

**IN THE SUPREME COURT OF THE  
STATE OF NEVADA**

JANE NELSON,

Petitioner

v.

EIGHTH JUDICIAL DISTRICT  
COURT IN AND FOR CLARK  
COUNTY, NEVADA, HON. SUSAN  
JOHNSON, Presiding;

Respondents

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MUHAMMAD SAEED SABIR, M.D.  
and PIONEER HEALTH CARE, LLC

Real Parties in Interest

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Electronically Filed  
Jan 03 2022 09:40 a.m.  
Elizabeth A. Brown  
Clerk of Supreme Court

SUPREME COURT CASE NO.

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**APPENDIX OF PETITIONER FOR ORIGINAL PETITION FOR WRIT  
VOLUME I**

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**ADAM J. BREEDEN, ESQ.**  
Nevada Bar No. 008768  
**BREEDEN & ASSOCIATES, PLLC**  
376 E. Warm Springs Road, Suite 120  
Las Vegas, Nevada 89119  
Phone (702) 819-7770  
Fax (702) 819-7771  
Adam@breedenandassociates.com  
*Attorney for Petitioner Nelson*

***INDEX OF APPENDIX BY CHRONOLOGICAL ORDER***

<b>DESCRIPTION OF DOCUMENT</b>	<b>DATE</b>	<b>VOL.</b>	<b>PAGE(S)</b>
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Scheduling Order and Order Setting Civil Jury Trial	03/19/2021	I	APPX000025 – APPX000029
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## **CERTIFICATE OF SERVICE**

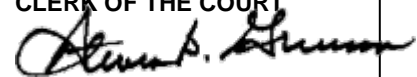
Pursuant to Nev. R. App. 25, I hereby certify that on the 3<sup>rd</sup> day of January, 2022, a copy of the foregoing **APPENDIX FOR ORIGINAL PETITION FOR WRIT OF MANDAMUS** was served via U.S. First Class Mail on all registered users as follows:

Hon. Susan Johnson, Department 22  
EIGHTH JUDICIAL DISTRICT COURT  
200 Lewis Avenue  
Las Vegas, Nevada 89155  
*Respondent*

Sean M. Kelly, Esq.  
McBRIDE HALL  
8329 W. Sunset Road, Suite 260  
Las Vegas, Nevada 89113  
*Counsel for Real Party in Interest  
Muhammad Saeed Sabir, M.D. &  
Pioneer Health Care, LLC*

Ian M. Houston, Esq.  
HALL PRANGLE & SCHOONVELD  
1140 N. Town Center Drive, Suite 340  
Las Vegas, Nevada 89144  
*Counsel for  
Jayson Agaton, APRN*

/s/ Sarah Daniels  
Attorney or Employee of  
Breedon & Associates, PLLC



**COMP**  
**ADAM J. BREEDEN, ESQ.**  
Nevada Bar No. 008768  
**BREEDEN & ASSOCIATES, PLLC**  
376 E. Warm Springs Road, Suite 120  
Las Vegas, Nevada 89119  
Phone: (702) 819-7770  
Fax: (702) 819-7771  
Adam@Breedendandassociates.com  
*Attorneys for Plaintiff*

CASE NO: A-20-823285-C  
Department 22

**EIGHTH JUDICIAL DISTRICT COURT**  
**STATE OF NEVADA, COUNTY OF CLARK**

JANE NELSON, an individual,

Plaintiff,

v.

MUHAMMAD SAEED SABIR, M.D., an individual; JAYSON PAULO ALBERTO AGATON, APRN, an individual; PIONEER HEALTH CARE, LLC, a domestic limited liability company; and DOES I through X; and ROE CORPORATIONS I through X, inclusive,

Defendants.

CASE NO.

DEPT NO.

**COMPLAINT**

**Arbitration Exempt- Professional  
Negligence/Medical Malpractice Case  
Chapter 41A**

Plaintiff, JANE NELSON, by and through her counsel, Adam J. Breeden, Esq. of BREEDEN & ASSOCIATES, PLLC, for her causes of action against Defendants, MUHAMMAD SAEED SABIR, M.D., JAYSON PAULO ALBERTO AGATON, APRN, and PIONEER HEALTH CARE, LLC, and each of them, alleges as follows:

**PARTIES, JURISDICTION AND VENUE**

1. Plaintiff, JANE NELSON (hereinafter referred to as "Plaintiff" and/or "Ms. Nelson"), is a resident and citizen of the State of Nevada, County of Nye and was at all times relevant to this Complaint.

2. Defendant, MUHAMMAD SAEED SABIR, M.D. (hereinafter referred to as "Dr. Sabir"), is and was a doctor of internal medicine and provider of health care licensed to practice medicine within the State of Nevada as defined by NRS § 630.014, NRS § 630.020 and NRS

APPX000001



1 § 41A.017, and was a medical care provider to Plaintiff at all times relevant to this Complaint. On  
2 information and belief, Dr. Sabir is a resident of Clark County, Nevada.

3 3. Defendant, JAYSON PAULO ALBERTO AGATON, APRN (hereinafter referred to  
4 as Mr. Agaton), is and was an Advanced Practice Registered Nurse and licensed within the State of  
5 Nevada and was a medical care provider to Plaintiff at all times relevant to this Complaint. On  
6 information and belief, Mr. Agaton is a resident of Clark County, Nevada.

7 4. Defendant, PIONEER HEALTH CARE, LLC (hereinafter referred to as “Pioneer  
8 Health Care”), is and was a limited liability company formed under the laws of the State of Nevada  
9 duly authorized to do and doing business in the County of Clark, State of Nevada.

10 5. This Court has personal jurisdiction over the Defendants because they are residents  
11 of the State of Nevada, are legally formed in the State of Nevada, or have minimum contacts with  
12 the state of Nevada under NRS § 14.065.

13 6. This Court has subject matter jurisdiction over this matter pursuant to Nev. Const.  
14 Art. VI, § 6 and NRS § 4.370(1), as this Court has original jurisdiction in all cases not assigned to  
15 the justices’ courts and the amount in controversy exceeds \$15,000, exclusive of attorney’s fees,  
16 interest, and costs.

17 7. All the facts and circumstances that give rise to this dispute and lawsuit occurred in  
18 Clark County, Nevada and the Defendants reside in Clark County, Nevada, making venue in the  
19 Eighth Judicial District the appropriate venue under NRS § 13.040.

20 8. At all times mentioned herein, Dr. Sabir and Mr. Agaton were the agents and/or  
21 employees of Pioneer Health Care or a DOE/ROE Defendant and were acting within the scope of  
22 their agency and/or employment, making that legal entity responsible for the acts or omissions of  
23 Dr. Sabir and Mr. Agaton.

24 9. The true names and capacities, whether individual, corporate, associate, or otherwise,  
25 of Defendants DOES I through X and ROE CORPORATIONS I through X, inclusive, are unknown  
26 to the Plaintiff, who therefore sues these defendants by such fictitious names. Plaintiff is informed  
27 and believes and thereon alleges that each of the Defendants designated herein as a Does I through  
28 X, inclusive, and/or Roe Corporations I through X, inclusive, is responsible in some manner for the

1 events and happenings referred to herein, and caused injury and damages proximately thereby to  
2 Plaintiff as herein alleged, and Plaintiff will ask leave of this Court to amend this Complaint to insert  
3 the true names and capacities of Defendants, DOES and/or ROE CORPORATIONS, when the same  
4 have been ascertained by Plaintiff, together with appropriate charging allegations, and adjoin such  
5 Defendants in this action.

6 10. More specifically but without limitation, DOE and ROE I are unknown individuals  
7 or companies that employed or otherwise had control over Defendants SABIR and AGATON at the  
8 times alleged in this Complaint.

9 11. More specifically but without limitation, DOE and ROE II are unknown individuals  
10 or companies that were responsible for monitoring and treating Plaintiff specific to her blood draws  
11 and dangerously low platelet count on or about January 14, 2020.

12 12. Without conceding that part or all of Plaintiff's complaint is subject to NRS Chapter  
13 41A, an affidavit or declaration from a physician in a substantially similar area of practice is attached  
14 to this Complaint regarding breach of the standard of care.

15 **FIRST CAUSE OF ACTION**

16 **(Professional Negligence – Against All Defendants)**

17 13. Plaintiff hereby re-states and re-alleges each and every paragraph of the Complaint  
18 as if fully restated herein.

19 14. On January 3, 2020, Ms. Nelson was admitted to Spring Valley Hospital Medical  
20 Center after suffering a fracture of her second lumbar vertebra during a bicycle accident.

21 15. On January 6, 2020, Ms. Nelson underwent a posterior pedicle screw fixation of her  
22 twelfth thoracic vertebra through her fourth lumbar vertebra as well as a posterior thoracolumbar  
23 arthrodesis at the same spine levels.

24 16. On January 10, 2020, Ms. Nelson was transferred to Spanish Hills Wellness Suites  
25 and became under the care of clinicians affiliated with Defendant Pioneer Health Care for ongoing  
26 physical and occupational therapy, specifically Defendants Dr. Sabir and Mr. Agaton.

27 17. During her hospital and rehabilitation stay, bloodwork was obtained multiple times  
28 showing normal platelet levels in Ms. Nelson. The normal range for blood platelet count is 140,000

1 to 400,000/uL and prior to January 14, Plaintiff's platelet count was last measured at a normal  
2 238,000/uL. However, as of January 14, 2020 lab work revealed a platelet count of 74,000/ul which  
3 was over a 68% decrease from just 3 days prior and critically low.

4 18. Although these laboratory results would be cause for concern and show obvious signs  
5 of thrombocytopenia and likely serious underlying conditions, Ms. Nelson was discharged on  
6 January 17, 2020 with no treatment, diagnosis, testing or disclosure to Ms. Nelson of her serious  
7 thrombocytopenia by Defendants Dr. Sabir or Mr. Agaton.

8 19. Although not known at the time because the Defendants failed to investigate it,  
9 Ms. Nelson had developed heparin induced thrombocytopenia and had developed serious, life  
10 threatening blood clots in her legs. Yet the Defendants took no steps to investigate the unusually  
11 low platelet count nor took any blood clotting prophylaxis or countermeasures.

12 20. On January 19, 2020, Ms. Nelson presented to Henderson Hospital by way of  
13 ambulance with complaints of severe shortness of breath. She was diagnosed with bilateral  
14 pulmonary emboli, bilateral deep venous thrombi of the lower extremities, and hypoxic respiratory  
15 failure. Ms. Nelson's platelet count at the time was only 40,000/uL.

16 21. Following an examination by a hematologist, Ms. Nelson was then properly  
17 diagnosed with heparin-induced thrombocytopenia.

18 22. Due to the neglect of the Defendants, Ms. Nelson's serious condition was left  
19 untreated and a clot or clots travelled to her heart and lungs.

20 23. The negligent care of Dr. Sabir and Mr. Agaton resulted in additional pain,  
21 discomfort, medical procedures, and expenses to Ms. Nelson that she otherwise would not have  
22 incurred. In fact, Ms. Nelson barely survived her ordeal.

23 24. Pioneer Health Care is responsible for the acts of its agents, Dr. Sabir and  
24 Mr. Agaton, under respondeat superior and NRS § 41.130.

25 25. In support of Plaintiff's Complaint, Plaintiff submits the report of Matthew Wright,  
26 M.D. attached hereto as *Exhibit "1"* and incorporated in full herein by reference.

27 26. As a direct result of Defendants' negligence, Plaintiff has been damaged in an  
28 amount in excess of Fifteen Thousand Dollars (\$15,000.00), which will be proven at trial.

27. Plaintiff has or will incur attorney's fees, costs and other expenses in prosecuting these claims and seeks to recover said damages by way of this action along with all pre-judgment or post-judgment interest allowed by law.

## SECOND CAUSE OF ACTION

**(Ordinary Negligence – Against All Defendants)**

28. Plaintiff hereby re-states and re-alleges each and every paragraph of the Complaint as if fully restated herein.

29. The Defendants failed to address a critical and dangerously low platelet count result in Ms. Nelson.

30. The lack of action did not involve medical treatment or judgment. Indeed, there was no judgment used at all. The negligence was simply failing to do anything to treat or address the dangerously low platelet count.

31. Such a failure of the Defendants constitutes ordinary negligence such that the negligence is within the “common knowledge” of a layperson and the carelessness of the Defendants is readily apparent to anyone of average intelligence and ordinary experience. *Estate of Mary Curtis v. South Las Vegas Medical Investors, LLC*, 136 Nev. Adv. Op. 39 (2020).

32. As the negligence of failing to do anything for a patient is within the “common knowledge” exception, this cause of action does not fall under NRS Chapter 41A nor is this cause of action subject to the non-economic damages caps of NRS § 41A.035.

33. Pioneer Health Care is responsible for the acts of its agents, Dr. Sabir and Mr. Agaton, under respondeat superior and NRS § 41.130.

34. As a direct result of Defendants' negligence, Plaintiff has been damaged in an amount in excess of Fifteen Thousand Dollars (\$15,000.00), which will be proven at trial.

35. Plaintiff has or will incur attorney's fees, costs and other expenses in prosecuting these claims and seeks to recover said damages by way of this action along with all pre-judgment or post-judgment interest allowed by law.

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1 **THIRD CAUSE OF ACTION**

2 **(Breach of Contract – All Defendants)**

3 36. Plaintiff hereby re-states and re-alleges each and every paragraph of the Complaint  
4 as if fully restated herein.

5 37. The Defendants entered into a contract under which they were to provide medical  
6 care to Plaintiff.

7 38. The contract included a covenant of good faith and fair dealing, and an express or  
8 implied agreement that medical services would be provided at a professional level within the  
9 standard of care.

10 39. Defendants breached their duty under said contract.

11 40. As a direct and proximate cause of the acts of the Defendants, Plaintiff has sustained  
12 damages in the form of money paid for substandard medical care in an amount to be determined at  
13 trial but exceeding \$15,000 and are entitled to recover all amounts paid to Dr. Sabir and Mr. Agaton  
14 and Pioneer Healthcare.

15 41. Plaintiff has or will incur attorney's fees, costs and other expenses in prosecuting  
16 these claims and seeks to recover said damages by way of this action along with all pre-judgment  
17 or post-judgment interest allowed by law.

18 **FOURTH CAUSE OF ACTION**

19 **(Unjust Enrichment – All Defendants)**

20 42. Plaintiff hereby re-states and re-alleges each and every paragraph of the Complaint  
21 as if fully restated herein.

22 43. Plaintiff paid the Defendants for medical care and treatment.

23 44. The medical care and treatment were performed in a substandard way such that  
24 Plaintiff was injured, and Plaintiff has had to seek additional medical treatment.

25 45. Under such circumstances, the Defendants will have been unjustly enriched if they  
26 can keep the fees paid to them for the substandard medical care and treatment.

27 46. As a direct and proximate cause of the acts of the Defendants, Plaintiff has sustained  
28 damages in an amount to be determined at trial but exceeding \$15,000 and are entitled to recover

1 all amounts paid to Dr. Sabir and Mr. Agaton and Pioneer Healthcare.

2 47. Plaintiff has or will incur attorney's fees, costs and other expenses in prosecuting  
3 these claims and seeks to recover said damages by way of this action along with all pre-judgment  
4 or post-judgment interest allowed by law.

5 **FIFTH CAUSE OF ACTION**

6 **(Neglect of an Older Person – All Defendants)**

7 48. Plaintiff hereby re-states and re-alleges each and every preceding paragraph of the  
8 Complaint as if fully restated herein.

9 49. In 1997, Nevada enacted Senate Bill 80, later codified as NRS § 41.1395, which had  
10 the express purpose to curb abuse, exploitation, and neglect of older persons and vulnerable persons  
11 with physical and mental impairments.

12 50. As a remedial statute, NRS § 41.1395 must be liberally construed to provide the most  
13 protections possible for older and vulnerable persons.

14 51. The “neglect” provisions of NRS § 41.1395 were broadly defined in both the statute  
15 and legislative history to include health care professionals, including nursing staff and physicians,  
16 as well as facilities that have undertaken care of vulnerable persons.

17 52. Similar statutes to curb abuse, exploitation and neglect of older persons and  
18 vulnerable persons with physical and mental impairments have been held to be a separate, statutory  
19 cause of action independent and distinct of tort medical malpractice actions, e.g., *Estate of McGill*  
20 *v. Albrecht*, 203 Ariz. 525, 530, 57 P.3d 384, 389 (2002), and thus actions under NRS § 41.1395 are  
21 not subsumed into negligence actions and are not subject to Nevada's medical malpractice damages  
22 caps.

23 53. Ms. Nelson is 70 years of age and is considered an older person as defined by NRS  
24 § 41.1395(d).

25 54. The Defendants had reason to know of Plaintiff's status as an older person.

26 55. Defendants voluntarily assumed a duty to care for Ms. Nelson, an older person.

27 56. Defendants neglected Ms. Nelson by failing to address a critical blood laboratory  
28 result, note the new diagnosis of thrombocytopenia, failing to conduct a proper patient evaluation

1 for the new diagnosis of thrombocytopenia, and failure of Dr. Sabir to appropriately supervise the  
2 nurse practitioner, Mr. Agaton.

3 57. As a direct and proximate cause of the acts of the Defendants, Plaintiff has sustained  
4 damages in an amount to be determined at trial but exceeding \$15,000.

5 58. Plaintiff is entitled to two times the actual damages incurred by her due to the acts of  
6 the Defendants under NRS § 41.1395(1).

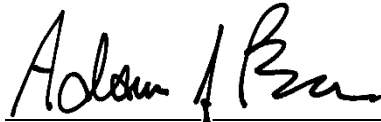
7 59. Plaintiff has or will incur attorney's fees, costs and other expenses in prosecuting  
8 these claims and seeks to recover said damages by way of this action along with all pre-judgment  
9 or post-judgment interest allowed by law.

10 **WHEREFORE**, Plaintiff prays for judgment against the Defendants as follows:

- 11 1. For special and general damages in an amount to exceed \$15,000;
- 12 2. For attorney's fees, expenses, and costs of suit;
- 13 3. Two times all recoverable damages under NRS § 41.1395(1);
- 14 4. For all pre-judgment and post-judgment interest awardable by law;
- 15 5. For such further relief as the Court may deem just and proper.

16 DATED this 19<sup>th</sup> day of October, 2020.

17 **BREEDEN & ASSOCIATES, PLLC**

18 

19 **ADAM J. BREEDEN, ESQ.**

20 Nevada Bar No. 008768

21 376 E. Warm Springs Road, Suite 120

22 Las Vegas, Nevada 89119

23 Phone: (702) 819-7770

24 Fax: (702) 819-7771

25 Adam@Breedendassociates.com

26 *Attorneys for Plaintiff*

# EXHIBIT “1”





Affidavit of Merit  
in the  
Matter of Jane Nelson

Prepared For:

Adam J. Breeden, Esq.  
Breeden Malpractice and Injury Law  
376 E. Warm Springs Rd  
Suite 120  
Las Vegas, NV 89119

Prepared By:

Matthew W. Wright, MD, FACP  
Canyon State MedicoLegal Consulting, LLC  
16427 N Scottsdale Road  
Suite 410  
Scottsdale, AZ 85254

September 14, 2020

Affidavit of Merit in the Matter of Jane Nelson  
September 14, 2020

**Introduction**

1. I am Matthew W. Wright, MD, FACP. I am over the age of 18 and competent to testify on the matters set forth herein.

2. I have been retained by the law firm of Breeden Malpractice and Injury Law to evaluate the care provided to Ms. Jane Nelson<sup>1</sup> while admitted to Spanish Hills Wellness Suites<sup>2</sup> between January 10, 2020, and January 17, 2020. I have been asked to set forth specific acts of alleged negligence, as they relate to the care provided by Muhammad Saeed Sabir, MD<sup>3</sup>, Jayson Paulo Alberto Agaton, APRN<sup>4</sup>, and Pioneer Health Care, LLC<sup>5</sup>.

3. The conclusions in this affidavit are based on the information made available to me as of September 14, 2020. I reserve the right to expand, amend, or change this affidavit, should I be provided with additional information. Per recognized professional ethics, the fees charged to Breeden Malpractice and Injury Law for the preparation of this affidavit are not contingent upon the conclusions made herein. Finally, this affidavit was written utilizing the Guidelines for Physician Expert Witnesses adopted by the American College of Physicians<sup>6</sup>.

**Qualifications**

4. I am a practicing general internist with over 16 years of patient care experience since completing a residency in the specialty of Internal Medicine at the University of Utah Health Sciences Center in Salt Lake City, UT. I hold a Doctor of Medicine degree from Eastern Virginia Medical School in Norfolk, VA. Before this, I completed a Bachelor of Science in Biology at The College of William and Mary in Williamsburg, VA. I am board certified in the specialty of Internal Medicine by the American Board of Internal Medicine. My initial certification was in 2004, and I recertified in 2014 with a Focused Practice in Hospital Medicine. In 2016, I was selected as a Fellow of the American College of Physicians. I have served as an outside medical

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<sup>1</sup> Date of Birth 7/14/1950

<sup>2</sup> 5351 Montessouri Street, Las Vegas, NV 89113-1126

<sup>3</sup> Nevada State Board of Medical Examiners License: 8931

<sup>4</sup> Nevada State Board of Nursing License: APRN001677

<sup>5</sup> Nevada Business ID: NV20051293471 / Entity Number: E0123342005-7

<sup>6</sup> <https://www.acpjournals.org/doi/abs/10.7326/0003-4819-113-10-789>

Affidavit of Merit in the Matter of Jane Nelson  
September 14, 2020

consultant for the Arizona Medical Board since 2016 and an outside medical consultant for the Arizona Board of Osteopathic Medical Examiners since 2018. I am currently licensed to practice medicine in Arizona, Montana, and South Dakota.

5. I practice in a substantially similar field as Dr. Sabir and Mr. Agaton and am familiar with the practice and standard of care for internists and their physician assistants in a hospital and rehab facility setting. I am also familiar with blood laboratory results, which I review daily in my practice, and the condition of thrombocytopenia<sup>7</sup>, which this case presents.

**Records Reviewed**

6. In forming my opinions, I have reviewed the following records provided to me:
- A. American Medical Laboratories, Inc. Various. (NELSON000001-NELSON000018)
  - B. Desert View Hospital. Various. (NELSON000019-NELSON000063)
  - C. Operative Report of Dr. Khavkin. January 10, 2020. (NELSON000064-NELSON000065)
  - D. Henderson Hospital. Various. (NELSON000067-NELSON0001561)
  - E. Spanish Hills Wellness Suites. Various. (NELSON0001562-NELSON1835)
  - F. Spring Valley Hospital Medical Center. Various. (NELSON0001836-NELSON2569)
  - G. TLC Care Center. Various. (NELSON0002570-NELSON0002668)

**Summary of Records**

7. On January 3, 2020, Ms. Nelson was admitted to Spring Valley Hospital Medical Center<sup>8</sup> after suffering a fracture of her second lumbar vertebra<sup>9</sup> during a bicycle accident<sup>10</sup>. On January 6, she underwent a posterior pedicle screw fixation of her twelfth thoracic vertebra

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<sup>7</sup> Low Platelet Count

<sup>8</sup> 5400 S. Rainbow Blvd., Las Vegas, NV, 89118-1859

<sup>9</sup> NELSON000062

<sup>10</sup> NELSON000028

Affidavit of Merit in the Matter of Jane Nelson  
September 14, 2020

through her fourth lumbar vertebra<sup>11</sup>, as well as a posterior thoracolumbar arthrodesis at the same spinal levels.

8. On January 10, Ms. Nelson was transferred to Spanish Hills Wellness Suites, under the care of clinicians affiliated with Pioneer Health Care, LLC<sup>12</sup>, for ongoing physical therapy and occupational therapy. On January 11, a complete blood count was obtained that revealed a platelet count of 238,000/uL. On January 14, a complete blood count was obtained that revealed a platelet count of 74,000/uL, a decrease of over 68%, and abnormally low compared to a reference range of 140,000/uL to 400,000/uL. Not only was the value low, but the suddenness of the drop compared to previous tests at Spanish Hills and Spring Valley Hospital was concerning. The most likely reasons for such a drop in only three days were drug-induced thrombocytopenia, certain infections, thrombotic microangiopathy, and disseminated intravascular coagulation, all of which could lead to significant morbidity, or even death.

9. Dr. Sabir was the attending physician responsible for Ms. Nelson's care on January 14, and Mr. Agaton was the nurse practitioner caring for Ms. Nelson on January 14. Both clinicians continued these roles through the end of Ms. Nelson's stay at the skilled nursing facility. There is no mention of the new diagnosis of thrombocytopenia in a progress note<sup>13</sup> written by Mr. Agaton on January 14, nor is it mentioned in the next progress note<sup>14</sup> written on January 16. Ms. Nelson was discharged<sup>15</sup> on January 17. There was no mention of the new thrombocytopenia in the discharge summary. No additional evaluation of this significant, new problem was performed after identification by the lab on January 14. There is a reference that Mr. Agaton had reviewed the laboratory results. However, there is simply no indication that either Mr. Agaton or Dr. Sabir addressed the thrombocytopenia in any way. No additional testing was performed, the patient was not notified, no diagnosis was made, and no additional treatment was administered. In short, the concerning thrombocytopenia identified in the lab results was simply ignored or missed altogether.

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<sup>11</sup> NELSON000065

<sup>12</sup> NELSON001563

<sup>13</sup> NELSON001727

<sup>14</sup> NELSON001725

<sup>15</sup> NELSON001776



Affidavit of Merit in the Matter of Jane Nelson  
September 14, 2020

10. Mrs. Nelson was discharged on January 17 without any attention to her thrombocytopenia. On January 19, Ms. Nelson presented to Henderson Hospital<sup>16</sup> via ambulance with shortness of breath. She was diagnosed with bilateral pulmonary emboli<sup>17</sup> as well as bilateral deep venous thrombi of the lower extremities<sup>18</sup>. She was also diagnosed with hypoxic respiratory failure<sup>19</sup>, and despite being placed on BiPAP, she remained hypoxic<sup>20</sup>. Of particular note, Ms. Nelson's platelet count was only 40,000/uL on admission<sup>21</sup>. In the early morning hours of January 20, Ms. Nelson underwent an emergent left pulmonary artery thrombectomy and placement of an inferior vena cava filter<sup>22</sup>. The patient was seen by a hematologist and was eventually diagnosed with heparin-induced thrombocytopenia,<sup>23</sup> a dangerous condition that can lead to death if untreated. She was treated with an intravenous argatroban infusion and was eventually able to be discharged<sup>24</sup> on warfarin therapy on January 31.

**Conclusions**

11. It is my professional opinion that Dr. Sabir deviated from the standard of care by:
- A. Failure to note the new diagnosis of thrombocytopenia on January 14.
  - B. Failure to conduct a proper patient evaluation for the new diagnosis of thrombocytopenia. More likely than not, an appropriate workup of the thrombocytopenia would have led to the diagnosis of heparin-induced thrombocytopenia, with subsequent admission to an acute care hospital before the patient developed the complication of submassive pulmonary embolism.

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<sup>16</sup> 1050 W Galleria Dr., Henderson, NV, 89011

<sup>17</sup> NELSON000258

<sup>18</sup> NELSON000259

<sup>19</sup> NELSON000252

<sup>20</sup> NELSON000250

<sup>21</sup> NELSON000254

<sup>22</sup> NELSON000275

<sup>23</sup> NELSON000148

<sup>24</sup> NELSON000178

Affidavit of Merit in the Matter of Jane Nelson  
September 14, 2020

C. Failure to appropriately supervise the nurse practitioner in this case, Mr. Agaton.

12. Based upon a reasonable degree of medical probability, it is my opinion that Dr. Sabir did not use such care as reasonably prudent physicians practicing in the same field would have provided under similar circumstances. The standard of care would require him to recognize the thrombocytopenia, properly diagnose the underlying cause, and address it, none of which was done.

13. It is also my professional opinion that Mr. Agaton deviated from the standard of care by:

- A. Failure to note the new diagnosis of thrombocytopenia on January 14.
- B. Failure to conduct a proper patient evaluation for the new diagnosis of thrombocytopenia. More likely than not, an appropriate workup of the thrombocytopenia would have led to the diagnosis of heparin-induced thrombocytopenia, with subsequent admission to an acute care hospital before the patient developing the complication of submassive pulmonary embolism.

14. Based upon a reasonable degree of medical probability, it is my opinion that Mr. Agaton did not use such care as reasonably prudent nurse practitioners practicing in the same field would have provided under similar circumstances. The standard of care would require him to recognize the thrombocytopenia, raise the issue with Dr. Sabir, properly diagnose the underlying cause, and address it, none of which was done.

15. It is my professional opinion that the care provided by Dr. Sabir and Mr. Agaton while they were acting on behalf of Pioneer Health Care, LLC, fell below the standard of care in at least the ways mentioned above.

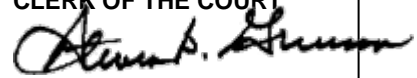
16. Under penalty of perjury in the State of Nevada, I declare that the foregoing is true and correct.



Matthew W. Wright, MD, FACP

September 14, 2020

Date



ANS  
ROBERT C. MCBRIDE, ESQ.  
Nevada Bar No.: 7082  
SEAN M. KELLY, ESQ.  
Nevada Bar No.: 10102  
McBRIDE HALL  
8329 W. Sunset Road, Suite 260  
Las Vegas, Nevada 89113  
Telephone No. (702) 792-5855  
Facsimile No. (702) 796-5855  
E-mail: [rcmcbride@mcbridehall.com](mailto:rcmcbride@mcbridehall.com)  
E-mail: [smkelly@mcbridehall.com](mailto:smkelly@mcbridehall.com)  
Attorneys for Defendant  
*Pioneer Health Care, LLC and*  
*Muhammad Saeed Sabir, M.D.*

**DISTRICT COURT**  
**CLARK COUNTY, NEVADA**

JANE NELSON, an individual,  
  
Plaintiff,

vs.

MUHAMMAD SAEED SABIR, M.D., an  
individual; JAYSON PAULO ALBERTO  
AGATON, APRN, an individual; PIONEER  
HEALTH CARE, LLC, a domestic limited  
liability company; and DOES I through X and  
ROES CORPORATIONS, I through X,  
inclusive  
  
Defendants.

**CASE NO.: A-20-823285-C**  
**DEPT NO.: 22**

**DEFENDANTS PIONEER HEALTH  
CARE, LLC AND MUHAMMAD SAEED  
SABIR, M.D.'S ANSWER TO  
PLAINTIFF'S COMPLAINT**

COME NOW, Defendants, PIONEER HEALTH CARE, LLC and MUHAMMAD SAEED  
SABIR, MD, by and through their counsel of record, ROBERT C. McBRIDE, ESQ. and SEAN  
M. KELLY, ESQ. of the law firm of McBRIDE HALL, and hereby submit their Answer to  
Plaintiff's Complaint as follows:

**PARTIES, JURISDICTION AND VENUE**

1. Answering Paragraph 1 of Plaintiff's Complaint, these answering Defendants are  
without sufficient knowledge to form a belief as to the truth of the allegations contained in said  
paragraph and therefore deny the same.

1           2.       Answering Paragraph 2 of Plaintiff's Complaint, these answering Defendants admit  
2 that Dr. Sabir is a doctor of internal medicine and a provider of health care licensed to practice  
3 medicine within the State of Nevada as defined by NRS §630.014, NRS §630.020 and NRS  
4 §41A.017, and is a resident of Clark County, Nevada. As to the remaining allegations, these  
5 answering Defendants deny each and every allegation contained therein

6           3.       Answering Paragraph 3 of Plaintiff's Complaint, these answering Defendants are  
7 without sufficient knowledge to form a belief as to the truth of the allegations contained in said  
8 paragraph and therefore deny the same.

9           4.       Answering Paragraph 4 of Plaintiff's Complaint, these answering Defendants admit  
10 each and every allegation contained therein.

11           5.       Answering Paragraphs 5, 6 and 7 of Plaintiff's Complaint, these answering  
12 Defendants aver that it calls for a legal conclusion to which no response is required. To the extent  
13 a response is required, these answering Defendants are without sufficient knowledge or  
14 information upon which to form a belief as to the truth or falsity of the allegations contained  
15 therein, and upon that basis deny each and every allegation contained therein.

16           6.       Answering Paragraph 8 of Plaintiff's Complaint, these answering Defendants deny  
17 each and every allegation contained therein.

18           7.       Answering Paragraphs 9, 10, 11 and 12 of Plaintiff's Complaint, these answering  
19 Defendants are without sufficient knowledge to form a belief as to the truth of the allegations  
20 contained in said paragraph and therefore deny the same.

21                                   **FIRST CAUSE OF ACTION**  
22                                   **(Professional Negligence – Against All Defendants)**

23           8.       Answering Paragraph 13 of Plaintiff's Complaint, these answering Defendants  
24 repeat each and every response to Paragraphs 1 through 12, inclusive, and incorporate the same by  
25 reference as though set forth fully herein.

26           9.       Answering Paragraphs 14, 15, 16 and 17 of Plaintiff's Complaint, these answering  
27 Defendants are without sufficient knowledge to form a belief as to the truth of the allegations  
28 contained in said paragraph and therefore deny the same.



1           10.     Answering Paragraphs 18 and 19 of Plaintiff's Complaint, these answering  
2 Defendants deny each and every allegation contained therein as it pertains to them. As to the  
3 remaining allegations, these answering Defendants are without sufficient knowledge to form a  
4 belief as to the truth of the allegations contained in said paragraphs and therefore deny the same.

5           11.     Answering Paragraphs 20 and 21 of Plaintiff's Complaint, these answering  
6 Defendants are without sufficient knowledge to form a belief as to the truth of the allegations  
7 contained in said paragraph and therefore deny the same.

8           12.     Answering Paragraphs 22, 23 and 24 of Plaintiff's Complaint, these answering  
9 Defendants deny each and every allegation contained therein as it pertains to them. As to the  
10 remaining allegations, these answering Defendants are without sufficient knowledge to form a  
11 belief as to the truth of the allegations contained in said paragraphs and therefore deny the same.

12           13.     Answering Paragraph 25 of Plaintiff's Complaint, these answering Defendants  
13 admit that there is a report of Matthew Wright, M.D. attached as Exhibit "A". These Answering  
14 Defendants specifically deny that this report has merit or provides support for Plaintiff's claims.

15           14.     Answering Paragraphs 26 and 27 of Plaintiff's Complaint, these answering  
16 Defendants deny each and every allegation contained therein as it pertains to them. As to the  
17 remaining allegations, these answering Defendants are without sufficient knowledge to form a  
18 belief as to the truth of the allegations contained in said paragraphs and therefore deny the same.

19                               **SECOND CAUSE OF ACTION**  
20                               **(Ordinary Negligence – Against All Defendants)**

21           15.     Answering Paragraph 28 of Plaintiff's Complaint, these answering Defendants  
22 repeat each and every response to Paragraphs 1 through 27, inclusive, and incorporate the same by  
23 reference as though set forth fully herein.

24           16.     Answering Paragraphs 29, 30, 31, 32, 33, 34 and 35 of Plaintiff's Complaint, these  
25 answering Defendants deny each and every allegation contained therein as it pertains to them. As  
26 to the remaining allegations, these answering Defendants are without sufficient knowledge to form  
27 a belief as to the truth of the allegations contained in said paragraphs and therefore deny the same.

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23. Answering Paragraphs 54, 55, 56, 57, 58 and 59 of Plaintiff's Complaint, these answering Defendants deny each and every allegation contained therein as it pertains to them. As to the remaining allegations, these answering Defendants are without sufficient knowledge to form a belief as to the truth of the allegations contained in said paragraphs and therefore deny the same.

#### **AFFIRMATIVE DEFENSES**

1. The Complaint fails to state a claim against these answering Defendants upon which relief can be granted.

2. Defendants allege that in all medical attention and care rendered to Plaintiff, these answering Defendants possessed and exercised that degree of skill and learning ordinarily possessed and exercised by members of the medical profession in good standing practicing in similar localities and that at all times these answering Defendants used reasonable care and diligence in the exercise of skill and application of learning, and at all times acted in accordance with best medical judgment.

3. Defendants allege that any injuries or damages alleged sustained or suffered by the Plaintiff at the times and places referred to in Plaintiff's Complaint were caused in whole or in part or were contributed to by the negligence or fault or want of care of the Plaintiff, and the negligence, fault or want of care on the part of the Plaintiff was greater than that, if any, of these answering Defendants.

4. That in all medical attention rendered by these answering Defendants to the Plaintiff, these Defendants possessed and exercised the degree of skill and learning ordinarily possessed and exercised by members of their profession in good standing, practicing in similar localities, and that at all times, these answering Defendants used reasonable care and diligence in the exercise of their skills and the application of their learning, and at all times acted according to best judgment; that the medical treatment administered by these Defendants was the usual and customary treatment for the physical condition and symptoms exhibited by the Plaintiff, and that at no time was these Defendants guilty of negligence or improper treatment; that, on the contrary, these Defendants performed each and every act of such treatment in a proper and efficient manner

///

1 and in a manner approved and followed by the medical profession generally and under the  
2 circumstances and conditions as they existed when such medical attention was rendered.

3 5. Defendants allege that they made, consistent with good medical practice, a full and  
4 complete disclosure to the Plaintiff of all material facts known or reasonably believed be true  
5 concerning the Plaintiff's physical condition and the appropriate alternative procedures available  
6 for treatment of such condition. Further, each and every service rendered to the Plaintiff by these  
7 answering Defendants was expressly and impliedly consented to and authorized by the Plaintiff  
8 on the basis of said full and complete disclosure.

9 6. Defendants allege that they are entitled to a conclusive presumption of informed  
10 consent pursuant to NRS §41A.110.

11 7. Defendants allege that the Complaint is barred by the applicable statute of  
12 limitations.

13 8. Defendants allege that Plaintiff assumed the risks of the procedures, if any,  
14 performed.

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

17 10. Plaintiff has failed to mitigate her damages.

18 11. Defendants allege that the injuries and damages, if any, alleged by the Plaintiff were  
19 caused in whole or in part by the actions or inactions of third parties over whom these answering  
20 Defendants had no liability, responsibility or control.

21 12. Defendants allege that the injuries and damages, if any, complained of by the  
22 Plaintiff were unforeseeable.

23 13. Defendants allege that the injuries and damages, if any, complained of by the  
24 Plaintiff were caused by forces of nature over which these answering Defendants had no  
25 responsibility, liability or control.

26 14. Defendants allege that the injuries and damages, if any, complained of by the  
27 Plaintiff were not proximately caused by any acts and/or omissions on the part of these answering  
28 Defendants.

1           15.     Plaintiff's Complaint violates the Statute of Frauds.

2           16.     Defendants allege that pursuant to Nevada law, they would not be jointly liable,  
3 and that if liability is imposed, such liability would be several for that portion of the Plaintiff's  
4 damages, if any, that represents the percentage attributed to these answering Defendants.

5           17.     Defendants allege that the injuries and damages, if any, suffered by the Plaintiff  
6 were caused by new, independent, intervening and superseding causes and not by these answering  
7 Defendants' alleged negligence or other actionable conduct, the existence of which is specifically  
8 denied.

9           18.     Defendants allege that Plaintiff's damages, if any, are subject to the limitations and  
10 protections as set forth in Chapter 41A of the Nevada Revised Statutes including, without  
11 limitation, several liability and limits on non-economic damages.

12           19.     Defendants allege that it has been necessary to employ the services of an attorney  
13 to defend this action and a reasonable sum should be allowed these Defendants for attorney's fees,  
14 together with the costs expended in this action.

15           20.     Defendants allege that they are not guilty of fraud, oppression or malice, express or  
16 implied, in connection with the care rendered to Plaintiff at any of the times or places alleged in  
17 the Complaint.

18           21.     Defendants allege that at all relevant times these Defendants were acting in good  
19 faith and not with recklessness, oppression, fraud or malice.

20           22.     Defendants allege that Defendants never engaged in conduct which constitutes  
21 battery, abuse, neglect or exploitation of Plaintiff.

22           23.     Defendants allege that the injuries and damages, if any, suffered by Plaintiff can  
23 and do occur in the absence of negligence.

24           24.     Plaintiff has failed to allege any facts sufficient to satisfy Plaintiff's burden of proof  
25 by clear and convincing evidence that these answering Defendants engaged in any conduct that  
26 would support an award of punitive damages.

27           25.     No award of punitive damages can be awarded against these answering Defendants  
28 under the facts and circumstances alleged in Plaintiff's Complaint.

26. To the extent Plaintiff has been reimbursed from any source for any special damages claimed to have been sustained as a result of the incidents alleged in Plaintiff's Complaint, Defendants may elect to offer those amounts into evidence and, if Defendants so elect, Plaintiff's special damages shall be reduced by those amounts pursuant to NRS §42.021.

27. Pursuant to N.R.C.P. 11 all possible affirmative defenses may not have been alleged since sufficient facts were not available and, therefore, these Defendants reserve the right to amend this Answer to allege additional affirmative defenses if subsequent investigation warrants. Additionally, one or more of these Affirmative Defenses may have been pled for the purposes of non-waiver.

WHEREFORE, Defendants pray for relief as follows:

1. That Plaintiff takes nothing by way of the Complaint on file herein.
2. For reasonable attorney's fees and costs incurred in defending this litigation.
3. For such other and further relief as this Court deems just and proper in the premises.

DATED this 2<sup>nd</sup> day of February 2021.

McBRIDE HALL

/s/ Sean M. Kelly

Robert C. McBride, Esq.

Nevada Bar No.: 7082

Sean M. Kelly, Esq.

Nevada Bar No.: 10102

8329 W. Sunset Road, Suite 260

Las Vegas, Nevada 89113

Attorneys for Defendants *Pioneer Health Care, LLC and Muhammad Saeed Sabir, MD*

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☒ **VIA ELECTRONIC SERVICE:** by mandatory electronic service (e-service), proof of e-service attached to any copy filed with the Court; or

☐ **VIA U.S. MAIL:** By placing a true copy thereof enclosed in a sealed envelope with postage thereon fully prepaid, addressed as indicated on the service list below in the United States mail at Las Vegas, Nevada; or

☐ **VIA FACSIMILE:** By causing a true copy thereof to be telecopied to the number indicated on the service list below.

Zachary J. Thompson, Esq.  
Ian M. Houston, Esq.  
HALL PRANGLE & SCHOONVELD, LLC  
1140 N. Town Center Dr., Suite 350  
Las Vegas, Nevada 89144  
Attorneys for *Defendant Jayson Paulo Alberto*  
*Agaton, APRN*

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1 SCHTO

2  
3 DISTRICT COURT  
4 CLARK COUNTY, NEVADA

5 JANE NELSON, an individual,  
6  
7 Plaintiff,

CASE NO.: A-20-823285-C  
DEPT. NO.: XXII

8 vs.

9 MUHAMMAD SAEED SABIR, M.D., an  
10 individual; JAYSON PAULO ALBERTO  
11 AGATON, APRN, an individual; PIONEER  
12 HEALTH CARE, LLC, a domestic limited liability  
company; DOES I through X; and ROE  
CORPORATIONS I through X, inclusive,

13 Defendants.

14 SCHEDULING ORDER AND ORDER SETTING CIVIL JURY TRIAL

15 NATURE OF ACTION: **Medical Malpractice**

16 TIME REQUIRED FOR TRIAL: **7-10 days**

17 DATES FOR SETTLEMENT CONFERENCE: **None requested**

18 Counsel representing all parties and after consideration by the District Court Judge,

19 IT IS HEREBY ORDERED:

20 1. All parties shall complete discovery on or before April 21, 2022.

21 2. All parties shall file motions to amend pleadings or add parties on or before January 21,  
22 2022.

23 3. All parties shall make initial expert disclosures pursuant to N.R.C.P. 16.1(a)(2) on or before  
24 January 21, 2022.

25 4. All parties shall make rebuttal expert disclosures pursuant to N.R.C.P. 16.1(a)(2) on or before  
26 February 18, 2022.

27 5. All parties shall file dispositive motions on or before May 20, 2022.  
28



1 Certain dates from your case conference report(s) may have been changed to bring them into  
2 compliance with N.R.C.P. 16.1.

3 Unless otherwise directed by the court, all pretrial disclosures pursuant to N.R.C.P. 16.1(a)(3) must  
4 be made at least 30 days before trial.

5 Motions for extensions of discovery shall be made to the Department in strict accordance with  
6 E.D.C.R. 2.35. Discovery is completed on the day responses are due or the day a deposition begins.

7 Unless otherwise ordered, all discovery disputes (except disputes presented at a pre-trial conference  
8 or at trial) must first be heard by the Discovery Commissioner.

9 IT IS HEREBY ORDERED THAT:

10 A. The above entitled case is set to be tried to a jury on a Five week stack to begin,  
11 **Monday, August 1, 2022, at 8:30 a.m.**

12 B. A Pre-Trial Conference/Calendar Call with the designated trial attorney and/or parties  
13 in proper person will be held on **Wednesday, July 20, 2022, at 8:30 a.m.** Parties must bring to  
14 Calendar Call the following:

- 15 (1) Typed exhibit lists;  
16 (2) List of depositions;  
17 (3) List of equipment needed for trial; and  
18 (4) Courtesy copies of any legal briefs on trial issues.

19 C. Parties are **to appear on Wednesday, April 27, 2022, at 8:30 a.m. for a Status**  
20 **Check on the matter.**

21 D. The Pre-trial Memorandum must be filed no later than noon on Monday, July 18,  
22 2022, with a courtesy copy hand delivered to Department XXII. All parties, (Attorneys and parties  
23 in proper person) **MUST** comply with **All REQUIREMENTS** of E.D.C.R. 2.67 and 2.69.

24 E. All pre-trial motions, including but not limited to motions in limine, must be in  
25 writing and **filed no later than June 6, 2022**, and must be heard not less than 14 days prior to trial.  
26 The parties must adhere to the requirements set forth within the Eighth Judicial District Court Rules  
27 (EDCR), and particularly, EDCR 2.47(b), which requires the lawyers personally consult with one  
28 another by way of face-to-face meeting or via telephone conference before a motion in limine can be

1 filed. **Counsel are required to confer, pursuant to EDCR2.47 at least two weeks prior to filing**  
2 **any motion in limine.** If a personal or telephone conference was not possible, the attorney's  
3 declaration and/or affidavit attached to the motion in limine shall set forth the reasons. Should a  
4 party and/or his or her attorney fail to abide by the requirements of EDCR 2.47(b) before filing his  
5 or her motion in limine, such motion will not be heard by the Court. **Orders shortening time will**  
6 **not be signed except in extreme emergencies.** An upcoming trial date is not an extreme  
7 emergency.

8 **Failure of the designated trial attorney or any party appearing in proper person**  
9 **to appear for any court appearances or to comply with this Order shall result in any of the**  
10 **following: (1) dismissal of the action (2) default judgment; (3) monetary sanctions; (4) vacation**  
11 **of trial date; and/or any other appropriate remedy or sanction.**

12 Counsel is required to advise the Court immediately when the case settles or is otherwise  
13 resolved prior to trial. A stipulation which terminates a case by dismissal shall also indicate  
14 whether a Scheduling Order has been filed and, if a trial date has been set, the date of that trial. A  
15 copy should be given to Chambers.

16 **Dated this 19th day of March, 2021**

17 

18 SUSAN H. JOHNSON, DISTRICT COURT JUDGE

19 **CA9 A1E FD2E 8CBA**  
20 **Susan Johnson**  
21 **District Court Judge**

1 **CSERV**

2  
3 DISTRICT COURT  
CLARK COUNTY, NEVADA

4  
5  
6 Jane Nelson, Plaintiff(s)

CASE NO: A-20-823285-C

7 vs.

DEPT. NO. Department 22

8 Muhammad Sabir, M.D.,  
9 Defendant(s)

10  
11 **AUTOMATED CERTIFICATE OF SERVICE**

12 This automated certificate of service was generated by the Eighth Judicial District  
13 Court. The foregoing Scheduling and Trial Order was served via the court's electronic eFile  
system to all recipients registered for e-Service on the above entitled case as listed below:

14 Service Date: 3/19/2021

15 Adam Breeden adam@breedenandassociates.com

16 E-File Admin efile@hpslaw.com

17 Kellie Piet kpiet@mcbridehall.com

18 Robert McBride rcmcbride@mcbridehall.com

19 Sean Kelly smkelly@mcbridehall.com

20 Kristine Herpin kherpin@mcbridehall.com

21 Michelle Newquist mnewquist@mcbridehall.com

22 Kristy Johnson kristy@breedenandassociates.com

23 Candace Cullina ccullina@mcbridehall.com

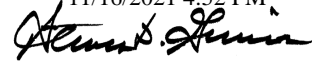
24 Casey Henley chenley@hpslaw.com

25 Reina Claus rclaus@hpslaw.com

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Tiffane Safar	tsafar@mcbridehall.com
Penny Williams	pwilliams@mcbridehall.com
Timothy Evans	tevens@mcbridehall.com

  
CLERK OF THE COURT

~~MDQA~~ OST  
**ADAM J. BREEDEN, ESQ.**  
Nevada Bar No. 008768  
**BREEDEN & ASSOCIATES, PLLC**  
376 E. Warm Springs Road, Suite 120  
Las Vegas, Nevada 89119  
Phone: (702) 819-7770  
Fax: (702) 819-7771  
Adam@Breedendandassociates.com  
*Attorneys for Plaintiff*

**EIGHTH JUDICIAL DISTRICT COURT**  
**STATE OF NEVADA, COUNTY OF CLARK**

JANE NELSON, an individual,  
  
Plaintiff,

CASE NO.: A-20-823285-C  
  
DEPT NO.: XXII

v.

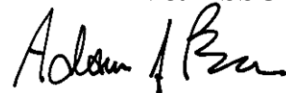
MUHAMMAD SAEED SABIR, M.D., an  
individual; JAYSON PAULO ALBERTO  
AGATON, APRN, an individual; PIONEER  
HEALTH CARE, LLC, a domestic limited  
liability company; and DOES I through X; and  
ROE CORPORATIONS I through X,  
inclusive,  
  
Defendants.

**PLAINTIFF JANE NELSON'S MOTION  
TO DISQUALIFY THE McBRIDE HALL  
LAW FIRM FROM REPRESENTING  
DEFENDANTS DR. SABIR AND  
PIONEER HEALTH CARE, LLC ON AN  
ORDER SHORTENING TIME**  
  
**HEARING REQUESTED**

Plaintiff, JANE NELSON, by and through her attorney of record Adam J. Breeden, Esq. of  
BREEDEN AND ASSOCIATES, PLLC, hereby submits the following Motion to Disqualify the  
Law Firm of McBride Hall. This Motion is made and based on the following Points and Authorities,  
the pleadings and papers on file herein, the Declaration of Adam J. Breeden, Esq., and any oral  
argument allowed by the Court at the time of hearing on this matter.

DATED this 16<sup>th</sup> day of November, 2021.

**BREEDEN & ASSOCIATES, PLLC**



**ADAM J. BREEDEN, ESQ.**  
Nevada Bar No. 008768  
*Attorneys for Plaintiff Nelson*

APPX000030

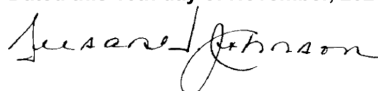


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**ORDER SHORTENING TIME**

IT IS HEREBY ORDERED that a hearing on the PLAINTIFF JANE NELSON'S MOTION TO DISQUALIFY THE McBRIDE HALL LAW FIRM FROM REPRESENTING DEFENDANTS DR. SABIR AND PIONEER HEALTH CARE, LLC ON AN ORDER SHORTENING TIME, be expedited and heard on the 23rd day of November, 2021, at the hour of 8:30 a.m. am/pm, or as soon thereafter as counsel can be heard.

Dated this 16th day of November, 2021

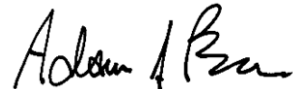


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05A D26 CEDF 4A0B  
Susan Johnson  
District Court Judge

Submitted by:

**BREEDEN & ASSOCIATES, PLLC**



---

**ADAM J. BREEDEN, ESQ.**

Nevada Bar No. 008768

376 E. Warm Springs Road, Suite 120

Las Vegas, Nevada 89119

Phone: (702) 819-7770

Fax: (702) 819-7771

Adam@Breedendassociates.com

*Attorneys for Plaintiff*

1 **MEMORANDUM IN SUPPORT OF MOTION**

2 **I. INTRODUCTION**

3 Recently, the McBride Hall law firm (defense counsel for Dr. Sabir and Pioneer Health Care)  
4 hired away a paralegal, Kristy Johnson, from the law firm of Breeden & Associates, PLLC (plaintiff  
5 Nelson's counsel). Because Ms. Johnson worked extensively on the Nelson file at her previous  
6 employment with plaintiff's counsel and has the most sensitive confidential and privileged  
7 information regarding case assessment and valuation, the McBride Hall law firm is subject to a  
8 rebuttable presumption that it is disqualified from further representation in this case pursuant to  
9 *Leibowitz v. Eighth Judicial Dist. Court of Nev.*, 119 Nev. 523 (2003). If it wishes to overcome this  
10 rebuttable presumption, it bears the burden of proof at an evidentiary hearing to establish that  
11 effective screening can overcome the disqualification presumption given all available factors.

12 **II. CASE BACKGROUND**

13 This case concerns disqualification of defense counsel after defense counsel hired the  
14 paralegal of plaintiff's counsel working on this case. The applicable facts are set forth as follows in  
15 Declaration form from Plaintiff's counsel, Adam J. Breeden, Esq.:

16 I, ADAM J. BREEDEN, ESQ., declare the following under penalty of perjury:

17 1. I am Adam J. Breeden, Esq. and am counsel for Plaintiff, JANE NELSON, in this  
18 matter.

19 2. I am a licensed attorney in the state of Nevada. I am the managing member of  
20 Breeden & Associates, PLLC. I know the following facts to be true of my own knowledge and, if  
21 called to testify, I could competently do so.

22 3. I have a small/solo law practice. While I have two other attorneys who work with my  
23 firm occasionally as of-counsel and several other attorneys and paralegals who do occasional  
24 piecework for my law firm, for the most part I alone manage litigation and represent the clients.

25 4. Until recently, I had one full-time paralegal and assistant, Kristy Johnson.  
26 Ms. Johnson had worked for me since October of 2017. She worked 40 hours a week. Ms. Johnson  
27 worked very closely with me while she was employed. I saw her, worked with her and assigned her  
28 work daily. She is involved in every case I have at my office. She independently manages some



1 aspects of litigation at my firm as well, including preparing discovery supplements and other filings  
2 and notices. I shared all of my mental impressions and evaluations of every case at my office with  
3 Ms. Johnson.

4 5. Specifically as to the Jane Nelson case, I would testify to the following:

5 a. Ms. Johnson had worked on the Nelson file at my office since its inception at my  
6 firm in May of 2020, from sign up to litigation.

7 b. Ms. Johnson had worked on all or substantially all pleadings and filings in the  
8 case, including drafting the complaint and drafting or revising discovery and  
9 other case documents.

10 c. As a matter of course, I copied Ms. Johnson on virtually every case and client  
11 email I send at my firm, including Ms. Nelson's case. As a result, she is likely  
12 copied on a hundred emails in this case and perhaps two dozen emails directly to  
13 the client Ms. Nelson, which detail legal advice, case evaluations and other  
14 confidential information.

15 d. Ms. Johnson has met the client, Ms. Nelson, personally many times and spoken  
16 to her many times by phone. Ms. Johnson has sat through all or part of client  
17 meetings between me and Ms. Nelson.

18 e. There is no confidential communication between my law firm and the client  
19 Ms. Nelson of which Ms. Johnson was not privy to and actually worked on.  
20 Perhaps most specifically, she worked on and sent comprehensive status letters  
21 to the client, the most recent of which was on May 10, 2021 which outlines to the  
22 client all of my mental impressions of the case, judicial officer, opposing counsel,  
23 opposing insurer, discovery and expert strategy, offer of judgment strategy, trial  
24 strategy and settlement negotiation strategy, including possible offers and  
25 demands.

26 f. Ms. Johnson has the same knowledge of this case as if I turned over my entire  
27 file to opposing counsel.

28 6. On October 12-19, 2021, I took another matter to trial against the McBride Hall law

1 firm called *Taylor v. Brill, MD*. During that trial, Ms. Johnson appeared every day and operated  
2 trial presentation software. Apparently, Ms. Johnson made an impression on someone at the  
3 McBride Hall law firm during that time and they made a job offer to her, reportedly after conclusion  
4 of the trial.

5 7. On Monday, October 25, 2021 Ms. Johnson advised me that over the weekend she  
6 discussed a job position at McBride Hall and had accepted an offer. I contacted the principals of  
7 the McBride Hall law firm to see if they intended to withdraw from matters Ms. Johnson worked on  
8 and they indicated they would not and they believed screening would cure any imputed  
9 disqualification. There were two clients involved, Jane Nelson and Kimberly Taylor.

10 8. I explained this situation to my client, Jane Nelson, who has instructed me that she  
11 feels uncomfortable with this situation and directed me to file a motion to disqualify the McBride  
12 Hall law firm.

13 9. It's hard to imagine a case fraught with more risk of disclosure of confidential  
14 information to the adversary. I do not wish to accuse McBride Hall or Ms. Johnson of any unethical  
15 behavior but the mere circumstances and risk of disclosure warrant imputed disqualification in this  
16 matter in my opinion. Given the level of information Ms. Johnson, I do not feel that screening will  
17 cure this issue and mere screening is unacceptable to Ms. Nelson and me personally.

18 I declare under penalty of perjury under the laws of the State of Nevada that the foregoing  
19 is true and correct.

20 DATED this 16th day of November, 2021.

21   
22 \_\_\_\_\_  
ADAM J. BREEDEN, ESQ.

23 **III. LAW AND ARGUMENT**

24 **A. Imputed Disqualification of a Law Firm upon Employment of Legal Staff with**  
25 **Confidential Information about an Opposing Party**

26 The legal issue in this case is when the hiring of legal staff by an opposing law firm results  
27 in disqualification of the hiring law firm. The controlling Nevada Supreme Court precedent on this  
28

1 issue is *Leibowitz v. Eighth Judicial Dist. Court of Nev.*, 119 Nev. 523 (2003). However, a short  
2 primer of Nevada law on this issue is necessary.

3       The Nevada Supreme Court first addressed imputed disqualification of a law firm due to  
4 hiring nonlawyer legal staff from opposing counsel in the case of *Ciaffone v. Eighth Judicial Dist.*  
5 *Court*, 113 Nev. 1165, 945 P.2d 950 (1997). In *Ciaffone*, a secretary word processor had worked on  
6 a wrongful death case at one firm as a temporary employee but was later hired by the opposing law  
7 firm. The first law firm requested imputed disqualification of the hiring or second law firm. The  
8 Supreme Court found that “[w]hen SCR 187 [non-lawyers held to same standards as lawyers  
9 supervising them] is read in conjunction with SCR 160(2) [imputed disqualification], nonlawyer  
10 employees become subject to the same rules governing imputed disqualification. To hold otherwise  
11 would grant less protection to the confidential and privileged information obtained by a nonlawyer  
12 than that obtained by a lawyer.” *Id.* at 1169. The Nevada Supreme Court *rejected* screening of non-  
13 lawyer staff as an effective method of curing imputed disqualification, explaining both that  
14 “[a]ttorney disqualification of counsel is part of a court's duty to safeguard the sacrosanct privacy  
15 of the attorney-client relationship which is necessary to maintain public confidences in the legal  
16 profession and to protect the integrity of the judicial process” *Panduit Corp. v. All States Plastic*  
17 *Mfg. Co.*, 744 F.2d 1564, 1576 (D.C. Cir. 1984), and that “a client must be secure in the knowledge  
18 that any information he reveals to counsel will remain confidential.” *United States v. Schell*, 775  
19 F.2d 559, 565 (4th Cir. 1985). Therefore, *Ciaffone* set forth a bright-line, per se rule of  
20 disqualification without any inquiry into the level of confidential information the nonlawyer  
21 obtained or the ability to screen the employee at the second law firm.

22       *Ciaffone* clearly states that “the policy of protecting the attorney-client privilege must be  
23 preserved through imputed disqualification when a nonlawyer employee, in possession of privileged  
24 information, accepts employment with a firm who represents a client with materially adverse  
25 interests.” *Id.* at 1168. While *Ciaffone* set forth a bright-line rule of imputed disqualification that  
26 was easy to apply, it was a bit harsh and came under criticism that it unfairly restricted employment  
27 opportunities of nonlawyer legal staff, particularly those who had little to no confidential  
28 information. In *Ciaffone*, the staff member involved did not have much involvement with the

1 underlying case. The staff member had been a temporary secretarial employee at the first firm and  
2 did word processing only. She was not regularly assigned to the underlying case and was not  
3 assigned to the attorney handling the underlying case, but did some limited work on the case in an  
4 “overflow” capacity. *Id.* at 1166-1167. Regardless, the Nevada Supreme Court found the second  
5 firm should be disqualified. The Court barred screening as a means to avoid disqualification of the  
6 hiring firm and noted the inherent difficulties allowing screening presented, including (a) the  
7 effectiveness of the screen, (b) the monetary incentive involved in breaching the screen, (c) the fear  
8 of disclosing privileged information in the course of proving an effective screen, and (d) the  
9 possibility of accidental disclosures.

10 Several years later, the Nevada Supreme Court revisited *Ciaffone* and the issue of screening  
11 of nonlawyer legal staff in *Leibowitz v. Eighth Judicial Dist. Court of Nev.*, 119 Nev. 523 (2003).  
12 In *Leibowitz* the underlying case concerned a contested divorce which was on appeal when  
13 disqualification issues arose. It was discovered that the husband’s law firm had hired two different  
14 employees that had both previously worked for the wife’s law firm. One employee, Magalianes was  
15 a legal assistant newly hired by the husband’s law firm. However, Maglianens had previously worked  
16 on the divorce case for roughly a month while working for the wife’s law firm. The evidence was  
17 that she took the initial intake call from the wife, prepared a memo for the attorney on the case, may  
18 have drafted certain legal documents and may have been present at meetings between the wife and  
19 her attorneys. *Id.* at 527-528. The husband’s law firm said they would screen Magalianes off the  
20 file and prohibit her from discussing the matter at her new law firm to avoid disqualification  
21 (although this was not allowed at the time under *Ciaffone*). The second employee, Baker, was also  
22 a legal assistant. While there was disputed evidence, the court found that Baker had worked at the  
23 wife’s law firm for only a short period of time and had access to, but did not actually work on, the  
24 divorce case at issue. Thus, the type of exposure between the two employees was different.  
25 Maglianens had actually worked on the case but perhaps obtained only minimal confidential or  
26 privileged information. Baker did not even seem to have worked on the case at all. The district court  
27 found that under *Ciaffone*, mere access to the file even without a showing of knowledge of  
28 confidential material was sufficient by itself to disqualify the second law firm that hired the legal

1 staff and ordered the same.

2 In reviewing the District Court's decision, the Supreme Court revisited and modified  
3 *Ciaffone*. The Court explained that in *Ciaffone* the nonlawyer's involvement was in a "secretarial,  
4 word processor capacity" and the opinion did not consider whether the employee had "exposure  
5 related to privileged or confidential information," which was error. *Id.* at 530. The court therefore  
6 found that instead of a per se rule of imputed disqualification, "the imputed disqualification  
7 standards of SCR 160(2) do not apply simply because a nonlawyer employee was exposed, or had  
8 access to, a former client's file. **The rule only applies when the nonlawyer employee acquires  
9 privileged, confidential information.**"

10 The Court then continued its analysis and stated that even if the former employee had  
11 confidential information, there is a sort of sliding scale as to how much and whether disqualification  
12 is warranted. The Court then stated that in **some (but not all) cases**, the screening of nonlawyer  
13 employees at a new firm to cure imputed disqualification was acceptable, explaining as follows:

14 When a law firm hires a nonlawyer employee, the firm has an affirmative duty to  
15 determine whether the employee previously had access to adversarial client files. If  
16 the hiring law firm determines that the employee had such access, the hiring law  
17 firm has an absolute duty to screen the nonlawyer employee from the adversarial  
cases irrespective of the nonlawyer employee's actual knowledge of privileged or  
confidential information.

18 Although we decline to mandate an exhaustive list of screening requirements, the  
following provides an instructive minimum:

19 1. "The newly hired nonlawyer [employee] must be cautioned not to disclose any  
20 information relating to the representation of a client of the former employer."

21 2. "The nonlawyer [employee] must be instructed not to work on any matter on  
22 which [he or] she worked during the prior employment, or regarding which [he or]  
she has information relating to the former employer's representation."

23 3. "The new firm should take...reasonable steps to ensure that the nonlawyer  
24 [employee] does not work in connection with matters on which [he or] she worked  
during the prior employment, absent client consent [i.e., unconditional waiver] after  
consultation."

25 In addition, the hiring law firm must inform the adversarial party, or their counsel,  
26 regarding the hiring of the nonlawyer employee and the screening mechanisms  
27 utilized. The adversarial party may then: (1) make a conditional waiver (i.e., agree  
to the screening mechanisms); (2) make an unconditional waiver (eliminate the  
screening mechanisms); or (3) file a motion to disqualify counsel.

28 However, even if the new employer uses a screening process, disqualification will

1 always be required-absent unconditional waiver by the affected client-under the  
2 following circumstances :

3 1. "When information relating to the representation of an adverse client has in fact  
4 been disclosed [to the new employer]"; or, in the absence of disclosure to the new  
5 employer,

6 2. "When screening would be ineffective or the nonlawyer [employee] necessarily  
7 would be required to work on the other side of a matter that is the same as or  
8 substantially related to a matter on which the nonlawyer [employee] has previously  
9 worked."

10 *Id.* at 533. The Supreme Court continued to explain how the district court should weigh all factors,  
11 stating the following:

12 Once a district court determines that a nonlawyer employee acquired confidential  
13 information about a former client, the district court should grant a motion for  
14 disqualification unless the district court determines that the screening is sufficient  
15 to safeguard the former client from disclosure of the confidential information. The  
16 district court is faced with the delicate task of balancing competing interests,  
17 including: (1) "the individual right to be represented by counsel of one's choice,"  
18 (2) "each party's right to be free from the risk of even inadvertent disclosure of  
19 confidential information," (3) "the public's interest in the scrupulous administration  
20 of justice," and (4) "the prejudices that will inure to the parties as a result of the  
[district court's] decision."

21 To determine whether screening has been or may be effective, the district court  
22 should consider: (1) "the substantiality of the relationship between the former and  
23 current matters," (2) "the time elapsed between the matters," (3) "the size of the  
24 firm," (4) "the number of individuals presumed to have confidential information,"  
25 (5) "the nature of their involvement in the former matter," (6) "the timing and  
26 features of any measures taken to reduce the danger of disclosure," and (7) whether  
27 the "old firm and the new firm represent adverse parties in the same proceeding,  
28 rather than in different proceedings" because inadvertent disclosure by the  
nonlawyer employee is more likely in the former situation.

21 *Id.* at 533-534. Based on this new standard, the husband's firm in *Leibowitz* was clearly not  
22 disqualified due to Baker's hiring because Baker had not worked on the actual case while at the  
23 wife's law firm and acquired no confidential or privileged information. The issue was closer for  
24 Magalianes. Ultimately, imputed disqualification was not ordered as to Magalianes either but only  
25 because her involvement with the wife's case at her former law firm had been "brief" (about a month)  
26 and affidavits did not "clearly establish that Magalianes was privy to any confidential information"  
27 about the wife's case. Therefore, the situation as to Magalianes is quite different factually as to the  
28 paralegal involved in this case who knows all confidential information ever sent to the client.

1 Subsequent case law regarding the application of *Leibowitz* has been sparse. In *Ryan's*  
2 *Express Transp. Servs. v. Amador Stage Lines, Inc.*, 128 Nev. 289, 298-99, 279 P.3d 166, 172 (2012)  
3 the Supreme Court further explained that when faced with a screening and disqualification issue for  
4 a lawyer<sup>1</sup> changing employment, the District Court must set an evidentiary hearing and consider the  
5 following:

6 When presented with a dispute over whether a lawyer has been properly screened,  
7 Nevada courts should conduct an evidentiary hearing to determine the adequacy  
8 and timeliness of the screening measures on a case-by-case basis. The burden of  
9 proof is upon the party seeking to cure an imputed disqualification with screening  
to demonstrate that the use of screening is appropriate for the situation and that the  
disqualified attorney is timely and properly screened.

10 When considering whether the screening measures implemented are adequate,  
courts are to be guided by the following nonexhaustive list of factors:

11 (1) instructions given to ban the exchange of information between the disqualified  
12 attorney and other members of the firm;

13 (2) restricted access to files and other information about the case;

14 (3) the size of the law firm and its structural divisions;

15 (4) the likelihood of contact between the quarantined lawyer and other members  
of the firm; and

16 (5) the timing of the screening.

17 As with motions to disqualify, the consideration of the adequacy of screening is  
18 within the sound discretion of the district court, *LaSalle*, 703 F.2d at 256; however,  
the district court must justify its determination as to the adequacy of the screening  
in a written order with specific findings of fact and conclusions of law.

19 ***In summary, the law regarding imputed disqualification of a law firm due to the hiring of***  
20 ***nonlawyer staff previously working for the opposing party is the following:*** Because of concerns  
21 over preservation of confidential information of a client, nonlawyer staff is held to the same  
22 confidentiality and loyalty standards as lawyers as well as the same imputed disqualification  
23 standards. Thus, where a nonlawyer such as a paralegal is hired by an opposing law firm, the court  
24 must first inquire as to the degree or level of confidential information the paralegal has about the  
25 client or case. Where the paralegal has knowledge of highly confidential information, there is a  
26

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27 <sup>1</sup> Presumably, since this is the rule required for screening lawyers, it would also apply to the  
28 screening of non-lawyers who possess confidential client information.

1 presumption that the hiring law firm is disqualified. The court must consider (1) the individual right  
2 to be represented by counsel of one's choice, (2) each party's right to be free from the risk of even  
3 inadvertent disclosure of confidential information, (3) the public's interest in the scrupulous  
4 administration of justice, and (4) the prejudices that will inure to the parties as a result of the [district  
5 court's] decision. The hiring law firm may try to overcome the imputed disqualification by  
6 establishing a screening process. However, the hiring law firm bears the burden of establishing that  
7 the screening will be sufficient. To establish this, an evidentiary hearing must be held and findings  
8 of fact must be made as to (1) the substantiality of the relationship between the former and current  
9 matters, (2) the time elapsed between the matters, (3) the size of the firm, (4) the number of  
10 individuals presumed to have confidential information, (5) the nature of their involvement in the  
11 former matter, (6) the timing and features of any measures taken to reduce the danger of disclosure,  
12 and (7) whether the old firm and the new firm represent adverse parties in the same proceeding,  
13 rather than in different proceedings because inadvertent disclosure by the nonlawyer employee is  
14 more likely in the former situation.

15 **B. An Evidentiary Hearing should be Ordered and Imputed Disqualification should be Found**

16 Under *Ryan's Express Transp. Servs.* an evidentiary hearing must be held on the  
17 disqualification and screening issues (McBride Hall is presumptively disqualified and bears the  
18 burden of refuting that at the evidentiary hearing). However, Nelson will brief the *Ryan's Express*  
19 *Transp. Servs.* in the hopes that McBride Hall may just decide that disqualification is proper and  
20 withdraw.

21 **(1) The substantiality of the relationship between the former and current matters**

22 The matter concerned here, *Nelson v. Sabir*, is identical, open, active and the two clients are  
23 in direct conflict with each other. The paralegal will be moving from plaintiff's law firm to Dr. Sabir  
24 and Pioneer Health Care's law firm. This is not a case where we are talking about a former matter  
25 or a former client or an unrelated matter. This factor favors imputed disqualification.

26 **(2) The time elapsed between the matters**

27 No time has elapsed at all. In fact, we aren't even talking about related matters in this case,  
28 we are talking about the exact same matter. Ms. Johnson is literally working at plaintiff's law firm



1 on a Friday and working for the defendant's law firm on the following Monday. This factor favors  
2 imputed disqualification.

3 (3) The size of the firm

4 It is unclear how this factor is to be considered by the court. However, it can be offered that  
5 being disqualified from this case will not be a substantial burden to the law firm of McBride Hall.  
6 They are a firm of six attorneys and no doubt have hundreds of active files. This issue affects only  
7 two pending cases between the law firms (Nelson and Taylor). At the same time, McBride Hall is  
8 not so large that there is no risk of inadvertent disclosure or Ms. Johnson being in contact with other  
9 attorneys or staff at McBride Hall working on the Nelson file. McBride Hall is not a large, multistate  
10 law firm. Ms. Johnson will be working in the same office as Mr. Kelly, the attorney handling this  
11 matter at McBride Hall. This factor favors imputed disqualification.

12 (4) The number of individuals presumed to have confidential information

13 It is again unclear how this factor is to be applied. However, several members of McBride  
14 Hall are known to have worked on this file defending it, including Mr. Kelly as the lawyer and other  
15 staff. This factor favors imputed disqualification.

16 (5) The nature of their involvement in the former matter

17 As previously explained by Declaration, Ms. Johnson has worked on the Nelson matter since  
18 its inception at Breeden & Associates, PLLC. She has reviewed every pleading. She has reviewed  
19 every status report and email to the client detailing litigation, expert and settlement strategy, both in  
20 this case and the related Supreme Court writ. She has personally spoken to the client, Nelson, on  
21 numerous occasions and been part of some attorney-client meetings. She was copied on virtually  
22 every email and letter correspondence in the case. It is not possible for a non-lawyer staff to have  
23 more confidential, privileged information regarding the Nelson case that Ms. Johnson has. This  
24 factor favors imputed disqualification.

25 (6) The timing and features of any measures taken to reduce the danger of disclosure

26 The extent of screening measures is unknown at present, although upon inquiry McBride  
27 Hall did indicate they would employ some screening measures.

28 (7) Whether the old firm and the new firm represent adverse parties in the same proceeding, rather

1 than in different proceedings because inadvertent disclosure by the nonlawyer employee is more  
2 likely in the former situation.

3 Here the prior firm, Breeden & Associates, PLLC, represents Nelson in the same proceeding,  
4 an active civil matter still in discovery and litigation. The risk of disclosure of confidential  
5 information, intentional or inadvertent, is at its maximum. Indeed, it is hard to imagine facts more  
6 convincing for disqualification than this one.

7 In summary, this case presents the strongest possible facts for imputed disqualification.

### 8 **III. CLOSING**

9 In closing, the law of the state of Nevada presumes that the McBride Hall law firm must be  
10 disqualified because they now employ a paralegal with knowledge of all confidential  
11 communications between Nelson and her client. If McBride Hall wishes to overcome the  
12 presumption, they must seek an evidentiary hearing as to their screening efforts and the court must  
13 make specific findings of fact and conclusions of law as to why the presumption is overcome.  
14 However, the facts of this case are so enormously strong in favor of disqualification the District  
15 Court may deny even that hearing. Screening was a process invented to allow employees with  
16 minimal confidential knowledge to change positions. Screening was never intended to allow a legal  
17 professional with thorough, intimate knowledge of the case to switch sides while the case is still  
18 pending.

19 The legal system is honorable, but must concern itself with realities that even the appearance  
20 of impropriety must be avoided to maintain the public's confidence. The legal system must concern  
21 itself with both intentional and inadvertent disclosures. And the legal system must recognize that  
22 there are bad actors in the industry and when the nonlawyer employee has the most sensitive of  
23 confidential information one cannot merely trust one's adversary and hope no "shenanigans" are  
24 going on.

25 Several members of the Nevada Supreme Court dissented from the decision to allow  
26 screening of nonlawyer employees with access to confidential information from the prior law firm.

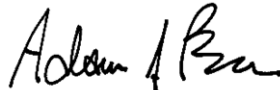
1 Surely, those dissenters had this case in mind. It is a Pollyanna<sup>2</sup> attitude that puts absolute trust in  
2 one's adversary that they will follow the rules strictly and not use or try to use confidential  
3 information to their advantage.

4 Indeed, the Court should ask itself "If I were the client, Nelson, in this matter, would I  
5 reasonably be concerned that a paralegal working on this case knowing all confidential evaluation  
6 of it by my attorney is now working for the defense?" Surely the answer is "yes," it is reasonable  
7 to be concerned. The legal system has a duty to make certain that the system appears fair and the  
8 appearance of impropriety is removed.

9 Respectfully, the McBride Hall law firm must be disqualified from further representation in  
10 this case.

11 DATED this 16<sup>th</sup> day of November, 2021.

12 **BREEDEN & ASSOCIATES, PLLC**

13 

14 **ADAM J. BREEDEN, ESQ.**

15 Nevada Bar No. 008768

16 376 E. Warm Springs Road, Suite 120

17 Las Vegas, Nevada 89119

18 Phone: (702) 819-7770

19 Fax: (702) 819-7771

20 Adam@Breedendassociates.com

21 *Attorneys for Plaintiff*

22  
23  
24  
25  
26  
27 <sup>2</sup> The character of Pollyanna is from a book and 1960 Disney film of the same name and has come  
28 to stand for a person characterized by irrepressible optimism and a tendency to find good in  
everything but ignore the harsher realities of the situation at hand.

1 **CERTIFICATE OF SERVICE**

2 I hereby certify that on the 16th day of November, 2021, I served a copy of the foregoing  
3 legal document **PLAINTIFF NELSON'S MOTION TO DISQUALIFY** via the method indicated  
4 below:

5 X	Pursuant to NRCP 5 and NEFCR 9, by electronically serving all counsel and 6 e-mails registered to this matter on the Court's official service, Wiznet 7 system.
8	Pursuant to NRCP 5, by placing a copy in the US mail, postage pre-paid to 9 the following counsel of record or parties in proper person: 10 Robert C. McBride, Esq. 11 Sean Kelly, Esq. 12 MCBRIDE HALL 13 8329 W. Sunset Rd., Suite 260 14 Las Vegas, NV 89113 15 <i>Attorneys for Defendants Pioneer Health Care, LLC</i> 16 <i>and Muhammad Saeed Sabir, M.D.</i> 17 Zachary J. Thompson, Esq. 18 Ian M. Houston, Esq. 19 HALL PRANGLE & SCHOONVELD, LLC 20 1140 N. Town Center Drive, Suite 340 21 Las Vegas, Nevada 89144 22 <i>Attorneys for Defendant Jayson Paulo Alberto Agaton, APRN</i>
23	Via receipt of copy (proof of service to follow)

24 An Attorney or Employee of the following firm:

25 /s/ Sarah Daniels

26 **BREEDEN & ASSOCIATES, PLLC**

1 **CSERV**

2  
3 DISTRICT COURT  
4 CLARK COUNTY, NEVADA

5  
6 Jane Nelson, Plaintiff(s)

CASE NO: A-20-823285-C

7 vs.

DEPT. NO. Department 22

8 Muhammad Sabir, M.D.,  
9 Defendant(s)

10  
11 **AUTOMATED CERTIFICATE OF SERVICE**

12 This automated certificate of service was generated by the Eighth Judicial District  
13 Court. The foregoing Order Shortening Time was served via the court's electronic eFile  
14 system to all recipients registered for e-Service on the above entitled case as listed below:

15 Service Date: 11/16/2021

16 Adam Breeden

adam@breedenandassociates.com

17 E-File Admin

efile@hpslaw.com

18 Robert McBride

rcmcbride@mcbridehall.com

19 Sean Kelly

smkelly@mcbridehall.com

20 Kristine Herpin

kherpin@mcbridehall.com

21 Michelle Newquist

mnewquist@mcbridehall.com

22 Candace Cullina

ccullina@mcbridehall.com

23 Casey Henley

chenley@hpslaw.com

24 Reina Claus

rclaus@hpslaw.com

25 Lauren Smith

lsmith@mcbridehall.com

26 Natalie Jones

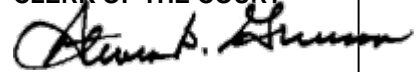
njones@mcbridehall.com

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Madeline VanHeuvelen

[mvanheuvelen@mcbridehall.com](mailto:mvanheuvelen@mcbridehall.com)



**OPP**

ROBERT C. MCBRIDE, ESQ.  
Nevada Bar No.: 7082  
SEAN M. KELLY, ESQ.  
Nevada Bar No.: 10102  
McBRIDE HALL  
8329 W. Sunset Road, Suite 260  
Las Vegas, Nevada 89113  
Telephone No. (702) 792-5855  
Facsimile No. (702) 796-5855  
E-mail: [rcmcbride@mcbridehall.com](mailto:rcmcbride@mcbridehall.com)  
E-mail: [smkelly@mcbridehall.com](mailto:smkelly@mcbridehall.com)  
Attorneys for Defendant  
*Pioneer Health Care, LLC and*  
*Muhammad Saeed Sabir, M.D.*

**DISTRICT COURT  
CLARK COUNTY, NEVADA**

JANE NELSON, an individual,  
  
Plaintiff,

vs.

MUHAMMAD SAEED SABIR, M.D., an  
individual; JAYSON PAULO ALBERTO  
AGATON, APRN, an individual; PIONEER  
HEALTH CARE, LLC, a domestic limited  
liability company; and DOES I through X and  
ROES CORPORATIONS, I through X,  
inclusive

Defendants.

**CASE NO.: A-20-823285-C  
DEPT NO.: 22**

**DEFENDANTS' POINTS AND  
AUTHORITIES IN OPPOSITION TO  
PLAINTIFF JANE NELSON'S MOTION  
TO DISQUALIFY DEFENDANTS'  
COUNSEL ON AN ORDER  
SHORTENING TIME**

**Hearing Date: November 23, 2021  
Hearing Time: 8:30 a.m.**

COME NOW, Defendants, PIONEER HEALTH CARE, LLC and MUHAMMAD SAEED  
SABIR, MD, by and through their counsel of record, ROBERT C. McBRIDE, ESQ. and SEAN  
M. KELLY, ESQ. of the law firm of McBRIDE HALL, and hereby submits this Opposition to  
Plaintiff Jane Nelson's Motion to Disqualify the McBride Hall Law Firm from Representing  
Defendants D. Sabir and Pioneer Health Care, LLC on an Order Shortening Time.

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This Opposition is based upon the following Memorandum of Points and Authorities, the attached exhibits herein, the pleadings and papers on file herein, and any oral argument which may be adduced at the time of such hearing for this matter.

DATED this 22<sup>nd</sup> day of November, 2021.

McBRIDE HALL

/s/ Sean M. Kelly

Robert C. McBride, Esq.

Nevada Bar No.: 7082

Sean M. Kelly, Esq.

Nevada Bar No.: 10102

8329 W. Sunset Road, Suite 260

Las Vegas, Nevada 89113

Attorneys for Defendants *Pioneer Health Care, LLC* and *Muhammad Saeed Sabir, MD*



1 **POINTS AND AUTHORITIES**

2 **I.**

3 **FACTS**

4 This is a medical malpractice action concerning Plaintiff's allegation that the Defendant  
5 providers of healthcare failed to diagnose and treat Plaintiffs' heparin-induced Thrombocytopenia.  
6 Plaintiff filed her Complaint for medical malpractice on October 19, 2020 against Defendants  
7 Muhammad Saeed Sabir, M.D., Jayson Paulo Albert Agaton, APRN, and Pioneer Healthcare.  
8 Defendants Dr. Sabir and Pioneer Healthcare have been represented since the inception of this case  
9 by the law firm of McBride Hall.

10 Attached as "**Exhibit A**" to these Points and Authorities is the Affidavit of Kirsty Johnson.  
11 The undisputed facts set forth in Ms. Johnson's Affidavit demonstrate the following:

12 1. Ms. Johnson worked as a paralegal at the law firm of Breeden & Associates, PLLC  
13 from October 2017 until November 5, 2021.

14 2. Ms. Johnson did not arrange for an interview with the law firm McBride Hall until  
15 8:48 p.m. the evening of October 19, 2021, after the conclusion of trial in the *Kimberly Taylor v.*  
16 *Brill, M.D.*, matter. Prior to that time, counsel from the law firm of McBride Hall did not have any  
17 conversations with Ms. Johnson regarding an employment opportunity.

18 3. Ms. Johnson interviewed for a paralegal position with the McBride Hall law firm  
19 on October 21, 2021. During her interview, it was discussed that she would need to be screened  
20 off of any active files between the law firms of Breeden & Associates, PLLC and McBride Hall  
21 and could not discuss the litigation between the two law firms, including the cases *Jane Nelson v.*  
22 *Muhammad Saeed Sabir, M.D., et al.* (Case No. A-20-823285-C) and *Kimberly Taylor v. Keith*  
23 *Brill, M.D., et al.* (Case No. A-18-773472-C).

24 4. Thereafter, Ms. Johnson accepted employment with the law firm of McBride Hall  
25 as a paralegal with the express condition that a conflict check would be conducted, she would be  
26 screened off of any mutual matters between the McBride Hall and Breeden & Associates, PLLC  
27 law firms, and she would be prohibited from disclosing any confidential and/or privileged  
28

1 information she may possess about any potentially conflicting, mutual litigation between the two  
2 law firms.

3 5. When Ms. Johnson left the Breeden & Associates law firm to accept employment  
4 with the McBride Hall law firm, a conflict check was conducted to determine whether any potential  
5 conflicts were presented by Ms. Johnson accepting employment with the McBride Hall law firm.

6 6. The two firms had some mutual litigation. One of the cases was *Nelson v. Dr. Sabir,*  
7 *et al.*, (Case No. A-20-823285-C). The Breeden & Associates law firm was representing Plaintiff.  
8 The McBride Hall law firm was representing and defending Dr. Sabir and Pioneer Health Care,  
9 LLC.

10 7. Prior to beginning her employment with the McBride Hall law firm, Ms. Johnson  
11 was informed by Ms. Heather Hall that she could not discuss either matter with anyone who is  
12 employed with McBride Hall. Ms. Johnson agreed that she would not discuss either the *Jane*  
13 *Nelson* or *Kimberly Taylor* matters with anyone employed with the McBride Hall law firm.

14 9. At no time has Ms. Johnson communicated, stated, disclosed or divulged any  
15 confidential and/or privileged information she may possess regarding the *Jane Nelson* or *Kimberly*  
16 *Taylor* matters to anyone at the McBride Hall law firm. Since beginning her employment at the  
17 McBride Hall law firm, two Memoranda have been circulated to all members of the McBride Hall  
18 law firm advising all of Ms. Johnson's screening off the *Kimberly Taylor* and *Jane Nelson* matters  
19 and all firm members have been instructed not to discuss the *Kimberly Taylor* or *Jane Nelson*  
20 matter with Ms. Johnson. Additionally, Ms. Johnson's computer access to these files has been  
21 blocked. The hard files for these cases have been locked in a filing cabinet, which only Mr. Sean  
22 Kelly has a key to open.

23 10. Ms. Johnson is not the paralegal assigned to work on either the *Jane Nelson* or  
24 *Kimberly Taylor* matters, as the McBride Hall law firm employs two other paralegals.

25 11. As Ms. Johnson has not discussed either the *Kimberly Taylor* or *Jane Nelson* case  
26 with any member of the McBride Hall law firm, no member of the McBride Hall law firm knows  
27 what confidential and/or privileged information Ms. Johnson may possess about either case.  
28

1 Based upon these undisputed facts and the arguments and law set forth below, it is apparent  
2 that Plaintiff's Motion to Disqualify Defendants' counsel from representing Dr. Sabir and Pioneer  
3 Health Care, LLC is not only meritless, but directly contrary to Nevada law.

## 4 II.

### 5 ARGUMENT

#### 6 A. IN NEVADA, EFFECTIVE SCREENING OF NON-ATTORNEY EMPLOYEES 7 IS AN APPROPRIATE REMEDY TO PREVENT IMPUTED FIRM-WIDE 8 DISQUALIFICATION.

9 The Nevada Supreme Court recognizes that nonlawyer firm employees may be screened  
10 to maintain employment and representation of clients with potentially adverse interests. *See*  
11 *Leibowitz v. Eighth Jud. Dist. Court*, 119 Nev.523, 526, 78 P.3d 515, 517 (Nev. 2003). The Court  
12 further held that "[w]hen a law firm hires a nonlawyer employee, the firm has an affirmative duty  
13 to determine whether the employee previously had access to adversarial client files. If the hiring  
14 law firm determines that the employee had such access, the hiring law firm has an absolute duty  
15 to screen the nonlawyer employee from the adversarial cases irrespective of the nonlawyer  
16 employee's actual knowledge of privileged or confidential information." *Id.* at 532.

17 And because "...[i]mputed disqualification is a harsh remedy that 'should be invoked only  
18 if the court is satisfied that real harm is likely to result from failing to invoke it,'" the Nevada  
19 Supreme Court permits screening mechanisms. *Id.* at 532. Sufficient screening mechanism are  
20 enough to avoid disqualification because of a "client's right to counsel of the client's choosing and  
21 likelihood of prejudice and economic harm to the client when severance of the attorney-client  
22 relationship is ordered." *Id.* at 532.<sup>1</sup>

23 To determine if such mechanisms are appropriate, the Nevada Supreme Court evaluates

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25  
26 <sup>1</sup> Plaintiff's citation to *Ciaffone v. Eighth Judicial District Court*, 113 Nev. 1165, 945 P.2d 950 (Nev. 1997) is  
27 misleading as *Ciaffone* was expressly overruled, in part, by the Nevada Supreme Court in *Leibowitz v. Eighth Judicial*  
28 *District Court*, 119 Nev. 523, 78 P.3d 515 (Nev. 2003). Specifically, the Court stated that it was "...persuaded *Ciaffone*  
misapprehended the state of the law regarding nonlawyer imputed disqualification." *Id.* at 532. (holding "We therefore  
overrule *Ciaffone* to the extent it prohibits screening of nonlawyer employees"). The Court further referenced a 1988  
ABA opinion that screening of nonlawyers was permitted, noting that paralegals, legal secretaries, and other  
employees of attorneys do not have the option of practicing his or her profession regardless of an affiliation to a law  
firm. *Id.* at 532.

1 several factors including: (1) the substantiality of the relationship between the former and current  
2 matters; (2) the time elapsed between the matters; (3) the size of the firm; (4) the number of  
3 individuals presumed to have confidential information; (5) the nature of their involvement in the  
4 former matter; (6) the timing and features of any measure taken to reduce the danger of disclosure;  
5 and (7) whether the old firm and new firm represent adverse parties in the same proceeding rather  
6 than in different proceedings. *Id.* at 534.

7 Moreover, the Nevada Supreme Court has set forth a non-exhaustive list of screening  
8 requirements, which are as follows:

- 9 (1) “The newly hired nonlawyer [employee] must be cautioned not to disclose any  
10 information relating to the representation of a client of the former employer.”
- 11 (2) “The nonlawyer [employee] must be instructed not to work on any matter on which  
12 [he or] she worked during the prior employment, or regarding which [he or] she has  
13 information relating to the former employer’s representation.”
- 14 (3) “The new firm should take ... reasonable steps to ensure that the nonlawyer  
15 [employee] does not work in connection with matters on which [he or] she worked  
16 during the prior employment, absent client consent [i.e. unconditional waiver] after  
17 consultation.” *See Leibowitz v. Eighth Jud. Dist. Court*, 119 Nev. 523, 532 - 533  
18 (Nev. 2003).

17 Attached as “**Exhibit B**” are copies of the two memoranda, which were circulated to all  
18 members of the McBride Hall law firm regarding the screening of Ms. Johnson from the *Kimberly*  
19 *Taylor* and *Jane Nelson* matters. Moreover, attached as “**Exhibit C**” is an email confirming that  
20 Ms. Johnson was electronically blocked from the *Jane Nelson* and *Kimberly Taylor* files.  
21 Furthermore, “**Exhibit D**” is the Declaration of Sean M. Kelly, Esq. confirming that appropriate  
22 screening measures were immediately put into place **before** Ms. Johnson was hired and that they  
23 have not been disclosed confidential information from Ms. Johnson.

24 Although the matter is substantially the same, McBride Hall is a sizeable law firm with  
25 seven attorneys, two additional paralegals, and eight additional support staff members. This case  
26 has never been assigned to Ms. Johnson and never will be assigned to Ms. Johnson as it is assigned  
27 to another paralegal. Ms. Johnson’s role at both the McBride Hall law firm and Breeden &  
28 Associates, PLLC law firm has been that of a paralegal, not an attorney. Disqualifying an entire

1 law firm because of one individual – that is not and never has been assigned to the instant matter  
2 – is not appropriate under this standard.

3 Moreover, Defendants will suffer undue prejudice if Plaintiff's Motion is granted. In  
4 determining "to disqualify" counsel, the district court must balance the prejudices that will ensue  
5 to the parties as a result of its decision. *See Brown v. Eighth Judicial Dist. Court*, 116 Nev. 1200,  
6 14 P.3d 1266 (Nev. 2000). The *Brown* Court analyzed disqualification of the Plaintiff's counsel  
7 and held it was not proper because the Defendant's counsel had not demonstrated he would be  
8 prejudiced by the continued representation of the Plaintiff. *Id.* The *Brown* Court further determined  
9 that the Plaintiff would be "severely prejudiced by disqualifications" as it would be very difficult  
10 for Plaintiff to obtain new counsel and effectively and economically proceed to trial. *Id.*

11 The Court is tasked with "the delicate task of balancing competing interests" when  
12 determining prejudices from disqualification. *See Leibowitz v. Eighth Judicial Dist. Court*, 78 P.3d  
13 515, 119 Nev. 512 (Nev. 2003). Here, Defendants Dr. Sabir and Pioneer Health Care, LLC have  
14 retained the law firm of McBride Hall since the inception of the instant litigation. Since then,  
15 McBride Hall has fiercely pursued the defense of this case. Defendants have the right to be  
16 represented by the attorneys of their choice. To force Dr. Sabir and Pioneer Health Care to obtain  
17 new counsel at this late juncture would be precisely contrary to the right to be represented by  
18 counsel of the party's choice (especially when that counsel has been preparing to litigate this action  
19 through trial).

20 Indeed, Plaintiff has not exhibited any specific prejudice she would suffer if McBride Hall  
21 remained counsel of record on this file. Counsel for Plaintiff merely asserts that Ms. Johnson is  
22 aware of confidential information - a statement which undersigned counsel cannot further address  
23 as they are not aware of the knowledge Ms. Johnson possesses about the instant litigation because  
24 she has been appropriately screened and barred from accessing this file. Thus, no real prejudice  
25 exists.

26  
27 ///

28 ///

1           **B. THERE IS ABSOLUTELY NO EVIDENCE THAT DEFENSE COUNSEL**  
2           **ACTUALLY ACQUIRED PRIVILEGED, CONFIDENTIAL INFORMATION**  
3           **ABOUT PLAINTIFF IN THIS CASE.**

4           The Nevada Supreme Court has previously stated, in pertinent part, on an appeal involving  
5 an attempt to disqualify a plaintiff's counsel, as follows:

6           "We conclude that disqualification is not warranted absent proof of a reasonable  
7 probability that counsel actually acquired privileged, confidential information...".  
8 See *Brown v. Eighth Judicial Dist. Court*, 116 Nev. 1200, 1202, 14 P.3d 1266, 1267  
(Nev. 2000).

9           In this case, the law firm of McBride Hall implemented a conflict check and stringent  
10 screening measures to preclude the possibility of any confidential information being disclosed by  
11 either party. Moreover, Plaintiff's counsel was made aware of those screening measures and has  
12 decided to bring this Motion for Disqualification in the midst of litigation. (See October 25, 2021  
13 letter to Mr. Breeden, attached hereto as "**Exhibit E**").

14           In *Cronin v. Eighth Judicial District Court*, 105 Nev. 635, 781 P.2d 1150 (Nev. 1989), the  
15 Nevada Supreme Court specifically stated as follows:

16           "The District Courts have broad discretion in determining whether disqualification  
17 is required in a particular case, and that determination will not be disturbed by this  
18 court absent a showing of abuse of that discretion."

19           So there is no misunderstanding, there is no allegation that any confidential information  
20 that was theoretically acquired by Ms. Johnson was imparted to the McBride Hall law firm, let  
21 alone evidence of the same.

22           As demonstrated in **Exhibit A**, Ms. Johnson has testified that she has not informed her new  
23 employer regarding the extent of any confidential information she may have been exposed to at  
24 her prior employer and has been screened off entirely from those mutual matters between the  
25 Breeden & Associates and McBride Hall law firms. Moreover, as demonstrated in "**Exhibit D**,"  
26 Defense counsel has not acquired any confidential information and has screened Ms. Johnson, a  
27 nonlawyer, from this matter with a strict prohibition on discussing the instant litigation. Any  
28 possibility of inadvertent disclosure has been eliminated through the use of stringent screening

1 procedures in line with those set forth by the Nevada Supreme Court in *Leibowitz v. Eighth Judicial*  
2 *Dist. Court.*

3 In the absence of insufficient screening and the acquisition of confidential information, it  
4 would respectfully be an abuse of discretion to deny Dr. Sabir and Pioneer Health Care their  
5 counsel of choice. Plaintiff's Motion to Disqualify should be denied for the reasons stated.

6 **III.**

7 **CONCLUSION**

8 Plaintiff's Motion is without merit. Plaintiff has failed to demonstrate how the McBride  
9 Hall law firm's screening mechanisms are insufficient under *Lebowitz v. Eighth Judicial District*  
10 *Court*. Further, Plaintiff has completely failed to demonstrate to a reasonable degree of probability  
11 (or in fact at all) that counsel actually acquired confidential and/or privileged information with  
12 respect to this case.

13 Disqualification of counsel chosen by the Defendants, counsel who has served in that  
14 capacity since the inception of this litigation, is an extreme measure. Perhaps, that is why Nevada  
15 law requires the Court to use its discretion, and find that the screening mechanisms in place is not  
16 sufficient.

17 The motion to disqualify is simply another attempt by Plaintiff to distract away from  
18 litigating the true merits of this medical malpractice case, and should, respectfully, be denied.

19 DATED this 22<sup>nd</sup> day of November 2021.

20 McBRIDE HALL

21  
22 /s/ Sean M. Kelly

23 Robert C. McBride, Esq.

24 Nevada Bar No.: 7082

25 Sean M. Kelly, Esq.

26 Nevada Bar No.: 10102

27 8329 W. Sunset Road, Suite 260

28 Las Vegas, Nevada 89113

Attorneys for Defendants *Pioneer Health Care,*

*LLC and Muhammad Saeed Sabir, MD*

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☒ **VIA ELECTRONIC SERVICE:** by mandatory electronic service (e-service), proof of e-service attached to any copy filed with the Court; or

☐ **VIA U.S. MAIL:** By placing a true copy thereof enclosed in a sealed envelope with postage thereon fully prepaid, addressed as indicated on the service list below in the United States mail at Las Vegas, Nevada; or

☐ **VIA FACSIMILE:** By causing a true copy thereof to be telecopied to the number indicated on the service list below.

Laura J. Ginette, Esq.  
Zachary J. Thompson, Esq.  
Ian M. Houston, Esq.  
HALL PRANGLE & SCHOONVELD, LLC  
1140 N. Town Center Dr., Suite 350  
Las Vegas, Nevada 89144  
Attorneys for *Defendant Jayson Paulo Alberto*  
*Agaton, APRN*

/s/ Madeline VanHeuvelen  
An Employee of *McBRIDE HALL*



# EXHIBIT A

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STATE OF NEVADA               )  
COUNTY OF CLARK             )

KRISTY JOHNSON being first duly sworn, deposes and states as follows:

1. My name is Kristy Johnson.

2. I worked as a paralegal at the law firm of Breeden & Associates, PLLC from October 2017 until November 5, 2021. At no time have I been licensed to and/or employed to practice law in the State of Nevada.

3. I did not arrange for an interview with the McBride Hall law firm until 8:48 p.m. the evening of October 19, 2021, after the conclusion of trial in the *Kimberly Taylor v. Keith Brill, M.D.* matter. Prior to that time, I did not have any conversations or communications with counsel from the McBride Hall law firm regarding an employment opportunity.

4. I interviewed for a paralegal position with the McBride Hall law firm on October 21, 2021. During the interview, we discussed that I would need to be screened off of any active files between the law firms of Breeden & Associates, PLLC and McBride Hall and could not discuss the litigation between the two law firms, including the cases *Jane Nelson v. Muhammad Saeed Sabir, M.D., et al.* (Case No. A-20-823285-C) and *Kimberly Taylor v. Keith Brill, M.D., et al.* (Case No. A-18-773472-C).

5. Thereafter, I accepted employment with the law firm of McBride Hall also as a paralegal. An express condition of my employment was that a conflict check would be conducted, I would be screened off of any mutual matters between the McBride Hall and Breeden & Associates, PLLC law firms, and I would be prohibited from disclosing any confidential and/or privileged information I may possess about any potentially conflicting, mutual litigation between the two law firms.

6. When I left the Breeden & Associates, PLLC law firm to accept employment at the McBride Hall law firm, a conflict check was conducted by the McBride Hall law firm to determine whether any potential conflicts were presented by my accepting employment with the McBride Hall law firm.

7. The two law firms had some mutual litigation. Two of the cases were *Jane Nelson v. Muhammad Saeed Sabir, M.D., et al.* (Case No. A-20-823285-C) and *Kimberly Taylor v. Keith Brill, M.D., et al.* (Case No. A-18-773472-C). The Adam Breeden & Associates, PLLC law firm represented Plaintiffs Jane Nelson and Kimberly Taylor and the McBride Hall law firm served as Defense counsel in both cases.

8. Prior to beginning my employment with the McBride Hall law firm, I was informed by Ms. Heather Hall that I could not discuss either matter with anyone who is employed with McBride Hall. I agreed that I would not discuss either the *Jane Nelson* or *Kimberly Taylor* matters with anyone employed with the McBride Hall law firm.

9. At no time have I communicated, stated, disclosed or divulged any confidential and/or privileged information I may possess regarding the *Jane Nelson* or *Kimberly Taylor* matters to anyone at the McBride Hall law firm. Since beginning my employment at the McBride Hall law firm, two Memoranda have been circulated to all members of the McBride Hall law firm advising all of my screening off the *Kimberly Taylor* and *Jane Nelson* matters and all firm members have been instructed not to discuss the *Kimberly Taylor* or *Jane Nelson* matter with me. Additionally, my computer access to these files has been blocked. It is my further understanding that hard files for these cases have been locked in a filing cabinet which only Mr. Sean Kelly has a key to open.

10. I am not the paralegal assigned to work on either the Jane Nelson or Kimberly Taylor matters, as the McBride Hall law firm employs two other paralegals.

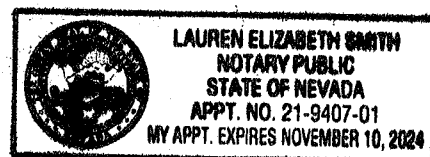
11. As I have not discussed either the *Kimberly Taylor* or *Jane Nelson* case with any member of the McBride Hall law firm, no member of the McBride Hall law firm knows what confidential and/or privileged information I may possess about either case.

FURTHER YOUR AFFIANT SAYETH NAUGHT.

KRISTY JOHNSON

SUBSCRIBED AND SWORN to before  
me this 19<sup>th</sup> day of November, 2021.

NOTARY PUBLIC



APPX000060

# EXHIBIT B



# MCBRIDE HALL

ATTORNEYS AT LAW

# MEMO

## MEMORANDUM

DATE: November 8, 2021

TO: All Staff

FROM: Heather Hall

To all staff:

Please be advised that after Kristy Johnson accepted our offer of employment, I informed her that she would be screened from both *Taylor v. Brill, et al. District Court Case No.: A-18-773472-C* and *Nelson V. Pioneer Health Care, et al. District Court Case No. A-20-823285-C* before beginning any employment with McBride Hall. I also informed her that she would need to understand that she could not discuss either matter with anyone who is employed with McBride Hall and she voiced her agreement to refrain from any discussion with members of this law firm.

Prior to Ms. Johnson beginning her employment with McBride Hall, I was personally responsible for ensuring that she is appropriately screened from these two cases. The screening process in place includes: (a) separate discussions with Ms. Johnson and all members of the law firm of McBride Hall regarding the issue and that I would be screening Ms. Johnson from the *Taylor* and *Nelson* matters; (2) preparation of a memorandum distributed to the entire firm advising all of the screening of Ms. Johnson for these two matters; (3) segregation of the *Taylor* and *Nelson* files in a locked file cabinet that only attorney Robert McBride will have the key to open; and (4) arranging for our IT department to lock out Ms. Johnsons access to any electronic documents or other materials in any way related to the *Taylor* and *Nelson* matters.

For both these matters, the paralegal working on them is Kristine Herpin. Ms. Herpin remains a part of my law firm and will continue full paralegal duties on these two cases. The paralegal Ms. Johnson is replacing never had any involvement in either matter.

As mentioned previously, Ms. Johnson was advised that she is not to discuss the *Taylor* and *Nelson* matters with any employee at McBride Hall and employees at McBride Hall were told the same as to Ms. Johnson. No member McBride Hall has ever discussed any confidential information with Ms. Johnson about these two cases and will not do so in the future.

---

APPX000062

## Heather S. Hall

---

**From:** Lena Markle  
**Sent:** Monday, November 8, 2021 9:38 AM  
**To:** All McBride Hall  
**Subject:** MEMO TO ALL STAFF: Kristy Johnson Case Screening  
**Attachments:** Memo Kristy Johson Case conflicts.pdf

Dear Staff,

Please read the attached memo regarding case screening for Kristy Johnson.  
A copy is pasted below as well as attached in PDF.



**MCBRIDE HALL**  
ATTORNEYS AT LAW

# MEMO

MEMORANDUM

DATE: November 8, 2021

TO: All Staff

FROM: Heather Hall

To all staff:

Please be advised that after Kristy Johnson accepted our offer of employment, I informed her that she would be screened from both *Taylor v. Brill, et al. District Court Case No.: A-18-773472-C* and *Nelson V. Pioneer Health Care, et al. District Court Case No. A-20-823285-C* before beginning any employment with McBride Hall. I also informed her that she would need to understand that she could not discuss either matter with anyone who is employed with McBride Hall and she voiced her agreement to refrain from any discussion with members of this law firm.

Prior to Ms. Johnson beginning her employment with McBride Hall, I was personally responsible for ensuring that she is appropriately screened from these two cases. The screening process in place includes: (a) separate discussions with Ms. Johnson and all members of the law firm of McBride Hall regarding the issue and that I would be screening Ms. Johnson from the *Taylor* and *Nelson* matters; (2) preparation of a memorandum distributed to the entire firm advising all of the screening of Ms. Johnson for these two matters; (3) segregation of the *Taylor* and *Nelson* files in a locked file cabinet that only attorney Robert McBride will have the key to open; and (4) arranging for our IT department to lock out Ms. Johnsons access to any electronic documents or other materials in any way related to the *Taylor* and *Nelson* matters.

For both these matters, the paralegal working on them is Kristine Herpin. Ms. Herpin remains a part of my law firm and will continue full paralegal duties on these two cases. The paralegal Ms. Johnson is replacing never had any involvement in either matter.

As mentioned previously, Ms. Johnson was advised that she is not to discuss the *Taylor* and *Nelson* matters with any employee at McBride Hall and employees at McBride Hall were told the same as to Ms. Johnson. No member McBride Hall has ever discussed any confidential information with Ms. Johnson about these two cases and will not do so in the future.

Lena Markle  
Office Administrator  
8329 West Sunset Road, Suite 260  
Las Vegas, Nevada 89113  
Email: LMarkle@mcbridehall.com  
Direct: (725) 216-1974

Office: (702) 792-5855  
Facsimile: (702) 796-5855



# MCBRIDE HALL

ATTORNEYS AT LAW

NOTICE: THIS MESSAGE IS CONFIDENTIAL, INTENDED FOR THE NAMED RECIPIENT(S) AND MAY CONTAIN INFORMATION THAT IS (I) PROPRIETARY TO THE SENDER, AND/OR, (II) PRIVILEGED, CONFIDENTIAL, AND/OR OTHERWISE EXEMPT FROM DISCLOSURE UNDER APPLICABLE STATE AND FEDERAL LAW, INCLUDING, BUT NOT LIMITED TO, PRIVACY STANDARDS IMPOSED PURSUANT TO THE FEDERAL HEALTH INSURANCE PORTABILITY AND ACCOUNTABILITY ACT OF 1996 ("HIPAA"). IF YOU ARE NOT THE INTENDED RECIPIENT, OR THE EMPLOYEE OR AGENT RESPONSIBLE FOR DELIVERING THE MESSAGE TO THE INTENDED RECIPIENT, YOU ARE HEREBY NOTIFIED THAT ANY DISSEMINATION, DISTRIBUTION OR COPYING OF THIS COMMUNICATION IS STRICTLY PROHIBITED. IF YOU HAVE RECEIVED THIS TRANSMISSION IN ERROR, PLEASE NOTIFY US IMMEDIATELY BY REPLY E-MAIL OR BY TELEPHONE AT (702) 792-5855, AND DESTROY THE ORIGINAL TRANSMISSION AND ITS ATTACHMENTS WITHOUT READING OR SAVING THEM TO DISK. THANK YOU.



# EXHIBIT C

## Natalie Jones

---

**From:** Brandon Baumeister | Network Heroes <brandon@network-heroes.com>  
**Sent:** Monday, November 8, 2021 9:34 AM  
**To:** Natalie Jones  
**Subject:** RE: [External] New Hire

Hello Natalie,  
I've added the requested folder permissions. Please let me know if you need anything else.

Thank You,



**Brandon Baumeister | CTO / Systems Administrator**

500 N Rainbow Blvd. Ste 214, Las Vegas, NV 89131  
[brandon@network-heroes.com](mailto:brandon@network-heroes.com) | [www.network-heroes.com](http://www.network-heroes.com)  
(702) 252-HERO (4376)

---

**From:** Natalie Jones <njones@mcbridehall.com>  
**Sent:** Monday, November 8, 2021 9:16 AM  
**To:** Ticket@network-heroes.com  
**Subject:** [External] New Hire

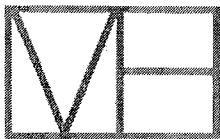
**Caution: External Sender**

Hey we have a new hire, Kristy Johnson, that needs to be blocked out of certain files. The two files she needs to be blocked from are

DATA(Z) > 507 ProAss > 5477-01 Taylor v. Brill  
&  
DATA(Z) > 506 NORCAL > 6285-02 Nelson v. Pioneer Health, et al

Thank you,

Natalie Jones  
*Legal Assistant to Teyla Charlotte Buys, Esq.*  
[njones@mcbridehall.com](mailto:njones@mcbridehall.com) | [www.mcbridehall.com](http://www.mcbridehall.com)  
8329 West Sunset Road  
Suite 260  
Las Vegas, Nevada 89113  
Telephone: (702) 792-5855  
Facsimile: (702) 796-5855



**MCBRIDE HALL**  
ATTORNEYS AT LAW

# EXHIBIT D

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STATE OF NEVADA                 )  
COUNTY OF CLARK               ) ss.

I, SEAN M. KELLY, ESQ., do hereby declare under penalty of perjury pursuant to NRCP 43(c) and NRS 53.045 as follows:

1. I am an attorney licensed to practice law in the State of Nevada and I am a partner with the law firm of McBRIDE HALL.

2. I serve as Defendants Dr. Sabir and Pioneer Health Care, LLC's counsel in the case identified as *Jane Nelson v. Dr. Sabir, et al.*, Case No. A-20-823285-C and have done so since they made their initial appearance in the instant litigation.

3. This Declaration is made and based upon my personal knowledge and I am competent to testify to the matters contained herein.

4. Ms. Johnson did not arrange for an interview with the McBride Hall law firm until after the conclusion of trial in the *Kimberly Taylor v. Keith Brill, M.D.* matter. Prior to that time, I did not have any conversations with Ms. Johnson regarding an employment opportunity at the McBride Hall law firm.

5. Ms. Johnson attended an interview at the McBride Hall law firm on October 21, 2021 and was told during the interview that she would need to be screened off of any active files between the law firms of Breeden & Associates, PLLC and McBride Hall and could not discuss the litigation between the two law firms, including the cases *Jane Nelson v. Muhammad Saeed Sabir, M.D., et al.* (Case No. A-20-823285-C) and *Kimberly Taylor v. Keith Brill, M.D., et al.* (Case No. A-18-773472-C).

6. After an employment opportunity as a paralegal was extended to Ms. Johnson, a conflict check was conducted to screen her off of any mutual files between the McBride Hall and Breeden & Associates law firms.

7. Two Memoranda have been circulated to all members of the McBride Hall law firm advising all that Ms. Johnson has been screened off *the Kimberly Taylor and Jane Nelson* matters

1 and all firm members have been instructed not to discuss the *Kimberly Taylor* and *Jane Nelson*  
2 matters with Ms. Johnson.

3 8. Ms. Johnson's computer access to the Jane Nelson matters has been blocked.

4 9. The hard files for the *Kimberly Taylor* and *Jane Nelson* matters have been locked  
5 in a filing cabinet to which Mr. Kelly possesses the only key.

6 10. At no time have I ever acquired confidential and/or privileged information, or any  
7 information, whatsoever regarding *Jane Nelson* or the instant litigation from Ms. Kristy Johnson.

8 FURTHER YOUR DECLARANT SAYETH NAUGHT.

9  
10  
11   
12 SEAN M. KELLY, ESQ.

# EXHIBIT E



# MCBRIDE HALL

ATTORNEYS AT LAW

October 25, 2021

VIA E-Service

Adam J. Breeden, Esq.  
BREEDEN & ASSOCIATES, PLLC  
376 E. Warm Springs Road, Suite 120  
Las Vegas, Nevada 89119

Re: *Taylor v. Brill, et al.*  
District Court Case No.: A-18-773472-C  
And  
*Nelson v. Pioneer Health Care et al.*  
District Court Case No. A-20-823285-C

Dear Mr. Breeden:

I am in receipt of your October 25, 2021 email regarding your paralegal, Kristy Johnson's acceptance of a paralegal position with my office and indicating your intent to seek my law firm's disqualification on two matters: *Taylor v. Brill* and *Nelson v. Pioneer Health Care*. I disagree with your assertion that there is imputed disqualification of my law firm in those matters due to the anticipated employment of Ms. Johnson at our office.

We take conflict and ethics matters very seriously. First, I want you to be aware that we had no discussion with Ms. Johnson about an employment opportunity with our firm until the *Taylor* trial was concluded. We were well aware of Ms. Johnson's prior work on the *Taylor* and *Nelson* matters as complied with our affirmative duty to determine whether Ms. Johnson had access to adversarial client files during her interview for the position. *Leibowitz v. Eighth Judicial Dist. Court*, 119 Nev. 523, 532-33, 78 P.3d 515, 521-22 (2003). Further, the trial in *Taylor* concluded on October 20, 2021.

After Ms. Johnson accepted our offer of employment, I informed her that she would be screened from both these cases before beginning any employment with McBride Hall. I also informed her that she would need to understand that she could not discuss either matter with anyone

T: 702-792-5855 | F: 702-796-5855  
www.mcbridehall.com

8329 West Sunset Road, Suite 260  
Las Vegas, Nevada 89113

who is employed with my law firm and she voiced her agreement to refrain from any discussion with members of this law firm.

Prior to Ms. Johnson beginning her employment with McBride Hall, I will be personally responsible for ensuring that she is appropriately screened from these two cases. The screening process in place includes: (a) separate discussions with Ms. Johnson and all members of the law firm of McBride Hall regarding the issue and that I would be screening Ms. Johnson from the *Taylor* and *Nelson* matters; (2) preparation of a memorandum distributed to the entire firm advising all of the screening of Ms. Johnson for these two matters; (3) segregation of the Taylor and Nelson files in a locked file cabinet that only attorney Robert McBride will have the key to open; and (4) arranging for our IT department to lock out Ms. Johnsons access to any electronic documents or other materials in any way related to the *Taylor* and *Nelson* matters.

For both these matters, the paralegal working on them is Kristine Herpin. Ms. Herpin remains a part of my law firm and will continue full paralegal duties on these two cases. The paralegal Ms. Johnson is replacing never had any involvement in either matter.

As mentioned previously, Ms. Johnson was advised that she is not to discuss the *Taylor* and *Nelson* matters with any employee at McBride Hall and employees at McBride Hall were told the same as to Ms. Johnson. Although Ms. Johnson has not started her employment with our firm, no member of my law firm has ever discussed any confidential information with Ms. Johnson about these two cases and will not do so in the future.

I trust that the foregoing addresses your concerns over Ms. Johnson's hiring, our screening of her from these two cases, and our full compliance with Nevada Rule of Professional Conduct 1.10(e). Please feel free to contact me directly should you have any additional concerns pertaining to this matter.

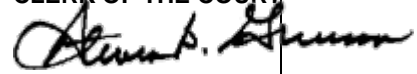
Sincerely,

McBRIDE HALL

/s/ Heather S. Hall

HEATHER S. HALL, ESQ.





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5 DISTRICT COURT  
6 CLARK COUNTY, NEVADA  
7

8 JANE NELSON, ) CASE NO.: A-20-823285-C  
9 Plaintiff, ) DEPT. XXII  
10 vs. )  
11 MUHAMMED SABIR, M.D, )  
12 Defendant. )  
13

14 BEFORE THE HONORABLE SUSAN H. JOHNSON, DISTRICT COURT JUDGE  
15 TUESDAY, NOVEMBER 23, 2021

16 **RECORDER'S TRANSCRIPT OF HEARING RE:**  
17 **PLAINTIFF JANE NELSON'S MOTION TO DISQUALIFY THE**  
18 **MCBRIDE HALL LAW FIRM FROM REPRESENTING DEFENDANTS**  
19 **DR. SABIR AND PIONEER HEALTH CARE, LLC ON AN ORDER**  
20 **SHORTENING TIME**

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25 APPEARANCES ON PAGE 2:

RECORDED BY: NORMA RAMIREZ, COURT RECORDER

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APPEARANCES:

For the Plaintiff:

ADAM J. BREEDEN, ESQ.  
(Via Bluejeans)

For the Defendant:  
Pioneer Health Care LLC

SEAN M. KELLY, ESQ.  
(Via Bluejeans)

For the Defendant:  
Jayson Paulo Alberto Agaton

TRENT L. EARL, ESQ.  
(Via Bluejeans)

1 Las Vegas, Nevada; Tuesday, November 23, 2021

2  
3 [Hearing commenced at 9:13 a.m.]

4 THE COURT: All right. Page 3, Nelson versus Sabir, case  
5 number A-20-823285-C. Would counsel who's present please identify  
6 yourself for the record?

7 MR. BREEDEN: Good morning, Your Honor. This is Adam  
8 Breeden for the Plaintiff Ms. Nelson.

9 MR. KELLY: Good morning, Your Honor. Sean Kelly on  
10 behalf of Dr. Sabir and Pioneer Health Care.

11 THE COURT: Okay and this is --

12 MR. EARL: Good morning, Your Honor --

13 THE COURT: Oh, I'm sorry.

14 MR. EARL: Trent Earl on behalf of Jason Agaton.

15 THE COURT: Okay, any other attorneys in this case? No?  
16 We got them all. All right. All right -- this is Plaintiff's motion to  
17 disqualify the McBride Hall Law Firm from representing Defendants Dr.  
18 Sabir and Pioneer Health Care, LLC which I did agree to hear on an  
19 order shortening time given Mr. Breeden's calendar.

20 So, Mr. Breeden.

21 MR. BREEDEN: Your Honor, there's really two options for  
22 you here today. The first option is, you can look at this motion and say,  
23 based on the unique facts here there's enough here that warrants  
24 disqualification and I'm uncomfortable with any screening measures.  
25 And that's what we'd like you to do here today.

1           The second option is, you can say, well there might be some  
2 circumstances under which screening here would be effective. In which  
3 case under the *Ryan's Express* case you would actually have to set a  
4 evidentiary hearing where we discuss that and then afterward you would  
5 have to make specific findings of fact and conclusions of law.

6           Obviously, I'm advocating for the first that McBride Hall should  
7 simply be disqualified under the unique facts of this case where mid  
8 lawsuit, they poached a key employee from my law office with all  
9 confidential and privileged information about case strategy and my  
10 mental impressions of this case.

11           I will say that any doubts regarding disqualification are  
12 resolved in favor of disqualification. That comes from the *Brown v.*  
13 *Eighth Judicial District Court* case. I would also say that imputed  
14 disqualification exists for several reasons and that is to ensure public  
15 confidence in the judicial system to avoid bad actors who might  
16 intentionally secretly use confidential information from the employee who  
17 has changed positions, and also to avoid the possibility of inadvertent or  
18 accidental disclosures.

19           And I've had a few email exchanges with one of the principals  
20 of the McBride Hall Law Firm, Ms. Heather Hall, and she keeps arguing  
21 to me that, you know, she thinks you can never do disqualification in this  
22 case because she has no actual knowledge of confidential information.  
23 And that, of course, is not the standard at all for imputed disqualification.

24           There's actually what is called a "presumption of shared  
25 confidences," under the law. So they are presumed, that entire law firm,

1 to have all the confidential and privileged information about this client's  
2 case that my former paralegal, Ms. Johnson, had.

3 I would also say for -- to the McBride Hall Law Firm that this is  
4 not personal. When I advised the client in this case, Ms. Nelson, of this  
5 development and what her options were, she was extremely concerned  
6 about this development and asked that I proceed with the  
7 disqualification motion. The other client who is involved, Ms. Taylor,  
8 was equally concerned and I agree with this decision and I think  
9 disqualification is warranted but ultimately this was the client's decision  
10 to pursue this.

11 So, there is a two-step process to be followed here. First,  
12 under the *Leibowitz* case, you must determine whether Ms. Johnson  
13 actually has confidential and privileged information. I think that's  
14 conceded in this case by McBride Hall. She was a key employee, has  
15 met the client numerous times; has reviewed all of the case status  
16 reports with my confidential assessments of this case. And so therefore,  
17 the McBride Law or imputed disqualification is presumed in this case.

18 Step two occurs only if McBride Hall says they think they can  
19 establish to you that screening would be effective under the particular  
20 facts of this case. And then you would have to hold an evidentiary  
21 hearing, make specific findings of fact and conclusions of law. And by  
22 the way, McBride Hall, not my firm, has the burden of proof at that  
23 hearing to show you that the screening will be effective. The  
24 disqualification -- the imputed disqualification is presumed.

25 As I sit here arguing this to you, I win -- or my client wins on

1 the disqualification issue. I should rephrase. So I will tell you though,  
2 that screening seems to work best when the employee involved who has  
3 changed positions has minimal confidential information or the  
4 information the employee has would not be devastating to the  
5 prosecution of the case, and his case presents the most extreme facts.  
6 We're not dealing with a former client, or a former matter, or a different  
7 matter for a present client. This is the same ongoing disputed case.

8           So if the law was, hey screening is effective in all cases, all  
9 this case law would be very short, Judge, and it isn't. I mean, there's a  
10 lot that you would have to find in this case to overcome the presumption  
11 of imputed disqualification.

12           I will share with you personally, that I have a dim view of  
13 screening because screening assumes there are no bad actors out  
14 there, and sadly we know that's not true. Screening assumes there is  
15 no inadvertent disclosures that will ever occur, and screening disregards  
16 the client's lack of faith in the legal process and the client suspicion that  
17 her confidential information may be leaked to the other side and just  
18 discounts that and provides that with no meaning, and I think that's a  
19 mistake under the facts of this particular case.

20           And I'll conclude here in a minute, but I just have a couple  
21 more thoughts for you, Judge. McBride Hall in their opposition sort of  
22 speaks about the prejudice to their own client if they were forced to  
23 withdraw here. And I don't believe there'd be a lot of prejudice here to  
24 Dr. Sabir and Pioneer Health Care. McBride Hall are fine attorneys but  
25 there are a number of attorneys that could come in and defend this

1 case, and we are several months still from expert disclosures, the  
2 discovery cutoff, and trial in this case.

3 But I wish to point to out, Judge, that McBride Hall caused this  
4 situation. I didn't cause it. My client certainly didn't cause it. And if  
5 there's some inconvenience to befall the players in this situation, it  
6 should fall on the McBride Hall Law Firm, and certainly they realized  
7 when they hired away this employee, that she had key confidential  
8 information and it was going to be a real problem with these two matters.

9 So in closing, Your Honor, this is the clearest case of imputed  
10 disqualification that can be imagined when a key employee with the  
11 most sensitive and privileged information possible was hired away mid  
12 lawsuit by opposing counsel. I do not think that screening could ever be  
13 effective here, so I would ask you to simply grant the disqualification  
14 today. However, if you did want to hear more on the screening issue  
15 under the *Ryan's Express* case, you would have to set an evidentiary  
16 hearing. I think it would probably be a half day hearing and we would  
17 need that, or I would request it sooner rather than later.

18 So, thank you, Your Honor.

19 THE COURT: Okay. Counsel?

20 MR. KELLY: Thank you, Your Honor. I obviously disagree  
21 with everything Counsel just stated and we provided with the Court with  
22 all of the screening measures we've taken including prior to hiring Ms.  
23 Johnson. We informed her that she would have to be screened off of  
24 these two cases. And since Counsel brings up the other case, just for  
25 Your Honor's information, that case was actually tried last month,

1 resulting in a defense verdict before Ms. Johnson even came over to our  
2 firm, so that case is -- maybe there's an appeal coming, but that case  
3 was already tried, so we're talking about this case.

4           We have sent two memos to everyone in our office that she is  
5 not to be talked to or involved in either of these cases. We have locked  
6 up both files. The keys are in my office. We have two other paralegals  
7 in addition to Ms. Johnson, so those paralegals have been assigned to  
8 these cases, not Ms. Johnson, whatsoever. When someone needs to  
9 get in one of those files, they have to come into my office and request  
10 the key from me. Ms. Johnson knows that she can't talk about the files  
11 or do anything on them. She hasn't bothered to ask for the key or any of  
12 that.

13           She -- we had our IT guy restrict her computer to where she  
14 can't access those filed electronically either. She has no access to  
15 them. Everybody in our firm knows that she can't be involved in them  
16 and she has been properly screened off. All of this information has been  
17 provided to the Court and Counsel which shows that we have met our  
18 burden to screen her off these two cases, one of which was already  
19 tried.

20           Plaintiff has not shown that she would be prejudiced by the  
21 hiring of Ms. Johnson other than a bunch of assumptions. And again,  
22 McBride Hall has taken all of the steps necessary to make sure she's  
23 screened off and we have not asked for or received any confidential  
24 information under any of these cases, nor do we intend to do that. That  
25 was not the purpose of hiring her. The purpose for hiring her is we



1 needed another paralegal in addition to the two we already had. We  
2 have enough cases to where we can give work to all three of them. We  
3 don't need her on any of those.

4 So, we would request that Plaintiff's motion be denied.

5 THE COURT: Okay. Mr. Breeden?

6 MR. BREEDEN: Just quickly in rebuttal, Your Honor. I think  
7 we hear the same arguments that, hey, no actual exchange here of  
8 confidential information has occurred. And of course, the reasons  
9 behind imputed disqualification are more than that. And again, it is to  
10 avoid potential bad actors and I wish I could tell you that I absolutely  
11 trusted every legal staff and every attorney in this community, Judge,  
12 and I personally don't. And clearly in this case, my client did not.

13 My client was very troubled by this and it's important to  
14 maintain the public's trust in the legal process and to avoid suspicion  
15 that there had been leaks. And so, it -- the standard here is much  
16 broader and -- than just, hey, has an actual leak occurred? I don't have  
17 to establish that. All I have to establish to warrant disqualification is that  
18 this former employee of mine had confidential privileged information and  
19 she absolutely did. She had the highest level. She worked on  
20 everything in this case including all of my very detailed status letters to  
21 this client outlining strategy for negotiations, settlement, trial, et cetera.

22 So, I don't think screening is possible in this case. Screening  
23 might work again for -- if this was a former client or something of that  
24 effect, and I just don't think that screening could possibly be effective in  
25 this case. And so, I'll submit with that.

1 THE COURT: Okay. Counsel, I'm not seeing any prejudice at  
2 this point and I am convinced that the McBride Hall has screened Ms.  
3 Johnson off of this -- by the way, that's no relation to me.

4 We're -- I'm just not quite seeing it. Obviously, if something  
5 comes up, Mr. Breeden, I'm sure you'll let me know through another  
6 motion. So, at this point I am denying your motion to disqualify the  
7 McBride Hall Law Firm. That is without prejudice. It's not going to  
8 preclude you from bringing it again if you find out something has  
9 happened. But they've locked the computers, they've closed -- locked  
10 the file room from her. I -- so, I think that's enough. She's not supposed  
11 to talk about it.

12 MR. KELLY: And Your Honor, just --

13 THE COURT: What?

14 MR. KELLY: Your Honor, just so it's clear, because you said  
15 file room, we have these files in a separate room from the rest of our  
16 files. So, they're locked even separate away from them, just so that's  
17 completely clear.

18 THE COURT: Okay.

19 MR. KELLY: But thank you.

20 THE COURT: Now Counsel, in drafting this proposed order, I  
21 want it to include the limitations on Ms. Johnson. That she has been  
22 blocked in terms of the computer, she has been blocked from looking at  
23 this trial, she is blocked from talking about this case, and luckily this  
24 case is coming to trial in August of 2022, and we only have the two  
25 cases that you guys have talked about, the *Taylor* case and the *Nelson*

1 case; is that right? And the *Taylor* case has been tried?

2 MR. BREEDEN: The *Taylor* case is on appeal.

3 THE COURT: Okay. But it's --

4 MR. BREEDEN: And it's in a different department.

5 THE COURT: Okay. So, I think that's enough. But I'd sure  
6 like to have the order indicate that you will continue with these limitations  
7 on Ms. Johnson.

8 MR. KELLY: Absolutely, Your Honor.

9 THE COURT: Okay. Mr. Breedon, obviously if you find out  
10 that she has violated -- she and the law firm has violated the order, I  
11 want to know about it.

12 MR. BREEDEN: Well, that's the problem is that I -- you  
13 inherently can't establish that. And that's why I think screening is not  
14 effective under the particular facts of this case. If this had been a closed  
15 matter, or if this had been, for example, a former client who is not a  
16 current client, then we wouldn't have this risk. But I -- I'm very troubled  
17 by this and I continue to be, Your Honor.

18 THE COURT: Okay, I understand.

19 MR. BREEDEN: And probably looking at another writ.

20 THE COURT: Okay. Well, that's fine. You know, we'll do  
21 whatever the Supreme Court tells me to do. And I guess I also look at it  
22 this way is, Mr. Breedon, I have the upmost respect for both you and the  
23 McBride Hall Law Firm. You guys try complicated malpractice cases.  
24 I've known you guys for a long time and I guess I just think that both of  
25 you would be honest with me. So, in any event, there will be limitations

1 placed upon Ms. Johnson, with respect to this file and I am denying your  
2 motion to disqualify. Okay?

3 MR. KELLY: Thank you, Your Honor.

4 MR. BREEDEN: Thank you, Your Honor.

5 THE COURT: Okay. Thank you.

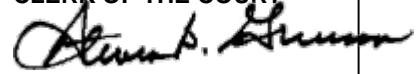
6 [Hearing concluded at 9:29 a.m.]

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21 ATTEST: I do hereby certify that I have truly and correctly transcribed  
22 the audio/video proceedings in the above-entitled case to the best of my  
23 ability.

24 

25 Brittany Amoroso  
Court Recorder/Transcriber



NEOJ  
ROBERT C. MCBRIDE, ESQ.  
Nevada Bar No.: 7082  
SEAN M. KELLY, ESQ.  
Nevada Bar No.: 10102  
MCBRIDE HALL  
8329 W. Sunset Road, Suite 260  
Las Vegas, Nevada 89113  
Telephone No. (702) 792-5855  
Facsimile No. (702) 796-5855  
E-mail: [rcmcbride@mcbridehall.com](mailto:rcmcbride@mcbridehall.com)  
E-mail: [smkelly@mcbridehall.com](mailto:smkelly@mcbridehall.com)  
Attorneys for Defendant  
*Pioneer Health Care, LLC and*  
*Muhammad Saeed Sabir, M.D.*

**DISTRICT COURT**  
**CLARK COUNTY, NEVADA**

JANE NELSON, an individual,  
  
Plaintiff,

vs.

MUHAMMAD SAEED SABIR, M.D., an  
individual; JAYSON PAULO ALBERTO  
AGATON, APRN, an individual; PIONEER  
HEALTH CARE, LLC, a domestic limited  
liability company; and DOES I through X and  
ROES CORPORATIONS, I through X,  
inclusive  
  
Defendants.

**CASE NO.: A-20-823285-C**  
**DEPT NO.: 22**

**NOTICE OF ENTRY OF ORDER**  
**DENYING PLAINTIFF JANE**  
**NELSON'S MOTION TO DISQUALIFY**  
**DEFENDANTS' COUNSEL**

PLEASE TAKE NOTICE that an Order Denying Plaintiff Jane Nelson's Motion to  
Disqualify Plaintiff's Counsel was entered in the above-entitled action on December 1, 2021, a

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1 copy of which is attached hereto.

2 DATED this 1<sup>st</sup> day of December 2021.

3 McBRIDE HALL

4 /s/ Sean M. Kelly

5 Robert C. McBride, Esq.

6 Nevada Bar No.: 7082

7 Sean M. Kelly, Esq.

8 Nevada Bar No.: 10102

9 8329 W. Sunset Road, Suite 260

10 Las Vegas, Nevada 89113

11 Attorneys for Defendants *Pioneer Health Care,*

12 *LLC and Muhammad Saeed Sabir, MD*

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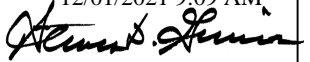
☒ **VIA ELECTRONIC SERVICE:** by mandatory electronic service (e-service), proof of e-service attached to any copy filed with the Court; or

☐ **VIA U.S. MAIL:** By placing a true copy thereof enclosed in a sealed envelope with postage thereon fully prepaid, addressed as indicated on the service list below in the United States mail at Las Vegas, Nevada; or

☐ **VIA FACSIMILE:** By causing a true copy thereof to be telecopied to the number indicated on the service list below.

Zachary J. Thompson, Esq.  
Nevada Bar No. 11001  
Trent L. Earl, Esq.  
Nevada Bar No. 15214  
HALL PRANGEL & SCHOONVELD, LLC  
1140 N. Town Center Drive, Ste. 350  
Las Vegas, Nevada 89144  
Attorneys for Defendant *Jayson Paulo Alberto Agaton, APRN*

/s/ Madeline VanHeuvelen  
An Employee of McBRIDE HALL

  
CLERK OF THE COURT

ODM

~~ORDR~~

ROBERT C. MCBRIDE, ESQ.  
Nevada Bar No.: 7082  
SEAN M. KELLY, ESQ.  
Nevada Bar No.: 10102  
McBRIDE HALL  
8329 W. Sunset Road, Suite 260  
Las Vegas, Nevada 89113  
Telephone No. (702) 792-5855  
Facsimile No. (702) 796-5855  
E-mail: [rcmcbride@mcbridehall.com](mailto:rcmcbride@mcbridehall.com)  
E-mail: [smkelly@mcbridehall.com](mailto:smkelly@mcbridehall.com)  
Attorneys for Defendant  
*Pioneer Health Care, LLC and*  
*Muhammad Saeed Sabir, M.D.*

**DISTRICT COURT**  
**CLARK COUNTY, NEVADA**

JANE NELSON, an individual,  
  
Plaintiff,

vs.

MUHAMMAD SAEED SABIR, M.D., an  
individual; JAYSON PAULO ALBERTO  
AGATON, APRN, an individual; PIONEER  
HEALTH CARE, LLC, a domestic limited  
liability company; and DOES I through X and  
ROES CORPORATIONS, I through X,  
inclusive  
  
Defendants.

**CASE NO.: A-20-823285-C**  
**DEPT NO.: 22**

**ORDER DENYING PLAINTIFF JANE**  
**NELSON'S MOTION TO DISQUALIFY**  
**DEFENDANTS' COUNSEL**

**Hearing Date: November 23, 2021**  
**Hearing Time: 8:30 a.m.**

Plaintiff JANE NELSON'S Motion to Disqualify the McBride Hall Law Firm from  
Representing Defendants D. Sabir and Pioneer Health Care, LLC on an Order Shortening Time  
came on for hearing on November 23, 2021, before the Hon. Susan Johnson; with ADAM  
BREEDEN, ESQ. of the law firm of BREEDEN & ASSOCIATES appearing for Plaintiff, JANE  
NELSON; SEAN KELLY, ESQ. of McBRIDE HALL, appearing for Defendants, PIONEER  
HEALTH CARE, LLC and MUHAMMAD SAEED SABIR, MD; and TRENT EARL, ESQ. of  
HALL PRANGEL & SCHOONVELD, LLC appearing for Defendant JAYSON PAULO  
ALBERTO AGATON, APRN. The Court, having reviewed the procedural history, read the Sean



1 moving papers and documents on file herein, heard oral argument by counsel, hereby orders as  
2 follows:

3 **IT IS HEREBY ORDERED, ADJUDGED AND DECREED** that the Court finds that  
4 there is no prejudice in permitting McBride Hall to continue to represent Defendants Pioneer  
5 Health Care, LLC and Muhammad Saeed Sabir, M.D. in this matter. McBride Hall has  
6 demonstrated that they have properly screened Kristy Johnson from the files she was involved in  
7 while at Breeden & Associates, including this case.

8 Those screening measures include: 1) Advising everyone in their firm in two separate  
9 memos that they are not to speak with Ms. Johnson regarding this matter, which is assigned to one  
10 of their two other paralegals; 2) That Ms. Johnson's electronic access to the files has been restricted  
11 by the firm's IT personnel to where she is completely blocked from accessing said files; and 3)  
12 That the hard copy files are locked in file cabinets separate from the firm's other case files, with  
13 the keys for same located in Mr. Kelly's office. Furthermore, Mr. Kelly represented that these  
14 screening measure will continue throughout the litigation of this matter and further represented  
15 that no confidential and/or privileged information has been discussed with Ms. Johnson by anyone  
16 at McBride Hall, and no such discussions will occur in the future.

17 Therefore, Plaintiff JANE NELSON'S Motion to Disqualify the McBride Hall Law Firm  
18 from Representing Defendants D. Sabir and Pioneer Health Care, LLC on an Order Shortening  
19 Time is DENIED, WITHOUT PREJUDICE.

20 **IT IS SO ORDERED.**

Dated this 1st day of December, 2021



22 538 1D5 082A 10A7  
23 Susan Johnson  
24 District Court Judge

1 **Respectfully submitted by:**

2 DATED this 30<sup>th</sup> day of November 2021.

3 McBRIDE HALL  
4

5 /s/ Sean M. Kelly

6 ROBERT C. McBRIDE, ESQ.

7 Nevada Bar No. 7082

8 SEAN M. KELLY, ESQ.

9 Nevada Bar No. 10102

10 8329 W. Sunset Road, Suite 260

Las Vegas, Nevada 89113

Attorneys for Defendants *Pioneer Health Care,*

*LLC and Muhammad Saeed Sabir, MD.*

11 **Approved as to Form and Content by:**

12 DATED this 30th day of November 2021.

13  
14 /s/ Adam J. Breeden

15 Adam J. Breeden, Esq.

16 Nevada Bar No. 8768

BREEDEN & ASSOCIATES

376 E. Warm Springs Rd., Suite 120

Las Vegas, Nevada 89119

Attorneys for *Plaintiff*

**Approved as to Form and Content by:**

DATED this 30th day of November 2021.

/s/ Trent L. Earl

Zachary J. Thompson, Esq.

Nevada Bar No. 11001

Trent L. Earl, Esq.

Nevada Bar No. 15214

HALL PRANGEL & SCHOONVELD, LLC

1140 N. Town Center Drive, Ste. 350

Las Vegas, Nevada 89144

Attorneys for Defendant *Jayson Paulo Alberto*

*Agaton, APRN*

## Madeline VanHeuvelen

---

**From:** Trent Earl <tearl@hpslaw.com>  
**Sent:** Wednesday, November 24, 2021 1:31 PM  
**To:** Sean M. Kelly; Adam Breeden  
**Cc:** Madeline VanHeuvelen  
**Subject:** RE: Nelson v. Sabir, et al

Look good to me. You may use my e-signature.



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

**Trent Earl**  
*Associate*  
O: 702.212.1472  
Email: tearl@hpslaw.com

**Legal Assistant:** Casey Henley  
O: 702.212.1449  
Email: chenley@hpslaw.com

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**From:** Sean M. Kelly <smkelly@mcbridehall.com>  
**Sent:** Wednesday, November 24, 2021 1:14 PM  
**To:** Adam Breeden <adam@breedenandassociates.com>; Trent Earl <tearl@hpslaw.com>  
**Cc:** Madeline VanHeuvelen <mvanheuvelen@mcbridehall.com>  
**Subject:** Nelson v. Sabir, et al

[External Email] CAUTION!.

Adam and Trent,

Attached please find the proposed Order Denying Plaintiff's Motion to Disqualify McBride Hall. Please advise if we have authority to affix your e-signatures to same.

Thank you,

**Sean M. Kelly, Esq.**  
[smkelly@mcbridehall.com](mailto:smkelly@mcbridehall.com) | [www.mcbridehall.com](http://www.mcbridehall.com)

8329 West Sunset Road  
Suite 260

Las Vegas, Nevada 89113  
Telephone: (702) 792-5855  
Facsimile: (702) 796-5855



# MCBRIDE HALL

ATTORNEYS AT LAW

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## Madeline VanHeuvelen

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**From:** Adam Breeden <adam@breedenandassociates.com>  
**Sent:** Friday, November 26, 2021 5:17 AM  
**To:** Sean M. Kelly  
**Cc:** Trent Earl; Madeline VanHeuvelen  
**Subject:** Re: Nelson v. Sabir, et al

You may submit with my e-signature.



**Adam Breeden, Esq.**

Trial Attorney, Breeden & Associates

 376 E. Warm Springs Rd. Ste. 120 Las Vegas, NV 89119  
 702.819.7770  702.819.7771  adam@breedenandassociates.com  
 http://www.breedenandassociates.com/



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On Wed, Nov 24, 2021 at 1:13 PM Sean M. Kelly <[smkelly@mcbridehall.com](mailto:smkelly@mcbridehall.com)> wrote:

Adam and Trent,

Attached please find the proposed Order Denying Plaintiff's Motion to Disqualify McBride Hall. Please advise if we have authority to affix your e-signatures to same.

Thank you,

**Sean M. Kelly, Esq.**

[smkelly@mcbridehall.com](mailto:smkelly@mcbridehall.com) | [www.mcbridehall.com](http://www.mcbridehall.com)

8329 West Sunset Road

Suite 260

Las Vegas, Nevada 89113

Telephone: (702) 792-5855

Facsimile: (702) 796-5855



# MCBRIDE HALL

ATTORNEYS AT LAW

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1 **CSERV**

2  
3 DISTRICT COURT  
CLARK COUNTY, NEVADA  
4

5  
6 Jane Nelson, Plaintiff(s)

CASE NO: A-20-823285-C

7 vs.

DEPT. NO. Department 22

8 Muhammad Sabir, M.D.,  
9 Defendant(s)

10  
11 **AUTOMATED CERTIFICATE OF SERVICE**

12 This automated certificate of service was generated by the Eighth Judicial District  
13 Court. The foregoing Order Denying Motion was served via the court's electronic eFile  
system to all recipients registered for e-Service on the above entitled case as listed below:

14 Service Date: 12/1/2021

15 Adam Breeden

adam@breedenandassociates.com

16 E-File Admin

efile@hpslaw.com

17 Robert McBride

rcmcbride@mcbridehall.com

18 Sean Kelly

smkelly@mcbridehall.com

19 Kristine Herpin

kherpin@mcbridehall.com

20 Michelle Newquist

mnewquist@mcbridehall.com

21 Candace Cullina

ccullina@mcbridehall.com

22 Casey Henley

chenley@hpslaw.com

23 Reina Claus

rclaus@hpslaw.com

24 Lauren Smith

lsmith@mcbridehall.com

25 Natalie Jones

njones@mcbridehall.com

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Madeline VanHeuvelen	mvanheuvelen@mcbridehall.com
Sarah Daniels	sarah@breedenandassociates.com