

IN THE SUPREME COURT OF THE STATE OF NEVADA

CASIANO R. FLAVIANO, M.D.;

Petitioner,

v.

THE EIGHTH JUDICIAL DISTRICT  
COURT OF THE STATE OF NEVADA ex  
rel. THE COUNTY OF CLARK, AND THE  
HONORABLE JUDGE BITA YAEAGER.

Respondent.

and

ARLIS NEASON, as Heir of the Estate of  
JEFFREY NEASON;

Real Party in Interest

and

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

Additional Parties in Interest.

) Case No. 83821

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) District Court Case No.

) A-20-824585-C

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Jan 19, 2022 05:40 p.m.  
Elizabeth A. Brown  
Clerk of Supreme Court

**DIGNITY SELECT NEVADA, LLC'S JOINDER TO PETITIONERS  
SUSHIL R. PATEL M.D.'S AND CASIANA R. FLAVIANO, M.D.'S  
PETITION FOR WRIT OF MANDAMUS; AND ANSWER IN SUPPORT  
OF THE PETITION**

Petitioner/Real Party-In-Interest, Dignity Select Nevada, LLC erroneously  
named Dignity Health Medical Group, Nevada, LLC ("Dignity Select"), by and  
through its counsel of record, GORDON REES SCULLY MANSUKHANI, LLP, hereby

submits this non-substantive Joinder to Petitioners Casiano R. Flaviano, M.D. and Sushil R. Patel, M.D.'s Petition for Writ of Mandamus; and Answer in Support of the Petition.

## **I. DIGNITY SELECT'S JOINDER**

Dignity Select is a real party-in interest in this matter. Dignity Select's non-substantive joinder is made and based upon the papers and pleadings on file herein and any documentary evidence and oral argument that may be presented at the time of the hearing of this matter. Dignity Select hereby adopts the factual and legal arguments set forth in Petitioner Casiano R. Flaviano, M.D.'s Petition for Writ of Mandamus and Sushil R. Patel, M.D.'s Substantive Joinder thereto.

Dignity Select respectfully requests that the Court grant the Petition for Writ of Mandamus and Order Respondent to grant the Motion to Dismiss.

## **II. DIGNITY SELECT'S ANSWER IN SUPPORT OF THE PETITION**

Dignity Select dba Dignity Health Rehabilitation Hospital is a provider of healthcare within the meaning ascribed by NRS 41A.017.<sup>1</sup> If "an action for professional negligence is filed in the district court, the district shall dismiss the

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<sup>1</sup> "Provider of health care" means a physician licensed pursuant to chapter 630 or 633 of NRS, physician assistant, dentist, licensed nurse, dispensing optician, optometrist, registered physical therapist, podiatric physician, licensed psychologist, chiropractor, doctor of Oriental medicine, medical laboratory director or technician, licensed dietitian or a licensed hospital, clinic, surgery center, physicians' professional corporation or group practice that employs any such person and its employees."

action, without prejudice, if the action is filed without an affidavit that:

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

*See* NRS 41A.071 (emphasis added).

Michael Davoren, M.D. is a board certified general surgeon in private practice at Olathe Medical Center in Olathe, Kansas. Based on the information in his affidavit, Dr. Davoren does not practice internal medicine or physical medicine. He is not a rehabilitation specialist. There is nothing in Dr. Davoren's background to suggest that he is qualified to offer expert opinions as to whether the treatment the deceased received at Dignity Select's rehabilitation hospital fell below the standard of care.

Dr. Davoren does not offer any opinions with respect to Dignity's

staff or the standards of care required for an acute rehabilitation facility.

Q. Have you been retained in a Nevada case to offer expert opinions on standard of care for an acute rehabilitation hospital?

A. The only one was that one sponge case. And it wasn't – they did not – actually, they did include that facility, but my opinion was limited to the wound vac itself.

Q. How about in Kansas?

A. No.

Q. So does that change or alter how – your reference in paragraph 21, where you talk about the staff and Drs. Patel and Flaviano?

A. That was who I was referring to at that time. The staff would only be serving in terms of how they assisted Dr. Flaviano and Patel in terms of their care and assessment of the patient.

**Q. But you're not offering any opinions with respect to just the staff and the standards?**

**A. At this point in time, I'm not.**

*See* Petitioner's App., Vol. 2, Ex. 11, 31:13 – 32:7. Dr. Davoren's opinions are limited to the care and treatment provided by the Defendant-Physicians. Those opinions are memorialized in a medical affidavit that is deficient under Nevada law because Dr. Davoren does not practice, nor has he ever practiced, "in an area that is substantially similar to the type of practice engaged in at the time of the alleged professional negligence." *See* NRS 41A.071.

With respect to Dignity Select, the medical affidavit is further deficient because Dr. Davoren did not review any of the facility's policies and procedures. *Id.*, 11:14 – 12:6. It has been more than a decade since Dr. Davoren has reviewed the policies and procedures for the Kansas-based hospital on whose Medical

Executive Committee he sits. *Id.*, 30:23 – 31:7.<sup>2</sup> Moreover, the hospital at which Dr. Davoren works has rehabilitation services “come in.” *Id.*, 15:17 – 16:5. Dr. Davoren’s Kansas hospital ***does not*** “have a dedicated portion of the hospital devoted solely to the care and treatment involved with rehabilitation.” *Id.* 30:9 – 15.

Dr. Davoren has not and does not currently practice in a *substantially similar* area as the medical providers identified in the case at bar; he does not offer any opinions specifically as to Dignity Select; and he is not qualified to offer opinions with respect to standard of care as it relates to Dignity Select. Based on the foregoing, Dignity Select respectfully requests that the Court grant the Petition for Writ of Mandamus and Order Respondent to grant the Motion to Dismiss.

DATED this 11<sup>th</sup> day of January, 2022.

**GORDON REES SCULLY  
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/s/ Dione C. Wrenn

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***Attorneys for Defendant,  
DIGNITY SELECT NEVADA, LLC***

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<sup>2</sup> Q. Thank you. And the hospital that you work in, is it a rehabilitative hospital?

A. It is not a rehab hospital, no. We do have rehabilitation facilities and we maintain both inpatient and outpatient rehab services.

## **NRAP 28.2 ATTORNEY'S CERTIFICATE OF COMPLIANCE**

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

☒ This brief has been prepared in a proportionally spaced typeface using Microsoft Word 2016 in Times New Roman 14; or

☐ This brief has been prepared in a monospaced typeface using [*state name and version of word processing program*] with [*state number of characters per inch and name of type style*].

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

☒ Proportionately spaced, has a typeface of 14 points or more and contains 981 words (not including disclosure statement, table of contents, table of authorities, required certificate of service and compliance with rules, and any addendum containing statutes, rules, or regulations); or

☐ Monospaced, has 10.5 or fewer characters per inch, and contains \_\_\_\_ words or \_\_\_\_ lines of text; or

☐ Does not exceed 10 pages.

3. Finally, I hereby certify that I have read this appellate brief, and to the best of my knowledge, information, and belief, it is not frivolous or interposed for any improper purpose. I further certify that this brief complies with all applicable Nevada Rules of Appellate Procedure, in particular NRAP 28(e)(1), which requires every assertion in the brief regarding matters in the record to be supported by a reference to the page and volume number, if any, of the transcript or appendix where the matter relied on is to be found. I understand that I may be subject to sanctions in the event that the accompanying brief is not in conformity with the requirements of the Nevada Rules of Appellate Procedure.

4. I understand that I may be subject to sanctions in the event that the accompanying brief is not in conformity with the requirements to the Nevada Rules of Appellate Procedure.

DATED this 11<sup>th</sup> day of January 2022.

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## **CERTIFICATE OF SERVICE**

I hereby certify that pursuant to NRAP 25(C), on January 11, 2022, I caused service of a true and correct copy of the above and foregoing **DIGNITY SELECT NEVADA, LLC’S JOINDER TO PETITIONERS SUSHIL R. PATEL M.D.’S AND CASIANA R. FLAVIANO, M.D.’S PETITION FOR WRIT OF MANDAMUS; AND ANSWER IN SUPPORT OF THE PETITION** was served on the following by the Supreme Court Electronic filing system:

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