

1 IN THE SUPREME COURT OF THE STATE OF NEVADA

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3 CASIANO R. FLAVIANO, M.D.;

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5 Petitioner,

6
7 vs.

8 THE EIGHTH JUDICIAL DISTRICT
9 COURT OF THE STATE OF NEVADA
10 ex rel. THE COUNTY OF CLARK,
11 AND THE HONORABLE JUDGE
BITA YEAGER.

12 Respondent,

13 and

14
15 ARLIS NEASON, as Heir of the Estate
16 of JEFFREY NEASON;

17 Real Party in Interest

18 and

19
20 DIGNITY HEALTH MEDICAL
21 GROUP, NEVADA, LLC, a domestic
22 limited-liability company; SUSHIL R.
23 PATEL, M.D.; DOES I through X, and
ROE BUSINESS ENTITIES I through X,
inclusive,

24 Additional Parties in Interest.
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SUPREME COURT NO. : 83821

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DISTRICT COURT NO.:

A-20-824585-Elizabeth A. Brown
Clerk of Supreme Court

**PETITIONER, SUSHIL R. PATEL,
M.D.'S SUBSTANTIVE JOINDER
TO PETITIONER, CASIANO R.
FLAVIANO, M.D.'S PETITION
FOR WRIT OF MANDAMUS**

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1 Petitioner, SUSHIL R. PATEL, M.D., by and through his counsel of record,
2 ROBERT C. McBRIDE, ESQ. and SEAN M. KELLY, ESQ. of the law firm of
3 McBRIDE HALL, and hereby submits this Joinder to Petitioner Casiano R.
4 Flaviano, M.D.'s Petition for Writ of Mandamus.

6 This Substantive Joinder is made and based upon the papers and pleadings on
7 file herein and any documentary evidence and oral argument that may be presented
8 at the time of the hearing of this matter. This Petitioner hereby adopts the following
9 as set forth in Petitioner Casiano R. Flaviano, M.D.'s Petition for Writ of Mandamus:
10 Relief Sought, Routing Statement, Issue Presented, Introduction, Statement of
11 Reasons the Writ Should Issue and Conclusion. This Petitioner expressly adopts all
12 factual and legal arguments contained therein.

13 Specifically, Dr. Patel, is an Internist (Internal Medicine), not a surgeon.
14 Plaintiff's expert, Dr. Davoren (surgeon), is not an internist and, therefore, does not
15 practice in an area of medicine that is substantially similar to Dr. Patel. To become
16 an Internal Medicine physician, one must complete a three-year intensive residency
17 program in internal medicine. Plaintiff's expert, Dr. Davoren is a general surgeon
18 and there is no contention made that he completed such a residency.

19 In fact, to the contrary, during his deposition, Dr. Davoren testified as follows:
20 1) that he is not Board Certified in Internal Medicine; 2) he has never done an
21 internship in Internal Medicine; 3) has never done a residency in Internal Medicine;
22 and 4) has never been considered an Internal Medicine physician at Olathe Medical
23

Center (where he is employed). The care and treatment provided by Dr. Patel and Flaviano to Mr. Neason is outside the purview of a general surgeon who has never practiced as an Internal Medicine physician. Accordingly, Plaintiff failed to meet the requirements set forth in NRS 41A.071.

By this Substantive Joinder, this Petitioner respectfully requests that the Court grant the Petition for Writ of Mandamus and order the Respondent to grant Petitioner's Motion to Dismiss.

DATED this 24th day of November, 2021.

McBRIDE HALL

/s/Sean M. Kelly

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Sushil R. Patel, M.D.

1 **NRAP 28.2 ATTORNEY’S CERTIFICATE OF COMPLIANCE**

2 1. I hereby certify that this brief complies with the formatting
3 requirements of NRAP 32(a)(4), the typeface requirements of NRAP 32(a)(5) and
4 the type style requirements of NRAP 32 (a)(6) because:
5

6 [X] It has been prepared in proportionally spaced typeface using Word in
7 14 point Times New Roman Font.
8

9 2. I further certify that this brief complies with the page-or type-volume
10 limitations of NRAP 32(a)(7) because, excluding the parts of the brief exempted by
11 NRAP 32(a)(7)(C), it is:
12

13 [X] Proportionally spaced, has a typeface font of 14 points or more, and
14 contains 987 words.
15

16 3. I hereby certify that I have read Petitioner, Sushil R. Patel’s Substantive
17 Joinder to Petitioner Casiano R. Flaviano’s Petition for Writ of Mandamus, and to
18 the best of my knowledge, information, and belief, it is not frivolous or interposed
19 for any improper purposes. I further certify that this brief complies with all
20 applicable Nevada Rules of Appellate Procedure, in particular NRAP 28(e), which
21 requires every assertion in the brief regarding matters in the record to be supported
22 to a reference to the page of the transcript or appendix where the matter relied on is
23 to be found.
24
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1 I understand that I may be subject to sanctions in the event that the
2 accompanying brief is not in conformity with the requirements to the Nevada Rules
3 of Appellate Procedure.
4

5 DATED this 24th day of November, 2021.
6

7 McBRIDE HALL

8 */s/Sean M. Kelly*

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2 **CERTIFICATE OF SERVICE**

3 I HEREBY CERTIFY that on the 24th day of November, 2021, I served a true
4 and correct copy of the foregoing **REAL PARTY IN INTEREST, SUSHIL R.**
5 **PATE.'S SUBSTANTIVE JOINDER TO PETITIONER, CASIANO R.**
6 **FLAVIANO, M.D.'S PETITION FOR WRIT OF MANDAMUS** addressed to
7 the following counsel of record at the following address(es):
8
9

- 10 ☒ **VIA ELECTRONIC SERVICE:** By mandatory electronic service (e-
11 service), proof of e-service attached to any copy filed with the Court; or
12 ☒ **VIA U.S. MAIL:** By placing a true copy thereof enclosed in a sealed
13 envelope with postage thereon fully prepaid, addressed as indicated on the
14 service list below in the United States mail at Las Vegas, Nevada
15 ☐ **VIA FACSIMILE:** By causing a true copy thereof to be telecopied to the
16

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/s/Madeline VanHeuvelen
An Employee McBRIDE HALL