed order regarding the Motion for Reconsideration. Please let me know if you have any changes and/or approve as to form and content.

Thank you!
Nicole

Nicole M. Young, Esq.
Associate Attorney
Law Office of Daniel Marks
610 South Ninth Street
Las Vegas, Nevada 89101
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From: Stryker, Eric K. <Eric.Stryker@wilsonelser.com>
Sent: Friday, June 4, 2021 10:30 AM
To: Vogel, Brent; Nicole Young; Linda K. Rurangirwa; Jordan, Erin; Tyson Dobbs; Mike Prangle
Cc: Amoroso, Elsa; Foley, Brigitte E.; Clark, Angela; Lord, Nicole N.; Richean Martin
Subject: RE: Green v. Delee

You can sign for me too – thanks.

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Cc: Amoroso, Elsa <Elsa.Amoroso@lewisbrisbois.com>; Foley, Brigitte E. <Brigitte.Foley@wilsonelser.com>; Clark, Angela <Angela.Clark@wilsonelser.com>; Lord, Nicole N. <Nicole.Lord@wilsonelser.com>; Richean Martin <richean.martin@cdiglaw.com>
Subject: RE: Green v. Delee

[EXTERNAL EMAIL]

You can e-sign for me.



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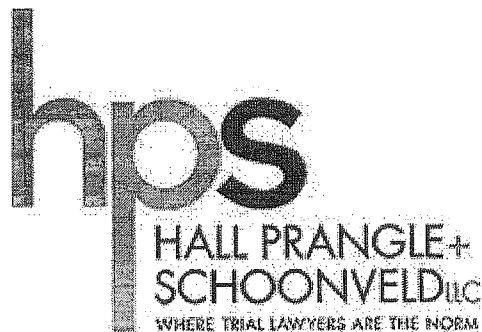
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Sent: Thursday, June 3, 2021 3:30 PM
To: Nicole Young; Stryker, Eric K.; Linda K. Rurangirwa; Jordan, Erin; Vogel, Brent; Mike Prangle
Cc: Amoroso, Elsa; Foley, Brigitte E.; Clark, Angela; Lord, Nicole N.; Richean Martin
Subject: RE: Green v. Delee

You can e-sign on my behalf. Thanks.



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Subject: RE: Green v. Delee

[External Email] CAUTION!

Hi All:

Attached is the revised order with the change requested by Mr. Stryker. Please provide your updated consent to submit to the judge.

Thank you!
Nicole

1 CSERV

2 DISTRICT COURT
3 CLARK COUNTY, NEVADA
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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**

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