

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 7

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CERTIFICATE OF COMPLIANCE

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

Dated: August 11, 2021

COLLINSON, DAEHNKE, INLOW & GRECO

/s/ Linda Rurangirwa

By _____
Patricia Egan Daehnke
Nevada Bar No. 4976
Linda K. Rurangirwa
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 7** 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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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



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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.

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

Fine with us as well.



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From: Vogel, Brent <Brent.Vogel@lewisbrisbois.com>

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.



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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

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

Good afternoon:

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

Thank you,

Linda



Linda K. Rurangirwa | Partner

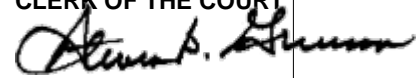
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13 Attorneys for Defendant
14 *Ali Kia, M.D.*

10 **DISTRICT COURT**

11 **CLARK COUNTY, NEVEDA**

12 CHLOE GREEN, an individual,
13 Plaintiffs,

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
20 KIA, M.D., an individual and NEVADA
21 HOSPITALIST GROUP, LLP.

22 Defendants.

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

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

22 COMES NOW Defendant ALI KIA, M.D. by and through his attorneys of record,
23 COLLINSON, DAEHNKE, INLOW & GRECO and in answer to Plaintiff's Amended
24 Complaint on file herein, admits, denies and alleges as follows:

25 1. Answering Paragraphs 1 through 5 of Plaintiff's Amended Complaint on file
26 herein, Defendant is without sufficient knowledge or information to form a belief as to the
27 truth of the allegations contained in said paragraphs, and on that basis denies each and every
28 allegation contained therein.

1 2. Answering Paragraph 6 of Plaintiff's Amended Complaint on file herein,
2 Defendant admits he was a licensed medical doctor in the State of Nevada and denies that he
3 was an employee of NEVADA HOSPITALIST GROUP, LLP. As to all other allegations
4 contained therein, Defendant is without sufficient knowledge or information to form a belief
5 as to the truth of such allegations, and on that basis denies all other allegations contained
6 therein.

7 3. Answering Paragraphs 7 through 9 of Plaintiff's Amended Complaint on file
8 herein, Defendant is without sufficient knowledge or information to form a belief as to the
9 truth of the allegations contained in said paragraphs, and on that basis denies each and every
10 allegation contained therein.

11 4. Answering Paragraph 10 of Plaintiff's Amended Complaint on file herein
12 Defendant admits on July 14, 2016, Chloe was admitted through Defendant and was
13 discharged on July 16, 2016. Defendant admits he discussed the discharge with Dr. DeLee.
14 As to all other allegations contained therein, Defendant is without sufficient knowledge or
15 information to form a belief as to the truth of such allegations, and on that basis denies all
16 other allegations contained therein.

17 5. Answering Paragraphs 11 through 12 of Plaintiff's Amended Complaint on
18 file herein, Defendant is without sufficient knowledge or information to form a belief as to
19 the truth of the allegations contained in said paragraphs, and on that basis denies each and
20 every allegation contained therein.

21 6. Answering Paragraph 13 of Plaintiff's Amended Complaint on file herein,
22 Defendant restates and incorporates his responses to Paragraphs 1 through 12 of Plaintiff's
23 Amended Complaint as set forth above as though set forth herein.

24 7. Answering Paragraphs 14 through 15 of Plaintiff's Amended Complaint on
25 file herein, Defendant denies the allegations contained therein as to himself. As to all other
26 allegations contained therein, Defendant is without sufficient knowledge or information to
27 form a belief as to the truth of such allegations, and on that basis denies all other allegations
28 contained therein.

1 8. Answering Paragraph 16 through 17 of Plaintiff's Complaint on file herein,
2 Defendant is without sufficient knowledge or information to form a belief as to the truth of
3 the allegations contained in said paragraphs, and on that basis denies each and every
4 allegation contained therein.

5 9. Answering Paragraph 18 of Plaintiff's Complaint on file herein, Defendant
6 denies the allegations contained therein.

7 **AFFIRMATIVE DEFENSES**

8 **FIRST AFFIRMATIVE DEFENSE**

9 Plaintiff's Amended Complaint fails to state a claim against this Defendant upon
10 which relief can be granted.

11 **SECOND AFFIRMATIVE DEFENSE**

12 Defendant asserts that Plaintiff's injuries, if any, were caused by the acts or inactions
13 of persons beyond the control or right of control of Defendant and for whom Defendant is not
14 liable or responsible.

15 **THIRD AFFIRMATIVE DEFENSE**

16 The injuries, if any, complained of by Plaintiff in her Amended Complaint, were
17 proximately caused by the acts or omissions of unknown third parties or other persons over
18 whom Defendant exercised no control, over whom Defendant had no right or duty to control,
19 nor ever had a right or duty to exercise control.

20 **FOURTH AFFIRMATIVE DEFENSE**

21 In all professional services rendered by answering Defendant to Plaintiff, Defendant
22 possessed and exercised that degree of skill ordinarily possessed and exercised by health care
23 providers acting under the same or similar conditions. The care and treatment rendered by
24 Defendant was the usual and customary treatment, and at no time was Defendant guilty of
25 negligence, gross negligence, or improper treatment.

26 **FIFTH AFFIRMATIVE DEFENSE**

27 Defendant asserts that he fully performed and discharged all obligations owed to
28 Plaintiff, including meeting the requisite standard of care to which Plaintiff was entitled.

SIXTH AFFIRMATIVE DEFENSE

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

SEVENTH AFFIRMATIVE DEFENSE

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

EIGHTH AFFIRMATIVE DEFENSE

Plaintiff's injuries and damages, if any, are the result of Plaintiff's own negligence, if any, which may exceed the negligence, if any, of Defendant and therefore bars recovery by Plaintiff. Defendant asserts that Plaintiff's own actions contributed to the damages alleged in the Complaint.

NINTH AFFIRMATIVE DEFENSE

Plaintiff's claims are barred by the applicable statutes of limitations and/or doctrines of laches, waiver, estoppel, or the Statute of Frauds.

TENTH AFFIRMATIVE DEFENSE

Plaintiff's claims are barred as this court lacks jurisdiction over this claims and Defendant.

ELEVENTH AFFIRMATIVE DEFENSE

Plaintiff's injuries and damages, if any, were the result of forces of nature over which Defendant had no control.

TWELFTH AFFIRMATIVE DEFENSE

Further answering Plaintiff's Complaint on file herein and the whole thereof, Defendant denies that Plaintiff sustained any injury, damage, or loss, if any by reason of any negligent act or omission on the part of Defendant.

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THIRTEENTH AFFIRMATIVE DEFENSE

Defendant is entitled to contractual indemnity and comparative equitable indemnity from others.

FOURTEENTH AFFIRMATIVE DEFENSE

Plaintiff has failed to join necessary and indispensable parties to the action.

FIFTEENTH AFFIRMATIVE DEFENSE

Plaintiff has failed to exercise reasonable diligence to mitigate any alleged damages and said conduct was the legal cause of any injuries or damages.

SIXTEENTH AFFIRMATIVE DEFENSE

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

SEVENTEENTH AFFIRMATIVE DEFENSE

The instant dispute arises from a matter covered by a binding arbitration agreement between Plaintiff and Defendant, and Defendant desires that this matter be submitted to binding arbitration in accordance with the terms of the Arbitration Agreement.

EIGHTEENTH AFFIRMATIVE DEFENSE

Defendant alleges that at all times mentioned in the Complaint, Plaintiff was suffering from a disease process/medical condition which is one Defendant did not cause, nor was Defendant responsible for said disease process/medical condition.

NINETEENTH AFFIRMATIVE DEFENSE

This action is governed by NRS 41A et. seq., including but not limited to 41A.035, 41A.045, 41A.061, 41A.071, 41A.097, 41A.100. Defendant is otherwise entitled to all protections, benefits and set-offs available to defendants in professional negligence actions under NRS Chapters 41A and 42.

TWENTIETH AFFIRMATIVE DEFENSE

Defendant reserves the right to introduce evidence of any amounts paid as benefits pursuant to NRS 42.021.

TWENTY-FIRST AFFIRMATIVE DEFENSE

Defendant may elect to have future damages, if any, paid in whole or in part, pursuant to NRS 42.021.

TWENTY-SECOND AFFIRMATIVE DEFENSE

Plaintiff's damages, if any, were not proximately caused by Defendant.

TWENTY-THIRD AFFIRMATIVE DEFENSE

The Amended Complaint fails to state facts or assert claims entitling Plaintiff to recover attorney's fees.

TWENTY-FOURTH AFFIRMATIVE DEFENSE

Plaintiff's entire Amended Complaint, and each cause of action contained therein, fails to state sufficient facts to constitute a viable cause of action.

TWENTY-FIFTH AFFIRMATIVE DEFENSE

Any and all events and happenings in connection with the allegations contained in the Plaintiff's Complaint were caused and contributed to by the negligence and other legal fault of Plaintiff and were further caused and contributed to by the negligence and other legal fault of persons or entities other than Plaintiff. If Plaintiff recovers any sum whatsoever herein, such amount must be reduced in proportion to the extent that Plaintiff's own negligence and other legal fault caused or contributed to Plaintiff's claimed injuries and damages. If there is a verdict in favor of Plaintiff and against Defendant, said verdict should be in proportion to Defendant's pro-rata responsibility. To the extent that it is necessary, Defendant may be entitled to partial indemnity from others on a comparative fault basis.

TWENTY-SIXTH AFFIRMATIVE DEFENSE

All care and services rendered to decedent by Defendant was with the implied and express consent of Plaintiff.

TWENTY-SEVENTH AFFIRMATIVE DEFENSE

Defendant alleges that pursuant to Nevada law he would not be jointly liable and that if liability is imposed, such liability would be several for that portion of the Plaintiff's damages, if any, that represent the percentage attributed to him.

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TWENTY-EIGHTH AFFIRMATIVE DEFENSE

Defendant alleges that the injuries and damages, if any, suffered by Plaintiff can and do occur in the absence of negligence.

TWENTY-NINTH AFFIRMATIVE DEFENSE

Defendant contends that he is entitled to a conclusive presumption of informed consent pursuant to NRS 41A.110.

THIRTIETH AFFIRMATIVE DEFENSE

Defendant contends that he made, consistent with good medical practice, a full and complete disclosure to Plaintiff of all material facts known to him or reasonably believed by him to be true concerning Plaintiff's condition and the appropriate alternative procedures available for treatment of such condition. Further, each and every service rendered to Plaintiff by Defendant was expressly and impliedly consented to and authorized by the Plaintiff on the basis of said full and complete disclosure.

THIRTY-FIRST AFFIRMATIVE DEFENSE

The expert affidavits attached to Plaintiff's Amended Complaint do not comply with NRS 41A.071 in that they fail to demonstrate this Defendant breached the standard of care in Plaintiff's case, and fails to demonstrate an alleged causal link between Defendant's treatment of Plaintiff and Plaintiff's alleged injuries.

THIRTY-SECOND AFFIRMATIVE DEFENSE

The expert affidavits attached to Plaintiff's Amended Complaint do not comply with NRS 41A.071 in that they fail to support the allegations contained in the action.

THIRTY-THIRD AFFIRMATIVE DEFENSE

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

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THIRTY-FOURTH AFFIRMATIVE DEFENSE

Plaintiff's experts are not qualified to provide expert medical testimony in this action pursuant to NRS 41A.071, NRS 41A.100, NRS 50.275, *Hallmark v. Eldridge*, 124 Nev. 492, 189 P.3d 646 (2008), and all relevant case law.

THIRTY-FIFTH AFFIRMATIVE DEFENSE

Defendant has fully performed his duties owed, if any to Plaintiff, and Plaintiff is therefore estopped to assert any claims against Defendant.

THIRTY-SIXTH AFFIRMATIVE DEFENSE

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

THIRTY-SEVENTH AFFIRMATIVE DEFENSE

Plaintiff approved and ratified the alleged acts of this Defendant for which Plaintiff now complains.

THIRTY-EIGHTH AFFIRMATIVE DEFENSE

Plaintiff has not suffered any compensable injury as a result of Defendant's alleged actions, and as a result, is not entitled to an award against Defendant.

THIRTY-NINTH AFFIRMATIVE DEFENSE

Plaintiff failed to allege facts in support of any award of pre-judgment or post-judgment interest.

FORTIETH AFFIRMATIVE DEFENSE

Defendant avails himself to all affirmative defenses and limitations of actions as set out in NRS 41.085, 41.500, 41.503, 41.504, 41.505, 42.005, 42.007, 42.021, 41.141, and all applicable subparts.

FORTY-FIRST AFFIRMATIVE DEFENSE

The damages caps and the other provisions of KODIN is constitutional under both the Nevada and United States Constitutions.

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FORTY-SECOND AFFIRMATIVE DEFENSE

Defendant reserves the right to introduce evidence of any amounts paid as benefits pursuant to NRS 42.021.

FORTY-THIRD AFFIRMATIVE DEFENSE

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

FORTY-FOURTH AFFIRMATIVE DEFENSE

Defendant alleges that the injuries and damages, if any, complained of by the Plaintiff were unforeseeable.

FORTY-FIFTH AFFIRMATIVE DEFENSE

Defendant denies each and every allegation, as well as Plaintiff's prayer for relief, not specifically admitted or otherwise pled to herein.

FORTY-SIXTH AFFIRMATIVE DEFENSE

Defendant cannot fully anticipate all affirmative defenses that may be applicable to this action based upon the conclusory/general terms used in the Complaint. Accordingly, Defendant expressly reserves the right to assert additional defenses as applicable.

FORTY-SEVENTH AFFIRMATIVE DEFENSE

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

FORTY-EIGHTH AFFIRMATIVE DEFENSE

Some of the foregoing affirmative defenses have been pled for purposes of non-waiver. Additionally, pursuant to NRCP 11, as amended, all possible affirmative defenses may have not been alleged herein insofar as sufficient facts were not available after reasonable inquiry upon filing of this Defendant's Answer. Therefore, Defendant reserves the

1 right to amend his Answer to allege additional affirmative defenses if subsequent
2 investigation so warrants.

3 WHEREFORE, Defendant prays:

4 1. That Plaintiff take nothing by her Amended Complaint and the Complaint be
5 dismissed with prejudice;

6 2. That Defendant be awarded his attorneys' fees and costs of suit incurred in
7 defense of this action;

8 3. For trial by jury; and

9 4. For such other and further relief as this court may deem just and proper.

10 DATED: July 12, 2021.

COLLINSON, DAEHNKE, INLOW & GRECO

11 BY: /s/ Linda K. Rurangirwa

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CERTIFICATE OF SERVICE

I hereby certify that on this 12th day of July 2021, a true and correct copy of
**DEFENDANT ALI KIA, M.D.'S ANSWER TO 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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