

# IN THE SUPREME COURT OF THE STATE OF NEVADA

## INDICATE FULL CAPTION:

VALLEY HEALTH SYSTEM, LLC,  
  
Appellant,  
vs.  
ESTATE OF REBECCA POWELL, DARCI  
CREECY, TARYN CREECY, ISALAH  
KHOSROF, and LLOYD CREECY,  
  
Respondents.

No. 84402  
  
Electronically Filed  
Apr 18 2022 03:03 p.m.  
Elizabeth N. Brown  
Clerk of Supreme Court  
  
DOCKETING STATEMENT  
CIVIL APPEALS

## GENERAL INFORMATION

Appellants must complete this docketing statement in compliance with NRAP 14(a). The purpose of the docketing statement is to assist the Supreme Court in screening jurisdiction, identifying issues on appeal, assessing presumptive assignment to the Court of Appeals under NRAP 17, scheduling cases for oral argument and settlement conferences, classifying cases for expedited treatment and assignment to the Court of Appeals, and compiling statistical information.

## WARNING

This statement must be completed fully, accurately and on time. NRAP 14(c). The Supreme Court may impose sanctions on counsel or appellant if it appears that the information provided is incomplete or inaccurate. *Id.* Failure to fill out the statement completely or to file it in a timely manner constitutes grounds for the imposition of sanctions, including a fine and/or dismissal of the appeal.

A complete list of the documents that must be attached appears as Question 27 on this docketing statement. Failure to attach all required documents will result in the delay of your appeal and may result in the imposition of sanctions.

This court has noted that when attorneys do not take seriously their obligations under NRAP 14 to complete the docketing statement properly and conscientiously, they waste the valuable judicial resources of this court, making the imposition of sanctions appropriate. See KDI Sylvan Pools v. Workman, 107 Nev. 340, 344, 810 P.2d 1217, 1220 (1991). Please use tab dividers to separate any attached documents.

1. Judicial District Eighth Department 30  
County Clark Judge Jerry Wiese  
District Ct. Case No. A-19-788787-C

**2. Attorney filing this docketing statement:**

Attorney Adam Garth Telephone 702-693-4335  
Firm Lewis Brisbois Bisgaard & Smith LLP  
Address 6385 S. Roainbow Blvd.,  
Suite 600  
Las Vegas, NV 89118

Client(s) VALLEY HEALTH SYSTEM, LLC

If this is a joint statement by multiple appellants, add the names and addresses of other counsel and the names of their clients on an additional sheet accompanied by a certification that they concur in the filing of this statement.

**3. Attorney(s) representing respondents(s):**

Attorney Paul Padda Telephone 702-366-1888  
Firm PAUL PADDA LAW, PLLC  
Address 4560 S. Decatur Blvd., Suite 300  
Las Vegas, NV 89103

Client(s) ESTATE OF REBECCA POWELL, DARCI CREECY, TARYN CREECY, ISAIAH K

Attorney \_\_\_\_\_ Telephone \_\_\_\_\_  
Firm \_\_\_\_\_  
Address \_\_\_\_\_

Client(s) \_\_\_\_\_

(List additional counsel on separate sheet if necessary)

**4. Nature of disposition below (check all that apply):**

- |   |   |
|---|---|
| <input type="checkbox"/> Judgment after bench trial                   | <input type="checkbox"/> Dismissal:   |
| <input type="checkbox"/> Judgment after jury verdict                  | <input type="checkbox"/> Lack of jurisdiction   |
| <input checked="" type="checkbox"/> Summary judgment                  | <input type="checkbox"/> Failure to state a claim   |
| <input type="checkbox"/> Default judgment                             | <input type="checkbox"/> Failure to prosecute   |
| <input checked="" type="checkbox"/> Grant/Denial of NRCP 60(b) relief | <input type="checkbox"/> Other (specify): _____   |
| <input type="checkbox"/> Grant/Denial of injunction                   | <input type="checkbox"/> Divorce Decree:  |
| <input type="checkbox"/> Grant/Denial of declaratory relief           | <input type="checkbox"/> Original <input type="checkbox"/> Modification                     |
| <input type="checkbox"/> Review of agency determination               | <input checked="" type="checkbox"/> Other disposition (specify): <u>Denial of Fees/Cost</u> |

**5. Does this appeal raise issues concerning any of the following?**

- ☐ Child Custody
- ☐ Venue
- ☐ Termination of parental rights

**6. Pending and prior proceedings in this court.** List the case name and docket number of all appeals or original proceedings presently or previously pending before this court which are related to this appeal:

Supreme Court Case No. 82250

VALLEY HEALTH SYSTEM, LLC (doing business as "Centennial Hills Hospital Medical Center"), a foreign limited liability company,

Petitioner,

vs.

THE EIGHTH JUDICIAL DISTRICT COURT OF THE STATE OF NEVADA ex rel. THE COUNTY OF CLARK, AND THE HONORABLE JUDGE JERRY A. WIESE II,

Respondent,

**7. Pending and prior proceedings in other courts.** List the case name, number and court of all pending and prior proceedings in other courts which are related to this appeal (e.g., bankruptcy, consolidated or bifurcated proceedings) and their dates of disposition:

None.

**8. Nature of the action.** Briefly describe the nature of the action and the result below:

This is a professional negligence case that arises out of the care and treatment Defendant Valley Health System, LLC as well as co-defendant physicians provided to decedent Rebecca Powell from May 3-11, 2017. Plaintiffs commenced their action in this matter on February 4, 2019 alleging professional negligence. NRS 41A.097(2) imposes a statute of limitations of 3 years after the date of injury or 1 year after the plaintiff discovers or through the use of reasonable diligence should have discovered the injury, whichever occurs first.

CHH moved for summary judgment on September 2, 2020, which motion was denied by the District Court on October 29, 2020. By way of writ petition to the Nevada Supreme Court, the Supreme Court agreed to hear the writ petition. On October 18, 2021, the Nevada Supreme Court issued an order granting the CHH's writ petition and directing the Supreme Court Clerk to issue a writ of mandamus directing this Court to vacate its order denying CHH's motion for summary judgment and enter summary judgment in favor of all defendants. The District Court entered judgment in favor of Defendants on November 19, 2021, and the Notice of Entry of Judgment was filed the same day.

**9. Issues on appeal.** State concisely the principal issue(s) in this appeal (attach separate sheets as necessary):

Summary judgment in favor of Defendants entitles them to an award of attorneys' fees pursuant to N.R.C.P. 68, N.R.S. 17.117, and interpreting case authority. Moreover, NRS §§ 7.085 and 18.010(2) along with EDCR 7.60 entitle CHH to costs and attorney fees due to the Plaintiffs' frivolous filing of a lawsuit 8 months after the statute of limitations expired, with proof the exclusively provided, demonstrating that they possessed inquiry notice of the alleged malpractice as early as the date of decedent's death, but no later than June 11, 2017; however, they chose to file a lawsuit in February, 2019, long after the one year statute of limitations expired. Plaintiffs failed to timely move to retax costs, but the District Court refused to award costs. Moreover, the District Court further denied Defendant Valley Health's separate motion for costs and attorneys' fees. Both denials were a manifest abuse of discretion in light of the evidence submitted in the motion and the memorandum of costs, and further that the District Court refused to conduct a hearing at which all evidence of costs and fees could be presented and disputed by Plaintiffs.

**10. Pending proceedings in this court raising the same or similar issues.** If you are aware of any proceedings presently pending before this court which raises the same or similar issues raised in this appeal, list the case name and docket numbers and identify the same or similar issue raised:

We are unaware of pending proceedings on these issues.



**11. Constitutional issues.** If this appeal challenges the constitutionality of a statute, and the state, any state agency, or any officer or employee thereof is not a party to this appeal, have you notified the clerk of this court and the attorney general in accordance with NRAP 44 and NRS 30.130?

☒ N/A

☐ Yes

☐ No

If not, explain:

**12. Other issues.** Does this appeal involve any of the following issues?

☐ Reversal of well-settled Nevada precedent (identify the case(s))

☐ An issue arising under the United States and/or Nevada Constitutions

☐ A substantial issue of first impression

☐ An issue of public policy

☐ An issue where en banc consideration is necessary to maintain uniformity of this court's decisions

☐ A ballot question

If so, explain: N/A

**13. Assignment to the Court of Appeals or retention in the Supreme Court.** Briefly set forth whether the matter is presumptively retained by the Supreme Court or assigned to the Court of Appeals under NRAP 17, and cite the subparagraph(s) of the Rule under which the matter falls. If appellant believes that the Supreme Court should retain the case despite its presumptive assignment to the Court of Appeals, identify the specific issue(s) or circumstance(s) that warrant retaining the case, and include an explanation of their importance or significance:

This appeal may be assigned to the Court of Appeals in accordance with NRAP 17(b)(5) and (7) in that it involves the District Court's refusal to sign a judgment for costs which were undisputed by plaintiff after the Supreme Court's reversal of the District Court and granting Defendants' motion for summary judgment, as well as for a separate motion for additional costs and attorneys' fees for Plaintiffs' initiation and maintenance of a case which they knew was filed well beyond the statute of limitations for which they had inquiry notice more than one year before the commencement of the action.

**14. Trial.** If this action proceeded to trial, how many days did the trial last? 0 \_\_\_\_\_

Was it a bench or jury trial? N/A \_\_\_\_\_

**15. Judicial Disqualification.** Do you intend to file a motion to disqualify or have a justice recuse him/herself from participation in this appeal? If so, which Justice?  
No.

## TIMELINESS OF NOTICE OF APPEAL

**16. Date of entry of written judgment or order appealed from** Feb 15, 2022

If no written judgment or order was filed in the district court, explain the basis for seeking appellate review:

**17. Date written notice of entry of judgment or order was served** Feb 16, 2022

Was service by:

☐ Delivery

☒ Mail/electronic/fax

**18. If the time for filing the notice of appeal was tolled by a post-judgment motion (NRCP 50(b), 52(b), or 59)**

(a) Specify the type of motion, the date and method of service of the motion, and the date of filing.

☐ NRCP 50(b)      Date of filing \_\_\_\_\_

☐ NRCP 52(b)      Date of filing \_\_\_\_\_

☐ NRCP 59      Date of filing \_\_\_\_\_

**NOTE: Motions made pursuant to NRCP 60 or motions for rehearing or reconsideration may toll the time for filing a notice of appeal. See AA Primo Builders v. Washington, 126 Nev. \_\_\_\_, 245 P.3d 1190 (2010).**

(b) Date of entry of written order resolving tolling motion \_\_\_\_\_

(c) Date written notice of entry of order resolving tolling motion was served \_\_\_\_\_

Was service by:

☐ Delivery

☐ Mail

**19. Date notice of appeal filed** Mar 14, 2022

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If more than one party has appealed from the judgment or order, list the date each notice of appeal was filed and identify by name the party filing the notice of appeal:

**20. Specify statute or rule governing the time limit for filing the notice of appeal, e.g., NRAP 4(a) or other**

NRAP 4(a), NRCP 60 & See AA Primo Builders v. Washington, 126 Nev. \_\_\_\_, 245 P.3d 1190

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**SUBSTANTIVE APPEALABILITY**

**21. Specify the statute or other authority granting this court jurisdiction to review the judgment or order appealed from:**

(a)

- |  |                                       |
|--|---------------------------------------|
| <input checked="" type="checkbox"/> NRAP 3A(b)(1)                        | <input type="checkbox"/> NRS 38.205   |
| <input type="checkbox"/> NRAP 3A(b)(2)                                   | <input type="checkbox"/> NRS 233B.150 |
| <input type="checkbox"/> NRAP 3A(b)(3)                                   | <input type="checkbox"/> NRS 703.376  |
| <input checked="" type="checkbox"/> Other (specify) <u>NRCP 58(b)(1)</u> |                                       |
- 

(b) Explain how each authority provides a basis for appeal from the judgment or order:  
NRCP 58 calls for entry of judgment which must be signed and approved by the court which the District Court refused to sign.

NRAP 3A(b)(1) is a final judgment of the District Court which denied a request for costs and fees after dismissal of plaintiffs' case pursuant to a writ of mandamus by this Court issued on October 18, 2021 directing entry of summary judgment by the District Court due to its manifest abuse of discretion in failing to grant summary judgment to Defendants.

**22. List all parties involved in the action or consolidated actions in the district court:**

(a) Parties:

ESTATE OF REBECCA POWELL, through BRIAN POWELL, as Special Administrator; DARCI CREECY; TARYN CREECY, ISAIAH KHOSROF, LLOYD CREECY, Plaintiffs.

VALLEY HEALTH SYSTEM, LLC, DR. DIONICE S. JULIANO, M.D., DR. CONRADO C.D. CONCIO, M.D.; DR. VISHAL S. SHAH, M.D., Defendants.

(b) If all parties in the district court are not parties to this appeal, explain in detail why those parties are not involved in this appeal, *e.g.*, formally dismissed, not served, or other:

DR. DIONICE S. JULIANO, M.D., DR. CONRADO C.D. CONCIO, M.D.; DR. VISHAL S. SHAH, M.D. are not parties to this appeal due to their own separate motion pertaining to costs and fees and a memorandum of costs. Plaintiffs are pursuing a separate appeal which granted said Defendants' costs and fees in part in Case No. 84424.

**23. Give a brief description (3 to 5 words) of each party's separate claims, counterclaims, cross-claims, or third-party claims and the date of formal disposition of each claim.**

Plaintiffs - claims dismissed on summary judgment

Defendant Valley Health System, LLC - judgment per memorandum of costs denied and motion for costs and fees denied.

**24. Did the judgment or order appealed from adjudicate ALL the claims alleged below and the rights and liabilities of ALL the parties to the action or consolidated actions below?**

☒ Yes

☐ No

**25. If you answered "No" to question 24, complete the following:**

(a) Specify the claims remaining pending below:

N/A

(b) Specify the parties remaining below:  
N/A

(c) Did the district court certify the judgment or order appealed from as a final judgment pursuant to NRCP 54(b)?

☐ Yes

☒ No

(d) Did the district court make an express determination, pursuant to NRCP 54(b), that there is no just reason for delay and an express direction for the entry of judgment?

☐ Yes

☒ No

**26. If you answered "No" to any part of question 25, explain the basis for seeking appellate review (e.g., order is independently appealable under NRAP 3A(b)):**

Order is independently appealable under NRAP 3(A)(b) as it pertains to costs owed in accordance with N.R.C.P. 68, N.R.S. §§ 17.117, 7.085, 18.010(2), and EDCR 7.60 after final disposition of plaintiffs' case and dismissal of all of plaintiffs' claims.

**27. Attach file-stamped copies of the following documents:**

- The latest-filed complaint, counterclaims, cross-claims, and third-party claims
- Any tolling motion(s) and order(s) resolving tolling motion(s)
- Orders of NRCP 41(a) dismissals formally resolving each claim, counterclaims, cross-claims and/or third-party claims asserted in the action or consolidated action below, even if not at issue on appeal
- Any other order challenged on appeal
- Notices of entry for each attached order

## VERIFICATION

I declare under penalty of perjury that I have read this docketing statement, that the information provided in this docketing statement is true and complete to the best of my knowledge, information and belief, and that I have attached all required documents to this docketing statement.

Valley Health System LLC  
Name of appellant

Adam Garth  
Name of counsel of record

Apr 18, 2022  
Date

/s/ Adam Garth  
Signature of counsel of record

Clark County, Nevada  
State and county where signed

## CERTIFICATE OF SERVICE

I certify that on the 18th day of April, 2022, I served a copy of this completed docketing statement upon all counsel of record:

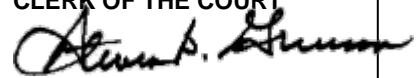
- ☐ By personally serving it upon him/her; or
- ☒ By mailing it by first class mail with sufficient postage prepaid to the following address(es): (NOTE: If all names and addresses cannot fit below, please list names below and attach a separate sheet with the addresses.)

Dated this 18th day of April, 2022

/s/ Heidi Brown  
Signature

**Defendant Valley Health  
System, LLC d/b/a Centennial  
Hills Hospital Medical  
Center's Motion for  
Reconsideration Regarding its  
Motion for Attorneys' Fees  
Pursuant to N.R.C.P. 68,  
N.R.S. §§ 17.117, 7.085,  
18.010(2), and E.C.R. 7.60**





MRCN  
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ADAM GARTH  
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Telephone: 702.893.3383  
Facsimile: 702.893.3789  
*Attorneys for Defendant Valley Health System,  
LLC dba Centennial Hills Hospital Medical  
Center*

DISTRICT COURT

CLARK COUNTY, NEVADA

ESTATE OF REBECCA POWELL, through  
BRIAN POWELL, as Special Administrator;  
DARCI CREECY, individually and as Heir;  
TARYN CREECY, individually and as an  
Heir; ISAAH KHOSROF, individually and as  
an Heir; LLOYD CREECY, individually;

Plaintiffs,

vs.

VALLEY HEALTH SYSTEM, LLC (doing  
business as "Centennial Hills Hospital Medical  
Center"), a foreign limited liability company;  
UNIVERSAL HEALTH SERVICES, INC., a  
foreign corporation; DR. DIONICE S.  
JULIANO, M.D., an individual; DR.  
CONRADO C.D. CONCIO, M.D., an  
individual; DR. VISHAL S. SHAH, M.D., an  
individual; DOES 1-10; and ROES A-Z;

Defendants.

Case No. A-19-788787-C

Dept. No.: 30

**DEFENDANT VALLEY HEALTH  
SYSTEM, LLC DBA CENTENNIAL  
HILLS HOSPITAL MEDICAL CENTER'S  
MOTION FOR RECONSIDERATION  
REGARDING ITS MOTION FOR  
ATTORNEYS' FEES PURSUANT TO  
N.R.C.P. 68, N.R.S. §§ 17.117, 7.085,  
18.010(2), AND EDCR 7.60**

**HEARING REQUESTED**

Defendants by and through their counsel of record, S. Brent Vogel and Adam Garth of the  
Law Firm LEWIS BRISBOIS BISGAARD & SMITH LLP, hereby file their Motion for Attorneys'  
Fees Pursuant to N.R.C.P. 68 and N.R.S. §§ 17.117, 7.085, 18.010(2) and EDCR 7.60.

This Motion is based upon the Memorandum of Points and Authorities below, the pleadings  
and papers on file herein, any oral argument which may be entertained by the Court at the hearing  
of this matter and the Declaration of Adam Garth, below.

1 DATED this 23<sup>rd</sup> day of February, 2022

2  
3 LEWIS BRISBOIS BISGAARD & SMITH LLP

4  
5 By /s/ Adam Garth  
6 S. BRENT VOGEL  
7 Nevada Bar No. 6858  
8 ADAM GARTH  
9 Nevada Bar No. 15045  
10 6385 S. Rainbow Boulevard, Suite 600  
11 Las Vegas, Nevada 89118  
12 Tel. 702.893.3383  
13 *Attorneys for Attorneys for Defendant Valley*  
14 *Health System, LLC dba Centennial Hills Hospital*  
15 *Medical Center*  
16  
17  
18  
19  
20  
21  
22  
23  
24  
25  
26  
27  
28

1     **DECLARATION OF ADAM GARTH IN SUPPORT OF MOTION FOR ATTORNEYS'**  
2                                   **FEES**

3     I, Adam Garth, declare under penalty of perjury as follows:

4             1.       I am a partner at Lewis Brisbois Bisgaard & Smith LLP, and am duly licensed to  
5     practice law in the State of Nevada. I am competent to testify to the matters set forth herein, and  
6     will do so if called upon.

7             2.       I am one of the attorneys of record representing Defendant Valley Health System,  
8     LLC dba Centennial Hills Hospital Medical Center ("Defendant" or "CHH") in the above-entitled  
9     action, currently pending in Department 30 of the Eighth Judicial District Court for the State of  
10    Nevada, Case No. A-19-788787-C.

11            3.       I make this Declaration on behalf of DEFENDANT VALLEY HEALTH SYSTEM,  
12    LLC DBA CENTENNIAL HILLS HOSPITAL MEDICAL CENTER'S MOTION FOR  
13    RECONSIDERATION REGARDING ITS MOTION FOR ATTORNEYS' FEES PURSUANT TO  
14    N.R.C.P. 68, N.R.S. §§ 17.117, 7.085, 18.010(2), AND EDCR 7.60.

15            4.       I have been counsel of record for Defendants for much of this case, including for all  
16    times that fees are being sought with this Motion for post-NRCP Rule 68 fees and costs, and much  
17    pre-NRCP Rule 68 fees and costs.

18            5.       On August 28, 2020, Defendant served an Offer of Judgment on Plaintiff pursuant  
19    to N.R.C.P. 68, N.R.S. 17.115<sup>1</sup>, and *Busick v. Trainor*, 2019 Nev. Unpub. LEXIS 378, 437 P.3d  
20    1050 (2019) for a waiver of any presently or potentially recoverable costs in full and final settlement  
21    of the matter. At the time of the Offer, Defendants' expended costs and fees totaled \$58,514.36.  
22    The Offer was not accepted by Plaintiff and expired on September 11, 2020.

23            6.       Since the date the Offer of Judgment: I billed 405.6 hours for a total charge to the  
24    client of \$91,260; S. Brent Vogel, Esq. billed 39.8 hours for a total charge to the client of \$8,955;  
25    Heather Armantrout, Esq. billed 33.1 hours for a total charge to the client of \$6,404.85. I have  
26    personal knowledge of Mr. Vogel and Ms. Armantrout's work on this matter and I have personally  
27    reviewed their billing entries for the time period in question.

28     \_\_\_\_\_  
      <sup>1</sup> Currently N.R.S. 17.117.

7. Since the date of the Offer of Judgment, paralegals in my office have billed the following in this matter: Arielle Atkinson billed 46.9 hours for a total charge to the client of \$4,221; and Joshua Daor billed 0.1 hours for a total charge to the client of \$9. I have personal knowledge of Ms. Atkinson and Mr. Daor's work on this matter, and I have personally reviewed their billing entries for the time period in question.

8. The billing records are attached hereto along with all costs and disbursements incurred in this case which are true and accurate copies of said records and are maintained in the course of our firm's business<sup>2</sup>.

9. I declare under penalty of perjury that the foregoing is true and correct.

FURTHER YOUR DECLARANT SAYETH NAUGHT.

/s/Adam Garth

Adam Garth, Esq.

No notarization required pursuant to NRS 53.045

<sup>2</sup> Exhibit “E” hereto

1 **MEMORANDUM OF POINTS AND AUTHORITIES**

2 **I. FACTUAL BACKGROUND**

3 This is a professional negligence case that arises out of the care and treatment Defendant  
4 Valley Health System, LLC dba Centennial Hills Hospital Medical Center (“Defendant” or “CHH”)  
5 as well as co-defendant physicians provided to decedent Rebecca Powell from May 3-11, 2017.  
6

7 CHH moved this Court on November 22, 2021 for **\$110,930.85** in attorneys’ fees per  
8 N.R.C.P. 68 and N.R.S. §§ 17.117, plus **\$58,514.36** in pre-NRCP 68 offer fees and expenses pursuant  
9 to N.R.S. §§ 7.085, 18.010(2) and EDCR 7.60.<sup>3</sup> Plaintiffs opposed said motion,<sup>4</sup> with a reply by  
10 CHH interposed in further support of its motion.<sup>5</sup>

11 By order of this Court dated, February 15, 2022 and served with notice of entry on February  
12 16, 2022,<sup>6</sup> this Court denied CHH’s motion, claiming that it was not sufficiently supported with  
13 invoices and billing statements reflecting every moment of work performed on this case, that  
14 somehow the declaration of an officer of the Court attesting to the hours spent by all timekeepers  
15 on this case was insufficient. Additionally, this Court denied the request to conduct an *in camera*  
16 hearing at which time any supporting evidence could be presented before opposing counsel and the  
17 Court without having to publicly trot out CHH’s private bills and expenses related hereto. Annexed  
18 hereto are 195 pages of bills and invoices reflecting every moment of professional time billed on  
19 this matter, all invoices from medical experts necessarily engaged to defend CHH, as well as all  
20 other costs and disbursements attendant to this litigation.<sup>7</sup> As is plainly evident from this evidence,  
21 CHH incurred substantial costs associated with the defense of this case. Plaintiffs not only lost, but  
22 after having caused CHH to litigate this case, but also forced the case to proceed during a lengthy  
23  
24  
25

26 <sup>3</sup> Exhibit “A” hereto

27 <sup>4</sup> Exhibit “B” hereto

28 <sup>5</sup> Exhibit “C” hereto

<sup>6</sup> Exhibit “D” hereto

<sup>7</sup> Exhibit “E” hereto

1 appeal incurring even greater expense. Said appeal resulted in a final determination that the  
2 evidence which Plaintiffs exclusively possessed demonstrated that this lawsuit was void from its  
3 inception. A price must be paid for flagrantly untenable pursuits.

4       There are two issues afoot which this Court conflated, namely the memorandum of costs and  
5 disbursements previously submitted totaling **\$42,492.03**<sup>8</sup>, an amount which is undisputed, and for  
6 which this Court has refused to sign a judgment,<sup>9</sup> and the additional costs, disbursements and  
7 attorneys fees addressed by CHH's instant motion and the initial motion which sought **\$110,930.85**  
8 in attorneys' fees per N.R.C.P. 68 and N.R.S. §§ 17.117, plus **\$58,514.36** in pre-NRCP 68 offer fees  
9 and expenses pursuant to N.R.S. §§ 7.085, 18.010(2) and EDCR 7.60. As a further reminder, this  
10 Court previously denied Plaintiffs' motion to extend time to retax costs<sup>10</sup> attendant to the  
11 memorandum of costs for the aforementioned **\$42,492.03**,<sup>11</sup> an amount which itself is undisputed and for  
12 which a judgment must be signed and entered.  
13

14       Additionally, this Court implied that the amount of attorneys' fees specified in CHH's  
15 motion is somehow excessive, by asserting that it far exceeded those of co-defense counsel is  
16 concerning.<sup>12</sup> CHH's counsel spearheaded considerable motions and engaged in extensive appellate  
17 practice due to this Court's refusal to either dismiss this case from its inception, or at the very least,  
18 grant summary judgment when the uncontroverted evidence necessitated that result. These  
19 extraordinary legal fees resulted from having to engage in extensive discovery, engaging multiple  
20 experts due to the Plaintiffs' blunderbuss of allegations, the law of ostensible agency which  
21 implicated CHH in any alleged negligence of any physician credentialed at its hospital, the multiple  
22 stays this Court denied while the appeal was pending, coupled with Plaintiffs' counsel's refusal to  
23  
24  
25

---

26 <sup>8</sup> Exhibit "F" hereto

27 <sup>9</sup> Exhibit "G" hereto

28 <sup>10</sup> Exhibit "H" hereto

<sup>11</sup> Exhibit "F"

<sup>12</sup> Exhibit "D", p. 11

1 consent to a stay of proceedings while the appeal was pending. All of these actions combined with  
2 the finding of the Supreme Court that this Court manifestly abused its discretion in failing to grant  
3 summary judgment in the wake of the overwhelming evidence requiring dismissal is what brought  
4 us to this place. Plaintiffs' counsel and his clients cost CHH over \$200,000. CHH did not  
5 commence these proceedings, Plaintiffs did. CHH did cause itself to incur huge amounts of legal  
6 fees and costs due to Plaintiffs' untimely lawsuit, Plaintiff did. CHH should not have to underwrite  
7 a frivolous lawsuit which was given breath in the wake of overwhelming evidence that dismissal  
8 was not only warranted, but required.

10 What is more concerning is the finding that "the Court notes that although the Court found  
11 insufficient evidence to establish irrefutably that the statute of limitations had expired, Defense  
12 counsel was successful in convincing the Supreme Court of that, and consequently, Defendants  
13 prevailed."<sup>13</sup> The record needs to be corrected here – there was no convincing the Supreme Court  
14 of anything. The Supreme Court reviewed the entirety of the record, the same one that was before  
15 this Court. The Supreme Court held that this Court "manifestly abused its discretion when it denied  
16 summary judgment."

18 A manifest abuse of discretion is "[a] clearly erroneous interpretation of the  
19 law or a clearly erroneous application of a law or rule." Steward v. McDonald,  
20 330 Ark. 837, 958 S.W.2d 297, 300 (Ark. 1997); see Jones Rigging and  
21 Heavy Hauling v. Parker, 347 Ark. 628, 66 S.W.3d 599, 602 (Ark. 2002)  
22 (stating that a manifest abuse of discretion "is one exercised improvidently or  
23 thoughtlessly and without due consideration"); Blair v. Zoning Hearing Hd.  
24 of Tp. of Pike, 676 A.2d 760, 761 (Pa. Commw. Ct. 1996) ("[M]anifest abuse  
of discretion does not result from a mere error in judgment, but occurs when  
the law is overridden or misapplied, or when the judgment exercised is  
manifestly unreasonable or the result of partiality, prejudice, bias or ill will.").

25 *State v. Eighth Judicial Dist. Court of Nev.*, 127 Nev. 927, 932, 267 P.3d 777, 780 (2011). Under  
26  
27

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28 <sup>13</sup> Court's February 15, 2022 order, pp. 11-12

1 the Supreme Court's own definition, a manifest abuse of discretion is one where a court so  
2 erroneously interprets the law or rule, or where the result is so unreasonable that it demonstrates  
3 prejudice, partiality or bias that it must be corrected. Such is the case here. In light of the Supreme  
4 Court's finding in this regard, it remains abundantly clear that this matter was frivolously brought  
5 and frivolously maintained. Under those circumstances, the law provides for and even requires the  
6 recovery of costs, disbursements and attorneys' fees. To deny same disregards the Supreme Court's  
7 conclusion as well as the laws and cases interpreting them requiring the impositions of costs and  
8 attorneys' fees on the counsel who perpetrated the frivolous action.

10 Therefore, we end the introduction where we began. CHH submitted its memorandum of  
11 costs and disbursements.<sup>14</sup> That memorandum was not challenged. Plaintiffs missed the deadline  
12 for doing so, and this Court agreed and denied Plaintiffs an extension of time to retax costs.<sup>15</sup> By  
13 so doing, CHH's memorandum of costs is unopposed and a judgment is required to be signed and  
14 entered stemming directly therefrom.<sup>16</sup> This Court cannot revisit an issue which has been finally  
15 decided and therefore, at a minimum, a judgment for the unchallenged **\$42,492.03** in statutory costs  
16 and disbursements must be signed.<sup>17</sup>

18 Separate and apart from the **\$42,492.03**, are the additional costs, disbursements and fees to  
19 which the underlying motion was addressed. In light of the Supreme Court's findings, as well as  
20 the materials annexed hereto, additional costs, disbursements and attorneys' fees are more than  
21 warranted and justified to the extent of **\$110,930.85** in attorneys' fees per N.R.C.P. 68 and N.R.S. §§  
22 17.117, plus **\$58,514.36** in pre-NRCP 68 offer fees and expenses pursuant to N.R.S. §§ 7.085,  
23 18.010(2) and EDCR 7.60.

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26 <sup>14</sup> Exhibit "F"

27 <sup>15</sup> Exhibit "H"

28 <sup>16</sup> Exhibit "F"

<sup>17</sup> *Id.*



1 As previously noted in CHH's prior motion on this issue, Plaintiffs made multiple allegations  
2 concerning the cause of death. First, Plaintiffs asserted that Ms. Powell died from a Cymbalta  
3 overdose and that the administration of the Ativan to calm her during her CT procedure suppressed  
4 her breathing which caused her death. In order to debunk those theories, CHH engaged Dr. Ruffalo,  
5 a pharmacology and anesthesiology expert, whose report completely eviscerated Plaintiffs'  
6 accusations in this regard. This forced Plaintiffs to abandon their initial theory of the case as outlined  
7 in their Complaint and concoct another unsupported liability theory. Dr. Ruffalo's itemized bills  
8 are attached hereto documenting his extensive review of the records, his research of applicable  
9 literature supportive of his findings, and his drafting of both an initial expert report and rebuttal  
10 report addressing the respective Plaintiffs' experts accusations.<sup>18</sup> His bills alone total \$16,500.<sup>19</sup>

12 Second, Plaintiffs implicated the care and treatment rendered by critical care physicians and  
13 hospitalist physicians credentialed by CHH but not employed by CHH. Under the ostensible agency  
14 theory, CHH would potentially be vicariously liable for any alleged professional negligence of these  
15 individuals. As such, CHH needed to employ the services of Abraham Ishaaya, MD, a critical care  
16 physician, and Hiren Shah, MD, a hospitalist, in order to review the care and treatment provided to  
17 Ms. Powell by their respective counterparts in order to debunk the allegations leveled by Plaintiffs  
18 against physicians in those respective specialties. Dr. Shah did not provide us bills for his services,  
19 so those were not included in this motion. Dr. Ishaaya did provide his itemized bills which are  
20 referenced herein.<sup>20</sup> Drs. Shah and Ishaaya each demonstrated that the theories upon which  
21 Plaintiffs based their lawsuit were unsubstantiated by medical science. They each conducted  
22 comprehensive reviews of the decedent's medical records and reviewed the theories and literature  
23 propounded by Plaintiffs' experts. This took a substantial amount of time. Dr. Ishaaya's bills total  
24  
25  
26

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27 <sup>18</sup> Exhibit "E", pp. 17, 38, 128

28 <sup>19</sup> *Id.*

<sup>20</sup> Exhibit "E", pp. 25, 39, 105, 138, 171 and 195

1 \$25,355.<sup>21</sup>

2 When Plaintiffs' first theory of a drug overdose by CHH and others was completely  
3 debunked, Plaintiffs had to scramble to manufacture another theory for which they ultimately lacked  
4 medical support. CHH's experts even forced Plaintiffs' experts to agree that Ms. Powell's cause of  
5 death was an acute event which could not have been predicted, thus destroying any notion that CHH  
6 or anyone for whom it may have been vicariously liable, was in any way responsible for Ms.  
7 Powell's death.  
8

9 Additionally, Plaintiffs interposed some half-baked economic loss theory based upon Brian  
10 Powell's supplemental interrogatory response where he merely guessed at Ms. Powell's prior  
11 earnings. To that end, Plaintiffs interposed an "expert report" from an economist based solely upon  
12 the unsubstantiated guesswork of a party to this action. CHH needed to interpose a rebuttal to  
13 Plaintiffs' economist to discredit the unsubstantiated income theory proffered by them. Erik Volk  
14 was engaged to do exactly that. His invoices to review of Plaintiffs' expert report and draft a rebuttal  
15 thereto have also been provided.<sup>22</sup> Invoices from Mr. Volk total \$4,544.10.<sup>23</sup> Thus, expert fees  
16 alone, without Dr. Shah's bills, total \$46,399.10.  
17

18 Previously provided to this Court on the original motion were the initial expert and rebuttal  
19 reports from CHH's four experts which specifically addressed the allegations made by Plaintiffs as  
20 implicated by their respective specialties.<sup>24</sup>  
21

22 As for the amount of attorneys fees and hours billed by all timekeepers in this case, as well  
23 as other related disbursements including court filing fees and other related expenses, CHH provides  
24 195 pages of billing records<sup>25</sup> substantiating the hundreds of hours devoted to defending CHH  
25

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26 <sup>21</sup> *Id.*

27 <sup>22</sup> Exhibit "E", pp. 146-150, 162-166

28 <sup>23</sup> *Id.*

<sup>24</sup> Exhibit "D" to Exhibit "C" hereto

<sup>25</sup> Exhibit "E"

1 against Plaintiffs' folly. These records include time devoted to preparation and propounding of  
2 extensive written discovery to Plaintiffs, correspondence directed at Plaintiffs lack of proper  
3 responses to said discovery, CHH's responses to Plaintiffs' multiple discovery devices, consultation  
4 with experts regarding standard of care and causation opinions, strategizing with co-defense counsel  
5 pertaining to the dismissal of the Plaintiffs' case, moving this Court for summary judgment, moving  
6 this Court twice for a stay of proceedings pending the appeal, interposing a writ application to the  
7 Nevada Supreme Court, moving for a stay in the Nevada Supreme Court, preparing for a mediation  
8 which was eventually obviated by the Supreme Court's decision which included the preparation of  
9 an extensive mediation brief, as well as the collection of Plaintiffs' prior medical records and  
10 analysis of more than 1100 pages of records from CHH concerning Ms. Powell's subject hospital  
11 stay.  
12

13  
14 In essence, this was a Herculean effort to defend a case on multiple tracks – (1) litigation in  
15 this Court due to the forced push to trial when summary judgment should have been clearly granted,  
16 and (2) in the Nevada Supreme Court to present the overwhelming and obvious evidence which was  
17 ignored in CHH's motion for summary judgment regarding Plaintiffs' possession of irrefutable  
18 evidence of inquiry notice to commence the running of the statute of limitations. CHH's costs, fees  
19 and disbursements (which are unrelated to the undisputed \$42,492.03 for which a judgment must be  
20 entered) total \$110,930.85 in attorneys' fees per N.R.C.P. 68 and N.R.S. §§ 17.117, plus \$58,514.36  
21 in pre-NRCP 68 offer fees and expenses pursuant to N.R.S. §§ 7.085, 18.010(2) and EDCR 7.60 (a  
22 total of \$169,445.21). When added to the undisputed \$42,492.03, CHH incurred \$211,937.24 in  
23 costs, fees and disbursements.  
24

## 25 **II. LEGAL ARGUMENT**

### 26 **A. A Motion to Reconsider is Both Timely And Appropriate**

27 EDCR 2.24 states in pertinent part:  
28

1 (a) No motion once heard and disposed of may be renewed in the same  
2 cause, nor may the same matters therein embraced be reheard, unless by leave  
3 of the court granted upon motion therefor, after notice of such motion to the  
adverse parties.

4 (b) A party seeking reconsideration of a ruling of the court, other than any  
5 order that may be addressed by motion pursuant to NRCP 50(b), 52(b), 59 or  
6 60, must file a motion for such relief within 14 days after service of written  
notice of the order or judgment unless the time is shortened or enlarged by  
order.

7 The implicated order was served with notice of entry on February 16, 2022 (Exhibit "D")  
8 making this motion timely.

9 "A district court may reconsider a previously decided issue if substantially different evidence  
10 is subsequently introduced or the decision is clearly erroneous." *Masonry & Tile Contractors v.*  
11 *Jolley, Urga & Wirth Ass'n*, 113 Nev. 737, 741, 941 P.2d 486, 489 (1997). Based upon the evidence  
12 attached hereto and which was originally submitted to this Court in support of CHH's motion, CHH  
13 requests that this Court reconsider its order and impose the additional **\$169,445.21** in costs,  
14 disbursements and attorneys' fees attendant to the defense of this case, over and above the  
15 **\$42,492.03** in undisputed costs and disbursements to which CHH is entitled by law and for which  
16 this Court denied Plaintiffs' motion to retax. Moreover, this Court must sign the judgment for CHH's  
17 **\$42,492.03** in undisputed costs. *See*, NRCP 58(b)(1).

18  
19  
20 **B. An Award of Attorneys' Fees is Appropriate**

21 Plaintiffs rejected CHH's Offer of Judgment and then failed to obtain a more favorable  
22 judgment. Therefore, CHH is entitled to reasonable attorneys' fees under N.R.C.P. 68(f) and N.R.S.  
23 17.117(10).

24 Rule 68 (f), Penalties for Rejection of Offer, provides as follows:

25 (1) In general. If the offeree rejects an offer and fails to obtain a more  
26 favorable judgment:

27 ...  
28

1 (B) the offeree must pay the offeror's post-offer costs and expenses,  
2 including a reasonable sum to cover any expenses incurred by the offeror for  
3 each expert witness whose services were reasonably necessary to prepare for  
4 and conduct the trial of the case, applicable interest on the judgment from the  
time of the offer to the time of entry of the judgment **and reasonable attorney  
fees, if any be allowed, actually incurred by the offeror from the time of  
the offer.**

5 Similarly, N.R.S. 17.117, Offers of judgment, provides:

6  
7 (10) If the offeree rejects an offer and fails to obtain a more favorable  
judgment:

8  
9 (a) The offeree may not recover any costs, expenses or attorney's fees  
and may not recover interest for the period after the service of the offer and  
before the judgment; and

10  
11 (b) The offeree must pay the offeror's post-offer costs and expenses,  
12 including a reasonable sum to cover any expenses incurred by the offeror for  
13 each expert witness whose services were reasonably necessary to prepare for  
14 and conduct the trial of the case, applicable interest on the judgment from the  
time of the offer to the time of the entry of the judgment and reasonable  
attorney's fees, if any allowed, actually incurred by the offeror from the time  
of the offer.

15 This Court has discretion under N.R.C.P. 68(f) and N.R.S. 17.117(10) to award attorneys'  
16 fees when the offeror prevailed and the offeree failed to obtain a more favorable judgment. While  
17 exercising this discretion, a Court must consider the following factors: (1) whether the offeree  
18 brought his claims in good faith; (2) whether the offeror's offer of judgment was also brought in  
19 good faith in both timing and amount; (3) whether the offeree's decision to reject the offer of  
20 judgment was in bad faith or grossly unreasonable; and (4) whether the amount of offeror's  
21 requested fees is reasonable and justified. *Schouweiler v. Yancey Co.*, 101 Nev. 827, 833, 917 P.2d  
22 786 (1985). To not award costs and fees in light of the overwhelming evidence in this case directly  
23 violates the very purpose of the statutes allowing for same.  
24

25  
26 The circumstances of CHH's Offer of Judgment (premised on the waiver of an existing or  
27 potential right to attorneys' fees and costs) was accepted and analyzed as a proper Offer of Judgment  
28 by the Nevada Supreme Court in *Busick v. Trainer*, 2019 Nev. Unpub. LEXIS 378, 437 P.3d 1050

1 (2019). In *Busick*, the Court upheld the trial court's award of attorneys' fees and costs to the  
2 defendant following a verdict in favor of the defendant/physician. *Id.* at \*6-7.

3 Generally, the "district court may not award attorney fees absent authority under a statute,  
4 rule, or contract." *Albios v. Horizon Cmtys., Inc.*, 122 Nev. 409, 417, 132 P.3d 1022 (2006).  
5 Pursuant to N.R.S. 17.115 [the predecessor to N.R.S. 17.117] and N.R.C.P. 68, "a party is entitled  
6 to recover certain costs and reasonable attorney fees that it incurs after the making an unimproved-  
7 upon offer of judgment." *Logan v. Abe*, 131 Nev. 260, 268, 350 P.3d 1139 (2015).

9 In this case, CHH served an Offer of Judgment on Plaintiffs for waiver of any presently or  
10 potentially recoverable costs in full and final settlement of the claims. Plaintiffs rejected this Offer  
11 of Judgment by failing to accept it within 14 days. N.R.C.P. 68(e) and N.R.S. 17.117(6). As this  
12 Court was directed by the Supreme Court to vacate its order denying summary judgment to CHH  
13 and instead issue an order granting CHH's summary judgment motion, Plaintiffs failed to obtain  
14 more a favorable judgment than the one offered to them in CHH's Offer of Judgment. Thus,  
15 pursuant to N.R.C.P. 68 and N.R.S. 17.117, this Court has discretion to award CHH its attorneys'  
16 fees.  
17

18 All factors to be considered in awarding attorneys' fees under the current circumstances  
19 weigh in favor of Defendants. First, Plaintiffs did not bring his claims against CHH in good faith.  
20 The Nevada Supreme Court confirmed this fact by finding as follows:  
21

22 Here, **irrefutable evidence demonstrates that the real parties in interest**  
23 **were on inquiry notice by June 11, 2017 at the latest**, when real party in  
24 interest Brian Powell, special administrator for the estate, filed a complaint  
25 with the State Board of Nursing. There, Brian alleged that the decedent,  
26 Rebecca Powell, "went into respiratory distress" and her health care providers  
27 did not appropriately monitor her, abandoning her care and causing her death.  
28 Thus, Brian's own allegations in this Board complaint demonstrate that he had  
enough information to allege a prima facie claim for professional negligence-  
that in treating Rebecca, her health care providers failed "to use the reasonable  
care, skill or knowledge ordinarily used under similar circumstances by  
similarly trained and experienced providers of health care." NRS 41A.015  
(defining professional negligence); *Winn*, 128 Nev. at 252-53; 277 P.3d at

1 462 (explaining that a "plaintiffs general belief that someone's negligence  
2 may have caused his or her injury" triggers inquiry notice).<sup>3</sup> **That the real**  
3 **parties in interest received Rebecca's death certificate 17 days later,**  
4 **erroneously listing her cause of death as suicide, does not change this**  
5 **conclusion.**<sup>4</sup> Thus, the real parties in interest had until June 11, 2018, at the  
6 latest, to file their professional negligence claim. Therefore, their February 4,  
7 2019 complaint was untimely.

8 **3 The evidence shows that Brian was likely on inquiry**  
9 **notice even earlier. For example, real parties in interest**  
10 **had observed in real time, following a short period of**  
11 **recovery, the rapid deterioration of Powell's health while**  
12 **in petitioners' care. Additionally, Brian had filed a**  
13 **complaint with the Nevada Department of Health and**  
14 **Human Services (NDHHS) on or before May 23, 2017.**  
15 **Similar to the Nursing Board complaint, this complaint**  
16 **alleged facts, such as the petitioners' failure to upgrade**  
17 **care, sterilize sutures properly, and monitor Powell, that**  
18 **suggest he already believed, and knew of facts to support**  
19 **his belief, that negligent treatment caused Powell's death**  
20 **by the time he made these complaints to NDHHS and the**  
21 **Nursing Board.**

22 **4 The real parties in interest do not adequately address**  
23 **why tolling should apply under NRS 41A.097(3)** (providing  
24 that the limitation period for a professional negligence claim  
25 "is tolled for any period during which the provider of health  
26 care has concealed any act, error or omission upon which the  
27 action is based"). Even if they did, such an argument would be  
28 unavailing, as the medical records provided were sufficient for  
their expert witness to conclude that petitioners were negligent  
in Powell's care. *See Winn*, 128 Nev. at 255, 277 P.3d at 464  
(holding that tolling under NRS 41A.097(3) is only  
appropriate where the intentionally concealed medical records  
were "material" to the professional negligence claims).  
Finally, we have not extended the doctrine of equitable tolling  
to NRS 41A.097(2), and the real parties in interest do not  
adequately address whether such an application is appropriate  
under these facts. *See Edwards v. Emperor's Garden Rest.*, 122  
Nev. 317, 330 n.38, 130 P.3d 1280, 1288 n.38 (2006) (refusing  
to consider arguments that a party did not cogently argue or  
support with relevant authority).

26 **Given that uncontroverted evidence demonstrates that the petitioners**  
27 **are entitled to judgment as a matter of law** because the complaint is  
28 time-barred under NRS 41A.097(2), see NRCP 56(a); *Wood*, 121 Nev. at 729,  
121 P.3d at 1029 (recognizing that courts must grant summary judgment  
when the pleadings and all other evidence on file, viewed in a light most

1 favorable to the nonmoving party, "demonstrate that **no genuine issue as to**  
2 **any material fact [remains]** and that the moving party is entitled to a  
3 judgment as a matter of law" (internal quotations omitted)) . . .<sup>26</sup>

4 This Court correctly found that CHH's offer of judgment was made in good faith and its  
5 timing was proper.<sup>27</sup> However, this Court erroneously found "Plaintiff's decision to reject the offer  
6 and proceed to trial was not grossly unreasonable or in bad faith. Plaintiffs believed they had a valid  
7 claim, and the Court cannot find that wanting some recovery, as opposed to \$0.00, to be 'grossly  
8 unreasonable' or in 'bad faith'."<sup>28</sup> This finding is unreasonable in light of the Supreme Court's  
9 conclusions in this case. The Supreme Court determined that Plaintiffs were certainly on notice of  
10 any alleged malpractice no more than one month after decedent's death. The Court also determined  
11 that the very records upon which Plaintiffs based their case were in their possession long before the  
12 statute of limitations expired and that they knowingly initiated complaints to State agencies  
13 manifesting definitive knowledge and belief of malpractice. Nevertheless, Plaintiffs chose to initiate  
14 a lawsuit which was dead on arrival, continued to maintain it even after irrefutable evidence  
15 demonstrated its untenability, and then used every opportunity to prevent the expenditure of  
16 additional resources in order to prove the impropriety of the lawsuit. Plaintiffs were given every  
17 opportunity to exit the matter gracefully, but they instead chose to pursue an untenable claim, with  
18 knowledge they were doing so, utilizing an attorney who presented no evidence supportive of his  
19 own personal theories, and did all of this to the financial detriment of CHH. There is a price to be  
20 paid for that, and the statutes and case law cited above, coupled with the clear findings of the  
21 Supreme Court, entitle CHH to be compensated, at least in part, for their losses.<sup>29</sup>

22  
23  
24  
25 \_\_\_\_\_  
26 <sup>26</sup> Exhibit "B" to Exhibit "A" hereto, pp. 3-5 (emphasis supplied)

27 <sup>27</sup> Exhibit "D" hereto, p. 11

28 *Id.*

29 Pursuant to NRCP 68 and NRS 17.117, CHH normally does not get compensated for  
approximately \$60,000 in pre-offer of judgment expenses it incurred, but based upon statutes and  
cases cited hereinbelow, Defendants are requesting these very pre-Rule 68 costs and fees.



1           Second, this Court already correctly found that CHH's Offer of Judgment was brought in  
2 good faith in both timing and amount. At the time of the Offer, CHH incurred over \$58,000 in costs  
3 defending Plaintiffs' claims. The Offer was served several days prior to CHH's motion for summary  
4 judgment and about 1 ½ years from the lawsuit's commencement. Moreover, Plaintiffs were in  
5 possession of CHH's respective requests for production of documents and interrogatories six weeks  
6 prior to the motion for summary judgment having been filed, and produced they produced the  
7 "smoking gun" documents demonstrating irrefutable evidence of inquiry notice prior to the motion  
8 for summary judgment having been made and even while said motion was pending before this Court  
9 prior to the final submission of the motion. Plaintiffs were on notice of the statute of limitations  
10 issues even as early as the motion to dismiss made by predecessor counsel in July, 2019, just months  
11 after commencing this action, yet they still pursued their untenable claim while in full possession of  
12 the documents which defeated it. That is bad faith, pure and simple. Given the likelihood of  
13 Plaintiffs losing on this issue, the offered waiver of the right to seek reimbursement of costs was  
14 reasonable in both timing and amount, especially given the multiple opportunities for Plaintiffs to  
15 be on notice of the issue. Annexed hereto are all of the supporting documents demonstrating all  
16 work and expenses incurred in this matter.<sup>30</sup>

17  
18  
19           Third, Plaintiffs' decision to reject the Offer of Judgment was made in bad faith and was  
20 grossly unreasonable. For the reasons noted above, this Court's decision to find otherwise was  
21 incorrect given the Supreme Court's findings and the facts and evidence associated therewith.  
22 Instead of abandoning their untimely filed action, (and accepting CHH's Offer of Judgment),  
23 Plaintiffs simply continued to push the litigation forward, blocking every opportunity CHH provided  
24 to "stop the financial bleeding" by staying the litigation while this case dispositive issue made its  
25  
26

27  
28 <sup>30</sup> Exhibit "E" hereto.

1 way through the courts. They opposed two stay motions and a motion to reconsider a stay. They  
2 opposed a motion to dismiss and a motion for summary judgment, presenting not one shred of  
3 evidence by anyone with personal knowledge of the facts, supporting their claim of a timely  
4 commencement of the action. They forced CHH to incur substantial legal costs and expenses to  
5 defend the action, requiring the engagement of counsel along with multiple experts, to pursue a  
6 lawsuit they knew could not be maintained from the start. Furthermore, they provided unresponsive  
7 answers to discovery requests seeking to avoid addressing the underlying claims in the lawsuit  
8 necessitating EDCR 2..34 conferences and their supplementation of a large number of discovery  
9 responses. At every turn and opportunity, Plaintiffs stonewalled providing materials and  
10 information supportive of their claims while placing CHH in the position of having to incur massive  
11 expenses to obtain that to which it was legally entitled and seek dismissal of what Plaintiffs clearly  
12 knew was an untenable claim. The Plaintiffs' failure to accept CHH's Offer of Judgment was both  
13 in bad faith and grossly unreasonable.

14  
15  
16 Finally, as set forth in detail below, the fourth factor regarding the reasonableness of CHH's  
17 requested attorneys' fees also weighs in favor of CHH. Pursuant to NRCP 68, CHH may recover  
18 their attorneys' fees from the date of service of the Offer of Judgment to the end of the matter. In  
19 this case, the Offer of Judgment was served on August 28, 2020 and expired on September 11, 2020.  
20 CHH incurred a total of \$110,930.85 in attorneys' fees alone<sup>31</sup> (not inclusive of expenses) from  
21 August, 28, 2020 to the present billing cycle (which does not include all fees incurred for October,  
22 2021). Additionally, CHH incurred \$31,401.10 in disbursements including expert fees and other  
23 expenses incurred since August, 28, 2020.<sup>32</sup> This amount of bills is reasonable for the massive  
24 amounts of time and energy needed to defend this case, engage in extensive written discovery to  
25  
26  
27

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28 <sup>31</sup> Exhibit "E" hereto

<sup>32</sup> *Id.*

1 obtain the various documents proving the late filing of the case, extensive motions and appeals  
2 practice, and, expert time and expense due to Plaintiffs' refusal to stipulate to stay the litigation  
3 while the summary judgment issue made its way through the court system. Plaintiffs own actions  
4 in this matter, including bringing it late in the first place, caused all of the expenses here. Medical  
5 malpractice cases are complex, involve substantial amounts of expert testimony, and require a great  
6 deal of preparation. Supporting documentation was offered to be presented to this Court for *in*  
7 *camera* review. Instead of granting a hearing to which Plaintiffs could interpose whatever opposition  
8 they may have had, the Court rejected this offer and suggestion. Moreover, Plaintiffs provided not  
9 one shred of opposition to the amount of costs and fees incurred on the original motion, even without  
10 the attached bills. Since this Court insisted that the bills be attached, CHH has provided the entirety  
11 thereof for judicial review and review by Plaintiffs.<sup>33</sup>

12  
13  
14 An analysis of the *Beattie* factors shows that an award of attorneys' fees to Defendants from  
15 the time of the Offer of Judgment served on Plaintiff to the present is warranted and appropriate.

16 **C. Amount of Fees Incurred**

17 When awarding fees in the offer of judgment context under N.R.C.P. 68 and N.R.S. 17.115  
18 [currently N.R.S. 17.117], the district court must also consider the reasonableness of the fees  
19 pursuant to *Brunzell v. Golden Gate National Bank*, 85 Nev. 345, 455 P.2d 31 (1969). *Id.* When  
20 determining the amount of attorneys' fees to award, the District Court has wide discretion, to be  
21 "tempered only by reason and fairness" *Shuette v. Beazer Homes*, 121 Nev. 837, 864 (2005).<sup>34</sup> If  
22 the district court's exercise of discretion is neither arbitrary nor capricious, it will not be disturbed  
23 on appeal. *Schouweiler*, 101 Nev. at 833.

24  
25  
26  
27 <sup>33</sup> *Id.*

28 <sup>34</sup> Reasonable attorneys' fees also include fees for paralegal and non-attorney staff "whose labor contributes to the work product for which an attorney bills her client." *See Las Vegas Metro. Police Dep't v. Yeghiazarian*, 312 P.3d 503, 510 (Nev. 2013).

1 "In determining the amount of fees to award, the [district] court is not limited to one specific  
2 approach; its analysis may begin with any method rationally designed to calculate a reasonable  
3 amount, so long as the requested amount is reviewed in light of the . . . Brunzell factors." *See Haley*  
4 *v. Eighth Judicial Dist. Court*, 128 Nev. 171 (2012); *see also, Gunderson v. D.R. Horton, Inc.*, 319  
5 P.3d 606, 615-616, 130 Nev. Adv. Rep. 9 (2014).  
6

7 The following four *Brunzell* factors are to be considered by the court:

8 (1) the qualities of the advocate: ability, training, education, experience,  
9 professional standing and skill;

10 (2) the character of the work to be done: its difficulty, its intricacy, its  
11 importance, time and skill required, the responsibility imposed and the  
12 prominence and character of the parties where they affect the importance of  
13 the litigation;

14 (3) the work actually performed by the lawyer: the skill, time and  
15 attention given to the work;

16 (4) the result: whether the attorney was successful and what benefits were  
17 derived.

18 *Brunzell v. Golden Gate*, at 349-50.

19 From August 28, 2020 to present, the attorneys' fees incurred by CHH are as follows:

20 Partner Adam Garth	405.6 hours	\$91,260.00
21 Partner Brent Vogel	39.8 hours	\$ 8,955.00
Associate Heather Armantrout	33.1 hours	\$ 6,404.85
Paralegal Arielle Atkinson	46.9 hours	\$ 4,221.00
Paralegal Joshua Daor	0.1 hours	\$ 90.00
	<b>Total</b>	<b>\$110,930.85<sup>35</sup></b>

22 Mr. Garth and Mr. Vogel are experienced litigators that focus exclusively on medical  
23 malpractice. Both have practiced over either close to or equal to 30 years each and are partners at  
24 Lewis Brisbois. They both billed \$225/hour on this matter. Where appropriate, work was also  
25 assigned to associate attorneys (\$193.50/hour) and paralegals (\$90/hour).  
26  
27

28 <sup>35</sup> Exhibit "E" hereto

1 Medical malpractice cases are complex and require an in-depth understanding of both unique  
2 legal issues as well as the medical care and course that is at issue. Plaintiffs claimed that they were  
3 entitled to \$105,000,000.00 in damages including \$172,728.04 billed by CHH as a recoverable  
4 expense, plus a loss of earning capacity of \$1,348,596. There were multiple highly skilled expert  
5 witnesses presented by both parties. Further, nearly 14 months have passed since CHH's Offer of  
6 Judgment expired, including the participation a motion for summary judgment, two motions to stay  
7 proceedings (one in this Court and one in Supreme Court), a writ petition to the Nevada Supreme  
8 Court plus all that it implies, and extensive written discovery.

10 Defendants' requested attorneys' fees are well below the amounts Nevada courts have found  
11 reasonable. Defendants are only requesting attorneys' fees at a rate of \$225 and \$193.50 per hour,  
12 and a paralegal rate of \$90 per hour, which is a fraction of the rates recognized that Nevada courts  
13 have found reasonable.

15 A consideration of the *Brunzell* factors shows that the recovery of the entire billed amount  
16 of fees from August 28, 2020 to present is entirely appropriate.

17 **D. Award of Pre-NRCP Rule 68 Offer of Judgment Costs and Fees Pursuant to**  
18 **NRS 7.085**

19 NRS § 7.085 provides the following:

20 1. If a court finds that an attorney has:

21 **(a) Filed, maintained or defended a civil action or proceeding in any court**  
22 **in this State and such action or defense is not well-grounded in fact or is**  
23 **not warranted by existing law or by an argument for changing the**  
**existing law that is made in good faith; or**

24 **(b) Unreasonably and vexatiously extended a civil action or proceeding**  
25 **before any court in this State, the court shall require the attorney**  
26 **personally to pay the additional costs, expenses and attorney's fees**  
**reasonably incurred because of such conduct.**

27 2. **The court shall liberally construe the provisions of this section in favor**  
28 **of awarding costs, expenses and attorney's fees in all appropriate**  
**situations.** It is the intent of the Legislature that the court award costs,

1 expenses and attorney's fees pursuant to this section and impose sanctions  
2 pursuant to Rule 11 of the Nevada Rules of Civil Procedure in all appropriate  
3 situations to **punish for and deter frivolous or vexatious claims and**  
4 **defenses because such claims and defenses overburden limited judicial**  
5 **resources, hinder the timely resolution of meritorious claims and**  
6 **increase the costs of engaging in business and providing professional**  
7 **services to the public.**

8 NRS § 7.085 (emphasis supplied).

9 As clearly documented above, Plaintiffs brought this action in the first place already having  
10 personally alleged medical negligence pertaining to CHH to third parties, i.e., two State agencies.  
11 They went to the trouble of obtaining a Special Administrator for decedent's estate for the express  
12 purpose of obtaining her medical records from CHH which they received. Not only did they receive  
13 the records, their counsel, with unmitigated gall, suggested that CHH was obligated to prove that  
14 Plaintiffs received the medical records. Plaintiffs' counsel completely disregarded NRS 47.250(13)  
15 in which a rebuttable presumption is created "[t]hat a letter duly directed and mailed was received  
16 in the regular course of the mail." CHH submitted the declarations of two witnesses with personal  
17 knowledge of the facts outlining their procedures for handling incoming medical records requests,  
18 the specifics of how such procedures were implemented in this case, and that the medical records  
19 here were mailed to the Plaintiffs twice, all within one month of decedent's death. Plaintiffs' counsel  
20 produced nothing in rebuttal except his false and improper claim that CHH was required to prove  
21 Plaintiffs actually received the records. Plaintiffs themselves never denied receiving them. What  
22 made his statement even more disingenuous was the fact that he gave the very records to Dr. Hashim,  
23 his own expert, for review. Dr. Hashim stated that he reviewed the records and formulated an  
24 opinion which counsel used to file his Complaint. Plaintiffs' counsel even denied asserting a  
25 fraudulent concealment argument and this Court found no such argument advanced by Plaintiffs. In  
26 a footnote, the Nevada Supreme Court stated "**The real parties in interest do not adequately**  
27 **address why tolling should apply** under NRS 41A.097(3) (providing that the limitation period for  
28

1 a professional negligence claim "is tolled for any period during which the provider of health care  
2 has concealed any act, error or omission upon which the action is based"). **Even if they did, such**  
3 **an argument would be unavailing, as the medical records provided were sufficient for their**  
4 **expert witness to conclude that petitioners were negligent in Powell's care.**"<sup>36</sup> Therefore, there  
5 was no evidence that Plaintiffs lacked sufficient documentation to formulate their claim and the  
6 Supreme Court confirmed it.

8 As noted by a sister Department, "NRS 7.085 essentially provides, where an attorney  
9 violates NRS 18.010(2), NRCP 11 or EDCR 7.60, the delinquent lawyer may be required to  
10 personally pay the additional costs, expenses and/or attorney's fees in all appropriate situations.  
11 Notably, as shown above, NRS 18.010(2)(b), EDCR 7.60 and NRS 7.085 do not require Defendants  
12 to be "prevailing parties" and attorneys' fees may be awarded without regard to the recovery sought."  
13 *Berberich v. S. Highland Cmty. Ass'n*, 2019 Nev. Dist. LEXIS 130, \*11 (Nev. Dist. Ct., Case No.  
14 A-16-731824-C, January 29, 2019).

16 Furthermore,

17 Nevada's statutory interpretation rules also support treating NRCP 11 and  
18 NRS 7.085 as separate sanctioning mechanisms. This court has "previously  
19 indicated that the rules of statutory interpretation apply to Nevada's Rules of  
20 Civil Procedure." *Webb, ex rel. Webb v. Clark Cnty. Sch. Dist.*, 125 Nev. 611,  
21 618, 218 P.3d 1239, 1244 (2009) (citing *Moseley*, 124 Nev. at 662 n.20, 188  
22 P.3d at 1142 n.20). Further, "whenever possible, a court will interpret a rule  
23 or statute in harmony with other rules or statutes." *Nev. Power Co. v.*  
24 *Haggerty*, 115 Nev. 353, 364, 989 P.2d 870, 877 (1999); *see also Bowyer*,  
107 Nev. at 627-28, 817 P.2d at 1178. The simplest way to reconcile NRCP  
11 and NRS 7.085 is to do what federal courts have done with FRCP 11 and  
§ 1927; treat the rule and statute as independent methods for district courts to  
award attorney fees for misconduct. Therefore, we conclude NRCP 11 does  
not supersede NRS 7.085.

25 *Watson Rounds, P.C. v. Eighth Judicial Dist. Court*, 131 Nev. 783, 789, 358 P.3d 228, 232 (2015).

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28 <sup>36</sup> Exhibit "B" to Exhibit "A" hereto, note 4 (emphasis supplied)

1        Hereinabove is a long documented recitation of case law and facts which specifically and  
2 directly contradict anything and everything advanced by Plaintiffs' counsel in this matter. Plaintiffs'  
3 counsel did everything he could to force CHH to incur expenses. He filed a case well beyond the  
4 statute of limitations, despite clear case law demonstrating when inquiry notice commences. He  
5 was faced with two motions on the issue and misrepresented the facts. He provided not one shred  
6 of evidence to support his personal theories about confusion, refusing and unable to produce any  
7 supporting evidence. He provided no support for a suggestion of fraudulent concealment, and  
8 opposed any motions for a stay of proceedings while the statute of limitations issue made its way  
9 through the appellate system. In short, Plaintiffs' counsel advanced a case which was dead on  
10 arrival. He knew it, was reminded of it, and pursued it anyway, hoping for a judicial lifeline. The  
11 Supreme Court made certain to cover all possible avenues for Plaintiffs' counsel's attempt to scurry  
12 away from his late and improper case filing. Adding insult to injury, he did everything he could to  
13 increase expenses. Elections have consequences. Those consequences are sanctions under NRS  
14 7.085 which include the \$58,514.36 in pre-NRCP 68 offer fees and expenses incurred from the  
15 commencement of this litigation. Based upon Plaintiffs counsel's violation of the two prongs of  
16 NRS 7.085, the Supreme Court has determined:

19        The language of NRS 7.085 is straightforward. Subsection 1 of NRS 7.085  
20 provides **that district courts "shall" hold attorneys** "personally" liable for  
21 "additional costs, expenses and attorney's fees" under certain circumstances.  
22 **If the statutory conditions are met, "the court shall" impose a sanction**  
23 **of taxable fees and costs "reasonably incurred because of such**  
24 **conduct."** *Id* With respect to "such conduct," the statute requires no more than  
25 what it states: in relevant part, that "a court find[] that an attorney has" (i)  
26 "[brought or] maintained ... a civil action" that (ii) either (a) "is not well-  
27 grounded in fact," (b) "is not warranted by existing law," or (c) "is not  
warranted ... by a[] [good faith] argument for changing the existing law." See  
NRS 7.085(1)(a). Subsection 2 requires Nevada courts to "liberally construe"  
subsection 1 "in favor of awarding costs, expenses and attorney's fees in all  
appropriate situations." NRS 7.085(2) (emphasis added).

28        *Washington v. AA Primo Builders, Ltd. Liab. Co.*, 440 P.3d 49 (Nev. 2019) (Emphasis supplied).



1 “The statutes are clear—parties who bring and maintain an action without grounds shall have  
2 attorney fees imposed against them.” *Lopez v. Corral*, Nos. 51541, 51972, 2010 Nev. LEXIS 69, at  
3 \*24, 2010 WL 5541115 (Dec. 20, 2010).

4       There is no clearer case for the imposition of attorney’s fees than this one. Plaintiffs’ motion  
5 case was entirely frivolous as it was knowingly filed beyond the statute of limitations. For this  
6 Court to hold otherwise, especially in light of the Supreme Court’s findings that the overwhelming  
7 evidence of statute of limitations breach by Plaintiffs required this Court to dismiss their case, and  
8 the failure to do so was a manifest abuse of discretion. Even if it was not known from the outset,  
9 which the evidence clearly demonstrated that it was, it became abundantly clear that the Plaintiffs  
10 themselves not only suspected, but actually accused CHH of malpractice and sought investigations  
11 by the State into their allegations. Plaintiffs supplied the very evidence damning their own  
12 assertions of “confusion” which make Plaintiffs’ counsel’s advancement thereof all the more  
13 egregious.

14       Thus, in addition to all NRCP Rule 68 post offer fees and costs, CHH requests that sanctions  
15 be imposed against Plaintiffs’ counsel for all pre-NRCP Rule 68 costs and fees totaling \$58,514.36  
16 in accordance with NRS 7.085.

17       **E. EDCR 7.60 Authorizes the Imposition of Fines, Costs, and/or Attorneys’ Fees**  
18       **Due to an Attorney’s Presentation of Frivolous Opposition to a Motion or Who**  
19       **Multiplies the Proceeding in a Case to Increase Costs**

20       EDCR 7.60(b) provides:

- 21       (b) The court may, after notice and an opportunity to be heard, impose  
22       upon an attorney or a party any and all sanctions which may, under  
23       the facts of the case, be reasonable, including the imposition of fines,  
24       costs or attorney's fees when an attorney or a party without just cause:  
25       (1) Presents to the court a motion or an opposition to a motion which  
26       is obviously frivolous, unnecessary or unwarranted.  
27       (2) Fails to prepare for a presentation.  
28       (3) So multiplies the proceeding in a case as to increase costs  
unreasonably and vexatiously.  
(4) Fails or refuses to comply with these rules.

1 (5) Fails or refuses to comply with any order of a judge of the court.

2 The facts pertaining to Plaintiffs' counsel's conduct here are fully documented above. They  
3 commenced and maintained a completely unsustainable action from the beginning. They knowingly  
4 possessed the full medical file. They went to court to obtain an authorization to get the medical file.  
5 They never denied receiving the medicals, and in fact, utilized the medicals they did receive to  
6 obtain a medical affidavit for use with the Complaint. They knowingly possessed multiple  
7 complaints to State agencies alleging malpractice against CHH and requesting formal investigations  
8 thereof. Then, for purposes of the motion for summary judgment, Plaintiffs' counsel feigned  
9 confusion on his client's behalf as to decedent's cause of death (a fact which none of the Plaintiffs  
10 confirmed in any sworn statement or testimony). After creating chaos for no reason, when given  
11 the opportunity to prevent CHH from incurring further costs, Plaintiffs' counsel opposed any request  
12 for a stay of proceedings, three times in this case, requiring the continued discovery process, expert  
13 evaluations and expert reporting. They refused to agree to postpone the trial date to allow this matter  
14 to make its way through the Supreme Court, with knowledge that the Court would be ruling one  
15 way or another on this case dispositive issue. In all, Plaintiffs' counsel knowingly caused enormous  
16 costs on CHH only to have the very issues raised in this Court result in a total dismissal. CHH  
17 should not be required to pay for Plaintiffs' folly, especially when Plaintiffs' counsel purposely  
18 looked to increase expenses while pursuing a defunct case from the outset. Thus, EDCR 7.60  
19 provides a further avenue of deterrence to attorneys, like Plaintiffs' counsel, who engage in these  
20 unnecessary and flagrantly frivolous lawsuits which are dead before they are even filed, justifying  
21 an award of **\$110,930.85** in attorneys' fees per N.R.C.P. 68 and N.R.S. §§ 17.117, plus **\$58,514.36**  
22 in pre-NRCP 68 offer fees and expenses pursuant to N.R.S. §§ 7.085, 18.010(2) and EDCR 7.60.  
23  
24  
25

26 **F. CHH Is Also Entitled to Its Fees and Costs Per NRS 18.010(2)**

27 Likewise, CHH is entitled to an award of his attorney's fees and costs under NRS  
28

1 §18.010(2)(b), which provides in pertinent part:

2 In addition to the cases where an allowance is authorized by specific statute  
3 [see NRS § 7.085 above], the court may make an allowance of attorney's fees  
4 to a prevailing party:

5 (b) Without regard to the recovery sought, when the court finds that the claim,  
6 counterclaim, cross-claim or third-party complaint or defense of the opposing  
7 party was brought or maintained without reasonable ground or to harass the  
8 prevailing party. The court shall liberally construe the provisions of this  
9 paragraph in favor of awarding attorney's fees in all appropriate situations. It  
10 is the intent of the Legislature that the court award attorney's fees pursuant to  
11 this paragraph and impose sanctions pursuant to Rule 11 of the Nevada Rules  
of Civil Procedure in all appropriate situations to punish for and deter  
frivolous or vexatious claims and defenses because such claims and defenses  
overburden limited judicial resources, hinder the timely resolution of  
meritorious claims and increase the costs of engaging in business and  
providing professional services to the public.

12 For the reasons discussed above, CHH respectfully requests an award of attorney's fees and  
13 costs that it incurred in this matter, and enter an order awarding **\$110,930.85** in attorneys' fees per  
14 N.R.C.P. 68 and N.R.S. §§ 17.117, plus **\$58,514.36** in pre-NRCP 68 offer fees and expenses pursuant  
15 to N.R.S. §§ 7.085, 18.010(2) and EDCR 7.60. All of this is in addition to the undisputed **\$42,492.03**  
16 in costs and disbursements allowed by law and which have been fully justified by this Court's denial  
17 of Plaintiffs' motion to extend time to retax the costs to which they relate. If there is no dispute as  
18 to the costs and disbursements, a judgment must be signed pursuant to NRCP 58(b)(1).

19  
20 **III. CONCLUSION**

21 Based upon the legal authority and reasons stated above, Defendants respectfully request the  
22 Court grant their Motion and award them **\$110,930.85** in attorneys' fees per N.R.C.P. 68 and  
23 N.R.S. §§ 17.117, plus **\$58,514.36** in pre-NRCP 68 offer fees and expenses pursuant to N.R.S. §§  
24 7.085, 18.010(2) and EDCR 7.60. Moreover, this Court must sign the judgment already submitted  
25 to it for the undisputed **\$42,492.03** in costs to which CHH is already entitled by law.  
26  
27  
28

1 DATED this 23<sup>rd</sup> day of February 2022.

2 LEWIS BRISBOIS BISGAARD & SMITH LLP

3  
4  
5 By /s/ Adam Garth

6 S. BRENT VOGEL

7 Nevada Bar No. 006858

8 ADAM GARTH

9 Nevada Bar No. 15045

6385 S. Rainbow Boulevard, Suite 600

Las Vegas, Nevada 89118

Tel. 702.893.3383

10 *Attorneys for Attorneys for Defendant Valley*  
11 *Health System, LLC dba Centennial Hills Hospital*  
12 *Medical Center*  
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1 **CERTIFICATE OF SERVICE**

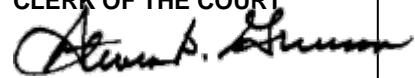
2 I hereby certify that on this 23<sup>rd</sup> day of February, 2022, a true and correct copy  
3 of **DEFENDANT VALLEY HEALTH SYSTEM, LLC DBA CENTENNIAL HILLS**  
4 **HOSPITAL MEDICAL CENTER'S MOTION FOR RECONSIDERATION REGARDING**  
5 **ITS MOTION FOR ATTORNEYS' FEES PURSUANT TO N.R.C.P. 68, N.R.S. §§ 17.117,**  
6 **7.085, 18.010(2), AND EDCR 7.60** was served by electronically filing with the Clerk of the Court  
7 using the Odyssey E-File & Serve system and serving all parties with an email-address on record,  
8 who have agreed to receive electronic service in this action.

9 Paul S. Padda, Esq.  
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*M.D., Conrado Concio, M.D And Vishal S.*  
*Shah, M.D.*

17 By /s/ Heidi Brown  
18 An Employee of  
19 LEWIS BRISBOIS BISGAARD & SMITH LLP  
20  
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28

# EXHIBIT A



1 S. BRENT VOGEL  
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2 Brent.Vogel@lewisbrisbois.com  
ADAM GARTH  
3 Nevada Bar No. 15045  
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*Attorneys for Defendant Valley Health System,  
7 LLC dba Centennial Hills Hospital Medical  
Center*

8  
9 DISTRICT COURT

10 CLARK COUNTY, NEVADA  
11

12 ESTATE OF REBECCA POWELL, through  
BRIAN POWELL, as Special Administrator;  
13 DARCI CREECY, individually and as Heir;  
TARYN CREECY, individually and as an  
14 Heir; ISALIAH KHOSROF, individually and as  
an Heir; LLOYD CREECY, individually,;

15 Plaintiffs,

16 vs.

17 VALLEY HEALTH SYSTEM, LLC (doing  
business as "Centennial Hills Hospital Medical  
18 Center"), a foreign limited liability company;  
UNIVERSAL HEALTH SERVICES, INC., a  
19 foreign corporation; DR. DIONICE S.  
JULIANO, M.D., an individual; DR.  
20 CONRADO C.D. CONCIO, M.D., an  
individual; DR. VISHAL S. SHAH, M.D., an  
21 individual; DOES 1-10; and ROES A-Z,;

22 Defendants.  
23

Case No. A-19-788787-C

Dept. No.: 30

**DEFENDANT VALLEY HEALTH  
SYSTEM, LLC DBA CENTENNIAL  
HILLS HOSPITAL MEDICAL CENTER'S  
MOTION FOR ATTORNEYS' FEES  
PURSUANT TO N.R.C.P. 68, N.R.S. §§  
17.117, 7.085, 18.010(2), AND EDCR 7.60**

**HEARING REQUESTED**

24 Defendants by and through their counsel of record, S. Brent Vogel and Adam Garth of the  
25 Law Firm LEWIS BRISBOIS BISGAARD & SMITH LLP, hereby file their Motion for Attorneys'  
26 Fees Pursuant to N.R.C.P. 68 and N.R.S. §§ 17.117, 7.085, 18.010(2) and EDCR 7.60.

27 This Motion is based upon the Memorandum of Points and Authorities below, the pleadings  
28 and papers on file herein, any oral argument which may be entertained by the Court at the hearing

1 of this matter and the Declaration of Adam Garth, below.  
2

3 DATED this 22<sup>nd</sup> day of November, 2021  
4

5 LEWIS BRISBOIS BISGAARD & SMITH LLP  
6

7 By /s/ Adam Garth  
8 S. BRENT VOGEL  
9 Nevada Bar No. 6858  
10 ADAM GARTH  
11 Nevada Bar No. 15045  
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13 Las Vegas, Nevada 89118  
14 Tel. 702.893.3383  
15 *Attorneys for Attorneys for Defendant Valley*  
16 *Health System, LLC dba Centennial Hills Hospital*  
17 *Medical Center*  
18  
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1     **DECLARATION OF ADAM GARTH IN SUPPORT OF MOTION FOR ATTORNEYS'**  
2                                     **FEES**

3     I, Adam Garth, declare under penalty of perjury as follows:

- 4         1. I am a partner at Lewis Brisbois Bisgaard & Smith LLP, and am duly licensed to practice  
5             law in the State of Nevada. I am competent to testify to the matters set forth herein, and will  
6             do so if called upon.
- 7         2. I am one of the attorneys of record representing Defendant Valley Health System, LLC dba  
8             Centennial Hills Hospital Medical Center (“Defendant” or “CHH”) in the above-entitled  
9             action, currently pending in Department 30 of the Eighth Judicial District Court for the State  
10            of Nevada, Case No. A-19-788787-C.
- 11        3. I make this Declaration on behalf of DEFENDANT VALLEY HEALTH SYSTEM, LLC  
12            DBA CENTENNIAL HILLS HOSPITAL MEDICAL CENTER’S MOTION FOR  
13            ATTORNEYS’ FEES PURSUANT TO N.R.C.P. 68, N.R.S. §§ 17.117, 7.085, 18.010(2),  
14            AND EDCR 7.60.
- 15        4. I have been counsel of record for Defendants for much of this case, including for all times  
16            that fees are being sought with this Motion for post-NRCP Rule 68 fees and costs, and much  
17            pre-NRCP Rule 68 fees and costs.
- 18        5. On August 28, 2020, Defendant served an Offer of Judgment on Plaintiff pursuant to  
19            N.R.C.P. 68, N.R.S. 17.115<sup>1</sup>, and *Busick v. Trainor*, 2019 Nev. Unpub. LEXIS 378, 437  
20            P.3d 1050 (2019) for a waiver of any presently or potentially recoverable costs in full and  
21            final settlement of the matter. At the time of the Offer, Defendants’ expended costs and fees  
22            totaled \$58,514.36. The Offer was not accepted by Plaintiff and expired on September 11,  
23            2020.
- 24        6. Since the date the Offer of Judgment: I billed 405.6 hours for a total charge to the client of  
25            \$91,260; S. Brent Vogel, Esq. billed 39.8 hours for a total charge to the client of \$8,955;  
26            Heather Armantrout, Esq. billed 33.1 hours for a total charge to the client of \$6,404.85. I

27  
28     <sup>1</sup> Currently N.R.S. 17.117.

- 1 have personal knowledge of Mr. Vogel and Ms. Armantrout's work on this matter and I have  
2 personally reviewed their billing entries for the time period in question.
- 3 7. Since the date of the Offer of Judgment, paralegals in my office have billed the following in  
4 this matter: Arielle Atkinson billed 46.9 hours for a total charge to the client of \$4,221; and  
5 Joshua Daor billed 0.1 hours for a total charge to the client of \$9. I have personal knowledge  
6 of Ms. Atkinson and Mr. Daor's work on this matter, and I have personally reviewed their  
7 billing entries for the time period in question.
- 8 8. The billing records are available for the Court's *in camera* review, if requested.
- 9 9. I declare under penalty of perjury that the foregoing is true and correct.

10 FURTHER YOUR DECLARANT SAYETH NAUGHT.

11 /s/Adam Garth

12 Adam Garth, Esq.

13

14 No notarization required pursuant to NRS 53.045

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1 **MEMORANDUM OF POINTS AND AUTHORITIES**

2 **I. FACTUAL BACKGROUND**

3 This is a professional negligence case that arises out of the care and treatment Defendant  
4 Valley Health System, LLC dba Centennial Hills Hospital Medical Center (“Defendant” or “CHH”)  
5 as well as co-defendant physicians provided to decedent Rebecca Powell from May 3-11, 2017.  
6 According to the Complaint, Rebecca Powell overdosed on Benadryl, Cymbalta, and Ambien on  
7 May 3, 2017. Plaintiffs further alleged that EMS was called and came to Ms. Powell’s aid,  
8 discovering her with labored breathing and vomit on her face. Plaintiffs alleged that Ms. Powell  
9 was transported to CHH where she was admitted.

10 Plaintiffs claim on May 10, 2017, Ms. Powell complained of shortness of breath, weakness,  
11 and a drowning feeling, and Defendant Vishal Shah, MD, ordered Ativan to be administered via IV  
12 push. Plaintiffs assert that on May 11, 2017, Defendant Conrado Concio, MD, ordered two doses  
13 of Ativan via IV push.

14 To assess her complaints, Plaintiffs alleged that a chest CT was ordered, but chest CT was  
15 not performed due to Ms. Powell’s anxiety, and she was returned to her room. Plaintiffs further  
16 alleged that Ms. Powell was placed in a room with a camera monitor.

17 Plaintiffs’ expert stated in his affidavit used to support the Complaint that pursuant to the  
18 doctor’s orders, a dose of Ativan was administered at 03:27. Thereafter, Ms. Powell allegedly  
19 suffered acute respiratory failure, which resulted in her death on May 11, 2017.

20 Plaintiffs commenced their action in this matter on February 4, 2019 alleging professional  
21 negligence. NRS 41A.097(2) imposes a statute of limitations of 3 years after the date of injury or 1  
22 year after the plaintiff discovers or through the use of reasonable diligence should have discovered  
23 the injury, whichever occurs first. In this case, decedent’s date of death of May 11, 2017 presents  
24 the earliest date for accrual of the statute of limitations.

25 On May 25, 2017, MRO, a medical records retrieval service responsible for supplying  
26 medical records to those requesting same on behalf of CHH, received a request for medical records  
27 from Plaintiff Taryn Creecy along with a copy of a court order requiring that Centennial Hills  
28 Hospital provide a complete copy of Rebecca Powell’s medical chart.

1 On June 2, 2017, the request for the medical records for Mrs. Powell was processed by MRO  
2 personnel. On June 5, 2017, MRO determined that the records for Mrs. Powell were requested by  
3 Taryn Creecy, her daughter, that the records were requested to be sent to a post office box, and  
4 verified the court order for same. On June 7, 2017, MRO invoiced Ms. Creecy which included all  
5 fees associated with the provision of 1165 pages of Mrs. Powell's medical records from CHH. The  
6 1165 pages invoiced represented the entirety of medical records for Mrs. Powell with no exclusions.  
7 On June 12, 2017, MRO received payment for the 1165 pages of records and the next day, June 13,  
8 2017, MRO sent out the complete 1165 pages to Ms. Creecy to the address provided on the request.

9 MRO received the package back from the United States Postal Service due to  
10 undeliverability to the addressee on June 23, 2017. MRO contacted Ms. Creecy on June 28, 2017  
11 regarding the returned records, and she advised MRO that the post office box to which she requested  
12 the records be sent was in the name of her father, Brian Powell, and that the Post Office likely  
13 returned them since she was an unknown recipient at the post office box. She thereafter requested  
14 that MRO resend the records to him at that post office box address. On June 29, 2017, MRO re-  
15 sent the records addressed to Mr. Powell at the post office box previously provided, and MRO never  
16 received the records back thereafter.

17 MRO provided copies of all medical records for Mrs. Powell and no records for this patient  
18 were excluded from that packet. CHH's custodian of records stated that she compared the 1165  
19 pages of records supplied in June, 2017 to Ms. Creecy to CHH's electronic medical records system  
20 and she verified that the totality of the medical records for Ms. Powell was provided to Ms. Creecy  
21 without excluding any records.

22 Contemporaneously with Plaintiffs' obtaining Ms. Powell's medical records from CHH,  
23 Plaintiff Brian Powell personally initiated two investigations with State agencies including the  
24 Nevada Department of Health and Human Services ("HHS") and the Nevada State Nursing Board.  
25 Plaintiffs failed to disclose Mr. Powell's complaint to HHS, but they did disclose HHS's May 23,  
26 2017 acknowledgement of his complaint alleging patient neglect (presumably the complaint Mr.  
27 Powell initiated was prior to May 23, 2017). Mr. Powell's complaint to the Nursing Board dated  
28 June 11, 2017 alleges that CHH's nursing staff failed to properly monitor Ms. Powell, that her care

1 was “abandoned by the nursing staff”, and that she passed away as a result of these alleged failures.  
2 Moreover, Mr. Powell stated “Now I ask that you advocate for her, investigate, and ensure that this  
3 doesn’t happen again.”

4 On February 4, 2019, which was one year, eight months, and twenty-four days after Ms.  
5 Powell’s death, Plaintiffs filed the subject Complaint. Plaintiffs included the Affidavit of Sami  
6 Hashim, MD, which set forth alleged breaches of the standard of care.

7 Plaintiffs’ claims sounded in professional negligence, which subjected the claims to NRS  
8 41A.097(2)’s one-year statute of limitations requirement. Since Plaintiffs failed to file their  
9 Complaint within one-year after they discovered or through the use of reasonable diligence should  
10 have discovered the injury, CHH’s Motion for Summary Judgment was eventually granted after a  
11 writ of mandamus petition was filed, accepted and ruled upon by the Nevada Supreme Court.

12 Pursuant to N.R.C.P. 68, CHH served Plaintiff with an Offer of Judgment on August 28,  
13 2020.<sup>2</sup> In that Offer of Judgment, Defendants offered to waive any presently or potentially  
14 recoverable costs in full and final settlement of the claims. At the time of the Offer, Defendants’  
15 incurred costs were \$58,514.36. The Offer was not accepted by Plaintiff and expired on September  
16 11, 2020.

17 The statute of limitations issue was first presented to this Court on June 19, 2019 by way of  
18 a motion to dismiss by predecessor counsel. This Court held a hearing on September 25, 2019 and  
19 denied that motion along other motions to dismiss and the respective joinders thereto.

20 Thereafter, the parties engaged in extensive written discovery. Discovery disputes emerged  
21 during that time necessitating conferences pursuant to EDCR 2.34 and supplements to previously  
22 provided requests for production and interrogatories. Moreover, due to the wide ranging allegations  
23 in this matter and considering CHH’s potential liability not only as a direct defendant, but also under  
24 the concept of ostensible agency, CHH engaged three medical experts to address the issues raised  
25 by Plaintiffs, namely a pharmacologist, a hospitalist and an intensivist. In response to Plaintiffs’  
26 expert disclosure, CHH engaged in an economist to rebut the Plaintiffs’ economist’s report which

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27  
28 <sup>2</sup> See Offer of Judgment, attached hereto as Exhibit “A”.

1 was predicated on not one shred of evidence, but based upon a supplemental interrogatory response  
2 from the decedent's ex-husband (dated one day before the economist's report), who provided no  
3 basis for his guess about his ex-wife's prior earnings.

4 During discovery, Plaintiffs produced records demonstrating that Plaintiffs specifically  
5 notified two State agencies of their concerns about the decedent's treatment at CHH. They  
6 specifically alleged malpractice on CHH's part, and requested investigations by those agencies into  
7 their allegations of malpractice by CHH, both of which were initiated just days after the decedent's  
8 death. Moreover, Plaintiffs did not deny obtaining the decedent's medical records from CHH in  
9 June, 2017, several weeks after the decedent's death, but their counsel attempted to impose an  
10 improper burden on CHH to prove Plaintiffs received the medical records which were sent, in  
11 derogation of the statutory presumption that documents mailed are presumed received unless  
12 sufficient evidence of non-receipt is demonstrated. No such demonstration occurred here.  
13 Moreover, Plaintiffs obtained the medical affidavit of a physician to support their Complaint who  
14 based his opinions on the very medical records Plaintiffs obtained from CHH (since the case had  
15 not yet been filed and there was no other avenue for Plaintiffs to have obtained said records).

16 CHH filed its motion for summary judgment on September 2, 2020 providing proof of the  
17 medical record request from CHH and the corresponding mailing thereof. Moreover, CHH provided  
18 Plaintiffs own documents to the respective State agencies alleging the malpractice which is the  
19 subject of this action. All of these materials definitively demonstrated that Plaintiffs were on inquiry  
20 notice within days of the decedent's death, but at the latest, a month thereafter.

21 On October 29, 2020, this Court issued an order denying CHH's motion for summary  
22 judgment finding a question of fact as to when Plaintiffs received inquiry notice based upon  
23 Plaintiffs' counsel's representation, without any declaration or affidavit by one with personal  
24 knowledge of the facts, that Plaintiffs' may have been confused as to the decedent's cause of death,  
25 which the Court believed was confirmed by the February 5, 2018 HHS report.

26 CHH thereafter moved this Court for a stay pending the filing of a writ petition to the Nevada  
27 Supreme Court predicated on the denial of CHH's motion for summary judgment. Plaintiffs  
28 vehemently opposed CHH's stay motion, and this Court denied the stay motion on December 17,

1 2020.

2 On December 22, 2020, CHH filed its writ petition with the Nevada Supreme Court. The  
3 Supreme Court requested answering and reply briefs on the aforesaid petition. Upon receipt of said  
4 order, CHH moved this Court to reconsider its decision to stay the proceedings in an effort to avoid  
5 future litigation costs. Again, Plaintiffs' vehemently opposed the stay. This Court entered an order  
6 on April 28, 2021 denying CHH's motion to reconsider the stay. On April 22, 2021, CHH moved  
7 in Supreme Court for a stay. Once again, Plaintiffs opposed the motion and the Supreme Court  
8 denied the stay motion. Litigation proceeded with greatly increased costs for things such as expert  
9 exchanges, leaving only depositions of the parties and experts to be conducted.

10 On October 18, 2021, The Nevada Supreme Court issued an order granting the CHH's writ  
11 petition and directing the Supreme Court Clerk to issue a writ of mandamus directing this Court to  
12 vacate is order denying CHH's motion for summary judgment and enter summary judgment in favor  
13 of all defendants.<sup>3</sup>

14 The Court entered judgment in favor of Defendants on November 19, 2021, and the Notice  
15 of Entry of Judgement was filed the same day.<sup>4</sup> Summary judgment in favor of Defendants entitles  
16 them to an award of attorneys' fees pursuant to N.R.C.P. 68, N.R.S. 17.117, and interpreting case  
17 authority. Moreover, NRS §§ 7.085 and 18.010(2) along with EDCR 7.60 entitle CHH to costs and  
18 attorney fees due to the Plaintiffs' frivolous filing of a lawsuit 8 months after the statute of  
19 limitations expired, with proof the exclusively provided, demonstrating that they possessed inquiry  
20 notice of the alleged malpractice as early as the date of decedent's death, but no later than June 11,  
21 2017; however, they chose to file a lawsuit in February, 2019, long after the one year statute of  
22 limitations expired. Those statutes and rules, along with the cases interpreting them justify the  
23 requested costs and fees.

24 ///

25 ///

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26  
27 <sup>3</sup> See Order Granting Petition, Exhibit "B" hereto

28 <sup>4</sup> See Order with Notice of entry, attached hereto as Exhibit "C".

1 **II. LEGAL ARGUMENT**

2 **A. An Award of Attorneys' Fees is Appropriate**

3 Plaintiff rejected CHH's Offer of Judgment and then failed to obtain a more favorable  
4 judgment. Therefore, CHH is entitled to reasonable attorneys' fees under N.R.C.P. 68(f) and N.R.S.  
5 17.117(10).

6 Rule 68 (f), Penalties for Rejection of Offer, provides as follows:

7 (1) In general. If the offeree rejects an offer and fails to obtain a more  
8 favorable judgment:

9 ...

10 (B) the offeree must pay the offeror's post-offer costs and expenses,  
11 including a reasonable sum to cover any expenses incurred by the offeror for each  
12 expert witness whose services were reasonably necessary to prepare for and  
conduct the trial of the case, applicable interest on the judgment from the time of  
the offer to the time of entry of the judgment **and reasonable attorney fees, if any  
be allowed, actually incurred by the offeror from the time of the offer.**

13 Similarly, N.R.S. 17.117, Offers of judgment, provides:

14 (10) If the offeree rejects an offer and fails to obtain a more favorable judgment:

15 (a) The offeree may not recover any costs, expenses or attorney's fees and  
16 may not recover interest for the period after the service of the offer and before the  
judgment; and

17 (b) The offeree must pay the offeror's post-offer costs and expenses,  
18 including a reasonable sum to cover any expenses incurred by the offeror for each  
19 expert witness whose services were reasonably necessary to prepare for and  
20 conduct the trial of the case, applicable interest on the judgment from the time of  
the offer to the time of the entry of the judgment and reasonable attorney's fees, if  
any allowed, actually incurred by the offeror from the time of the offer.

21  
22 This Court has discretion under N.R.C.P. 68(f) and N.R.S. 17.117(10) to award attorneys'  
23 fees when the offeror prevailed and the offeree failed to obtain a more favorable judgment. While  
24 exercising this discretion, a Court must consider the following factors: (1) whether the offeree  
25 brought his claims in good faith; (2) whether the offeror's offer of judgment was also brought in  
26 good faith in both timing and amount; (3) whether the offeree's decision to reject the offer of  
27 judgment was in bad faith or grossly unreasonable; and (4) whether the amount of offeror's  
28 requested fees is reasonable and justified. *Schouweiler v. Yancey Co.*, 101 Nev. 827, 833, 917 P.2d



1 786 (1985).

2 The circumstances of CHH's Offer of Judgment (premised on the waiver of an existing or  
3 potential right to attorneys' fees and costs) was accepted and analyzed as a proper Offer of Judgment  
4 by the Nevada Supreme Court in *Busick v. Trainer*, 2019 Nev. Unpub. LEXIS 378, 437 P.3d 1050  
5 (2019). In *Busick*, the Court upheld the trial court's award of attorneys' fees and costs to the  
6 defendant following a verdict in favor of the defendant/physician. *Id.* at \*6-7.

7 Generally, the "district court may not award attorney fees absent authority under a statute,  
8 rule, or contract." *Albios v. Horizon Cmtys., Inc.*, 122 Nev. 409, 417, 132 P.3d 1022 (2006).  
9 Pursuant to N.R.S. 17.115 [the predecessor to N.R.S. 17.117] and N.R.C.P. 68, "a party is entitled  
10 to recover certain costs and reasonable attorney fees that it incurs after the making an unimproved-  
11 upon offer of judgment." *Logan v. Abe*, 131 Nev. 260, 268, 350 P.3d 1139 (2015).

12 In this case, CHH served an Offer of Judgment on Plaintiffs for waiver of any presently or  
13 potentially recoverable costs in full and final settlement of the claims. Plaintiffs rejected this Offer  
14 of Judgment by failing to accept it within 14 days. N.R.C.P. 68(e) and N.R.S. 17.117(6). As this  
15 Court was directed by the Supreme Court to vacate its order denying summary judgment to CHH  
16 and instead issue an order granting CHH's summary judgment motion, Plaintiffs failed to obtain  
17 more a favorable judgment than the one offered to them in CHH's Offer of Judgment. Thus,  
18 pursuant to N.R.C.P. 68 and N.R.S. 17.117, this Court has discretion to award CHH its attorneys'  
19 fees.

20 All factors to be considered in awarding attorneys' fees under the current circumstances  
21 weigh in favor of Defendants. First, Plaintiffs did not bring his claims against CHH in good faith.  
22 The Nevada Supreme Court confirmed this fact by finding as follows:

23 Here, **irrefutable evidence demonstrates that the real parties in**  
24 **interest were on inquiry notice by June 11, 2017 at the latest**, when  
25 real party in interest Brian Powell, special administrator for the estate,  
26 filed a complaint with the State Board of Nursing. There, Brian  
27 alleged that the decedent, Rebecca Powell, "went into respiratory  
28 distress" and her health care providers did not appropriately monitor  
her, abandoning her care and causing her death. Thus, Brian's own  
allegations in this Board complaint demonstrate that he had enough  
information to allege a prima facie claim for professional negligence-  
that in treating Rebecca, her health care providers failed "to use the  
reasonable care, skill or knowledge ordinarily used under similar

1 circumstances by similarly trained and experienced providers of  
2 health care." NRS 41A.015 (defining professional negligence); *Winn*,  
3 128 Nev. at 252-53; 277 P.3d at 462 (explaining that a "plaintiffs  
4 general belief that someone's negligence may have caused his or her  
5 injury" triggers inquiry notice).<sup>3</sup> **That the real parties in interest  
6 received Rebecca's death certificate 17 days later, erroneously  
7 listing her cause of death as suicide, does not change this  
8 conclusion.**<sup>4</sup> Thus, the real parties in interest had until June 11, 2018,  
9 at the latest, to file their professional negligence claim. Therefore,  
10 their February 4, 2019 complaint was untimely.

11 **3 The evidence shows that Brian was likely on inquiry notice  
12 even earlier. For example, real parties in interest had  
13 observed in real time, following a short period of recovery,  
14 the rapid deterioration of Powell's health while in petitioners'  
15 care. Additionally, Brian had filed a complaint with the  
16 Nevada Department of Health and Human Services  
17 (NDHHS) on or before May 23, 2017. Similar to the Nursing  
18 Board complaint, this complaint alleged facts, such as the  
19 petitioners' failure to upgrade care, sterilize sutures properly,  
20 and monitor Powell, that suggest he already believed, and  
21 knew of facts to support his belief, that negligent treatment  
22 caused Powell's death by the time he made these complaints  
23 to NDHHS and the Nursing Board.**

24 **4 The real parties in interest do not adequately address why  
25 tolling should apply under NRS 41A.097(3)** (providing that the  
26 limitation period for a professional negligence claim "is tolled for  
27 any period during which the provider of health care has concealed  
any act, error or omission upon which the action is based"). Even  
if they did, such an argument would be unavailing, as the medical  
records provided were sufficient for their expert witness to  
conclude that petitioners were negligent in Powell's care. *See*  
*Winn*, 128 Nev. at 255, 277 P.3d at 464 (holding that tolling under  
NRS 41A.097(3) is only appropriate where the intentionally  
concealed medical records were "material" to the professional  
negligence claims). Finally, we have not extended the doctrine of  
equitable tolling to NRS 41A.097(2), and the real parties in  
interest do not adequately address whether such an application is  
appropriate under these facts. *See Edwards v. Emperor's Garden*  
*Rest.*, 122 Nev. 317, 330 n.38, 130 P.3d 1280, 1288 n.38 (2006)  
(refusing to consider arguments that a party did not cogently  
argue or support with relevant authority).

28 **Given that uncontroverted evidence demonstrates that the  
petitioners are entitled to judgment as a matter of law** because  
the complaint is time-barred under NRS 41A.097(2), see NRCP  
56(a); *Wood*, 121 Nev. at 729, 121 P.3d at 1029 (recognizing that  
courts must grant summary judgment when the pleadings and all other  
evidence on file, viewed in a light most favorable to the nonmoving  
party, "demonstrate that **no genuine issue as to any material fact**  
**[remains]** and that the moving party is entitled to a judgment as a

1 matter of law" (internal quotations omitted)) . . .<sup>5</sup>  
2 The Supreme Court determined that Plaintiffs were certainly on notice of any alleged malpractice  
3 no more than one month after decedent's death. The Court also determined that the very records  
4 upon which Plaintiffs based their case were in their possession long before the statute of limitations  
5 expired and that they knowingly initiated complaints to State agencies manifesting definitive  
6 knowledge and belief of malpractice. Nevertheless, Plaintiffs chose to initiate a lawsuit which was  
7 dead on arrival, continued to maintain it even after irrefutable evidence demonstrated its  
8 untenability, and then used every opportunity to prevent the expenditure of additional resources in  
9 order to prove the impropriety of the lawsuit. Plaintiffs were given every opportunity to exit the  
10 matter gracefully, but they instead chose to pursue an untenable claim, with knowledge they were  
11 doing so, utilizing an attorney who presented no evidence supportive of his own personal theories,  
12 and did all of this to the financial detriment of CHH. There is a price to be paid for that, and the  
13 statutes and case law cited above, coupled with the clear findings of the Supreme Court, entitle CHH  
14 to be compensated, at least in part, for their losses.<sup>6</sup>

15 Second, CHH's Offer of Judgment was brought in good faith in both timing and amount. At  
16 the time of the Offer, CHH incurred over \$58,000 in costs defending Plaintiffs' claims. The Offer  
17 was served several days prior to CHH's motion for summary judgment and about 1 ½ years from  
18 the lawsuit's commencement. Moreover, Plaintiffs were in possession of CHH's respective requests  
19 for production of documents and interrogatories six weeks prior to the motion for summary  
20 judgment having been filed, and produced they produced the "smoking gun" documents  
21 demonstrating irrefutable evidence of inquiry notice prior to the motion for summary judgment  
22 having been made and even while said motion was pending before this Court prior to the final  
23 submission of the motion. Plaintiffs were on notice of the statute of limitations issues even as early  
24 as the motion to dismiss made by predecessor counsel in July, 2019, just months after commencing

25 \_\_\_\_\_  
26 <sup>5</sup> Exhibit "B" hereto, pp. 3-5 (emphasis supplied)

27 <sup>6</sup> Pursuant to NRCP 68 and NRS 17.117, CHH normally does not get compensated for  
28 approximately \$60,000 in pre-offer of judgment expenses it incurred, but based upon statutes and  
cases cited hereinbelow, Defendants are requesting these very pre-Rule 68 costs and fees.

1 this action, yet they still pursued their untenable claim while in full possession of the documents  
2 which defeated it. That is bad faith, pure and simple. Given the likelihood of Plaintiffs losing on  
3 this issue, the offered waiver of the right to seek reimbursement of costs was reasonable in both  
4 timing and amount, especially given the multiple opportunities for Plaintiffs to be on notice of the  
5 issue.

6 Third, Plaintiffs' decision to reject the Offer of Judgment was in bad faith and grossly  
7 unreasonable. Instead of abandoning their untimely filed action, (and accepting CHH's Offer of  
8 Judgment), Plaintiffs simply continued to push the litigation forward, blocking every opportunity  
9 CHH provided to "stop the financial bleeding" by staying the litigation while this case dispositive  
10 issue made its way through the courts. They opposed two stay motions and a motion to reconsider  
11 a stay. They opposed a motion to dismiss and a motion for summary judgment, presenting not one  
12 shred of evidence by anyone with personal knowledge of the facts, supporting their claim of a timely  
13 commencement of the action. They forced CHH to incur substantial legal costs and expenses to  
14 defend the action, requiring the engagement of counsel along with multiple experts, to pursue a  
15 lawsuit they knew could not be maintained from the start. Furthermore, they provided unresponsive  
16 answers to discovery requests seeking to avoid addressing the underlying claims in the lawsuit  
17 necessitating EDCR 2.34 conferences and their supplementation of a large number of discovery  
18 responses. At every turn and opportunity, Plaintiffs stonewalled providing materials and  
19 information supportive of their claims while placing CHH in the position of having to incur massive  
20 expenses to obtain that to which it was legally entitled and seek dismissal of what Plaintiffs clearly  
21 knew was an untenable claim. The Plaintiffs' failure to accept CHH's Offer of Judgment was both  
22 in bad faith and grossly unreasonable.

23 Finally, as set forth in detail below, the fourth factor regarding the reasonableness of CHH's  
24 requested attorneys' fees also weighs in favor of CHH. Pursuant to NRCP 68, CHH may recover  
25 their attorneys' fees from the date of service of the Offer of Judgment to the end of the matter. In  
26 this case, the Offer of Judgment was served on August 28, 2020 and expired on September 11, 2020.

27 CHH incurred a total of \$110,930.85 in attorneys' fees alone (not inclusive of expenses)  
28 from August, 28, 2020 to the present billing cycle (which does not include all fees incurred for

1 October, 2021). Additionally, CHH incurred \$31,401.10 in disbursements including expert fees and  
2 other expenses incurred since August, 28, 2020. This amount of bills is reasonable for the massive  
3 amounts of time and energy needed to defend this case, engage in extensive written discovery to  
4 obtain the various documents proving the late filing of the case, extensive motions and appeals  
5 practice, and, expert time and expense due to Plaintiffs' refusal to stipulate to stay the litigation  
6 while the summary judgment issue made its way through the court system. Plaintiffs own actions  
7 in this matter, including brining it late in the first place, caused all of the expenses here. Medical  
8 malpractice cases are complex, involve substantial amounts of expert testimony, and require a great  
9 deal of preparation. Supporting documentation for every time entry is available for *in camera*  
10 review by this Court. The bills have not been attached hereto in order to preserve the attorney-client  
11 privilege and protect the information contained within the descriptions of the attorney billing. These  
12 fees were all reasonable and justified for the defense of claim against Defendants.

13 An analysis of the *Beattie* factors shows that an award of attorneys' fees to Defendants from  
14 the time of the Offer of Judgment served on Plaintiff to the present is warranted and appropriate.

15 **B. Amount of Fees Incurred**

16 When awarding fees in the offer of judgment context under N.R.C.P. 68 and N.R.S. 17.115  
17 [currently N.R.S. 17.117], the district court must also consider the reasonableness of the fees  
18 pursuant to *Brunzell v. Golden Gate National Bank*, 85 Nev. 345, 455 P.2d 31 (1969). *Id.* When  
19 determining the amount of attorneys' fees to award, the District Court has wide discretion, to be  
20 "tempered only by reason and fairness" *Shuette v. Beazer Homes*, 121 Nev. 837, 864 (2005).<sup>7</sup> If  
21 the district court's exercise of discretion is neither arbitrary nor capricious, it will not be disturbed  
22 on appeal. *Schouweiler*, 101 Nev. at 833.

23 "In determining the amount of fees to award, the [district] court is not limited to one specific  
24 approach; its analysis may begin with any method rationally designed to calculate a reasonable  
25

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26 <sup>7</sup> Reasonable attorneys' fees also include fees for paralegal and non-attorney staff "whose  
27 labor contributes to the work product for which an attorney bills her client." *See Las Vegas*  
28 *Metro. Police Dep't v. Yeghiazarian*, 312 P.3d 503, 510 (Nev. 2013).

1 amount, so long as the requested amount is reviewed in light of the . . . Brunzell factors." *See Haley*  
2 *v. Eighth Judicial Dist. Court*, 128 Nev. 171 (2012); *see also, Gunderson v. D.R. Horton, Inc.*, 319  
3 P.3d 606, 615-616, 130 Nev. Adv. Rep. 9 (2014).

4 The following four *Brunzell* factors are to be considered by the court:

5 (1) the qualities of the advocate: ability, training, education, experience, professional  
6 standing and skill;

7 (2) the character of the work to be done: its difficulty, its intricacy, its importance, time  
8 and skill required, the responsibility imposed and the prominence and character of the  
parties where they affect the importance of the litigation;

9 (3) the work actually performed by the lawyer: the skill, time and attention given to the  
10 work;

11 (4) the result: whether the attorney was successful and what benefits were derived.

12 *Brunzell v. Golden Gate*, at 349-50.

13 From August 28, 2020 to present, the attorneys' fees incurred by CHH are as follows:

14 Partner Adam Garth	405.6 hours	\$91,260.00
15 Partner Brent Vogel	39.8 hours	\$ 8,955.00
16 Associate Heather Armantrout	33.1 hours	\$ 6,404.85
17 Paralegal Arielle Atkinson	46.9 hours	\$ 4,221.00
18 Paralegal Joshua Daor	0.1 hours	\$ 90.00

19  
20 **Total** **\$110,930.85**

21 Mr. Garth and Mr. Vogel are experienced litigators that focus exclusively on medical  
22 malpractice. Both have practiced over either close to or equal to 30 years each and are partners at  
23 Lewis Brisbois. They both billed \$225/hour on this matter. Where appropriate, work was also  
24 assigned to associate attorneys (\$193.50/hour) and paralegals (\$90/hour).

25 Medical malpractice cases are complex and require an in-depth understanding of both unique  
26 legal issues as well as the medical care and course that is at issue. Plaintiffs claimed that they were  
27 entitled to \$105,000,000.00 in damages including \$172,728.04 billed by CHH as a recoverable  
28 expense, plus a loss of earning capacity of \$1,348,596. There were multiple highly skilled expert

witnesses presented by both parties. Further, nearly 14 months have passed since CHH's Offer of Judgment expired, including the participation a motion for summary judgment, two motions to stay proceedings (one in this Court and one in Supreme Court), a writ petition to the Nevada Supreme Court plus all that it implies, and extensive written discovery.

Defendants' requested attorneys' fees are well below the amounts Nevada courts have found reasonable. Defendants are only requesting attorneys' fees at a rate of \$225 and \$193.50 per hour, and a paralegal rate of \$90 per hour, which is a fraction of the rates recognized that Nevada courts have found reasonable.

A consideration of the *Brunzell* factors shows that the recovery of the entire billed amount of fees from August 28, 2020 to present is entirely appropriate.

C. **Award of Pre-NRCP Rule 68 Offer of Judgment Costs and Fees Pursuant to NRS 7.085**

NRS § 7.085 provides the following:

1. If a court finds that an attorney has:

(a) **Filed, maintained or defended a civil action or proceeding in any court in this State and such action or defense is not well-grounded in fact or is not warranted by existing law or by an argument for changing the existing law that is made in good faith; or**

(b) **Unreasonably and vexatiously extended a civil action or proceeding before any court in this State, the court shall require the attorney personally to pay the additional costs, expenses and attorney's fees reasonably incurred because of such conduct.**

2. **The court shall liberally construe the provisions of this section in favor of awarding costs, expenses and attorney's fees in all appropriate situations.** It is the intent of the Legislature that the court award costs, expenses and attorney's fees pursuant to this section and impose sanctions pursuant to Rule 11 of the Nevada Rules of Civil Procedure in all appropriate situations to **punish for and deter frivolous or vexatious claims and defenses because such claims and defenses overburden limited judicial resources, hinder the timely resolution of meritorious claims and increase the costs of engaging in business and providing professional services to the public.**

NRS § 7.085 (emphasis supplied).

As clearly documented above, Plaintiffs brought this action in the first place already having

1 personally alleged medical negligence pertaining to CHH to third parties, i.e., two State agencies.  
2 They went to the trouble of obtaining a Special Administrator for decedent's estate for the express  
3 purpose of obtaining her medical records from CHH which they received. Not only did they receive  
4 the records, their counsel, with unmitigated gall, suggested that CHH was obligated to prove that  
5 Plaintiffs received the medical records. Plaintiffs' counsel completely disregarded NRS 47.250(13)  
6 in which a rebuttable presumption is created "[t]hat a letter duly directed and mailed was received  
7 in the regular course of the mail." CHH submitted the declarations of two witnesses with personal  
8 knowledge of the facts outlining their procedures for handling incoming medical records requests,  
9 the specifics of how such procedures were implemented in this case, and that the medical records  
10 here were mailed to the Plaintiffs twice, all within one month of decedent's death. Plaintiffs' counsel  
11 produced nothing in rebuttal except his false and improper claim that CHH was required to prove  
12 Plaintiffs actually received the records. Plaintiffs themselves never denied receiving them. What  
13 made his statement even more disingenuous was the fact that he gave the very records to Dr. Hashim,  
14 his own expert, for review. Dr. Hashim stated that he reviewed the records and formulated an  
15 opinion which counsel used to file his Complaint. Plaintiffs' counsel even denied asserting a  
16 fraudulent concealment argument and this Court found no such argument advanced by Plaintiffs. In  
17 a footnote, the Nevada Supreme Court stated "**The real parties in interest do not adequately**  
18 **address why tolling should apply** under NRS 41A.097(3) (providing that the limitation period for  
19 a professional negligence claim "is tolled for any period during which the provider of health care  
20 has concealed any act, error or omission upon which the action is based"). **Even if they did, such**  
21 **an argument would be unavailing, as the medical records provided were sufficient for their**  
22 **expert witness to conclude that petitioners were negligent in Powell's care."**<sup>8</sup> Therefore, there  
23 was no evidence that Plaintiffs lacked sufficient documentation to formulate their claim and the  
24 Supreme Court confirmed it.

25 As noted by a sister Department, "NRS 7.085 essentially provides, where an attorney  
26 violates NRS 18.010(2), NRCP 11 or EDCR 7.60, the delinquent lawyer may be required to  
27

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28 <sup>8</sup> Exhibit "B", note 4 (emphasis supplied)



1 personally pay the additional costs, expenses and/or attorney's fees in all appropriate situations.  
2 Notably, as shown above, NRS 18.010(2)(b), EDCR 7.60 and NRS 7.085 do not require Defendants  
3 to be "prevailing parties" and attorneys' fees may be awarded without regard to the recovery sought."  
4 *Berberich v. S. Highland Cmty. Ass'n*, 2019 Nev. Dist. LEXIS 130, \*11 (Nev. Dist. Ct., Case No.  
5 A-16-731824-C, January 29, 2019).

6 Furthermore,

7 Nevada's statutory interpretation rules also support treating NRCP 11  
8 and NRS 7.085 as separate sanctioning mechanisms. This court has  
9 "previously indicated that the rules of statutory interpretation apply to  
10 Nevada's Rules of Civil Procedure." *Webb, ex rel. Webb v. Clark*  
11 *Cnty. Sch. Dist.*, 125 Nev. 611, 618, 218 P.3d 1239, 1244 (2009)  
12 (citing *Moseley*, 124 Nev. at 662 n.20, 188 P.3d at 1142 n.20).  
13 Further, "whenever possible, a court will interpret a rule or statute in  
14 harmony with other rules or statutes." *Nev. Power Co. v. Haggerty*,  
115 Nev. 353, 364, 989 P.2d 870, 877 (1999); *see also Bowyer*, 107  
15 Nev. at 627-28, 817 P.2d at 1178. The simplest way to reconcile  
16 NRCP 11 and NRS 7.085 is to do what federal courts have done with  
17 FRCP 11 and § 1927; treat the rule and statute as independent  
18 methods for district courts to award attorney fees for misconduct.  
19 Therefore, we conclude NRCP 11 does not supersede NRS 7.085.

20 *Watson Rounds, P.C. v. Eighth Judicial Dist. Court*, 131 Nev. 783, 789, 358 P.3d 228, 232 (2015).

21 Hereinabove is a long documented recitation of case law and facts which specifically and  
22 directly contradict anything and everything advanced by Plaintiffs' counsel in this matter. Plaintiffs'  
23 counsel did everything he could to force CHH to incur expenses. He filed a case well beyond the  
24 statute of limitations, despite clear case law demonstrating when inquiry notice commences. He  
25 was faced with two motions on the issue and misrepresented the facts. He provided not one shred  
26 of evidence to support his personal theories about confusion, refusing and unable to produce any  
27 supporting evidence. He provided no support for a suggestion of fraudulent concealment, and  
28 opposed any motions for a stay of proceedings while the statute of limitations issue made its way  
through the appellate system. In short, Plaintiffs' counsel advanced a case which was dead on  
arrival. He knew it, was reminded of it, and pursued it anyway, hoping for a judicial lifeline. The  
Supreme Court made certain to cover all possible avenues for Plaintiffs' counsel's attempt to scurry  
away from his late and improper case filing. Adding insult to injury, he did everything he could to  
increase expenses. Elections have consequences. Those consequences are sanctions under NRS

1 7.085 which include the \$58,514.36 in pre-NRCP 68 offer fees and expenses incurred from the  
2 commencement of this litigation. Based upon Plaintiffs counsel's violation of the two prongs of  
3 NRS 7.085, the Supreme Court has determined:

4           The language of NRS 7.085 is straightforward. Subsection 1 of NRS  
5 7.085 provides **that district courts "shall" hold attorneys**  
6 **"personally" liable for "additional costs, expenses and attorney's fees"**  
7 **under certain circumstances. If the statutory conditions are met,**  
8 **"the court shall" impose a sanction of taxable fees and costs**  
9 **"reasonably incurred because of such conduct."** *Id* With respect to  
10 "such conduct," the statute requires no more than what it states: in  
11 relevant part, that "a court find[] that an attorney has" (i) "[brought  
or] maintained ... a civil action" that (ii) either (a) "is not well-  
grounded in fact," (b) "is not warranted by existing law," or (c) "is not  
warranted ... by a[] [good faith] argument for changing the existing  
law." See NRS 7.085(1)(a). Subsection 2 requires Nevada courts to  
"liberally construe" subsection 1 "in favor of awarding costs,  
expenses and attorney's fees in all appropriate situations." NRS  
7.085(2) (emphasis added).

12 *Washington v. AA Primo Builders, Ltd. Liab. Co.*, 440 P.3d 49 (Nev. 2019) (Emphasis supplied).  
13 "The statutes are clear—parties who bring and maintain an action without grounds shall have  
14 attorney fees imposed against them." *Lopez v. Corral*, Nos. 51541, 51972, 2010 Nev. LEXIS 69, at  
15 \*24, 2010 WL 5541115 (Dec. 20, 2010).

16           There is no clearer case for the imposition of attorney's fees than this one. Plaintiffs' motion  
17 case was entirely frivolous as it was knowingly filed beyond the statute of limitations. Even if it  
18 was not known from the outset, which the evidence clearly demonstrated that it was, it became  
19 abundantly clear that the Plaintiffs themselves not only suspected, but actually accused CHH of  
20 malpractice and sought investigations by the State into their allegations. Plaintiffs supplied the very  
21 evidence damning their own assertions of "confusion" which make Plaintiffs' counsel's  
22 advancement thereof all the more egregious.

23           Thus, in addition to all NRCP Rule 68 post offer fees and costs, CHH requests that sanctions  
24 be imposed against Plaintiffs' counsel for all pre-NRCP Rule 68 costs and fees totaling \$58,514.36  
25 in accordance with NRS 7.085.

26           **D. EDCR 7.60 Authorizes the Imposition of Fines, Costs, and/or Attorneys' Fees**  
27 **Due to an Attorney's Presentation of Frivolous Opposition to a Motion or**  
28 **Who Multiplies the Proceeding in a Case to Increase Costs**

EDCR 7.60(b) provides:

(b) The court may, after notice and an opportunity to be heard, impose upon an attorney or a party any and all sanctions which may, under the facts of the case, be reasonable, including the imposition of fines, costs or attorney's fees when an attorney or a party without just cause:

- (1) Presents to the court a motion or an opposition to a motion which is obviously frivolous, unnecessary or unwarranted.
- (2) Fails to prepare for a presentation.
- (3) So multiplies the proceeding in a case as to increase costs unreasonably and vexatiously.
- (4) Fails or refuses to comply with these rules.
- (5) Fails or refuses to comply with any order of a judge of the court.

The facts pertaining to Plaintiffs' counsel's conduct here are fully documented above. They commenced and maintained a completely unsustainable action from the beginning. They knowingly possessed the full medical file. They went to court to obtain an authorization to get the medical file. They never denied receiving the medicals, and in fact, utilized the medicals they did receive to obtain a medical affidavit for use with the Complaint. They knowingly possessed multiple complaints to State agencies alleging malpractice against CHH and requesting formal investigations thereof. Then, for purposes of the motion for summary judgment, Plaintiffs' counsel feigned confusion on his client's behalf as to decedent's cause of death (a fact which none of the Plaintiffs confirmed in any sworn statement or testimony). After creating chaos for no reason, when given the opportunity to prevent CHH from incurring further costs, Plaintiffs' counsel opposed any request for a stay of proceedings, three times in this case, requiring the continued discovery process, expert evaluations and expert reporting. They refused to agree to postpone the trial date to allow this matter to make its way through the Supreme Court, with knowledge that the Court would be ruling one way or another on this case dispositive issue. In all, Plaintiffs' counsel knowingly caused enormous costs on CHH only to have the very issues raised in this Court result in a total dismissal. CHH should not be required to pay for Plaintiffs' folly, especially when Plaintiffs' counsel purposely looked to increase expenses while pursuing a defunct case from the outset. Thus, EDCR 7.60 provides a further avenue of deterrence to attorneys, like Plaintiffs' counsel, who engage in these unnecessary and flagrantly frivolous lawsuits which are dead before they are even filed, justifying an award of **\$110,930.85** in attorneys' fees per N.R.C.P. 68 and N.R.S. §§ 17.117, plus **\$58,514.36** in pre-NRCP 68 offer fees and expenses pursuant to N.R.S. §§ 7.085, 18.010(2) and EDCR 7.60.

///

1           **E.       CHH Is Also Entitled to Its Fees and Costs Per NRS 18.010(2)**

2           Likewise, CHH is entitled to an award of his attorney's fees and costs under NRS  
3 §18.010(2)(b), which provides in pertinent part:

4                     In addition to the cases where an allowance is authorized by specific  
5 statute [see NRS § 7.085 above], the court may make an allowance of  
6 attorney's fees to a prevailing party:

7                     (b) Without regard to the recovery sought, when the court finds that  
8 the claim, counterclaim, cross-claim or third-party complaint or  
9 defense of the opposing party was brought or maintained without  
10 reasonable ground or to harass the prevailing party. The court shall  
11 liberally construe the provisions of this paragraph in favor of  
12 awarding attorney's fees in all appropriate situations. It is the intent of  
the Legislature that the court award attorney's fees pursuant to this  
paragraph and impose sanctions pursuant to Rule 11 of the Nevada  
Rules of Civil Procedure in all appropriate situations to punish for and  
deter frivolous or vexatious claims and defenses because such claims  
and defenses overburden limited judicial resources, hinder the timely  
resolution of meritorious claims and increase the costs of engaging in  
business and providing professional services to the public.

13           For the reasons discussed above, CHH respectfully requests an award of attorney's fees and  
14 costs that it incurred in this matter, and enter an order awarding **\$110,930.85** in attorneys' fees per  
15 N.R.C.P. 68 and N.R.S. §§ 17.117, plus **\$58,514.36** in pre-NRCP 68 offer fees and expenses pursuant  
16 to N.R.S. §§ 7.085, 18.010(2) and EDCR 7.60.

17           **III.       CONCLUSION**

18           Based upon the legal authority and reasons stated above, Defendants respectfully request the  
19 Court grant their Motion and award them **\$110,930.85** in attorneys' fees per N.R.C.P. 68 and  
20 N.R.S. §§ 17.117, plus **\$58,514.36** in pre-NRCP 68 offer fees and expenses pursuant to N.R.S. §§  
21 7.085, 18.010(2) and EDCR 7.60.

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

LEWIS BRISBOIS BISGAARD &amp; SMITH LLP

By */s/ Adam Garth*

---

S. BRENT VOGEL

Nevada Bar No. 006858

ADAM GARTH

Nevada Bar No. 15045

6385 S. Rainbow Boulevard, Suite 600

Las Vegas, Nevada 89118

Tel. 702.893.3383

*Attorneys for Attorneys for Defendant Valley*

*Health System, LLC dba Centennial Hills Hospital  
Medical Center*

1 **CERTIFICATE OF SERVICE**

2 I hereby certify that on this 22<sup>nd</sup> day of November, 2021, a true and correct copy  
3 of **DEFENDANT VALLEY HEALTH SYSTEM, LLC DBA CENTENNIAL HILLS**  
4 **HOSPITAL MEDICAL CENTER'S MOTION FOR ATTORNEYS' FEES PURSUANT TO**  
5 **N.R.C.P. 68, N.R.S. §§ 17.117, 7.085, 18.010(2), AND EDCR 7.60** was served by electronically  
6 filing with the Clerk of the Court using the Odyssey E-File & Serve system and serving all parties  
7 with an email-address on record, who have agreed to receive electronic service in this action.

8 Paul S. Padda, Esq.  
9 PAUL PADDALAW, PLLC  
10 4560 S. Decatur Blvd., Suite 300  
11 Las Vegas, NV 89103  
12 Tel: 702.366.1888  
13 Fax: 702.366.1940  
14 [psp@paulpaddalaw.com](mailto:psp@paulpaddalaw.com)  
15 *Attorneys for Plaintiffs*

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Brad Shipley, Esq.  
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[bshipleyr@jhcottonlaw.com](mailto:bshipleyr@jhcottonlaw.com)  
*Attorneys for Defendants Dionice S. Juliano,*  
*M.D., Conrado Concio, M.D And Vishal S.*  
*Shah, M.D.*

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17  
18 By /s/ Roya Rokni  
19 An Employee of  
20 LEWIS BRISBOIS BISGAARD & SMITH LLP  
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EXHIBIT ‘A’

EXHIBIT ‘A’

1 S. BRENT VOGEL  
Nevada Bar No. 6858  
2 Brent.Vogel@lewisbrisbois.com  
ADAM GARTH  
3 Nevada Bar No. 15045  
Adam.Garth@lewisbrisbois.com  
4 LEWIS BRISBOIS BISGAARD & SMITH LLP  
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5 Las Vegas, Nevada 89118  
Telephone: 702.893.3383  
6 Facsimile: 702.893.3789  
*Attorneys for Defendant Valley Health System,  
7 LLC dba Centennial Hills Hospital Medical  
Center*  
8

9 DISTRICT COURT  
10 CLARK COUNTY, NEVADA  
11

12 ESTATE OF REBECCA POWELL, through  
BRIAN POWELL, as Special Administrator;  
13 DARCI CREECY, individually and as Heir;  
TARYN CREECY, individually and as an  
14 Heir; ISIAIAH KHORSOF, individually and as  
an Heir; LLOYD CREECY, individually,;

15 Plaintiffs,  
16

17 vs.

18 VALLEY HEALTH SYSTEM, LLC (doing  
business as "Centennial Hills Hospital Medical  
Center"), a foreign limited liability company;  
19 UNIVERSAL HEALTH SERVICES, INC., a  
foreign corporation; DR. DIONICE S.  
20 JULIANO, M.D., an individual; DR.  
CONRADO C.D. CONCIO, M.D., an  
21 individual; DR. VISHAL S. SHAH, M.D., an  
individual; DOES 1-10; and ROES A-Z,;  
22

23 Defendants.  
24

Case No. A-19-788787-C

Dept. No.: 30

**DEFENDANT VALLEY HEALTH  
SYSTEM, LLC'S RULE 68 OFFER TO  
PLAINTIFFS**

25 TO: ESTATE OF REBECCA POWELL, through BRIAN POWELL, as Special  
26 Administrator; DARCI CREECY, individually and as Heir; TARYN CREECY, individually and as  
27 an Heir; ISIAIAH KHORSOF, individually and as an Heir; LLOYD CREECY, individually,  
28 Plaintiffs; and



1 TO: Paul S. Padda, Esq., PAUL PADDA LAW, PLLC, 4560 S. Decatur Blvd., Suite 300,  
2 Las Vegas, NV 89103, their attorneys:

3 PLEASE TAKE NOTICE that pursuant to the provisions of N.R.C.P. 68 and *Busick v.*  
4 *Trainor*, 2019 Nev. Unpub. LEXIS 378, 2019 WL 1422712 (Nev., March 28, 2019), 437 P.3d 1050,  
5 Defendants VALLEY HEALTH SYSTEM, LLC (doing business as “Centennial Hills Hospital  
6 Medical Center”), a foreign limited liability company (“Defendant”), by and through its counsel of  
7 record, S. Brent Vogel, Esq. and Adam Garth, Esq. of LEWIS BRISBOIS BISGAARD & SMITH  
8 LLP, hereby offer to waive any presently or potentially recoverable attorney’s fees and costs in full  
9 and final settlement of the above-referenced case. At this time, Defendant has incurred \$53,389.90  
10 in attorney’s fees and \$5,124.46 in costs.

11 This Offer shall not be construed to allow Plaintiffs to seek costs, attorney’s fees, or  
12 prejudgment interest from the Court in addition to the amount stated in the Offer, should Plaintiffs  
13 accept the Offer.

14 Pursuant to N.R.C.P. 68, this Offer shall be open for a period of fourteen (14) days from the  
15 date of service. In the event this Offer is accepted by Plaintiffs, Defendant will obtain a dismissal  
16 of the claim as provided by N.R.C.P. 68(d), rather than to allow judgment to be entered against  
17 Defendant. Accordingly, and pursuant to these rules and statutes, judgment against Defendant could  
18 not be entered unless ordered by the District Court.

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1 This Offer is made solely for the purposes intended by N.R.C.P. 68, and is not to be construed  
2 as an admission in any form, shape or manner that Defendant is liable for any of the allegations  
3 made by Plaintiffs in the Complaint. Nor is it an admission that Plaintiffs are entitled to any relief,  
4 including, but not limited to, an award of damages, attorney's fees, costs or interest. By virtue of  
5 this Offer, Defendant waives no defenses asserted in their Answer to Plaintiffs' Complaint.

6  
7 DATED this 28<sup>th</sup> day of August, 2020

8  
9 LEWIS BRISBOIS BISGAARD & SMITH LLP

10  
11 By /s/ Adam Garth  
12 S. BRENT VOGEL  
13 Nevada Bar No. 6858  
14 ADAM GARTH  
15 Nevada Bar No. 15045  
16 6385 S. Rainbow Boulevard, Suite 600  
17 Las Vegas, Nevada 89118  
18 Tel. 702.893.3383  
19 *Attorneys for Attorneys for Defendant Valley*  
20 *Health System, LLC dba Centennial Hills Hospital*  
21 *Medical Center*  
22  
23  
24  
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1 **CERTIFICATE OF SERVICE**

2 I hereby certify that on this 28<sup>th</sup> day of August, 2020, a true and correct copy  
3 of **DEFENDANT VALLEY HEALTH SYSTEM, LLC'S RULE 68 OFFER TO**  
4 **PLAINTIFFS** was served by electronically filing with the Clerk of the Court using the Odyssey E-  
5 File & Serve system and serving all parties with an email-address on record, who have agreed to  
6 receive electronic service in this action.

7 Paul S. Padda, Esq.  
8 PAUL PADDALAW, PLLC  
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10 Las Vegas, NV 89103  
11 Tel: 702.366.1888  
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14 *Attorneys for Plaintiffs*

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*Attorneys for Defendants Dionice S. Juliano,*  
*M.D., Conrado Concio, M.D. and Vishal S.*  
*Shah, M.D.*

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16  
17 By /s/ Roya Rokni  
18 Roya Rokni, an Employee of  
19 LEWIS BRISBOIS BISGAARD & SMITH LLP  
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EXHIBIT ‘B’

EXHIBIT ‘B’

IN THE SUPREME COURT OF THE STATE OF NEVADA

VALLEY HEALTH SYSTEM, LLC,  
D/B/A CENTENNIAL HILLS HOSPITAL  
MEDICAL CENTER, A FOREIGN  
LIMITED LIABILITY COMPANY; DR.  
DIONICE S. JULIANO, M.D., AN  
INDIVIDUAL; DR. CONRADO C.D.  
CONCIO, M.D., AN INDIVIDUAL; AND  
DR. VISHAL S. SHAH, M.D., AN  
INDIVIDUAL,

Petitioners,

vs.

THE EIGHTH JUDICIAL DISTRICT  
COURT OF THE STATE OF NEVADA,  
IN AND FOR THE COUNTY OF  
CLARK; AND THE HONORABLE  
JERRY A. WIESE, DISTRICT JUDGE,  
Respondents,

and

ESTATE OF REBECCA POWELL  
THROUGH BRIAN POWELL, AS  
SPECIAL ADMINISTRATOR; DARCI  
CREECY, INDIVIDUALLY AND AS  
HEIR; TARYN CREECY,  
INDIVIDUALLY AND AS AN HEIR;  
ISAIAH KHOSROF, INDIVIDUALLY  
AND AS AN HEIR; LLOYD CREECY,  
INDIVIDUALLY,  
Real Parties in Interest.

No. 82250

FILED

OCT 18 2021

ELIZABETH A. BROWN  
CLERK OF SUPREME COURT  
BY   
DEPUTY CLERK

*ORDER GRANTING PETITION*

This is a petition for a writ of mandamus challenging a district court order denying a motion for summary judgment in a professional negligence matter on statute of limitations grounds.

Reviewing the summary judgment de novo, *Wood v. Safeway, Inc.*, 121 Nev. 724, 729, 121 P.3d 1026, 1029 (2005), we elect to entertain the petition and grant the requested relief as we conclude the district court manifestly abused its discretion when it denied summary judgment. *All Star Bail Bonds, Inc. v. Eighth Judicial Dist. Court*, 130 Nev. 419, 422, 326 P.3d 1107, 1109 (2014) (“A writ of mandamus is available to compel the performance of an act that the law requires or to control a manifest abuse of discretion.” (internal quotation and citation omitted)); *Ash Springs Dev. Corp. v. O'Donnell*, 95 Nev. 846, 847, 603 P.2d 698, 699 (1979) (“Where an action is barred by the statute of limitations no issue of material fact exists and mandamus is a proper remedy to compel entry of summary judgment.”). While we generally disfavor petitions for mandamus relief challenging a district court’s summary judgment denial, *State ex rel. Dep’t of Transp. v. Thompson*, 99 Nev. 358, 361-62, 662 P.2d 1338, 1340 (1983), we nonetheless may consider such petitions “where no disputed factual issues exist and, pursuant to clear authority under a statute or rule, the district court [was] obligated to dismiss [the] action.” *Smith v. Eighth Judicial Dist. Court*, 113 Nev. 1343, 1345, 950 P.2d 280, 281 (1997).

Petitioners argue that undisputed evidence demonstrates the real parties in interest were on inquiry notice of their professional negligence, wrongful death, and negligent infliction of emotional distress claims by June 11, 2017, at the latest.<sup>1</sup> Thus, petitioners contend that the

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<sup>1</sup>Petitioner Valley Health System filed the instant petition. We permitted Drs. Dionice Juliano, M.D., Conrado Concio, M.D., and Vishal Shah, M.D., to join the petition. However, the district court granted summary judgment in favor of Dr. Juliano. Thus, Dr. Juliano is not a proper

real parties in interest's February 4, 2019, complaint was time-barred under NRS 41A.097(2) (providing that plaintiffs must bring an action for injury or death based on the negligence of a health care provider within three years of the date of injury and within one year of discovering the injury, whichever occurs first).<sup>2</sup> We agree.

The term injury in NRS 41A.097 means "legal injury." *Massey v. Litton*, 99 Nev. 723, 726, 669 P.2d 248, 251 (1983). A plaintiff "discovers his legal injury when he knows or, through the use of reasonable diligence, should have known of facts that would put a reasonable person on inquiry notice of his cause of action." *Id.* at 728, 669 P.2d at 252. A plaintiff "is put on 'inquiry notice' when he or she should have known of facts that 'would lead an ordinarily prudent person to investigate the matter further.'" *Winn v. Sunrise Hosp. & Med. Ctr.*, 128 Nev. 246, 252, 277 P.3d 458, 462 (2012) (quoting *Inquiry Notice*, *Black's Law Dictionary* (9th ed. 2009)). While the accrual date for NRS 41A.097(2)'s one-year period is generally a question for the trier of fact, the district court may decide the accrual date as a matter of law when the evidence is irrefutable. *Winn*, 128 Nev. at 251, 277 P.3d at 462.

Here, irrefutable evidence demonstrates that the real parties in interest were on inquiry notice by June 11, 2017 at the latest, when real

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party to the instant petition and we direct the clerk of this court to remove his name from the case caption.

<sup>2</sup>Petitioners argue, and the real parties in interest do not contest, that the at-issue claims all sound in professional negligence and are thus subject to the limitation period under NRS 41A.097(2). *See Szymborski v. Spring Mountain Treatment Ctr.*, 133 Nev. 638, 642, 403 P.3d 1280, 1284 (2017) ("Allegations of breach of duty involving medical judgment, diagnosis, or treatment indicate that a claim is for medical malpractice.").



party in interest Brian Powell, special administrator for the estate, filed a complaint with the State Board of Nursing. There, Brian alleged that the decedent, Rebecca Powell, “went into respiratory distress” and her health care providers did not appropriately monitor her, abandoning her care and causing her death. Thus, Brian’s own allegations in this Board complaint demonstrate that he had enough information to allege a prima facie claim for professional negligence—that in treating Rebecca, her health care providers failed “to use the reasonable care, skill or knowledge ordinarily used under similar circumstances by similarly trained and experienced providers of health care.” NRS 41A.015 (defining professional negligence); *Winn*, 128 Nev. at 252-53; 277 P.3d at 462 (explaining that a “plaintiff’s general belief that someone’s negligence may have caused his or her injury” triggers inquiry notice).<sup>3</sup> That the real parties in interest received Rebecca’s death certificate 17 days later, erroneously listing her cause of death as suicide, does not change this conclusion.<sup>4</sup> Thus, the real parties in interest

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<sup>3</sup>The evidence shows that Brian was likely on inquiry notice even earlier. For example, real parties in interest had observed in real time, following a short period of recovery, the rapid deterioration of Powell’s health while in petitioners’ care. Additionally, Brian had filed a complaint with the Nevada Department of Health and Human Services (NDHHS) on or before May 23, 2017. Similar to the Nursing Board complaint, this complaint alleged facts, such as the petitioners’ failure to upgrade care, sterilize sutures properly, and monitor Powell, that suggest he already believed, and knew of facts to support his belief, that negligent treatment caused Powell’s death by the time he made these complaints to NDHHS and the Nursing Board.

<sup>4</sup>The real parties in interest do not adequately address why tolling should apply under NRS 41A.097(3) (providing that the limitation period for a professional negligence claim “is tolled for any period during which the provider of health care has concealed any act, error or omission upon which the action is based”). Even if they did, such an argument would be

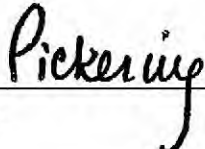



had until June 11, 2018, at the latest, to file their professional negligence claim. Therefore, their February 4, 2019 complaint was untimely.

Given that uncontroverted evidence demonstrates that the petitioners are entitled to judgment as a matter of law because the complaint is time-barred under NRS 41A.097(2), *see* NRCP 56(a); *Wood*, 121 Nev. at 729, 121 P.3d at 1029 (recognizing that courts must grant summary judgment when the pleadings and all other evidence on file, viewed in a light most favorable to the nonmoving party, “demonstrate that no genuine issue as to any material fact [remains] and that the moving party is entitled to a judgment as a matter of law” (internal quotations omitted)), we hereby

ORDER the petition GRANTED AND DIRECT THE CLERK OF THIS COURT TO ISSUE A WRIT OF MANDAMUS instructing the district court to vacate its order denying petitioners’ motion for summary judgment and enter summary judgment in favor of petitioners.

  
\_\_\_\_\_, J.  
Cadish

  
\_\_\_\_\_, J.  
Pickering

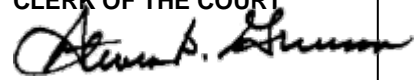
  
\_\_\_\_\_, J.  
Herndon

unavailing, as the medical records provided were sufficient for their expert witness to conclude that petitioners were negligent in Powell’s care. *See Winn*, 128 Nev. at 255, 277 P.3d at 464 (holding that tolling under NRS 41A.097(3) is only appropriate where the intentionally concealed medical records were “material” to the professional negligence claims). Finally, we have not extended the doctrine of equitable tolling to NRS 41A.097(2), and the real parties in interest do not adequately address whether such an application is appropriate under these facts. *See Edwards v. Emperor’s Garden Rest.*, 122 Nev. 317, 330 n.38, 130 P.3d 1280, 1288 n.38 (2006) (refusing to consider arguments that a party did not cogently argue or support with relevant authority).

cc: Hon. Jerry A. Wiese, District Judge  
Lewis Brisbois Bisgaard & Smith, LLP/Las Vegas  
John H. Cotton & Associates, Ltd.  
Paul Padda Law, PLLC  
Eighth District Court Clerk

EXHIBIT ‘C’

EXHIBIT ‘C’



1 **NEOJ**  
S. BRENT VOGEL  
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7 *Attorneys for Defendant Valley Health System,*  
*LLC dba Centennial Hills Hospital Medical*  
8 *Center*

9  
10 DISTRICT COURT

11 CLARK COUNTY, NEVADA

12 ESTATE OF REBECCA POWELL, through  
BRIAN POWELL, as Special Administrator;  
13 DARCI CREECY, individually and as Heir;  
TARYN CREECY, individually and as an  
Heir; ISAIAH KHOSROF, individually and as  
14 an Heir; LLOYD CREECY, individually;,,

15 Plaintiffs,

16 vs.

17 VALLEY HEALTH SYSTEM, LLC (doing  
business as "Centennial Hills Hospital Medical  
18 Center"), a foreign limited liability company;  
UNIVERSAL HEALTH SERVICES, INC., a  
19 foreign corporation; DR. DIONICE S.  
JULIANO, M.D., an individual; DR.  
20 CONRADO C.D. CONCIO, M.D., an  
individual; DR. VISHAL S. SHAH, M.D., an  
21 individual; DOES 1-10; and ROES A-Z;,,

22 Defendants.

Case No. A-19-788787-C

Dept. No. 30

**NOTICE OF ENTRY OF ORDER**

23  
24 PLEASE TAKE NOTICE that an ORDER was entered with the Court in the above-  
25 captioned matter on the 19<sup>th</sup> day of November 2021, a copy of which is attached hereto.

26 ///

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DATED this 19<sup>th</sup> day of November, 2021.

LEWIS BRISBOIS BISGAARD & SMITH LLP

By /s/ Adam Garth  
S. BRENT VOGEL  
Nevada Bar No. 06858  
ADAM GARTH  
Nevada Bar No. 15045  
6385 S. Rainbow Boulevard, Suite 600  
Las Vegas, Nevada 89118  
702.893.3383  
*Attorneys for Attorneys for Defendant Valley  
Health System, LLC dba Centennial Hills Hospital  
Medical Center*

1 **CERTIFICATE OF SERVICE**

2 I hereby certify that on this 19<sup>th</sup> day of November, 2021, a true and correct copy of  
3 **NOTICE OF ENTRY OF ORDER** was served by electronically filing with the Clerk of the  
4 Court using the Odyssey E-File & Serve system and serving all parties with an email-address on  
5 record, who have agreed to receive electronic service in this action.

6 Paul S. Padda, Esq.  
7 PAUL PADDA LAW, PLLC  
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10 Tel: 702.366.1888  
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12 [psp@paulpaddalaw.com](mailto:psp@paulpaddalaw.com)  
13 *Attorneys for Plaintiffs*

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Brad Shipley, Esq.  
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[bshipleyr@jhcottonlaw.com](mailto:bshipleyr@jhcottonlaw.com)  
*Attorneys for Defendants Dionice S. Juliano,  
M.D., Conrado Concio, M.D And Vishal S.  
Shah, M.D.*

14  
15 By /s/ Roya Rokni  
16 An Employee of  
17 LEWIS BRISBOIS BISGAARD & SMITH LLP  
18  
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**ORDR**

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Telephone: 702.893.3383  
Facsimile: 702.893.3789  
*Attorneys for Defendant Valley Health System,  
LLC dba Centennial Hills Hospital Medical  
Center*

DISTRICT COURT

CLARK COUNTY, NEVADA

ESTATE OF REBECCA POWELL, through  
BRIAN POWELL, as Special Administrator;  
DARCI CREECY, individually and as Heir;  
TARYN CREECY, individually and as an  
Heir; ISALAH KHOSROF, individually and as  
an Heir; LLOYD CREECY, individually;,,

Plaintiffs,

vs.

VALLEY HEALTH SYSTEM, LLC (doing  
business as "Centennial Hills Hospital Medical  
Center"), a foreign limited liability company;  
UNIVERSAL HEALTH SERVICES, INC., a  
foreign corporation; DR. DIONICE S.  
JULIANO, M.D., an individual; DR.  
CONRADO C.D. CONCIO, M.D., an  
individual; DR. VISHAL S. SHAH, M.D., an  
individual; DOES 1-10; and ROES A-Z;,,

Defendants.

Case No. A-19-788787-C

Dept. No.: 30

**ORDER VACATING PRIOR ORDER  
DENYING DEFENDANT VALLEY  
HEALTH SYSTEM, LLC DBA  
CENTENNIAL HILLS HOSPITAL  
MEDICAL CENTER'S MOTION FOR  
SUMMARY JUDGMENT AND  
GRANTING SAID DEFENDANT'S  
MOTION FOR SUMMARY JUDGMENT  
PER MANDAMUS OF NEVADA  
SUPREME COURT**

This matter, coming before this Honorable Court on November 18, 2021 at 10:30 a.m. in  
accordance with the order granting the petition for a writ of mandamus issued by the Nevada  
Supreme Court dated October 18, 2021, directing that this Court vacate its order of October 29,  
2020, which previously denied Defendant VALLEY HEALTH SYSTEM, LLC's motion for

1 summary judgment and co-defendants Concio and Shah's joinder thereto (collectively  
2 "Defendants"), and ordering this Court to issue an order entering summary judgment in favor of  
3 said Defendants due to the expiration of the statute of limitations, with Paul S. Padda, Esq. and  
4 Srilata Shah, Esq. of PAUL PADDA LAW, PLLC, appearing on behalf of Plaintiffs, Adam Garth,  
5 Esq., S. Brent Vogel, Esq. and Shady Sirsy, Esq., of the Law Offices of LEWIS BRISBOIS  
6 BISGAARD & SMITH LLP, appearing on behalf of the Defendant VALLEY HEALTH SYSTEM,  
7 LLC and John H. Cotton, Esq. and Brad Shipley, Esq. of JOHN H. COTTON AND ASSOCIATES,  
8 appearing on behalf of DR. CONRADO C.D. CONCIO, M.D. and DR. VISHAL S. SHAH, M.D.,  
9 with the Honorable Court having reviewed the order of the Nevada Supreme Court, finds and orders  
10 as follows:

11 THE COURT FINDS that Defendants argued that undisputed evidence demonstrated  
12 Plaintiffs were on inquiry notice of their alleged professional negligence, wrongful death, and  
13 negligent infliction of emotional distress claims by June 11, 2017, at the latest, and

14 THE COURT FURTHER FINDS that Defendants contended that Plaintiffs' February 4,  
15 2019 complaint was time-barred under NRS 41A.097(2) (providing that plaintiffs must bring an  
16 action for injury or death based on the negligence of a health care provider within three years of the  
17 date of injury and within one year of discovering the injury, whichever occurs first), and

18 THE COURT FURTHER FINDS that the term injury in NRS 41A.097 means "legal injury."  
19 *Massey v. Litton*, 99 Nev. 723, 726, 669 P.2d 248, 251 (1983). A plaintiff "discovers his legal injury  
20 when he knows or, through the use of reasonable diligence, should have known of facts that would  
21 put a reasonable person on inquiry notice of his cause of action." *Id.* at 728, 669 P.2d at 252. A  
22 plaintiff "is put on 'inquiry notice' when he or she should have known of facts that 'would lead an  
23 ordinarily prudent person to investigate the matter further.'" *Winn v. Sunrise Hosp. & Med. Ctr.*,  
24 128 Nev. 246, 252, 277 P.3d 458, 462 (2012) (quoting *Inquiry Notice*, *Black's Law Dictionary* (9th  
25 ed. 2009)), and

26 THE COURT FURTHER FINDS that while the accrual date for NRS 41A.097(2)'s one-  
27 year period is generally a question for the trier of fact, this Court may decide the accrual date as a  
28 matter of law when the evidence is irrefutable. *Winn*, 128 Nev. at 251, 277 P.3d at 462, and



1       THIS COURT FURTHER FINDS that here, irrefutable evidence demonstrated that  
2 Plaintiffs were on inquiry notice by June 11, 2017, at the latest, when Plaintiff Brian Powell, special  
3 administrator for the estate, filed a complaint with the State Board of Nursing. There, Brian alleged  
4 that the decedent, Rebecca Powell, “went into respiratory distress” and her health care providers did  
5 not appropriately monitor her, abandoning her care and causing her death, and

6       THIS COURT FURTHER FINDS that Brian Powell’s own allegations in the aforesaid  
7 Board complaint demonstrate that he had enough information to allege a prima facie claim for  
8 professional negligence-that in treating Rebecca Powell, her health care providers failed “to use the  
9 reasonable care, skill or knowledge ordinarily used under similar circumstances by similarly trained  
10 and experienced providers of health care.” NRS 41A.015 (defining professional negligence); *Winn*,  
11 128 Nev. at 252-53; 277 P.3d at 462 (explaining that a “plaintiffs general belief that someone’s  
12 negligence may have caused his or her injury” triggers inquiry notice), and

13       THIS COURT FURTHER FINDS that the evidence shows that Plaintiff Brian Powell was  
14 likely on inquiry notice even earlier than the aforesaid Board complaint, wherein Plaintiffs alleged  
15 they had observed in real time, following a short period of recovery, the rapid deterioration of  
16 Rebecca Powell’s health while in Defendants’ care, and

17       THIS COURT FURTHER FINDS that Plaintiff Brian Powell filed a complaint with the  
18 Nevada Department of Health and Human Services (NDHHS) on or before May 23, 2017. Similar  
19 to the Nursing Board complaint, this complaint alleged facts, such as the Defendants’ failure to  
20 upgrade care, sterilize sutures properly, and monitor Rebecca Powell, all of which suggest he already  
21 believed, and knew of facts to support his belief, that negligent treatment caused Rebecca Powell’s  
22 death by the time he made these complaints to NDHHS and the Nursing Board, and

23       THIS COURT FURTHER FINDS that even though Plaintiffs received Rebecca Powell’s  
24 death certificate 17 days later, erroneously listing her cause of death as suicide, that fact did not  
25 change the conclusion that Plaintiffs received inquiry notice prior to that date, and

26       THE COURT FURTHER FINDS that Plaintiffs did not adequately address why tolling  
27 should apply under NRS 41A.097(3) (providing that the limitation period for a professional  
28 negligence claim “is tolled for any period during which the provider of health care has concealed

1 any act, error or omission upon which the action is based”), and

2 THIS COURT FURTHER FINDS that even if Plaintiffs did adequately address the tolling  
3 issue, such an argument would be unavailing, as the medical records provided were sufficient for  
4 their expert witness to conclude that petitioners were negligent in Rebecca Powell’s care. *See Winn*,  
5 128 Nev. at 255, 277 P.3d at 464 (holding that tolling under NRS 41A.097(3) is only appropriate  
6 where the intentionally concealed medical records were “material” to the professional negligence  
7 claims), and

8 THE COURT FURTHER FINDS that the doctrine of equitable tolling has not been extended  
9 to NRS 41A.097(2), and

10 THIS COURT FURTHER FINDS that Plaintiffs did not adequately address whether such  
11 an application of equitable tolling is appropriate under these facts. *See Edwards v. Emperor's*  
12 *Garden Rest.*, 122 Nev. 317, 330 n.38, 130 P.3d 1280, 1288 n.38 (2006) (refusing to consider  
13 arguments that a party did not cogently argue or support with relevant authority), and

14 THE COURT FURTHER FINDS that Plaintiffs had until June 11, 2018, at the latest, to file  
15 their professional negligence claim, making Plaintiffs’ February 4, 2019 complaint untimely, and

16 THE COURT FURTHER FINDS that given the uncontroverted evidence demonstrating that  
17 Defendants were entitled to judgment as a matter of law because the complaint was time-barred  
18 under NRS 41A.097(2), *see* NRCP 56(a); *Wood*, 121 Nev. at 729, 121 P.3d at 1029 (recognizing  
19 that courts must grant summary judgment when the pleadings and all other evidence on file, viewed  
20 in a light most favorable to the nonmoving party, "demonstrate that no genuine issue as to any  
21 material fact [remains] and that the moving party is entitled to a judgment as a matter of law"  
22 (internal quotations omitted));

23 IT IS HEREBY ORDERED, ADJUDGED, AND DECREED that this Court’s prior order  
24 of October 29, 2020 denying VALLEY HEALTH SYSTEM, LLC’s motion for summary judgment  
25 and co-defendants’ joinder thereto is vacated in its entirety, and

26 ///

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28 ///

1 IT IS HEREBY FURTHER ORDERED, ADJUDGED, AND DECREED that Defendant  
2 VALLEY HEALTH SYSTEM, LLC's motion for summary judgment and co-defendants' joinders  
3 thereto are granted in their entirety due to the untimely filing of this action by Plaintiffs.

4 Dated this 19th day of November, 2021

5 Dated: \_\_\_\_\_.

  
DISTRICT COURT JUDGE

6  
7  
8 DATED this \_\_\_\_ day of November, 2021.

9 DATED this 18th day of November, 2021  
10 Jerry A. Wiese  
District Court Judge

11 \*UNSIGNED\*

12 Paul S. Padda, Esq.  
13 Srilata Shah, Esq.,  
14 PAUL PADDALAW, PLLC  
15 4560 S. Decatur Blvd., Suite 300  
16 Las Vegas, NV 89103  
17 Tel: 702.366.1888  
18 Fax: 702.366.1940  
19 [psp@paulpaddalaw.com](mailto:psp@paulpaddalaw.com)  
20 Attorneys for Plaintiffs

21 DATED this 18<sup>th</sup> day of November, 2021

22 /s/ Brad Shipley

23 John H. Cotton, Esq.  
24 Brad Shipley, Esq.  
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Attorneys for Defendants Dionice S. Juliano,  
M.D., Conrado Concio, M.D And Vishal S.  
Shah, M.D.

/s/ Adam Garth

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Nevada Bar No. 6858  
ADAM GARTH, ESQ.  
Nevada Bar No. 15045  
SHADY SIRSY, ESQ.  
Nevada Bar No. 15818  
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Attorneys for Defendant Valley Health  
System, LLC dba Centennial Hills Hospital  
Medical Center

**From:** [Brad Shipley](#)  
**To:** [Garth, Adam](#); [Srilata Shah](#); [Paul Padda](#)  
**Cc:** [Vogel, Brent](#); [Rokni, Roya](#); [Sirsy, Shady](#); [San Juan, Maria](#)  
**Subject:** [EXT] RE: Adam Garth sent you "Powell v Valley - Proposed Order Vacating Prior MSJ and Ordering SJ on SOL"  
**Date:** Friday, November 12, 2021 10:00:14 AM  
**Attachments:** [image001.png](#)

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Adam,

I believe the bracketed word [proposed] in the title caption should be removed before submission to the court, but please use my e-signature with or without making that change. Thank you for taking the time to draft the order.

Brad Shipley, Esq.  
John H. Cotton & Associates, Ltd.  
7900 W. Sahara ave. #200  
Las Vegas, NV 89117  
[bshipley@jhcottonlaw.com](mailto:bshipley@jhcottonlaw.com)  
702 832 5909

---

**From:** Garth, Adam <Adam.Garth@lewisbrisbois.com>  
**Sent:** Friday, November 12, 2021 8:50 AM  
**To:** Srilata Shah <sri@paulpaddalaw.com>; Paul Padda <psp@paulpaddalaw.com>; Brad Shipley <bshipley@jhcottonlaw.com>  
**Cc:** Vogel, Brent <Brent.Vogel@lewisbrisbois.com>; Rokni, Roya <Roya.Rokni@lewisbrisbois.com>; Sirsy, Shady <Shady.Sirsy@lewisbrisbois.com>; San Juan, Maria <Maria.SanJuan@lewisbrisbois.com>; John Cotton <jhcotton@jhcottonlaw.com>  
**Subject:** FW: Adam Garth sent you "Powell v Valley - Proposed Order Vacating Prior MSJ and Ordering SJ on SOL"  
**Importance:** High

Counsel,

As a reminder, we have not heard from any party with respect to an agreement on submitting the proposed order to the Court. Given that the hearing is scheduled for 11/18, we previously indicated that if we did not hear from all parties by 12:00 noon today, we would proceed to submit this order to the court indicating no agreement between the parties. Please advise your position on this proposed order. Many thanks.

Adam Garth



**Adam Garth**  
**Partner**  
[Adam.Garth@lewisbrisbois.com](mailto:Adam.Garth@lewisbrisbois.com)  
**T: 702.693.4335 F: 702.366.9563**

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---

**From:** Garth, Adam <[Adam.Garth@lewisbrisbois.com](mailto:Adam.Garth@lewisbrisbois.com)>

**Sent:** Tuesday, November 9, 2021 10:33 AM

**To:** Srilata Shah <[sri@paulpaddalaw.com](mailto:sri@paulpaddalaw.com)>; Paul Padda <[psp@paulpaddalaw.com](mailto:psp@paulpaddalaw.com)>; Brad Shipley <[bshipley@jhcottonlaw.com](mailto:bshipley@jhcottonlaw.com)>

**Cc:** Vogel, Brent <[Brent.Vogel@lewisbrisbois.com](mailto:Brent.Vogel@lewisbrisbois.com)>; Rokni, Roya <[Roya.Rokni@lewisbrisbois.com](mailto:Roya.Rokni@lewisbrisbois.com)>; San Juan, Maria <[Maria.SanJuan@lewisbrisbois.com](mailto:Maria.SanJuan@lewisbrisbois.com)>; Sirsy, Shady <[Shady.Sirsy@lewisbrisbois.com](mailto:Shady.Sirsy@lewisbrisbois.com)>; [jhcotton@jhcottonlaw.com](mailto:jhcotton@jhcottonlaw.com)

**Subject:** Adam Garth sent you "Powell v Valley - Proposed Order Vacating Prior MSJ and Ordering SJ on SOL"

**Importance:** High

Counsel:

Attached is a proposed order reflecting the Supreme Court's ruling on the writ petition for Judge Wiese's consideration and signature. In accordance with the Supreme Court's order, Judge Wiese was directed to vacate his order denying the respective summary judgment motions and issuing a new order granting said motions. This proposed order does exactly that and reflects the rationale utilized by the Supreme Court in its decision. It is our intention to submit this proposed order to Judge Wiese in advance of the hearing he scheduled for November 18, 2021. Please respond whether we have your consent to use your e-signature on the proposed order prior to submission. If you have proposed changes, please advise accordingly and we can see whether they can be incorporated. We would like to submit the order on or before Friday, November 12, 2021, so please indicate your agreement to the order or if you have an objection. If we do not hear from you by before 11/12 by 12:00 noon, we will submit the order with a letter of explanation as to those parties unwilling to sign and they will have an opportunity to submit any competing order to the Court. Many thanks for your attention to this matter.

Adam Garth

**Adam Garth**

**Partner**

Las Vegas Rainbow

702.693.4335 or x7024335

**From:** [Garth, Adam](#)  
**To:** [Paul Padda](#); [Srilata Shah](#); [Brad Shipley](#)  
**Cc:** [Vogel, Brent](#); [Rokni, Roya](#); [Sirsy, Shady](#); [San Juan, Maria](#); [jhcotton@jhcottonlaw.com](mailto:jhcotton@jhcottonlaw.com)  
**Subject:** RE: Adam Garth sent you "Powell v Valley - Proposed Order Vacating Prior MSJ and Ordering SJ on SOL"  
**Date:** Friday, November 12, 2021 9:59:40 AM  
**Attachments:** [image001.png](#)  
[image002.png](#)

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We are not willing to do that. As you were unwilling to stay anything at our request, we will return the courtesy.

---

**From:** Paul Padda <psp@paulpaddalaw.com>  
**Sent:** Friday, November 12, 2021 9:56 AM  
**To:** Garth, Adam <Adam.Garth@lewisbrisbois.com>; Srilata Shah <sri@paulpaddalaw.com>; Brad Shipley <bshipley@jhcottonlaw.com>  
**Cc:** Vogel, Brent <Brent.Vogel@lewisbrisbois.com>; Rokni, Roya <Roya.Rokni@lewisbrisbois.com>; Sirsy, Shady <Shady.Sirsy@lewisbrisbois.com>; San Juan, Maria <Maria.SanJuan@lewisbrisbois.com>; [jhcotton@jhcottonlaw.com](mailto:jhcotton@jhcottonlaw.com)  
**Subject:** [EXT] RE: Adam Garth sent you "Powell v Valley - Proposed Order Vacating Prior MSJ and Ordering SJ on SOL"

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As you know, there is a motion for rehearing pending in the Supreme Court. Given that fact, and the lack of prejudice to Defendants, please advise if Defendants are willing to stay enforcement of the Supreme Court's decision which is the subject of a motion for rehearing? Thanks.

**Paul S. Padda, Esq.**  
**PAUL PADDALAW, PLLC**  
**Websites:** [paulpaddalaw.com](http://paulpaddalaw.com)

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---

**From:** Garth, Adam <[Adam.Garth@lewisbrisbois.com](mailto:Adam.Garth@lewisbrisbois.com)>

**Sent:** Friday, November 12, 2021 8:50 AM

**To:** Srilata Shah <[sri@paulpaddalaw.com](mailto:sri@paulpaddalaw.com)>; Paul Padda <[psp@paulpaddalaw.com](mailto:psp@paulpaddalaw.com)>; Brad Shipley <[bshipley@jhcottonlaw.com](mailto:bshipley@jhcottonlaw.com)>

**Cc:** Vogel, Brent <[Brent.Vogel@lewisbrisbois.com](mailto:Brent.Vogel@lewisbrisbois.com)>; Rokni, Roya <[Roya.Rokni@lewisbrisbois.com](mailto:Roya.Rokni@lewisbrisbois.com)>; Sirsy, Shady <[Shady.Sirsy@lewisbrisbois.com](mailto:Shady.Sirsy@lewisbrisbois.com)>; San Juan, Maria <[Maria.SanJuan@lewisbrisbois.com](mailto:Maria.SanJuan@lewisbrisbois.com)>; [jhcotton@jhcottonlaw.com](mailto:jhcotton@jhcottonlaw.com)

**Subject:** FW: Adam Garth sent you "Powell v Valley - Proposed Order Vacating Prior MSJ and Ordering SJ on SOL"

**Importance:** High

Counsel,

As a reminder, we have not heard from any party with respect to an agreement on submitting the proposed order to the Court. Given that the hearing is scheduled for 11/18, we previously indicated that if we did not hear from all parties by 12:00 noon today, we would proceed to submit this order to the court indicating no agreement between the parties. Please advise your position on this proposed order. Many thanks.

Adam Garth



**Adam Garth**

**Partner**

[Adam.Garth@lewisbrisbois.com](mailto:Adam.Garth@lewisbrisbois.com)

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---

**From:** Garth, Adam <[Adam.Garth@lewisbrisbois.com](mailto:Adam.Garth@lewisbrisbois.com)>

**Sent:** Tuesday, November 9, 2021 10:33 AM

**To:** Srilata Shah <[sri@paulpaddalaw.com](mailto:sri@paulpaddalaw.com)>; Paul Padda <[psp@paulpaddalaw.com](mailto:psp@paulpaddalaw.com)>; Brad Shipley <[bshipley@jhcottonlaw.com](mailto:bshipley@jhcottonlaw.com)>

**Cc:** Vogel, Brent <[Brent.Vogel@lewisbrisbois.com](mailto:Brent.Vogel@lewisbrisbois.com)>; Rokni, Roya <[Roya.Rokni@lewisbrisbois.com](mailto:Roya.Rokni@lewisbrisbois.com)>; San Juan, Maria <[Maria.SanJuan@lewisbrisbois.com](mailto:Maria.SanJuan@lewisbrisbois.com)>; Sirsy, Shady <[Shady.Sirsy@lewisbrisbois.com](mailto:Shady.Sirsy@lewisbrisbois.com)>; [jhcotton@jhcottonlaw.com](mailto:jhcotton@jhcottonlaw.com)

**Subject:** Adam Garth sent you "Powell v Valley - Proposed Order Vacating Prior MSJ and Ordering SJ on SOL"

**Importance:** High

Counsel:

Attached is a proposed order reflecting the Supreme Court's ruling on the writ petition for Judge Wiese's consideration and signature. In accordance with the Supreme Court's order, Judge Wiese was directed to vacate his order denying the respective summary judgment motions and issuing a new order granting said motions. This proposed order does exactly that and reflects the rationale utilized by the Supreme Court in its decision. It is our intention to submit this proposed order to Judge Wiese in advance of the hearing he scheduled for November 18, 2021. Please respond whether we have your consent to use your e-signature on the proposed order prior to submission. If you have proposed changes, please advise accordingly and we can see whether they can be incorporated. We would like to submit the order on or before Friday, November 12, 2021, so please indicate your agreement to the order or if you have an objection. If we do not hear from you by before 11/12 by 12:00 noon, we will submit the order with a letter of explanation as to those parties unwilling to sign and they will have an opportunity to submit any competing order to the Court. Many thanks for your attention to this matter.

Adam Garth

**Adam Garth**

**Partner**

Las Vegas Rainbow

702.693.4335 or x7024335



1 **CSERV**

2  
3 DISTRICT COURT  
4 CLARK COUNTY, NEVADA

5  
6 Estate of Rebecca Powell,  
7 Plaintiff(s)

CASE NO: A-19-788787-C

8 vs.

DEPT. NO. Department 30

9 Valley Health System, LLC,  
10 Defendant(s)

11 **AUTOMATED CERTIFICATE OF SERVICE**

12  
13 This automated certificate of service was generated by the Eighth Judicial District  
14 Court. The foregoing 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:

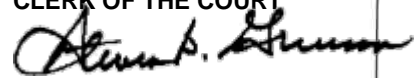
15 Service Date: 11/19/2021

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# EXHIBIT B



**OPP**

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Attorneys for Plaintiffs

**DISTRICT COURT**

**CLARK COUNTY, NEVADA**

ESTATE OF REBECCA POWELL, through  
Brian Powell as Special Administrator; DARCI  
CREECY, individually; TARYN CREECY,  
individually; ISAIAH KHOSROF,  
individually; LLOYD CREECY, individually;

Plaintiffs,

vs.

VALLEY HEALTH SYSTEM, LLC (doing  
business as "Centennial Hills Hospital Medical  
Center"), a foreign limited liability company;  
UNIVERSAL HEALTH SERVICES, INC., a  
foreign corporation; DR. DIONICE S.  
JULIANO, M.D., an individual; DR.  
CONRADO C.D. CONCIO, M.D., an  
individual; DR. VISHAL S. SHAH, M.D., an  
individual; DOES 1-10; ROES A-Z;

Defendants.

CASE NO. A-19-788787-C

DEPT. 30

**PLAINTIFFS' OPPOSITION TO  
DEFENDANT VALLEY HEALTH  
SYSTEM LLC'S MOTION FOR  
ATTORNEYS' FEES**

Plaintiffs ESTATE OF REBECCA POWELL, through Brian Powell as Special  
Administrator; DARCI CREECY, individually; TARYN CREECY, individually; ISAIAH  
KHOSROF, individually; LLOYD CREECY, individually submit this opposition to Defendant,

Estate of Rebecca Powell, et al. v. Valley Health System, LLC, et al.

District Court Case No. A-19-788787-C, Dept. 30

*Plaintiffs' Opposition to Defendant Valley Health System LLC's Motion For Attorneys' Fees*

VALLEY HEALTH SYSTEM, LLC's (doing business as "Centennial Hills Hospital Medical Center") ("Centennial Hills") Motion for Attorneys' Fees.

For the reasons set forth below, this Court should deny Centennial Hills' Motion for Attorneys' Fees. In support of this opposition, Plaintiffs rely upon the memorandum of points and authorities below, all papers on file in this litigation, Centennial Hills' Offer of Judgment and any additional argument the Court may permit. *See Defendant's Offer of Judgment to Plaintiffs attached as Exhibit 1.*

### 1. FACTUAL BACKGROUND

This is a medical malpractice/wrongful death case where Ms. Rebecca Powell, age 41, died while in the care of Defendant, Valley Health Systems, LLC doing business as Centennial Hills Hospital Medical Center ("Centennial Hills") on account of negligence by the hospital and its medical personnel. Ms. Powell was the mother of three children, Isiah, Taryn and Darci.

On May 3, 2017, Ms. Powell was found by EMS at her home. Ms. Powell was unconscious, labored in her breathing, and had vomit on her face. EMS provided emergency care and transported her to Centennial Hills where she was admitted. Ms. Powell continued to improve during her admission. However, on May 10, 2017, Ms. Powell complained of shortness of breath, weakness, and a "drowning" feeling. In response to these complaints, Defendant Dr. Shah ordered Ativan to be administered via an IV push. On May 11, 2017, Dr. Concio ordered two more doses of Ativan and ordered several tests, including a chest CT to be performed. However, the CT could not be performed due to Ms. Powell's inability to remain still during the test. Ms. Powell was returned to her room where she was supposed to be monitored by a camera. Another dose of Ativan was ordered at 3:27 AM on May 11, 2017. Shortly thereafter, Ms. Powell suffered acute respiratory failure, resulting in her death on May 11, 2017.

1 According to Plaintiff, Brian Powell, Ms. Powell's former husband, he could not visit with  
2 Ms. Powell while she was in the hospital because he was "turned away by the nurses." However,  
3 he stated under oath that, following Ms. Powell's death on May 11, 2017, "I did meet with Taryn,  
4 Isaiah and one of Rebecca's friends to speak with the doctor and risk manager after Rebecca's  
5 death, but they didn't provide any information." See *Responses to Defendant Valley Health*  
6 *Systems First Set of Interrogatories to Plaintiff Estate of Rebecca Powell Through Brian Powell*  
7 *As Special Administrator*, attached as **Exhibit 2, 11:17-21**. At this time, the family received no  
8 concrete facts or answers from Centennial Hills or its medical personnel as to the circumstances  
9 surrounding her death.  
10

11 In search of further answers, Plaintiff Brian Powell, Special Administrator of Rebecca  
12 Powell's estate filed a complaint with the Department of Health and Human Services ("HHS")  
13 sometime before May 23, 2017, requesting that the agency investigate the care and services  
14 received by Ms. Powell. Plaintiff, Taryn Creecy, ordered Ms. Powell's medical records on May  
15 25, 2017, however, there were issues with delivery, and it is unclear exactly when Plaintiff  
16 received them. Additionally, Plaintiff Brian Powell filed a Complaint with the Nevada State  
17 Board of Nursing on June 11, 2017.  
18

19 On June 28, 2017, approximately six weeks after the death of Ms. Powell, Plaintiffs  
20 received the Certificate of Death, issued by HHS which stated Ms. Powell's cause of death as a  
21 **suicide** due to "Complications of Duloxetine (Cymbalta) Intoxication."  
22

23 By letter dated February 5, 2018, HHS notified Mr. Powell that it conducted an  
24 "investigation" of the facility and concluded that Centennial Hills committed "**violation(s) with**  
25 **rules and/or regulations.**" HHS's report noted several deficiencies in the medical care provided  
26 to Ms. Powell including, among other things, that Ms. Powell was exhibiting symptoms that  
27  
28

1 should have triggered a higher level of care (“the physician should have been notified, the RRT  
2 activated, and the level of care upgraded”). *See State of Nevada Department of Health and Human*  
3 *Services Letter and Report*, attached as **Exhibit 3**. The HHS Report of Investigation stands in  
4 stark contrast to the Certificate of Death which inaccurately declared Ms. Powell’s death a  
5 suicide. This was the **first time** that Plaintiffs learned the cause of death listed on Ms. Powell’s  
6 Certificate of Death was inaccurate. Within one year of the HHS investigative report dated  
7 February 5, 2018, Plaintiffs filed a Complaint in the Eighth Judicial District Court on February 4,  
8 2019, in compliance with NRS 41 A.097(2)(a) and (c).

## 10 II. PROCEDURAL HISTORY

11 On February 4, 2019, Plaintiffs, filed a lawsuit alleging negligence/medical malpractice,  
12 wrongful death pursuant to NRS 41.085, and negligent infliction of emotional distress against  
13 Defendants, Valley Health Systems (doing business as “Centennial Hills Hospital Medical  
14 Center”), Universal Health Services, Inc., Dr. Dionice S. Juliano, M.D., Dr. Conrado C.D. and  
15 Dr. Vishal S. Shah M.D. and Doe Defendants. In compliance with NRS 41A.071, the Complaint  
16 included an affidavit from Dr. Sami Hashim in support of their first cause of action alleging  
17 negligence/medical malpractice.  
18

19 On June 12, 2019, Defendants Dr. Concio and Dr. Juliano, filed a Motion to Dismiss  
20 pursuant to Nevada Rules of Civil Procedure [“NRCPP”] 12(b)(5) alleging that Plaintiffs failed to  
21 timely file their Complaint within the statute of limitations pursuant to NRS 41A.097(2) and failed  
22 to meet the threshold requirements of NRS 41A.071 for the claims of negligent infliction of  
23 emotional distress and professional negligence.  
24

25 On June 13, 2019, Defendant Dr. Shah filed a Joinder to Dr. Concio and Dr. Juliano’s  
26 Motion to Dismiss. On June 26, 2019, Defendant Centennial Hills also filed a Joinder to Dr.  
27  
28

Concio and Dr. Juliano’s Motion to Dismiss. On June 19, 2019, Defendant Centennial Hills filed a separate Motion to Dismiss pursuant to NRCP 12(b)(5) alleging Plaintiffs failed to timely file their Complaint within the statute of limitations time of one year pursuant to NRS 41A.097(2) and requested dismissal of Plaintiffs’ Complaint. On August 13, 2019, Plaintiffs filed their Opposition to the Motion to Dismiss filed by Defendants.

On September 23, 2019, Defendant, Universal Health Services, Inc. Joinders to Defendants Dr. Concio and Dr. Juliano’s Motion to Dismiss. On September 23, 2019, Defendant Universal Health Services, Inc. filed a Joinder to Motion to Dismiss. On September 25, 2019, counsel for Centennial Hills presented oral arguments to the District Court on their Motion to Dismiss. Judge Wiese **denied** Centennial Hills’ Motion to Dismiss Plaintiffs’ Complaint based upon NRS 41A.097(2) and NRCP 12(b)(5).

After considering the papers on file and arguments of counsel, the District Court issued an Order dated February 6, 2021. Under the Findings of Fact and Conclusions of Law, Judge Wiese addressed the statute of limitations arguments noting that **the Supreme Court has been clear that the standard of when a claimant “knew or reasonably should have known” is generally an issue of fact for a jury to decide.** See, *Order Denying Defendants Conrado Concio, M.D. and Dionice Juliano, M.D. ‘s Motion to Dismiss Plaintiffs’ Complaint* attached as **Exhibit 4, 2:24-26.** Additionally, in the Order dated February 6, 2021, this Court **denied** Defendants Dr. Concio and Dr. Juliano’s Motion to Dismiss Plaintiffs’ Complaint, and subsequent Joinders. In a companion Order dated February 6, 2021, the Court **also denied** Centennial Hills’ Motion to Dismiss Plaintiffs’ Complaint, and subsequent Joinders to that motion. See *Order Denying Defendant Centennial Hills Hospital Medical Center’s Motion to Dismiss Plaintiffs’ Complaint* attached as **Exhibit 5.**



1 Dr. Concio, Dr. Juliano and Dr. Shah filed their answer on October 2, 2019. On April 15,  
2 2020, Centennial Hills filed its Answer to Plaintiffs Complaint.

3 In July of 2020, Centennial Hills served 86 Requests for Production of Documents  
4 including 16 additional special requests to Plaintiffs. Discovery requests also included  
5 Interrogatories to Plaintiffs. Responses to the discovery were provided in August and September  
6 of 2020 by Plaintiffs.  
7

8 On August 28, 2020 Centennial Hills served its Offer of Judgment to Plaintiffs which  
9 offered no money but simply offered “to waive any presently or potentially recoverable attorney’s  
10 fees and costs in full and final settlement of the . . . case.” See *Defendant Valley Health Systems,*  
11 *LLC’s Rule 68 Offer to Plaintiff’s* attached as **Exhibit 1**. The Offer claimed that “[a]t this time,  
12 Defendant has incurred \$53,389.90 in attorney’s fees and \$5,124.46 in costs.” *Id.* No billing  
13 statements or invoices documenting Centennial’s purported fees and costs were attached to the  
14 Offer. *Id.*  
15

16 On September 2, 2020, Centennial Hills and Universal Health Services filed a Motion for  
17 Summary Judgment based upon the expiration of the Statute of Limitations contained in NRS  
18 41A.097. On September 3, 2020, co-defendants Dr. Concio, Dr. Shah, and Dr. Juliano joined  
19 Centennial Hills’ Motion for Summary Judgment.  
20

21 On September 16, 2020, Plaintiffs filed their Opposition to Centennial Hills’ Motion for  
22 Summary Judgment. The Opposition pointed out that Centennial Hills had previously raised the  
23 identical arguments in their prior Motion to Dismiss and had joined co-defendants Motion also  
24 seeking a dismissal based on the expiration of the statute of limitations. Because the prior Motions  
25 to Dismiss were denied by the Court after hearing oral arguments from counsel, Plaintiffs also  
26  
27  
28

1 requested reasonable fees and costs for the violation of EDCR 2.24 which disallows the filing of  
2 the same motion without seeking leave of Court.

3 On October 21, 2020, Centennial Hills filed its reply to Plaintiffs opposition. On October  
4 21, 2020, co-defendants Dr. Concio, Dr. Shah, and Dr. Julianio filed a Joinder to Centennial Hills'  
5 reply.  
6

7 In an Order dated October 29, 2020, this Court **denied** several motions and joinders  
8 including Centennial Hills' Motion for Summary Judgment based upon the expiration of the  
9 Statute of Limitations contained in NRS 41A.097.

10 In the Order filed October 29, 2020, Judge Wiese held that "This Court is not to grant a  
11 Motion to Dismiss or a Motion for Summary Judgment on the issue of a violation of the Statute  
12 of Limitations, unless the facts and evidence irrefutably demonstrate that Plaintiff was put on  
13 inquiry notice more than one year prior to the filing of the complaint. See *ORDER*, attached as  
14 **Exhibit 6, 5:4-11**. "This Court **does not find that such evidence is irrefutable**, and that there  
15 **remains a genuine issue of material fact as to when the Plaintiffs were actually put on**  
16 **inquiry notice**. *Id.* Such issue is an issue of fact, appropriate for determination by the trier of  
17 fact. *Id.* "Consequently, Summary Judgment would not be appropriate, and the Motion for  
18 Summary Judgment, and the Joinders thereto, must be denied." *Id.*  
19  
20

21 On November 5, 2020, Centennial Hills filed a Motion Seeking a Stay of the lower court  
22 proceedings pending a resolution of an appellate issue pursuant to NRAP 8(a)(1)(A). On  
23 November 19, 2020, Plaintiffs filed an Opposition to Centennial Hills Motion Requesting a Stay.  
24 On December 17, 2020, the District Court **denied** Centennial Hills' Motion for Stay. In denying  
25 the stay the District Court again reiterated its reasoning for denying Centennial's Motion for  
26 Summary Judgment by stating that "the Court cannot find that the Defendants are likely to prevail  
27  
28

1 on the merits, as this Court previously found, and continues to believe, that the Death Certificate  
2 identifying Ms. Powell's cause of death as a "suicide," may have tolled the statute of limitations,  
3 in that such a conclusion or determination by the Medical Examiner, would clearly not suggest  
4 "negligence" on the part of any medical care provider. See *Order Denying Defendant Valley*  
5 *Health System, LLC's Motion to Stay on Order Shortening Time*, attached as **Exhibit 7, 5:7-10**.  
6 Although Defendants suggest that Plaintiffs possessed inquiry notice much earlier, the Court  
7 could not find that the families questioning of the cause of death equated with inquiry notice of  
8 negligence. Consequently, this Court concluded that "when the Plaintiffs knew or should have  
9 known, of the alleged negligence of the Defendants, was an issue of fact which overcame the  
10 Defendants' Motion for Summary Judgment. Consequently, the Court cannot find that there is a  
11 likelihood of success on the merits." *Id.*

14 On December 22, 2020, Centennial Hills filed a Writ Petition with the Nevada Supreme  
15 Court. The Supreme Court requested answering and reply briefs on the Writ Petition. On March  
16 30, 2021, Plaintiffs filed their Response to the Writ Petition. Centennial Hills filed their Reply to  
17 the Writ Petition on April 22, 2021. Centennial Hills moved this Court to reconsider its decision  
18 to stay the proceedings. On April 28, 2021, this Court denied Centennial Hills Motion to  
19 Reconsider Stay. On April 22, 2021, Centennial Hills requested the Supreme Court for a stay  
20 and the Supreme Court denied the stay.

22 On October 18, 2021, the Supreme Court issued an Order granting Centennial Hills' Writ  
23 Petition and directing this Court to vacate its Order denying Centennial Hills Motion for Summary  
24 Judgment and entering Summary Judgment in favor of all the Defendants.

26 Centennial Hills now seeks attorneys' fees in the instant Motion. Plaintiffs request this  
27 Court to deny Centennial Hills Motion for Attorneys' Fees as the filing of the medical  
28

malpractice, wrongful death, and negligent infliction of emotional distress complaint on behalf of the estate and surviving children of Rebecca Powell was not frivolous, and the claims for wrongful death/medical malpractice and negligent infliction of emotional distress were brought in good faith.

As the record reflects, this Court **repeatedly** denied several applications for Motions to Dismiss based on the expiration of the statute of limitations and Motions for Summary Judgment arguing the expiration of the statute of limitations by Defendants and found the filing of Plaintiffs suit to be meritorious and within the statute of limitations.

Centennial Hills did not “win” this matter on its merits. The case was not tried on the facts or merits and a jury did not find in Defendants’ favor. The Supreme Court reversed the decision of this Court on their interpretation of the facts regarding inquiry notice. The Supreme Court incorrectly reversed Judge Wiese’s decision on Centennial Hills Motion for Summary judgment which results in a dismissal of the case based on the Supreme Court’s interpretation of the facts as to when **all** the Plaintiffs learned of the wrongful death/medical malpractice claims against Centennial Hills and the treating physicians. Plaintiffs are challenging the Nevada Supreme Court’s October 18, 2021, decision and filing a Petition for En Banc Reconsideration.

This opposition is submitted to Centennial Hills Motion for Attorneys’ Fees pursuant to NRCF 68, NRS 17.117, 7.085, 18.010 (2), and EDCR 7.60.

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...

...

...



1 **Plaintiffs' unfairly to forego legitimate claims. See, Beattie v. Thomas, 99 Nev. 579, 668 P.2d**  
2 **268 (1983).**

3 NRCP 68 provides that if a party rejects an offer of judgment and fails to obtain a more  
4 favorable judgment **at trial**, the district court **may** order that party to pay the offeror reasonable  
5 attorney fees. Pursuant to Beattie, the District Court **must** weigh the following four factors when  
6 deciding whether to award attorney fees based upon an offer of judgment:  
7

- 8 (1) whether the plaintiff's claim was brought in good faith;  
9 (2) whether the defendants' offer of judgment was reasonable and in good faith in both its  
10 timing and amount;  
11 (3) whether the plaintiff's decision to reject the offer and proceed to trial was grossly  
12 unreasonable or in bad faith; and  
13 (4) whether the fees sought by the offeror are reasonable and justified in amount.  
14

15 Beattie, 99 Nev. 588–89, 668 P.2d, 274.

16 **1. Plaintiffs' Claims Were Brought In Good Faith**

17 Plaintiffs satisfy the first Beattie factor in that the Plaintiffs' claims were brought in good  
18 faith. The claims for medical malpractice and wrongful death are well supported by the facts of  
19 this case and the impending death of Rebecca Powell at the age of 41. HHS found Centennial  
20 Hills to be negligent in the care provided to Rebecca Powell at Centennial Hills. HHS's report  
21 dated February 5, 2018, noted several deficiencies in the medical care provided to Ms. Powell  
22 including, among other things, that Ms. Powell was exhibiting symptoms that should have  
23 triggered a higher level of care ("the physician should have been notified, the RRT activated, and  
24 the level of care upgraded"). See **Exhibit 3**. The HHS Report of Investigation stands in stark  
25 contrast to the Certificate of Death which inaccurately declared Ms. Powell's death a suicide.  
26  
27  
28

1 This was the first time that all the Plaintiffs learned the cause of death listed on Ms. Powell's  
2 Certificate of Death was inaccurate.

3 This Court has repeatedly found merit in Plaintiffs' Complaint and their causes of action  
4 for wrongful death, medical malpractice, and negligent infliction of emotional harm. Defendants  
5 request for attorneys' fees and costs is not justified and not warranted as the Complaint was  
6 bought by Plaintiffs in good faith. This case was "not dead on arrival" as stated by Centennial  
7 Hills. This case was brought because a 41 one year old mother of three died due to the negligence  
8 of the Defendants. A price was paid by the Plaintiffs when they lost their mother who died while  
9 in the care of Centennial Hills.  
10

11  
12 **2. Defendant's Offer Of Judgment Was Not Reasonable And Was Not**  
13 **Made In Good Faith In Both Its Timing And Amount**

14 The second factor of Beattie also weighs in favor of the Plaintiffs. Centennial Hills served  
15 an Offer of Judgment on August 28, 2020, where they agreed to merely waive their present and  
16 potentially recoverable attorney's fees and costs in full and final settlement of the above-  
17 referenced case. The Offer of Judgment, while referencing \$53,389.90 in purported attorney's  
18 fees and \$5,124.46 in purported costs, providing no documentation for Plaintiffs to evaluate the  
19 reasonableness or accuracy of what Centennial Hills was claiming.  
20

21 However, Defendant's Offer of Judgment of \$58,514.36 was not reasonable and nor was  
22 it in good faith considering Plaintiffs' causes of action for medical malpractice, wrongful death,  
23 and negligent infliction of emotional harm. Plaintiffs lost their mother, who was only 41 years  
24 old at the time of her death. It was reasonable for Plaintiffs to reject Defendants' Offer of  
25 Judgment as the terms of the Offer of Judgment did not provide for any monetary recovery to  
26 Plaintiffs to compensate them for the loss of their mother. Defendants incorrectly state in their  
27  
28

papers that given the likelihood of losing on this issue, the offered waiver of right to seek reimbursement of costs was reasonable in both timing and amount. On the contrary, shortly after the expiration of the time to accept the Offer of Judgment, this Court denied Centennial Hills Motion for Summary Judgment in October 2020 as it did not find merit in Defendant's Motion for Summary Judgment. An award of attorneys' fees is not appropriate in this case as Defendants failed to present an Offer of Judgment that would compensate Plaintiffs for their loss and the Offer itself was not proper under Nevada law. To this point, while the Offer cites Busick v. Trainor, 2019 WL 1422712, this is an unpublished decision by the Nevada Supreme Court. There is no published authority in Nevada that has held that a "walk away" Offer of Judgment is a proper Offer under NRCP 68, especially where no documentation is provided to permit a plaintiff to evaluate the reasonableness of the claimed fees and costs. Instead, the Nevada Supreme Court has held that where a trial court is evaluating an offer of judgment, the court may not factor in the "inclusion of fees and costs as part of the judgment being evaluated." McCrary v. Bianco, 122 Nev. 102, 107 (2006).

**3. Plaintiffs' Decision To Reject The Offer Of Judgment Was Not Grossly Unreasonable Nor In Bad Faith**

As stated above, Defendants Offer of Judgment did not include an amount to compensate the Plaintiffs for the loss of their mother. Plaintiffs continued to defeat every Motion to Dismiss, and Motion for Summary Judgement filed by all the Defendants challenging the expiration of the statute of limitations based on inquiry notice. Centennial Hills lost every Motion to Dismiss, Motion for Summary Judgment and Motion for a Stay pending the decision on the Writ as this Court was not convinced by Defendant that Plaintiffs filed the Complaint beyond the statute of limitations. This Court correctly held that the facts surrounding when Plaintiffs learned of the



1 negligence to support their causes of action is an issue of fact to be determined by the jury and/or  
2 trier of fact. It was not **grossly unreasonable** for Plaintiffs to reject the Offer of Judgment as no  
3 amount was being offered in damages to the Plaintiffs. What Defendants were offering was a  
4 waiver of their purported fees and costs in the range of \$58,500. Plaintiffs were not even in a  
5 position to verify the accuracy of the alleged fees and costs since no documentation was provided  
6 by Centennial Hills in support of its Offer.  
7

8 There was no bad faith as Plaintiffs wholeheartedly believed in their causes of action  
9 which was supported by the report issued by HHS in February of 2018. HHS found wrongdoing  
10 by Centennial Hills and found violations which supported the Plaintiffs causes of action for  
11 wrongful death, medical malpractice, and negligent infliction of emotional harm. `

12 Plaintiffs' decision to proceed with their causes of action was not only reasonable, and in  
13 good faith, but the right decision at that time.  
14

15 **4. The Fees Sought By Centennial Hills Is Not Reasonable And Not Justified**  
16 **In Amount**

17 Based on the overall facts of this case and the procedural history of this case Plaintiffs  
18 causes of action still have merit should this case or had this case proceeded to trial. Centennial  
19 Hills won on a technicality and not on merit at the Supreme Court level. There was no jury that  
20 rendered a decision after trial in Centennial Hills favor. A jury did not render a defense verdict  
21 after trial.  
22

23 Although the decision to award such fees lies within the district court's discretion, the  
24 Nevada Supreme Court has emphasized that, while Nevada's offer of judgment provisions are  
25 designed to encourage settlement, they should not be used as a mechanism to unfairly force  
26 plaintiffs to forego legitimate claims. Beattie v. Thomas, 99 Nev. 579, 588–89, 668 P.2d 268,  
27  
28

274 (1983). Each factor need not favor awarding attorney fees because “no one factor under Beattie is determinative.” Yamaha Motor Co. v. Arnoult, 114 Nev. 233, 252, 955 P.2d 661, 673 (1998). “[E]xplicit findings on every Beattie factor [are not] required for the district court to adequately exercise its discretion.” Certified Fire Prot., Inc. v. Precision Constr., Inc., 128 Nev. Adv. Op. 35, 283 P.3d 250, 258 (2012).

As detailed above, the Plaintiffs’ Complaint for wrongful death and medical malpractice was brought in good faith which is well supported by the facts in the record and this Court’s denial of several Motions by all the Defendants on the issue of the statute of limitations. Moreover, it is Defendant continued filing of Motions based on the same theory that Plaintiffs did not file their lawsuit within the prescribed statute of limitations that drove up Defendant’s fees. The fees related to these relentless attempts on the same statute of limitations theory makes Defendant’s attorney’s fees unreasonable and unjustified. Moreover, Plaintiffs are unable to properly evaluate the reasonableness of Defendant’s attorney’s fees because they only present a summary of the fees that have been incurred.

It is interesting to note that Defendants were willing to mediate this matter in November of 2021 prior to the October 18, 2021, Supreme Court decision. Defendants’ willingness to mediate further supports the merit of Plaintiffs’ claims. This Court should use its discretion and deny the motion for attorneys’ fees.

**B. THIS COURT SHOULD DENY CENTENNIAL HILLS REQUEST FOR AN AWARD OF PRE-NRCP RULE 68 OFFER OF JUDGMENT FEES PURSUANT TO NRS 7.085.**

NRS 7.085 provides the following:

1. If a court finds that an attorney has:
  - (a) Filed, maintained, or defended a civil action or proceeding in any court in this State and such action or defense is not well-grounded in fact or is not

1 warranted by existing law or by an argument for changing the existing law that is  
2 made in good faith; or

3 (b) Unreasonably and vexatiously extended a civil action or proceeding  
4 before any court in this State, the court shall require the attorney personally to pay  
5 the additional costs, expenses and attorney's fees reasonably incurred because of  
6 such conduct.

7 2. The court shall liberally construe the provisions of this section in favor of  
8 awarding costs, expenses and attorney's fees in all appropriate situations. It is the  
9 intent of the Legislature that the court award costs, expenses and attorney's fees  
10 pursuant to this section and impose sanctions pursuant to Rule 11 of the Nevada  
11 Rules of Civil Procedure in all appropriate situations to punish for and deter  
12 frivolous or vexatious claims and defenses because such claims and defenses  
13 overburden limited judicial resources, hinder the timely resolution of meritorious  
14 claims and increase the costs of engaging in business and providing professional  
15 services to the public.

16 As clearly documented above, Plaintiffs brought this action in good faith. None of the  
17 provisions of NRS 7.085 apply to the facts of this case. As detailed above, Plaintiffs did not have  
18 inquiry notice of a wrongful death and malpractice claim against the named Defendants until  
19 February 5, 2018, when HHS found that the Defendants violated the policies and procedures

20 In denying Centennial Hills' Motion for Summary Judgment, this Court concluded that  
21 when the Plaintiffs knew or should have known, of the alleged negligence of the Defendants, was  
22 an issue of fact which overcame the Defendants' Motion for Summary Judgment. Consequently,  
23 the Court cannot find that there is a likelihood of success on the merits. Specifically, in the Order  
24 dated February 6, 2021, this Court under the Findings of Fact and Conclusions of Law, addressed  
25 the statute of limitations arguments noting that the Supreme Court has been clear that the standard  
26 of when a claimant "knew or reasonably should have known" is generally an issue of fact for a  
27 jury to decide. Judge Wiese denied Centennial Hills' motion to dismiss Plaintiffs' Complaint  
28 based upon NRS 41A.097(2) and NRCP 12(b)(5). See **Exhibit 5, 2:19-21.**

Again in denying Centennial Hills' Motion for Stay, this Court on December 17, 2020 Order reiterated its finding that "the Court cannot find that the Defendants are likely to prevail on the merits, as this Court previously found, and continues to believe, that the Death Certificate identifying Ms. Powell's cause of death as a "suicide," may have tolled the statute of limitations, in that such a conclusion or determination by the Medical Examiner, would clearly not suggest "negligence" on the part of any medical care provider. See **Exhibit 7, 5:5-12. Although the Defendants suggest that the Plaintiffs possessed inquiry notice much earlier, the Court could not find that the families questioning of the cause of death equated with inquiry notice of negligence.** Consequently, this Court concluded that when the Plaintiffs knew or should have known, of the alleged negligence of the Defendants, was an issue of fact which overcame the Defendants' Motion for Summary Judgment. Consequently, the Court cannot find that there is a likelihood of success on the merits.

It is absurd for Defendants to suggest that the provisions of NRS 7.085 even apply to the facts of this case. Plaintiffs' attorneys did not violate NRS 18.010(2), NRCP 11 or EDCR 7.60. Defendants incorrectly malign Plaintiffs' counsel and make untrue statements of Plaintiffs' counsel's misrepresentation of facts. It is Defendant's counsel's statements in support of the instant motion that misrepresent the facts of this case and it is Defendant who should be sanctioned. Plaintiffs in good faith filed a suit for wrongful death/medical malpractice against Centennial Hills and the treating physician whose negligent actions and/or inactions led to the death of Rebecca Powell. To belittle the death of a 41-year-old and to malign the Plaintiffs' counsel is not only callous, but unprofessional. Plaintiffs' counsel did nothing in this case that would warrant the application of the sanctions suggested by defense counsel.

Defense counsel also insults this Court in its application for fees pursuant to NRS 7.085 as it is this Court that repeatedly found merit in Plaintiffs' arguments and denied several motions to dismiss and motions for summary judgment involving the issue of inquiry notice and the expiration of the statute of limitations. Defendant provides no facts to support their application of pre-NRCP 68 costs and fees pursuant to NRS 7.085. This Court should deny the application for fees and costs as the Plaintiffs did not submit frivolous or vexatious claims and did not overburden the limited judicial resources nor did it hinder the timely resolution of meritorious claims.

**C. EDCR 7.60 IS INAPPLICABLE TO THE FACTS OF THIS CASE AS THE PLAINTIFFS' ATTORNEYS DID NOT PRESENT FRIVOLOUS OPPOSITION TO A MOTION NOR DID THEY MULTIPLY THE PROCEEDINGS TO INCREASE THE COSTS.**

Pursuant to EDCR Rule 7.60(b):

(b) The court may, after notice and an opportunity to be heard, impose upon an attorney or a party any and all sanctions which may, under the facts of the case, be reasonable, including the imposition of fines, costs or attorney's fees when an attorney or a party without just cause:

- (1) Presents to the court a motion or an opposition to a motion which is obviously frivolous, unnecessary or unwarranted.
- (2) Fails to prepare for a presentation.
- (3) So multiplies the proceedings in a case as to increase costs unreasonably and vexatiously.
- (4) Fails or refuses to comply with these rules.
- (5) Fails or refuses to comply with any order of a judge of the court.

It is Defendant who filed multiple motions arguing the same facts whereby increasing their fees associate with this litigation. Plaintiffs had no option but to file oppositions to said motions. It is Defendant who lost every motion filed in this case at the District Court level except for the Writ Petition filed at the Supreme Court where the Supreme Court granted the Writ and overturned the lower court's denial of the motion for summary judgment. Moreover, Defendant served voluminous discovery request, which also necessitated Plaintiffs' response. Therefore, it is evident it was Defendants, not Plaintiffs, who were proactively increasing their fees.

Centennial Hills request for the imposition of attorneys' fees pursuant to EDCR 7.60 lacks merit. The facts of this case do not support such award of costs and fees.

**D. CENTENNIAL HILLS IS NOT ENTITLED TO FEES UNDER NRS 18.010(2).**

NRS 18.010 (2)(b) provides:

(b) Without regard to the recovery sought, when the court finds that the claim, counterclaim, cross-claim or third-party complaint or defense of the opposing party **was brought or maintained without reasonable ground or to harass the prevailing party.** The court shall liberally construe the provisions of this paragraph in favor of awarding attorney's fees in all appropriate situations. It is the intent of the Legislature that the court award attorney's fees pursuant to this paragraph and impose sanctions pursuant to Rule 11 of the Nevada Rules of Civil Procedure in all appropriate situations to punish for and deter frivolous or vexatious claims and defenses because such claims and defenses overburden limited judicial resources, hinder the timely resolution of meritorious claims and increase the costs of engaging in business and providing professional services to the public. (Emphasis added).

In Smith v. Crown Financial Serv. Of America, 890 P. 2d 769 (1995), the Supreme Court held that respondents could not recover attorney fees under NRS 18.010(2)(b) because appellants' action was neither groundless nor calculated to harass respondents. Therefore, the district court erred in awarding attorney fees pursuant to NRS 18.010. Similarly, Centennial Hills cannot recover attorneys' fees in this matter under NRS 18.010(2)(b) because Plaintiffs Complaint was neither groundless nor calculated to harass Defendant.

Plaintiffs filed a Complaint that was based on facts supporting the several causes of action. Had this matter proceed to trial, Plaintiffs are confident that a jury would have awarded damages to fully compensate the Plaintiffs for the loss of their mother. No facts have been presented by Defendant to show that Plaintiffs brought the instant case to harass the Defendants.

...

IV. CONCLUSION

Plaintiffs respectfully request that this Court deny Centennial Hills Motion For Attorneys' Fees and grant such other and further relief as this Court may deem just and proper.

Dated this 16<sup>th</sup> day of December 2021.

PAUL PADDALAW, PLLC

/s/ Srilata R. Shah

Paul S. Padda, Esq.

Nevada Bar No. 10417

Srilata R. Shah, Esq.

Nevada Bar No. 6820

4560 South Decatur Boulevard, Suite 300

Las Vegas, Nevada 89103

*Attorneys for Plaintiffs*

CERTIFICATE OF SERVICE

Pursuant to Rule 5(b) of the Nevada Rules of Civil Procedure, I certify that I am an employee of Paul Padda Law, PLLC and that on this 16<sup>th</sup> day of December 2021, I served a true and correct copy of the above and foregoing document **PLAINTIFFS' OPPOSITION TO DEFENDANT VALLEY HEALTH SYSTEM LLC'S MOTION FOR ATTORNEYS' FEES** on all parties/counsel of record in the above entitled matter through efileNV service.

/s/ Karen Cormier

An Employee of Paul Padda Law, PLLC

# EXHIBIT 1



1 S. BRENT VOGEL  
Nevada Bar No. 6858  
2 Brent.Vogel@lewisbrisbois.com  
ADAM GARTH  
3 Nevada Bar No. 15045  
Adam.Garth@lewisbrisbois.com  
4 LEWIS BRISBOIS BISGAARD & SMITH LLP  
6385 S. Rainbow Boulevard, Suite 600  
5 Las Vegas, Nevada 89118  
Telephone: 702.893.3383  
6 Facsimile: 702.893.3789  
*Attorneys for Defendant Valley Health System,*  
7 *LLC dba Centennial Hills Hospital Medical*  
*Center*

8  
9 DISTRICT COURT

10 CLARK COUNTY, NEVADA  
11

12 ESTATE OF REBECCA POWELL, through  
BRIAN POWELL, as Special Administrator;  
13 DARCI CREECY, individually and as Heir;  
TARYN CREECY, individually and as an  
14 Heir; ISALAH KHORSOF, individually and as  
an Heir; LLOYD CREECY, individually,;

15 Plaintiffs,

16 vs.  
17

18 VALLEY HEALTH SYSTEM, LLC (doing  
business as "Centennial Hills Hospital Medical  
Center"), a foreign limited liability company;  
19 UNIVERSAL HEALTH SERVICES, INC., a  
foreign corporation; DR. DIONICE S.  
20 JULIANO, M.D., an individual; DR.  
CONRADO C.D. CONCIO, M.D., an  
21 individual; DR. VISHAL S. SHAH, M.D., an  
individual; DOES 1-10; and ROES A-Z,;

22 Defendants.  
23

Case No. A-19-788787-C

Dept. No.: 30

**DEFENDANT VALLEY HEALTH  
SYSTEM, LLC'S RULE 68 OFFER TO  
PLAINTIFFS**

24  
25 TO: ESTATE OF REBECCA POWELL, through BRIAN POWELL, as Special  
26 Administrator; DARCI CREECY, individually and as Heir; TARYN CREECY, individually and as  
27 an Heir; ISALAH KHORSOF, individually and as an Heir; LLOYD CREECY, individually,  
28 Plaintiffs; and

1 TO: Paul S. Padda, Esq., PAUL PADDA LAW, PLLC, 4560 S. Decatur Blvd., Suite 300,  
2 Las Vegas, NV 89103, their attorneys:

3 PLEASE TAKE NOTICE that pursuant to the provisions of N.R.C.P. 68 and *Busick v.*  
4 *Trainor*, 2019 Nev. Unpub. LEXIS 378, 2019 WL 1422712 (Nev., March 28, 2019), 437 P.3d 1050,  
5 Defendants VALLEY HEALTH SYSTEM, LLC (doing business as “Centennial Hills Hospital  
6 Medical Center”), a foreign limited liability company (“Defendant”), by and through its counsel of  
7 record, S. Brent Vogel, Esq. and Adam Garth, Esq. of LEWIS BRISBOIS BISGAARD & SMITH  
8 LLP, hereby offer to waive any presently or potentially recoverable attorney’s fees and costs in full  
9 and final settlement of the above-referenced case. At this time, Defendant has incurred \$53,389.90  
10 in attorney’s fees and \$5,124.46 in costs.

11 This Offer shall not be construed to allow Plaintiffs to seek costs, attorney’s fees, or  
12 prejudgment interest from the Court in addition to the amount stated in the Offer, should Plaintiffs  
13 accept the Offer.

14 Pursuant to N.R.C.P. 68, this Offer shall be open for a period of fourteen (14) days from the  
15 date of service. In the event this Offer is accepted by Plaintiffs, Defendant will obtain a dismissal  
16 of the claim as provided by N.R.C.P. 68(d), rather than to allow judgment to be entered against  
17 Defendant. Accordingly, and pursuant to these rules and statutes, judgment against Defendant could  
18 not be entered unless ordered by the District Court.

19 ///

20 ///

21 ///

22 ///

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28 ///

1 This Offer is made solely for the purposes intended by N.R.C.P. 68, and is not to be construed  
2 as an admission in any form, shape or manner that Defendant is liable for any of the allegations  
3 made by Plaintiffs in the Complaint. Nor is it an admission that Plaintiffs are entitled to any relief,  
4 including, but not limited to, an award of damages, attorney's fees, costs or interest. By virtue of  
5 this Offer, Defendant waives no defenses asserted in their Answer to Plaintiffs' Complaint.

6  
7 DATED this 28<sup>th</sup> day of August, 2020

8  
9 LEWIS BRISBOIS BISGAARD & SMITH LLP

10  
11 By /s/ Adam Garth  
12 S. BRENT VOGEL  
13 Nevada Bar No. 6858  
14 ADAM GARTH  
15 Nevada Bar No. 15045  
16 6385 S. Rainbow Boulevard, Suite 600  
17 Las Vegas, Nevada 89118  
18 Tel. 702.893.3383  
19 *Attorneys for Attorneys for Defendant Valley*  
20 *Health System, LLC dba Centennial Hills Hospital*  
21 *Medical Center*  
22  
23  
24  
25  
26  
27  
28

1 **CERTIFICATE OF SERVICE**

2 I hereby certify that on this 28<sup>th</sup> day of August, 2020, a true and correct copy  
3 of **DEFENDANT VALLEY HEALTH SYSTEM, LLC'S RULE 68 OFFER TO**  
4 **PLAINTIFFS** was served by electronically filing with the Clerk of the Court using the Odyssey E-  
5 File & Serve system and serving all parties with an email-address on record, who have agreed to  
6 receive electronic service in this action.

7 Paul S. Padda, Esq.  
8 PAUL PADDA LAW, PLLC  
9 4560 S. Decatur Blvd., Suite 300  
10 Las Vegas, NV 89103  
11 Tel: 702.366.1888  
12 Fax: 702.366.1940  
13 [psp@paulpaddalaw.com](mailto:psp@paulpaddalaw.com)  
14 *Attorneys for Plaintiffs*

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*Attorneys for Defendants Dionice S. Juliano,*  
*M.D., Conrado Concio, M.D. and Vishal S.*  
*Shah, M.D.*

15  
16  
17 By /s/ Roya Rokni  
18 Roya Rokni, an Employee of  
19 LEWIS BRISBOIS BISGAARD & SMITH LLP  
20  
21  
22  
23  
24  
25  
26  
27  
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# EXHIBIT 2

**PAUL PADDA LAW, PLLC**  
4560 South Decatur Boulevard, Suite 300  
Las Vegas, Nevada 89103  
Tele: (702) 366-1888 • Fax (702) 366-1940

**RESP**

PAUL S. PADDA, ESQ.  
Nevada Bar No.: 10417

*psp@paulpaddalaw.com*

JAMES P. KELLY, ESQ.

Nevada Bar No.: 8140

*jpk@paulpaddalaw.com*

**PAUL PADDA LAW, PLLC**

4560 South Decatur Boulevard, Suite 300

Las Vegas, Nevada 89103

Tele: (702) 366-1888

Fax: (702) 366-1940

*Attorneys for Plaintiffs*

**DISTRICT COURT**

**CLARK COUNTY, NEVADA**

ESTATE OF REBECCA POWELL, through  
Brian Powell as Special Administrator; DARCI  
CREECY, individually; TARYN CREECY,  
individually; ISAIAH KHOSROF, individually;  
LLOYD CREECY, individually;

Plaintiffs,

vs.

VALLEY HEALTH SYSTEM, LLC (doing  
business as "Centennial Hills Hospital Medical  
Center"), a foreign limited liability company;  
UNIVERSAL HEALTH SERVICES, INC., a  
foreign corporation; DR. DIONICE S.  
JULIANO, M.D., an individual; DR. CONRADO  
C.D. CONCIO, M.D., an individual; DR.  
VISHAL S. SHAH, M.D., an individual; DOES  
1-10; ROES A-Z;

Defendants.

CASE NO. A-19-788787-C  
DEPT. 30

**RESPONSES TO DEFENDANT  
VALLEY HEALTH SYSTEM, LLC'S  
FIRST SET OF INTERROGATORIES  
TO PLAINTIFF ESTATE OF REBECCA  
POWELL THROUGH BRIAN POWELL  
AS SPECIAL ADMINISTRATOR**

COMES NOW Plaintiff, ESTATE OF REBECCA POWELL, through Brian Powell as  
Special Administrator, by and through his attorneys of record, PAUL S. PADDA, ESQ. and  
JAMES P. KELLY, ESQ., of PAUL PADDA LAW, and, pursuant to NRCP 36, hereby responds

1 to Defendant Valley Health System, LLC's First Set Of Interrogatories to Plaintiff Estate of  
2 Rebecca Powell through Brian Powell as Special Administrator, as follows:

3 **INTRODUCTORY STATEMENT**

4 The following responses herein are given in good faith and are based on information and  
5 evidence which are presently available to, and specifically known to Plaintiff. Discovery and  
6 investigation of all the facts relating to this matter has not been completed, nor has Plaintiff  
7 completed trial preparation. As such, Plaintiff expressly reserves the right to amend, supplement  
8 or expand on these answers as additional information and evidence becomes available.  
9

10 It is anticipated that further discovery, independent investigation, legal research, and  
11 analysis will supply additional facts, add meaning to known facts, and establish entirely new  
12 factual conclusions and legal contentions. The following responses are given without prejudice  
13 to Plaintiff's right to produce evidence of any subsequently discovered fact or facts, which this  
14 responding party may later recall, or be made aware of. The following responses given represent  
15 a good faith effort to supply factual information and as much specification of legal contentions as  
16 is presently known, but should in no way be to the prejudice of Plaintiff in relation to further  
17 discovery, research, analysis, or proof thereof. These responses are made solely for the purposes  
18 of this action. The responses are subject to all objections as to competence, relevance, materiality,  
19 propriety, admissibility, and to any and all other objections on the grounds that would require the  
20 exclusion of any statement contained herein if any questions were asked of, or a statement  
21 contained herein were made by, a witness present and testifying in court, all of which objections  
22 and grounds are preserved and may be interposed at the time of trial.  
23  
24

25  
26 Plaintiff reserves the right to modify and/or amend any and all responses contained herein  
27 as additional facts are ascertained, documents are discovered, and contentions are formulated.  
28

1 Plaintiff does not waive the attorney-client privilege, the work product immunity, or any other  
2 lawfully recognized privilege or immunity from disclosure which may attach to information  
3 called for by the propounded discovery herein. These responses are made by Plaintiff subject to,  
4 and without waiving or intending to waive:

5 1. All questions or objections as to competency, relevancy, materiality, privilege, and  
6 admissibility for any purpose, including evidence, of any documents referred to, responses given,  
7 or the subject matter thereof in any subsequent proceeding in the trial of this action or any other  
8 action;  
9

10 2. The right to object to other discovery proceedings involving or related to the  
11 subject matter of the Interrogatories herein replied to; and  
12

13 3. The right, at any time, to revise, correct, add to, or clarify any of the documents  
14 referred to or responses given.

15 While Plaintiff believes the responses given to be correct, there is a possibility of omission  
16 or error. These responses are given subject to correction of omissions or errors.  
17

18 **INTERROGATORY NO. 1:**

19 Please state Plaintiffs' decedent's full name, date of birth, and address.

20 **RESPONSE TO INTERROGATORY NO. 1:**

21 Objection. Plaintiff objects to this interrogatory because it is compound and contains multiple  
22 subparts which constitute separate interrogatories, seeks Plaintiff's personal, private information,  
23 and it seeks disclosure of information that is irrelevant and not reasonably calculated to lead to the  
24 discovery of admissible evidence.  
25

26 ...

27 ...  
28



Without waiving these objections, Plaintiff can be contacted through his attorneys of record, Paul Padda Law, 4560 S. Decatur Boulevard, Las Vegas, NV 89103, (702) 366-1888. Answering further:

Full Name: Rebecca Ann Powell

Date of Birth: May 30, 1975

Last Address: 7589 Splashing Rock Drive, Las Vegas, NV

Plaintiff reserves the right to amend and/or supplement this Answer as discovery remains ongoing.

**INTERROGATORY NO. 2:**

If the Plaintiffs' decedent was ever married, please state the inclusive date(s) of each marriage, and each spouse's full name, address, date of birth, and social security number.

**RESPONSE TO INTERROGATORY NO. 2:**

Objection. Plaintiff objects to this interrogatory because it is compound and contains multiple subparts which constitute separate interrogatories, seeks Plaintiff's personal, private information, and it seeks disclosure of information that is irrelevant and not reasonably calculated to lead to the discovery of admissible evidence.

Without waiving these objections, Plaintiff responds as follows:

Dates of Marriage: April 21, 2006- May 8, 2017

Spouse's Name: Brian Marshall Powell

Date of Birth: 11/4/72

SSN: XXX-XX-4784

Rebecca was previously married to Steven Trager, but I do not know his identifying information or dates of marriage.

1 Plaintiff reserves the right to amend and/or supplement this Answer as discovery remains  
2 ongoing.

3 **INTERROGATORY NO. 3:**

4 If the Plaintiffs' decedent was ever divorced, please state the date(s) of any judgment of  
5 divorce, as well as the court in and case number pertaining to said judgment.  
6

7 **RESPONSE TO INTERROGATORY NO. 3:**

8 Objection. Plaintiff objects to this interrogatory because it is compound and contains multiple  
9 subparts which constitute separate interrogatories, seeks Plaintiff's personal, private information,  
10 and it seeks disclosure of information that is irrelevant and not reasonably calculated to lead to the  
11 discovery of admissible evidence.  
12

13 Without waiving these objections, Plaintiff responds as follows: Rebecca Ann Powell was  
14 divorced from Brian Marshall Powell on May 8, 2017. Case No. D-17-550659-Z. I do not know  
15 when Rebecca was divorced from Steven Trager.  
16

17 Plaintiff reserves the right to amend and/or supplement this Answer as discovery remains  
18 ongoing.

19 **INTERROGATORY NO. 4**

20 State the name and address of each school, college or educational institution Plaintiffs'  
21 decedent attended, listing the dates of attendance, the courses of study, and any degrees or  
22 certificates awarded.  
23

24 **RESPONSE TO INTERROGATORY NO. 4:**

25 Objection. Plaintiff objects to this interrogatory because it is compound and contains multiple  
26 subparts which constitute separate interrogatories, seeks Plaintiff's personal, private information,  
27  
28

1 and it seeks disclosure of information that is irrelevant and not reasonably calculated to lead to the  
2 discovery of admissible evidence.

3 May 15, 2010: Lourdes College  
4 6832 Convent Boulevard  
5 Sylvania, OH 43560  
6 *Associate of Arts Degree*

7 December 2012: Cuyahoga Community College  
8 4250 Richmond Road  
9 Highland Hills, OH 44122  
10 *Associate of Applied Science in Nursing*

11 March 19, 2013: State of Ohio Board of Nursing  
12 17 S High Street, #660  
13 Columbus, OH 43215  
14 *Registered Nurse, License*

15 I recall that Rebecca started to obtain her bachelor's degree, but she did not yet complete  
16 it. Plaintiff reserves the right to amend and/or supplement this Answer as discovery remains  
17 ongoing.

18 **INTERROGATORY NO. 5**

19 Please list each job or occupation Plaintiffs' decedent held during the last ten (10) years  
20 prior to the injuries alleged in this case, including dates of each position, dates of unemployment,  
21 job title, job duties, immediate supervisor and annual compensation.

22 **RESPONSE TO INTERROGATORY NO. 5:**

23 Objection. Plaintiff objects to this interrogatory because it is compound and contains multiple  
24 subparts which constitute separate interrogatories, seeks Plaintiff's personal, private information,  
25 and it seeks disclosure of information that is irrelevant and not reasonably calculated to lead to the  
26 discovery of admissible evidence.

1 Without waiving these objections, Rebecca was a Registered Nurse in ICU at Mike  
2 O'Callaghan Hospital located on Nellis Air Force Base from approximately 2016 through her  
3 death. From approximately 2015-2016, Rebecca was employed as a Registered Nurse at  
4 Mountainview Hospital. From approximately 2013-2015, Rebecca worked as a Registered Nurse  
5 at the Cleveland Clinic Foundation in Ohio.  
6

7 Plaintiff reserves the right to amend and/or supplement this Answer as discovery remains  
8 ongoing.

9 **INTERROGATORY NO. 6**

10 Please state Plaintiffs' decedent's address and telephone number, and each of the  
11 addresses for the past ten (10) years, identifying the inclusive dates she resided at each address  
12 and each person who resided with her.  
13

14 **RESPONSE TO INTERROGATORY NO. 6:**

15 Objection. Plaintiff objects to this interrogatory because it is compound and contains  
16 multiple subparts which constitute separate interrogatories, seeks Plaintiff's personal, private  
17 information, and it seeks disclosure of information that is irrelevant and not reasonably calculated  
18 to lead to the discovery of admissible evidence.  
19

20 Without waiving these objections, within the specified time-period, my address history is  
21 as follows:

22 2010-10/2014: 9429 Dorothy Avenue Garfield Heights, OH 44125; Rebecca and I lived  
23 with Darci Creecy, Taryn Creecy and Isaiah Khosrov.  
24

25 10/2014-10/2016: Rebecca and I lived together in Las Vegas. I will try to obtain the  
26 address information.  
27  
28

1 10/2016-01/2017: 8301 Fawn Heather Court, Las Vegas, NV; Rebecca and I lived with  
2 her daughter, Taryn Creecy.

3 01/2017-05/2017: Splashing Rock Drive, Las Vegas, NV; Rebecca lived with her  
4 daughter, Taryn Creecy.

5 **INTERROGATORY NO. 7**

6  
7 Please state the name, age, and address of Plaintiffs' decedent's children, including any  
8 natural children, step-children, half-children, and/or adoptive children, including any deceased  
9 children and their respective dates of death.

10 **RESPONSE TO INTERROGATORY NO. 7:**

11  
12 Objection. Plaintiff objects to this interrogatory because it is compound and contains multiple  
13 subparts which constitute separate interrogatories, seeks Plaintiff's personal information, and it seeks  
14 disclosure of information that is irrelevant and not reasonably calculated to lead to the discovery of  
15 admissible evidence.

16  
17 Without waiving these objections, the names, ages, and addresses of Rebecca Powell's  
18 children are listed as follows:

19 Darci Creecy (Daughter) – 27 Years Old  
20 13613 Woodward Boulevard  
Garfield Heights, OH 44125

21 Taryn Creecy (Daughter) – 25 Years Old  
22 5305 N. Field Road  
23 Bedford Heights, OH 44146

24 Isaiah Khosrof (Son) – 24 Years Old  
25 333 Alewife Brook Parkway  
Summerville, MA 02144

26 Plaintiff reserves the right to amend and/or supplement this Answer as discovery remains  
27 ongoing.  
28

**INTERROGATORY NO. 8**

Please state the name, address and telephone number of each and every healthcare provider, including but not limited to hospitals, clinics, surgical centers, at home healthcare providers, physicians, psychiatrists, psychologists and therapists, who provided care and/or treatment to Plaintiffs' decedent within the ten (10) years prior to the incident referred to in the Complaint.

**RESPONSE TO INTERROGATORY NO. 8:**

Objection. Plaintiff objects to this interrogatory because it is compound and contains multiple subparts which constitute separate interrogatories, seeks information that is not appropriately limited in scope, and it seeks disclosure of information that is irrelevant and not reasonably calculated to lead to the discovery of admissible evidence. Objection. This Interrogatory is impermissibly overbroad in that it seeks disclosure of Plaintiff's medical history without proper limitation as to scope. Schlatter v. Eighth Judicial District Court 93 Nev. 189, 192, 561 P.2d 1342, 1344 (1977).

Without waiving said objections, Plaintiff responds as follows: In approximately 2007, Rebecca was diagnosed with bipolar disorder. The diagnosis was made in Ohio, but I cannot recall name of physician. Other than that, Rebecca was healthy with no respiratory issues.

Plaintiff reserves the right to amend and/or supplement this Answer as discovery remains ongoing.

**INTERROGATORY NO. 9**

Please state whether you, Brian Powell, ever pleaded guilty to or were convicted of any crime other than minor traffic violations, and if so, please state: the nature of the offense(s); the date(s); the county(s) and state(s) in which you were tried, and the sentence(s) given.

...

**RESPONSE TO INTERROGATORY NO. 9:**

Objection. Defendants seek discovery outside the scope of NRS §50.095 and NRC P 26(b)(1) as it is not relevant to any party's claims or defenses and is disproportional to the needs of the case, considering the importance of the issues at stake in the action, the amount in controversy, the parties' relative access to relevant information, the parties' resources, the importance of the discovery in resolving the issues, and whether the burden or expense of the proposed discovery outweighs its likely benefit.

Without waiving these objections, I have not been convicted of a felony during the time frame set forth in NRS §50.095.

**INTERROGATORY NO. 10**

If Plaintiffs' decedent was ever involved in any other legal action, either as a defendant or as a plaintiff please state: the date and place each such action was filed giving the name of the court, the name of the other party or parties involved, the number of such actions and the names of the attorneys representing each party; a description of the nature of each such action, and; the result of each such action, whether or not there was an appeal and the result of the appeal, and whether or not such case was reported, and the name, volume number and page citation of such report.

**RESPONSE TO INTERROGATORY NO. 10:**

Objection. Plaintiff objects to this Interrogatory because it is excessive as to time (no limitation to time whatsoever, which is overly burdensome and exceeds the five-year period of time the Discovery Commissioner typically permits) and scope (calls for "any" legal action and is not sufficiently limited to relate to the specific body parts at issue in this lawsuit), and it seeks

1 the disclosure of information that is irrelevant and not reasonably calculated to lead to the  
2 discovery of admissible evidence.

3 Without waiving these objections, and limiting this response to the five-year period of  
4 time before the incident at issue in this case: I do not believe that Rebecca has been involved in  
5 any other legal actions.  
6

7 **INTERROGATORY NO. 11**

8 Please state the name, address and phone number of all persons who witnessed or have  
9 knowledge of facts relevant to the incident referred to in the Complaint.  
10

11 **RESPONSE TO INTERROGATORY NO. 11:**

12 Objection. Plaintiff objects to this interrogatory because it seeks the disclosure of  
13 information that is unduly burdensome in that the information being sought is equally available  
14 to both parties by way of the parties' initial and supplemental NRCP 16.1 document disclosures  
15 and witness lists.

16 Without waiving these objections, I was not able to visit Rebecca while she was  
17 hospitalized because I was turned away by the nurses. Lloyd Creecy, Taryn Creecy, Isaiah  
18 Khosrof, Darci Creecy have information. I did meet with Taryn, Isaiah and one of Rebecca's  
19 friends to speak with the doctor and risk manager after Rebecca's death, but they didn't provide  
20 any information.  
21

22 For further information that may be responsive to this Interrogatory, please refer to the  
23 parties' initial and supplemental document disclosures and witness lists.  
24

25 Plaintiff reserves the right to amend and/or supplement this Answer as discovery remains  
26 ongoing.  
27

28 . . .



**INTERROGATORY NO. 12**

Please itemize all bills or expenses Plaintiffs' decedent or her estate incurred, including but not limited to those from all hospitals or other health care providers, as a result of the incident referred to in the Complaint, including the extent to which the expenses have been paid and by whom.

**RESPONSE TO INTERROGATORY NO. 12:**

I believe there would be medical bills from the hospital as well as cremation costs. I will look for additional information.

Plaintiff reserves the right to amend and/or supplement this Answer as discovery remains ongoing.

**INTERROGATORY NO. 13**

List and describe in detail the injuries, complaints, and symptoms which you claim Plaintiffs' decedent suffered as a result of the incident or incidents out of which this action arose, including aggravated pre-existing conditions, as well as the treatment sought.

**RESPONSE TO INTERROGATORY NO. 13:**

Objection. Plaintiff objects to this interrogatory because it is compound, contains multiple subparts each of which constitutes a separate interrogatory, it seeks medical expert opinions and legal conclusions, and it calls for the provision of a narrative response.

Without waiving these objections, Plaintiff responds as follows: Rebecca's untimely death. For further information related to Plaintiff Rebecca Powell's injuries, complaints and symptoms, please refer to her complete set of medical records.

Plaintiff reserves the right to amend and/or supplement this Answer as discovery remains ongoing.

1 **INTERROGATORY NO. 14**

2 Identify all injuries, symptoms, or ailments enumerated in the answer to the previous  
3 Interrogatory which Plaintiffs' decedent had prior to the incident described in your Complaint.

4 **RESPONSE TO INTERROGATORY NO. 14:**

5 Objection. Plaintiff objects to this Interrogatory because it seeks expert medical opinions,  
6 it is excessive as to time (i.e.: it calls for the disclosure of "all" information before the incident at  
7 issue in this case, as opposed to the 5 year period of time typically allowed by the Discovery  
8 Commissioner) making it overly burdensome, and it seeks the disclosure of information that is  
9 irrelevant and not reasonably calculated to lead to the discovery of admissible evidence.  
10

11 Without waiving these objections, Plaintiff answers as follows: Please see Answer to  
12 Interrogatory 8.  
13

14 Plaintiff reserves the right to amend and/or supplement this Answer as discovery remains  
15 ongoing.  
16

17 **INTERROGATORY NO. 15**

18 Identify all damages which you allege resulted from the incident described in your  
19 Complaint, including dollar amounts, as well as how such dollar amounts are computed.

20 **RESPONSE TO INTERROGATORY NO. 15:**

21 Objection. Plaintiff objects to this interrogatory because it is compound, contains multiple  
22 subparts each of which constitutes a separate interrogatory. This interrogatory is also calculated  
23 to advance the expert disclosure deadline.  
24

25 Without waiving these objections, Plaintiff is compiling information responsive to this  
26 Interrogatory. For further information that may be responsive to this Interrogatory, please refer  
27 to the parties' initial and supplemental document disclosures and witness lists.  
28

1 Plaintiff reserves the right to amend and/or supplement this Answer as discovery remains  
2 ongoing.

3 **INTERROGATORY NO. 16**

4 If Plaintiffs' decedent ever entered or was committed to any institution, either public or  
5 private, for the treatment or observation of a mental condition(s), alcoholism, narcotic addiction,  
6 or disorders of any kind, please state the name and address of such institution; the length of her  
7 stay and the dates thereof; the purpose or reason for your entry into such institution; and the name  
8 and address of the doctor(s) who treated her for such condition(s).

10 **RESPONSE TO INTERROGATORY NO. 16:**

11 Objection. Plaintiff objects to this Interrogatory because it seeks expert medical opinions,  
12 it is excessive as to time (i.e.: it calls for the disclosure of all information before the incident at  
13 issue in this case, as opposed to the 5 year period of time typically allowed by the Discovery  
14 Commissioner) making it overly burdensome, and it seeks the disclosure of information that is  
15 irrelevant and not reasonably calculated to lead to the discovery of admissible evidence.

17 Without waiving these objections, about 5 years into our marriage, Rebecca took a bunch  
18 of pills and had to be hospitalized at Marymount Hospital in Ohio for approximately two weeks.  
19 I believe she was admitted for psychiatric treatment and observation. I don't recall the names of  
20 doctors.

22 Plaintiff reserves the right to amend and/or supplement this Answer as discovery remains  
23 ongoing.

25 **INTERROGATORY NO. 17:**

26 If you or anyone else entered into any agreement or covenant with any person or entity in  
27 any way compromising, settling, and/or limiting the liability or potential liability for any party or  
28

1 entity, or providing compensation for any person, other than counsel, based on recovery in this  
2 case for the events that gave rise to this case, identify each person, the nature of the agreement,  
3 the terms of the agreement, and the consideration given for the agreement.

4 **RESPONSE TO INTERROGATORY NO. 17:**

5 Objection. This Request seeks documentation in violation with the collateral source rule.  
6  
7 Proctor v. Castelletti 112 Nev. 88, 911 P.2d 853 (1996). Without waiving said objections, I am  
8 not aware of any such agreements.

9 Plaintiff reserves the right to amend and/or supplement this Answer as discovery remains  
10 ongoing.

11 **INTERROGATORY NO. 18:**

12 Please state whether you are in possession of any written, recorded or videotaped  
13 statement taken in connection with the events described in the Complaint and if your response is  
14 anything other than an unqualified "no," please identify the person giving the statement and all  
15 persons having custody of the statement.  
16

17 **RESPONSE TO INTERROGATORY NO. 18:**

18 Objection. Plaintiff objects to this interrogatory because it seeks the disclosure of  
19 information that is unduly burdensome in that the information being sought is equally available  
20 to both parties by way of the parties initial and supplemental document disclosures and witness  
21 lists.  
22

23 Without waiving these objections, for information that may be responsive to this  
24 Interrogatory, please refer to the parties' initial and supplemental document disclosures and  
25 witness lists.  
26  
27  
28

1 Plaintiff reserves the right to amend and/or supplement this Answer as discovery remains  
2 ongoing.

3 **INTERROGATORY NO. 19**

4 Please describe in detail the nature and extent of any conversations Plaintiffs' decedent  
5 had with any individual or entity, other than attorneys, regarding Plaintiff's decedent's stay at  
6 CHH, including but not limited to, any concerns and/or complaints voiced by Plaintiffs' decedent,  
7 any symptoms Plaintiffs' decedent was experiencing, and any conversations Plaintiffs' decedent  
8 had with anyone, including any employees of CHH.  
9

10 **RESPONSE TO INTERROGATORY NO. 19:**

11 Objection. This Interrogatory seeks a narrative which is more appropriately sought by  
12 way of deposition testimony.  
13

14 Without waiving said objection, Plaintiff answers as follows: Following Rebecca's death,  
15 Isaiah, Taryn, Major Castro and I spoke with Dr. Shah and Risk Manager, "Amanda." I asked  
16 them to explain to us what happened. Last we knew she was getting ready to be discharged. Dr.  
17 Shah stated that he thought that it "might" have been a mucus plug.  
18

19 Plaintiff reserves the right to amend and/or supplement this Answer as discovery remains  
20 ongoing.

21 **INTERROGATORY NO. 20**

22 Please identify and describe in detail the nature and extent of any conversations you had  
23 with any employees of CHH or any of the defendants concerning Plaintiffs' decedent's care  
24 including, but not limited to, any conversation concerning your concerns with CHH in rendering  
25 care to Plaintiffs' decedent, any conversation concerning medication or Plaintiffs' decedent's  
26  
27  
28

1 behavior throughout the duration of her stay at CHH, or any complaints Plaintiffs' decedent may  
2 have had concerning any employee of CHH.

3 **RESPONSE TO INTERROGATORY NO. 20:**

4 Objection. Plaintiff objects to this interrogatory because it seeks the disclosure of  
5 information that is unduly burdensome in that the information being sought is equally available  
6 to both parties by way of the parties initial and supplemental document disclosures and witness  
7 lists.  
8

9 Without waiving these objections, Plaintiff responds as follows:

10 Please see Answer to Interrogatory No. 19.

11 Plaintiff reserves the right to amend and/or supplement this Answer as discovery remains  
12 ongoing.  
13

14 **INTERROGATORY NO. 21**

15 State with specificity the act(s) or omission(s) of CHH that you allege fell below the  
16 standard of care or breached a legal duty owed to Plaintiffs' decedent, and the factual and medical  
17 basis that supports each allegation.  
18

19 **RESPONSE TO INTERROGATORY NO. 21:**

20 Plaintiff objects to this Interrogatory as it calls for an expert medical opinion which he is  
21 not qualified to provide. Plaintiff further objects to this Interrogatory as it seeks to invade  
22 Plaintiff's attorney/client privilege and/or the attorney work product doctrine.  
23

24 Without waiving said objections, Plaintiff answers as follows:

25 Plaintiff reserves the right to amend and/or supplement this Answer as discovery remains  
26 ongoing. See medical affidavit attached to the Complaint.  
27  
28

1 **INTERROGATORY NO. 22**

2 State with specificity each act or omission of every defendant other than CHH named in  
3 this action that you allege fell below the standard of care or breached a legal duty owed to you,  
4 and the factual and medical basis that supports each allegation as to each such defendant. In  
5 responding to this Interrogatory, please be sure to differentiate the specific negligence attributable  
6 to each defendant separately and in detail.  
7

8 **RESPONSE TO INTERROGATORY NO. 22:**

9 Objection. Plaintiff objects to this Interrogatory as it calls for an expert medical opinion  
10 which he is not qualified to provide. Plaintiff further objects to this Interrogatory as it seeks to  
11 invade Plaintiff's attorney/client privilege and/or the attorney work product doctrine.  
12

13 Without waiving said objections, Plaintiff answers as follows: See medical affidavit  
14 attached to the Complaint.

15 Plaintiff reserves the right to amend and/or supplement this Answer as discovery remains  
16 ongoing.  
17

18 **INTERROGATORY NO. 23**

19 Identify all notes, records, documents, reports, correspondence and memoranda  
20 containing facts supporting the allegations of the Complaint referring to the negligence or  
21 wrongful conduct of CHH, or any other defendant.  
22

23 **RESPONSE TO INTERROGATORY NO. 23:**

24 Objection. Plaintiff objects to this interrogatory because it seeks the disclosure of  
25 information that is unduly burdensome in that the information being sought is equally available  
26 to both parties by way of the parties initial and supplemental document disclosures and witness  
27 lists.  
28

1 Without waiving these objections, for information that may be responsive to this  
2 Interrogatory, please refer to the parties' initial and supplemental document disclosures and  
3 witness lists.

4 Plaintiff reserves the right to amend and/or supplement this Answer as discovery remains  
5 ongoing.  
6

7 **INTERROGATORY NO. 24**

8 Identify all notes, records, documents, reports, correspondence and memoranda  
9 containing facts supporting the allegations of the Complaint referring to the negligence or  
10 wrongful conduct of CHH, or any other defendant.

11 **RESPONSE TO INTERROGATORY NO. 24:**

12  
13 Objection. Plaintiff objects to this interrogatory because it seeks the disclosure of  
14 information that is unduly burdensome in that the information being sought is equally available  
15 to both parties by way of the parties initial and supplemental document disclosures and witness  
16 lists.

17  
18 Without waiving these objections, for information that may be responsive to this  
19 Interrogatory, please refer to the parties' initial and supplemental document disclosures and  
20 witness lists.

21 Plaintiff reserves the right to amend and/or supplement this Answer as discovery remains  
22 ongoing.  
23

24 **INTERROGATORY NO. 25**

25 Identify all correspondence, notes, records, or memoranda from or by any Defendant with  
26 regard to this lawsuit and/or any person believed to be an employee of CHH.

27 ...  
28



**RESPONSE TO INTERROGATORY NO. 25:**

Objection. Plaintiff objects to this interrogatory because it seeks the disclosure of information that is unduly burdensome in that the information being sought is equally available to both parties by way of the parties initial and supplemental document disclosures and witness lists.

Without waiving these objections, for information that may be responsive to this Interrogatory, please refer to the parties' initial and supplemental document disclosures and witness lists.

Plaintiff reserves the right to amend and/or supplement this Answer as discovery remains ongoing.

**INTERROGATORY NO. 26**

Identify all records, reports, and memoranda including but not limited to in-patient and out-patient records, nurses' notes, doctors' notes, doctors' reports, x-ray reports, operation records, progress notes, laboratory tests, notes and reports, correspondence files, insurance files, accident files, medical histories, bills or statements for services rendered by any health care provider and related to the care or treatment involved in this lawsuit or any other person named as a DOE or ROE in this action with reference to the treatment received by the patient whose care is involved in this lawsuit.

**RESPONSE TO INTERROGATORY NO. 26:**

Objection. Plaintiff objects to this interrogatory because it seeks the disclosure of information that is unduly burdensome in that the information being sought is equally available to both parties by way of the parties initial and supplemental document disclosures and witness lists.

1 Without waiving these objections, for information that may be responsive to this  
2 Interrogatory, please refer to the parties' initial and supplemental document disclosures and  
3 witness lists.

4 Plaintiff reserves the right to amend and/or supplement this Answer as discovery remains  
5 ongoing.  
6

7 **INTERROGATORY NO. 27**

8 Identify all x-rays, CT scans, medical testing, and pathology slides and specimens related  
9 to any acts alleged in this lawsuit.

10 **RESPONSE TO INTERROGATORY NO. 27:**

11 Objection. Plaintiff objects to this interrogatory because it seeks the disclosure of  
12 information that is unduly burdensome in that the information being sought is equally available  
13 to both parties by way of the parties initial and supplemental document disclosures and witness  
14 lists.  
15

16 Without waiving these objections, for information that may be responsive to this  
17 Interrogatory, please refer to the parties' initial and supplemental document disclosures and  
18 witness lists.  
19

20 Plaintiff reserves the right to amend and/or supplement this Answer as discovery remains  
21 ongoing.  
22

23 **INTERROGATORY NO. 28**

24 Identify all diaries, calendars, notes, telephone logs or other writings that reflect any of  
25 the care and treatment or alleged conversations or contacts that occurred between Plaintiffs'  
26 decedent or anyone acting on Plaintiffs' decedent's behalf, with any of the defendants named in  
27 the Complaint regarding the subject of the lawsuit.  
28

**RESPONSE TO INTERROGATORY NO. 28:**

Objection. Plaintiff objects to this interrogatory because it seeks the disclosure of information that is unduly burdensome in that the information being sought is equally available to both parties by way of the parties initial and supplemental document disclosures and witness lists.

Without waiving these objections, for information that may be responsive to this Interrogatory, please refer to the parties' initial and supplemental document disclosures and witness lists.

Plaintiff reserves the right to amend and/or supplement this Answer as discovery remains ongoing.

**INTERROGATORY NO. 29**

Identify all diaries, calendars, notes or telephone logs that are relevant to any of the damages prayed for in the Complaint.

**RESPONSE TO INTERROGATORY NO. 29:**

Objection. Plaintiff objects to this interrogatory because it seeks the disclosure of information that is unduly burdensome in that the information being sought is equally available to both parties by way of the parties initial and supplemental document disclosures and witness lists.

Without waiving these objections, for information that may be responsive to this Interrogatory, please refer to the parties' initial and supplemental document disclosures and witness lists.

Plaintiff reserves the right to amend and/or supplement this Answer as discovery remains ongoing.

1 **INTERROGATORY NO. 30**

2 Identify all written or recorded statements or notes of any individual or entity concerning  
3 medical care, treatment or acts which are the subject matter of this lawsuit.

4 **RESPONSE TO INTERROGATORY NO. 30:**

5 Objection. Plaintiff objects to this interrogatory because it seeks the disclosure of  
6 information that is unduly burdensome in that the information being sought is equally available  
7 to both parties by way of the parties initial and supplemental document disclosures and witness  
8 lists.  
9

10 Without waiving these objections, for information that may be responsive to this  
11 Interrogatory, please refer to the parties' initial and supplemental document disclosures and  
12 witness lists.  
13

14 Plaintiff reserves the right to amend and/or supplement this Answer as discovery remains  
15 ongoing.  
16

17 **INTERROGATORY NO. 31**

18 Identify any and all documents or writings with respect to liens claimed or made by any  
19 government agency or entity including, but not limited to, those arising out of the provision of  
20 health care services or benefits to Plaintiffs' decedent under Medicare, Medicaid or Workers  
21 Compensation, relating to the subject matter of this lawsuit.  
22

23 **RESPONSE TO INTERROGATORY NO. 31:**

24 Objection. Defendant seeks information that is not discoverable due to the collateral  
25 source rule. This request is irrelevant, unduly prejudicial, and is not reasonably calculated to lead  
26 to the admission of evidence pursuant to the *per se bar* on collateral source evidence. See Khoury  
27 v. Seastrand, 377 P.3d 81 (2016) (evidence of payments showing provider discounts or "write  
28

1 downs" is irrelevant); Tri-County Equipment & Leasing v. Klinke, P.3d 593 (2012); Proctor v.  
2 Castelletti, 112 Nev. 88, 90, 911 P.2d 853, 854 (1996); Winchell v. Schiff, 124 Nev. 938, 945-  
3 46, 193 P.3d 946, 951 (2008); and Bass-Davis v. Davis, 122 Nev. 442, 453-54, 134 P3d 103, 110  
4 (2006). The Nevada Supreme Court has created "a *per se* rule barring the admission of a  
5 collateral source of payment for an injury into evidence for *any purpose*." Khoury, 377 P.3d at  
6 94, citing Proctor. Further, defendants seek discovery outside the scope of NRCP 26(b)(1) as it is  
7 not relevant to any party's claims or defenses and is disproportional to the needs of the case,  
8 considering the importance of the issues at stake in the action, the amount in controversy, the  
9 parties' relative access to relevant information, the parties' resources, the importance of the  
10 discovery in resolving the issues, and whether the burden or expense of the proposed discovery  
11 outweighs its likely benefit.

14 Without waiving said objections, I am not aware of any liens.

15 Plaintiff reserves the right to amend and/or supplement this Answer as discovery remains  
16 ongoing.

17 **INTERROGATORY NO. 32:**

18 Identify any and all documents or writings identified in your responses to Special  
19 Interrogatories, Set One, propounded by CHH.

20 **RESPONSE TO INTERROGATORY NO. 32:**

21 Objection. Plaintiff objects to this interrogatory because it seeks the disclosure of  
22 information that is unduly burdensome in that the information being sought is equally available  
23 to both parties by way of the parties initial and supplemental document disclosures and witness  
24 lists.  
25  
26  
27  
28

1 Without waiving these objections, for information that may be responsive to this  
2 Interrogatory, please refer to the parties' initial and supplemental document disclosures and  
3 witness lists.

4 Plaintiff reserves the right to amend and/or supplement this Answer as discovery remains  
5 ongoing.  
6

7 **INTERROGATORY NO. 33:**

8 Identify all documents or writings reflecting any and all income losses incurred or to be  
9 incurred by each Plaintiff as a result of the alleged negligence of CHH, or any of them, as set  
10 forth in your Complaint.

11 **RESPONSE TO INTERROGATORY NO. 33:**

12 Objection. Plaintiff objects to this interrogatory because it seeks the disclosure of  
13 information that is unduly burdensome in that the information being sought is equally available  
14 to both parties by way of the parties initial and supplemental document disclosures and witness  
15 lists.  
16

17 Without waiving said objections, for information that may be responsive to this  
18 Interrogatory, please refer to the parties' initial and supplemental document disclosures and  
19 witness lists.  
20

21 Plaintiff reserves the right to amend and/or supplement this Answer as discovery remains  
22 ongoing.  
23

24 **INTERROGATORY NO. 34**

25 Identify each and every document, paper, statement, memorandum, photograph, picture,  
26 plat, record, letter, recording or other exhibit which you reasonably expect to offer into evidence  
27 at the time of trial.  
28

**RESPONSE TO INTERROGATORY NO. 34:**

Objection. Plaintiff objects to this interrogatory because it seeks the disclosure of information that is unduly burdensome in that the information being sought is equally available to both parties by way of the parties initial and supplemental document disclosures and witness lists, and it seeks the premature disclosure of trial exhibits information.

Without waiving said objections, Plaintiff will disclose trial exhibits in accordance with the Nevada Rules of Civil Procedure. For information that may be responsive to this Interrogatory, please refer to the parties' initial and supplemental document disclosures and witness lists.

Plaintiff reserves the right to amend and/or supplement this Answer as discovery remains ongoing.

**INTERROGATORY NO. 35**

Identify and describe in detail all medications Plaintiffs' decedent was prescribed within the five (5) years prior her admission to CHH including, but not limited to, who prescribed the medication, when the medication was prescribed, the nature of the medication, and where the prescription was filled.

**RESPONSE TO INTERROGATORY NO. 35:**

Objection. Plaintiff objects to this Interrogatory because it seeks the disclosure of information pertaining to unrelated medical conditions which are not at issue in this litigation, and it seeks the disclosure of information that is irrelevant and not reasonably calculated to lead to the discovery of admissible evidence.

Without waiving said objections, I don't recall the medications that Rebecca was taking during that timeframe.

1 Plaintiff reserves the right to amend and/or supplement this Answer as discovery remains  
2 ongoing.

3 **INTERROGATORY NO. 36:**

4 Please state the full date of the Plaintiffs' decedent's death and identify in specific detail  
5 any findings of an autopsy report.

6 **RESPONSE TO INTERROGATORY NO. 36:**

7  
8 Objection. Plaintiff objects to this interrogatory because it seeks the disclosure of  
9 information that is unduly burdensome in that the information being sought is equally available  
10 to both parties by way of the parties initial and supplemental document disclosures and witness  
11 lists, and it seeks the premature disclosure of trial exhibits information.

12  
13 Without waiving said objections, according to the Death Certificate, Rebecca's date of  
14 death is noted as May 11, 2017. For further information that may be responsive to this  
15 Interrogatory, please refer to the parties' initial and supplemental document disclosures and  
16 witness lists.

17  
18 Plaintiff reserves the right to amend and/or supplement this Answer as discovery remains  
19 ongoing.

20 **INTERROGATORY NO. 37:**

21 Please identify all collateral sources for payment of Plaintiffs' decedent's medical care  
22 that is the subject of your Complaint pursuant to NRS 42.021 including, but not limited to,  
23 personal health insurance information.

24 **RESPONSE TO INTERROGATORY NO. 37:**

25  
26 Objection. This Request seeks documentation in violation with the collateral source rule.  
27 Proctor v. Castelletti 112 Nev. 88, 911 P.2d 853 (1996).  
28



1 Without waiving said objections, I do not recall the name of the company that provided  
2 health insurance to Rebecca Powell.

3 Plaintiff reserves the right to amend and/or supplement this Answer as discovery remains  
4 ongoing.

5  
6 **INTERROGATORY NO. 38**

7 State all factors which led you to conclude that any co-defendant physician or medical  
8 practice with which he/she is affiliated was an agent, servant or employee of CHH.

9 **RESPONSE TO INTERROGATORY NO. 38:**

10 Plaintiff assumes that physicians working in CHH are employees of CHH and/or Valley  
11 Health System, LLC and Universal Health Service, Inc. Defendants have not disclosed any  
12 information, either in initial or supplemental disclosures, to disabuse him of this assumption.  
13 Plaintiff reserves the right to amend and/or supplement this response as discovery remains  
14 ongoing.

15  
16 **INTERROGATORY NO. 39**

17 Did you ever have any notice that any co-defendant physician or medical practice with  
18 which that physician is affiliated was an independent contractor from CHH? If yes, please state  
19 when you received such notice and the specific information you received pertaining thereto.

20  
21 **RESPONSE TO INTERROGATORY NO. 39:**

22 Not to Plaintiff's knowledge or understanding.

23  
24 Plaintiff reserves the right to amend and/or supplement this Answer as discovery remains  
25 ongoing.

26 ...

27 ...

**INTERROGATORY NO. 40**

State the evidence you have to demonstrate that CHH possessed the right to control the conduct with regard to the work to be done and the manner of performing it by any individual you claim to be an agent of CHH who you assert was in any way negligent in the care and treatment of you during your admission to CHH for the time period pertaining to the incident referred to in your Complaint.

**RESPONSE TO INTERROGATORY NO. 40:**

Please see responses to interrogatory numbers 38 and 39.

Plaintiff reserves the right to amend and/or supplement this Answer as discovery remains ongoing.

**PAUL PADDALAW, PLLC**

/s/ Paul S. Padda

Paul S. Padda, Esq.

James P. Kelly, Esq.

4560 South Decatur Boulevard, Suite 300

Las Vegas, Nevada 89103

*Attorneys for Plaintiffs*

Dated this 1<sup>st</sup> day of September, 2020.

**DECLARATION OF BRIAN POWELL PER NRS 53.045**

1. My name is **BRIAN POWELL**, and I am over the age of 18 and competent to make this Declaration. All matters stated herein are within my personal knowledge and are true and correct.
2. I have read the foregoing **RESPONSES TO DEFENDANT VALLEY HEALTH SYSTEM, LLC'S FIRST SET OF INTERROGATORIES TO PLAINTIFF ESTATE OF REBECCA POWELL THROUGH BRIAN POWELL AS SPECIAL ADMINISTRATOR** and know the contents thereof; that the same is true of my own knowledge, except for those matters therein stated upon information and belief, and as to those matters, I believe them to be true.
3. I declare under penalty of perjury under the law of the State of Nevada that the foregoing is true and correct.

Executed this 27<sup>TH</sup> day of AUGUST, 2020.

  
BRIAN POWELL

**PAUL PADDALAW, PLLC**  
4560 South Decatur Boulevard, Suite 300  
Las Vegas, Nevada 89103  
Tele: (702) 366-1888 • Fax (702) 366-1940

**CERTIFICATE OF SERVICE**

Pursuant to Rule 5(b) of the Nevada Rules of Civil Procedure, I certify that I am an employee of Paul Padda Law, PLLC and that on this 1<sup>st</sup> day of September, 2020, I served a true and correct copy of the above and foregoing document on all parties/counsel of record in the above entitled matter through hand service and/or efileNV eservice.

/s/ Jennifer C. Greening  
An Employee of Paul Padda Law, PLLC

# EXHIBIT 3

STATE OF NEVADA

**BRIAN SANDOVAL**  
*Governor*

**RICHARD WHITLEY, MS**  
*Director, DHHS*



**JULIE KOTCHEVAR**  
*Administrator, DPBH*

**VACANT**  
*Chief Medical Officer*

**DEPARTMENT OF HEALTH AND HUMAN SERVICES  
DIVISION OF PUBLIC AND BEHAVIORAL HEALTH  
BUREAU OF HEALTH CARE QUALITY AND COMPLIANCE**  
727 Fairview Dr., Suite E, Carson City, NV 89701  
Telephone: 775-684-1030, Fax: 775-684-1073  
dpbh.nv.gov

February 5, 2018

Brian Powell  
Po Box 750131  
Las Vegas, NV 89136

Re: Complaint Number NV00049271

Dear Mr. Powell,

With reference to your complaint against Centennial Hills Hospital Medical Center, an unannounced inspection was completed on 09/21/2017 to investigate your concerns about care and services.

During the investigation, the State Inspector interviewed patients/residents, reviewed their records, interviewed staff, and made observations while the facility or agency was in operation. The facility's or agency's actions were evaluated using applicable state and/or federal rules and regulations to determine if they were in compliance.

Based on the completed investigation, it was concluded that the facility or agency had violation(s) with rules and/or regulations. The Bureau will take appropriate measures to ensure the facility/agency is well-informed of the specifics of violation(s), and that they will exercise their due diligence in preventing similar incidents in the future. A copy of the report is enclosed.

Thank you for reporting your concerns. Please know that your voice will help improve the services of health facilities and agencies. If we can be of further assistance, please contact the office, at 702-486-6515 in LV, 775-684-1030 in Carson City.

Sincerely,

DPBH Complaint Coordinator

Division of Public and Behavioral Health

STATEMENT OF DEFICIENCIES AND PLAN OF CORRECTION		(X1) PROVIDER/SUPPLIER/CLIA IDENTIFICATION NUMBER:  <b>NVS5086HOS</b>	(X2) MULTIPLE CONSTRUCTION A. BUILDING: _____  B. WING: _____	(X3) DATE SURVEY COMPLETED  <b>09/21/2017</b>
NAME OF PROVIDER OR SUPPLIER  <b>CENTENNIAL HILLS HOSPITAL MEDICAL CEN</b>		STREET ADDRESS, CITY, STATE, ZIP CODE <b>6900 N DURANGO DR LAS VEGAS, NV 89149</b>		
(X4) ID PREFIX TAG  <b>S 000</b>	SUMMARY STATEMENT OF DEFICIENCIES (EACH DEFICIENCY MUST BE PRECEDED BY FULL REGULATORY OR LSC IDENTIFYING INFORMATION)	ID PREFIX TAG  <b>S 000</b>	PROVIDER'S PLAN OF CORRECTION (EACH CORRECTIVE ACTION SHOULD BE CROSS-REFERENCED TO THE APPROPRIATE DEFICIENCY)	(X5) COMPLETE DATE
	<p><b>Initial Comments</b></p> <p>This Statement of Deficiencies was generated as a result of complaint investigation conducted at your facility and completed on 9/21/17 in accordance with Nevada Administrative Code, Chapter 449, Hospital.</p> <p>The census at the time of the survey was 270.</p> <p>The sample size was five.</p> <p>There were two complaints investigated.</p> <p>Complaint #NV00049271 was substantiated.</p> <p>The allegation a patient in respiratory distress was unattended and was not upgraded to a higher level of care was substantiated (See Tag S 300).</p> <p>Complaint #NV00049721 with the following allegations could not be substantiated:</p> <p>Allegation 1: sterile technique was not implemented when suturing a re-opened surgical incision.</p> <p>Allegation 2: a re-opened surgical incision was sutured without using local anesthesia.</p> <p>Allegation 3: pain medication was not administered in a timely manner.</p> <p>Allegation 4: an anesthesia vial was left at bedside in a patient's room.</p> <p>The investigation into the allegations included:</p> <p>Review of five clinical records including the patient of concern.</p> <p>Interviews were conducted with the Chief of Nursing Operations (CNO) and an Emergency</p>			

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LABORATORY DIRECTOR'S OR PROVIDER/SUPPLIER REPRESENTATIVE'S SIGNATURE

TITLE

(X6) DATE

**10/27/17**

Division of Public and Behavioral Health

STATEMENT OF DEFICIENCIES AND PLAN OF CORRECTION		(X1) PROVIDER/SUPPLIER/CLIA IDENTIFICATION NUMBER:  <b>NVS6086HOS</b>	(X2) MULTIPLE CONSTRUCTION A. BUILDING: _____  B. WING: _____	(X3) DATE SURVEY COMPLETED  <b>09/21/2017</b>
NAME OF PROVIDER OR SUPPLIER  <b>CENTENNIAL HILLS HOSPITAL MEDICAL CEN</b>		STREET ADDRESS, CITY, STATE, ZIP CODE <b>6900 N DURANGO DR LAS VEGAS, NV 89149</b>		
(X4) ID PREFIX TAG	SUMMARY STATEMENT OF DEFICIENCIES (EACH DEFICIENCY MUST BE PRECEDED BY FULL REGULATORY OR LSC IDENTIFYING INFORMATION)	ID PREFIX TAG	PROVIDER'S PLAN OF CORRECTION (EACH CORRECTIVE ACTION SHOULD BE CROSS-REFERENCED TO THE APPROPRIATE DEFICIENCY)	(X5) COMPLETE DATE
S 000	Continued From page 1 Department Physician.  Observation of a medical surgical hospitalization unit including two patient rooms.  Review of the facility policies title Pain Management, Wound Care Therapeutic Support Services Guidelines, Sterile Products: Aseptic Technique, Hand Hygiene and Drug Storage.  The findings and conclusions of any investigation by the Division of Public and Behavioral Health shall not be construed as prohibiting any criminal or civil investigations, actions or other claims for relief that may be available to any party under applicable federal, state or local laws.  The following deficiency was identified:	S 000		
S 300 SS=G	NAC 449.3622 Appropriate Care of Patient  1. Each patient must receive, and the hospital shall provide or arrange for, individualized care, treatment and rehabilitation based on the assessment of the patient that is appropriate to the needs of the patient and the severity of the disease, condition, impairment or disability from which the patient is suffering.  This Regulation is not met as evidenced by: Based on observation, interview, record review and document review, the facility failed to ensure a patient in respiratory distress was monitored and received the necessary care for 1 of 5 sampled residents (Resident #2).  Findings include:	S 300		10/27/17

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Division of Public and Behavioral Health

STATEMENT OF DEFICIENCIES AND PLAN OF CORRECTION		(X1) PROVIDER/SUPPLIER/CLIA IDENTIFICATION NUMBER:  NVS5086HOS	(X2) MULTIPLE CONSTRUCTION A. BUILDING: _____  B. WING: _____	(X3) DATE SURVEY COMPLETED  09/21/2017
NAME OF PROVIDER OR SUPPLIER  CENTENNIAL HILLS HOSPITAL MEDICAL CEN		STREET ADDRESS, CITY, STATE, ZIP CODE 6900 N DURANGO DR LAS VEGAS, NV 89149		
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S 300	<p>Continued From page 2</p> <p>Patient #2</p> <p>Patient #2 was admitted on 5/3/17, with diagnoses including intentional medication overdose and acute respiratory failure.</p> <p>A Physician progress note dated 5/9/17 at 2:06 PM, documented the patient did not complain of shortness of breath (SOB). The patient was status post intubation with Methicillin Resistant Staphylococcus Aureus (MRSA) pneumonia.</p> <p>The Pulmonologist consultation report dated 5/9/17 at 5:49 PM, indicated the patient did not have inflammation of the pleura, no blood in sputum, secretions were compatible with aspiration and MRSA. The treatment plan included breathing treatment, oxygen as needed and to decrease steroids.</p> <p>The Nursing progress dated 5/10/17 at 2:00 AM, documented the patient had a non-productive cough and SOB. The patient received oxygen at 2 liters per minute (lpm) and a breathing treatment as needed. The progress note did not document the patient's vital signs.</p> <p>On 5/10/17 at 3:41 AM, the clinical record documented the following vital signs: heart rate 76 beats per minutes (bpm) and respiratory rate 16 breaths per minute (br/m). The vital signs report did not document the blood pressure (B/P) or oxygen saturation (SPO2). The patient was receiving oxygen at 3 lpm via nasal cannula.</p> <p>On 5/10/17 at 8:00 AM, the clinical record documented the following vital signs: temperature 36.6 Fahrenheit, heart rate 96 bpm, respiratory rate 18 br/m, B/P 133/76, SPO2 96% with oxygen at 2 lpm via nasal cannula.</p>	S 300		

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Division of Public and Behavioral Health

STATEMENT OF DEFICIENCIES AND PLAN OF CORRECTION		(X1) PROVIDER/SUPPLIER/CLIA IDENTIFICATION NUMBER:  NVS5086HOS	(X2) MULTIPLE CONSTRUCTION A. BUILDING: _____  B. WING: _____	(X3) DATE SURVEY COMPLETED  09/21/2017
NAME OF PROVIDER OR SUPPLIER  CENTENNIAL HILLS HOSPITAL MEDICAL CEN		STREET ADDRESS, CITY, STATE, ZIP CODE 6900 N DURANGO DR LAS VEGAS, NV 89149		
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S 300	<p>Continued From page 3</p> <p>On 5/10/17 at 3:04 PM, the clinical record documented the following vital signs: heart rate 98 bpm, respiratory rate 20 br/m, B/P 133/76 and SPO2 95% with oxygen at 3 lpm via nasal cannula.</p> <p>The Nursing progress note dated 5/10/17 at 3:13 PM, documented the patient was resting in bed with SOB and fatigue. The patient was monitored with cameras due to being on a legal hold.</p> <p>The Nursing progress note dated 5/10/17 at 4:11 PM, revealed the patient complained of labored breathing. A physician was notified and orders were obtained for a chest x-ray and arterial blood gases. The progress note documented the patient was treated with breathing treatments and Ativan without satisfactory results. The progress note did not document vital signs.</p> <p>The Respiratory Therapist (RT) progress note dated 5/10/17 at 4:32 PM, documented the patient complained of respiratory distress when a radiology test was being conducted. The facility Rapid Response Team (RRT) was activated and checked the patient. The patient was returned to her room with the following vital signs: heart rate 115 bpm, SPO2 98% with oxygen at 6 lpm and a respiratory rate 28 br/m. Arterial blood gas (ABG) analysis was drawn with no critical results.</p> <p>The chest X-ray results dated 5/10/17 at 4:32 PM, documented persistent bilateral interstitial infiltrates with no changes since the previous chest-X-ray.</p> <p>The Pulmonologist consultation dated 5/10/17 at 5:15 PM, documented the patient complained of dyspnea (difficult or labored breathing) when a</p>	S 300		

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Division of Public and Behavioral Health

STATEMENT OF DEFICIENCIES AND PLAN OF CORRECTION	(X1) PROVIDER/SUPPLIER/CLIA IDENTIFICATION NUMBER:  <b>NVS5086HOS</b>	(X2) MULTIPLE CONSTRUCTION A. BUILDING: _____  B. WING: _____	(X3) DATE SURVEY COMPLETED  <b>09/21/2017</b>
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NAME OF PROVIDER OR SUPPLIER STREET ADDRESS, CITY, STATE, ZIP CODE

**CENTENNIAL HILLS HOSPITAL MEDICAL CEN 6900 N DURANGO DR  
LAS VEGAS, NV 89149**

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S 300	<p>Continued From page 4</p> <p>radiology study was being conducted and the RRT was activated. The patient did not have inflammation of the pleura (membranes that cover the lungs) and the chest X-ray showed some changes, but not fluids in the pleura. The increased dyspnea was possibly caused by "too rapid taper steroids". The treatment plan was to resume the steroids every eight hours, breathing treatment and pulmonary hygiene. Steroids were resumed as per Pulmonologist recommendation.</p> <p>The RT treatment report dated 5/10/17 at 10:22 PM, revealed the patient was receiving Oxygen via nasal cannula at 3 litter per minute (LPM) with an Oxygen saturation of 92 percent (%).</p> <p>The RT evaluation prior to a respiratory treatment performed on 5/10/17 at 11:51 PM, revealed breath sounds were diminished in all pulmonary lobes.</p> <p>The Medication Administration Record (MAR) dated 5/10/17 at 11:52 PM, documented Ipratropium 0.02 %, Levalbuterol 0.63 milligrams (mg) and Acetylcysteine 20 inhalation were administered. The patient's vital signs were documented as follows: pulse 100 bpm and respiratory rate at 22 br/m.</p> <p>The post respiratory treatment evaluation performed on 5/11/17 at 12:10 AM, revealed unchanged breath sounds (diminished) in all pulmonary lobes. The patient was receiving Oxygen via nasal cannula at 3 litter per minute (LPM) with an Oxygen saturation of 95%.</p> <p>The Respiratory therapy treatment report dated 5/11/17 at 2:00 AM, lacked the patient's respiratory status information or vital sign data. The respiratory therapy treatment note was blank.</p>	S 300		

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STATEMENT OF DEFICIENCIES AND PLAN OF CORRECTION	(X1) PROVIDER/SUPPLIER/CLIA IDENTIFICATION NUMBER:  <b>NVS5086HOS</b>	(X2) MULTIPLE CONSTRUCTION A. BUILDING: _____  B. WING: _____	(X3) DATE SURVEY COMPLETED  <b>09/21/2017</b>
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STREET ADDRESS, CITY, STATE, ZIP CODE

**CENTENNIAL HILLS HOSPITAL MEDICAL CEN**

**6900 N DURANGO DR  
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S 300	<p>Continued From page 5</p> <p>The Nursing progress note dated 5/11/17 at 3:15 AM, documented the patient was checked by two Registered Nurses (RN). The patient complained of anxiety and difficulty breathing. A physician and RT were notified and an order for Ativan was obtained. The nursing progress note indicated the patient kept pulling the Oxygen off, and RT recommended to monitor the patient closely. The Nurse Supervisor was notified about the need of a sitter to monitor the patient. The Camera Room was notified to check the patient via surveillance camera for removing the Oxygen. A technician at the Camera Room indicated the room could not be seen clearly through the camera and suggested to move the patient to another room with a camera. The note documented the patient seemed relaxed after the administration of the medication Ativan. The patient's vital signs were not documented in this note. There was no evidence the patient was changed to another room as suggested by the Camera Room technician.</p> <p>The RT evaluation prior to a respiratory treatment performed on 5/11/17 at 4:08 AM, revealed the breath sounds were diminished in all pulmonary lobes. The patient's Oxygen saturation was 90% and Oxygen was administered with a non-rebreather mask, however, the rate of Oxygen flow was not documented. The following vital signs were documented: heart rate of 130 bpm and respiratory rate of 30 br/m. There was no evidence the attending physician was notified about the increased heart rate and respiratory rate.</p> <p>The MAR dated 5/11/17 at 4:18 AM, documented Ipratropium 0.02 %, Levalbuterol 0.63 mg and Acetylcysteine 20 inhalation were administered.</p>	S 300		

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STATEMENT OF DEFICIENCIES AND PLAN OF CORRECTION		(X1) PROVIDER/SUPPLIER/CLIA IDENTIFICATION NUMBER:  <b>NVS5086HOS</b>	(X2) MULTIPLE CONSTRUCTION A. BUILDING: _____  B. WING: _____	(X3) DATE SURVEY COMPLETED  <b>09/21/2017</b>
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S 300	<p>Continued From page 6</p> <p>The patient's vital signs were documented as follows: pulse 130 bpm and respiratory rate at 30 br/m.</p> <p>The post respiratory treatment evaluation performed on 5/11/17 at 4:47 AM, revealed unchanged breath sounds (diminished) in all pulmonary lobes. The patient was receiving Oxygen via non-rebreather mask with Oxygen at 15 lpm, SPO2 of 90% and unchanged breath sounds. There was no evidence the attending physician was notified about the change in the patient's condition.</p> <p>The Nursing progress note dated 5/11/17 at 8:57 AM, documented at approximately 6:10 AM the patient was found unresponsive with the Oxygen mask in her feet and Cardio-Pulmonary Resuscitation (CPR) was initiated.</p> <p>The Respiratory therapy progress note dated 5/11/17 at 10:20 AM, indicated therapist entered the room during a Code Blue and CPR was initiated. The note documented a physician pronounced the patient at 6:50 AM and CPR ended.</p> <p>The Legal 2000 (Legal hold) Patient Frequency Observation Record date 5/11/17, revealed the patient was monitored in room 701 via camera every 15 minutes from 5/10/17 at 7:00 PM though 5/11/17 at 5:00 AM. The record documented the patient was awake/alert all the time, except on 5/10/17 at 11:00 PM and on 5/11/17 from 5:00 AM to 6:00 AM when it was documented the patient was sleeping. The record indicated a nurse called the sitter at 4:20 AM, the patient removed the intravenous (IV) lines, but they could not see the incident on monitor and suggested to change the patient to room 832. The record revealed at 6:10</p>	S 300		

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Division of Public and Behavioral Health

STATEMENT OF DEFICIENCIES AND PLAN OF CORRECTION		(X1) PROVIDER/SUPPLIER/CLIA IDENTIFICATION NUMBER:  NVS5086HOS	(X2) MULTIPLE CONSTRUCTION A. BUILDING: _____  B. WING: _____	(X3) DATE SURVEY COMPLETED  09/21/2017
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S 300	<p>Continued From page 7</p> <p>AM, Code Blue was announced. The record indicated the patient "last appeared to be sitting in close to upright position with fingers possible in mouth for approx. (approximately) one hour".</p> <p>Clinical record lacked documented evidence the patient's vital signs were monitored on 5/11/17 from 4:47 AM through 6:10 AM, when the patient was found unresponsive. There was no evidence a physician or the Rapid Response Team (RRT) were notified about the abnormal vital signs obtained at 4:08 AM, 4:18 AM, 4:47 AM and the patient's change in condition. The record did not document if the patient was moved to another room with a better camera resolution to monitor if Oxygen mask was removed.</p> <p>The RN who provided care to the patient on 5/11/17, submitted a statement dated 8/4/17, which indicated the patient was complaining of shortness of breath (SOB) from the previous shift and the RT provided breathing treatments several times but the patient was uncooperative. The patient was medicated with Ativan. The RN stated the attending physician was notified about the SOB and an order for a computerized tomography (CT) was obtained. Due to the SOB and anxiety, the CT could not be performed and the physician ordered another dose of Ativan. The RN indicated after the medication was administered, vital signs stabilized and the patient fell asleep at approximately 4:15 AM. A Certified Nursing Assistant (CNA) and the RN rotated hourly to check the patient. The statement documented the vital signs were at baseline and the patient was monitored via camera. The RN continued to provide care to other patients and hourly rounds were performed by a CNA at 5:00 AM and "all was well". The RN's statement continued that at no point it was believed the</p>	S 300		

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Division of Public and Behavioral Health

STATEMENT OF DEFICIENCIES AND PLAN OF CORRECTION		(X1) PROVIDER/SUPPLIER/CLIA IDENTIFICATION NUMBER:  <b>NVS5086HOS</b>	(X2) MULTIPLE CONSTRUCTION A. BUILDING: _____  B. WING: _____	(X3) DATE SURVEY COMPLETED  <b>09/21/2017</b>
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S 300	<p>Continued From page 8</p> <p>patient was in critical distress because the patient's condition was related to anxiety and the concerns had been reported to the Charge Nurse.</p> <p>The discharge summary dated 5/23/17, revealed the attending physician had been notified on 5/10/17 at 5:00 PM, when the patient complained of shortness of breath. The physician ordered arterial blood gases (ABG) and a chest X-ray. The physician documented the chest-X-ray and the ABG results were reviewed and an RN was directed to contact a Pulmonologist for an evaluation. The discharge summary indicated the attending physician was notified on 5/11/17 in the morning the patient expired. There was no evidence the attending physician was notified of the patient's increased respiratory and heart rate obtained at 4:08 AM and 4:47 AM.</p> <p>On 8/2/17 at 1:50 PM, the Chief of Nursing Operations (CNO) indicated Patient #2 should have been monitored closely based on the vital signs and condition. The CNO acknowledged the Rapid Response Team (RRT) should have been activated and the patient upgraded to a higher level of care.</p> <p>On 9/21/17 at 12:26 PM, the facility Process Improvement Manager indicated the patient was not monitored by telemetry and the cardiac monitoring documentation available for 5/11/17 was the electrocardiogram performed during the Code Blue.</p> <p>On 8/2/17 at 2:22 PM, an observation was conducted on the behavioral monitoring unit where staff monitored patients in their room via camera. A CNA (sitter) and a RN were on duty. The RN explained the purpose of the monitoring was to ensure the patients with psychiatric</p>	S 300		

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Division of Public and Behavioral Health

STATEMENT OF DEFICIENCIES AND PLAN OF CORRECTION	(X1) PROVIDER/SUPPLIER/CLIA IDENTIFICATION NUMBER:  <b>NVS5086HOS</b>	(X2) MULTIPLE CONSTRUCTION A. BUILDING: _____  B. WING: _____	(X3) DATE SURVEY COMPLETED  <b>09/21/2017</b>
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NAME OF PROVIDER OR SUPPLIER STREET ADDRESS, CITY, STATE, ZIP CODE

**CENTENNIAL HILLS HOSPITAL MEDICAL CEN** **6900 N DURANGO DR**  
**LAS VEGAS, NV 89149**

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S 300	<p>Continued From page 9</p> <p>behaviors were safe in their rooms. If a patient was out of bed, pulled lines out or got out the room, the nurse was notified immediately. The RN indicated it was only a visual monitoring and it was not capable of monitoring vital signs or if the patient was breathing or not.</p> <p>On 9/21/17 at 10:38 AM, a CNA explained rounds were performed every hour and as needed to each room. The CNA checked for comfort, pain or other issues or concerns the patients manifested. If there was any change in the patient's condition, the CNA notified the Licensed Nurse immediately. Vital signs were obtained by CNAs. If any of the vital signs were out of the normal parameters, the vital signs would be repeated and the nurse would be notified. The CNA described normal parameter for vital signs: B/P: 130/60, HR:60 bpm, RR: 14-16 br/m, SPO2: 91% and above.</p> <p>On 9/21/17 at 10:47 AM, another CNA indicated rounds were performed every hour and as needed. The CNA explained during the rounds they checked the patients for comfort, pain, distress or other concerns from the patient. The CNA verbalized vital signs were obtained by CNAs and the normal parameters were described as follow: B/P: 120/60, HR: 60 -88 bpm, SPO2: above 92% and RR 16-18 br/m. If any of the vital signs were out of parameter, the nurse would be notified.</p> <p>On 9/21/17 at 11:02 AM, a RN explained normal vital signs were: B/P: 100/60, HR: no more than 100 bpm, RR: 16-20 br/m and SPO2 no less than 90%. If a patient presented with a HR of 140 bpm and RR of 30 br/m, the physician must be notified immediately and the RRT activated.</p>	S 300		

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S 300	<p>Continued From page 10</p> <p>On 9/21/17 at 11:20 AM, an RT Supervisor explained non-rebreather mask was used as the last resort when a patient had respiratory problems that did not improve with breathing treatment, pulmonary hygiene and the SPO2 was lower than 90%. The RT Supervisor indicated if a non-rebreather mask was placed, the patient had to be upgraded to the next level of care. The RT Supervisor stated any RT could notify the physician and the RRT if after an assessment it was determined a patient was in respiratory distress. The RT Supervisor confirmed according to the vital signs documented in the record on 5/11/17 at 4:08 AM and 4:47 AM, Patient #2 was in respiratory distress and required an upgrade of the level of care. The RT Supervisor explained SPO2 lower than 90%, changes in skin color, the use of the accessory respiratory muscles, increase in heart and respiratory rates and abnormal arterial blood gases could be identified such as signs and symptoms of respiratory distress. The RT Supervisor verbalized the normal SPO2 was 90% or above but depended of the patient's condition.</p> <p>On 9/21/17 at 12:01 PM, the RT who provided care to Patient #2 on 5/10/17 during the day, had been worked with the patient since she was extubated and transferred from Intensive Care to the med-surge unit. The RT was present when the patient complained of a respiratory distress in the radiology unit and the RRT was activated. An Emergency Department physician responded to the incident, stabilized the patient and transferred back to her room. After that time, the RT provided a breathing treatment several times throughout the day but vital signs were stable. The RT explained a non- rebreather mask was used when a patient was not oxygenating (SPO2 was lower than 90%) and required an upgrade level of</p>	S 300			

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NAME OF PROVIDER OR SUPPLIER  <b>CENTENNIAL HILLS HOSPITAL MEDICAL CEN</b>		STREET ADDRESS, CITY, STATE, ZIP CODE <b>6900 N DURANGO DR LAS VEGAS, NV 89149</b>		
(X4) ID PREFIX TAG	SUMMARY STATEMENT OF DEFICIENCIES (EACH DEFICIENCY MUST BE PRECEDED BY FULL REGULATORY OR LSC IDENTIFYING INFORMATION)	ID PREFIX TAG	PROVIDER'S PLAN OF CORRECTION (EACH CORRECTIVE ACTION SHOULD BE CROSS-REFERENCED TO THE APPROPRIATE DEFICIENCY)	(X5) COMPLETE DATE
S 300	<p>Continued From page 11</p> <p>care. After reviewing Patient #2's clinical record for 5/11/17 at 4:08 AM and 4:47 AM, the RT concluded the physician should have been notified, the RRT activated and the level of care upgraded.</p> <p>Facility policy titled RRT dated December 2016, documented the RRT was established to aid in the preservation of patient life based on an early recognition of life threatening conditions. The policy documented the RRT could be activated when changes occurred in a patient that included acute change in heart rate less than 40 or more than 130 bpm, respiratory rate less than 8 or more than 28 br/m, acute change in saturation less than 90% despite oxygen and shortness of breath.</p> <p>Severity: 3 Scope: 1</p> <p>Complaint # NV00049271</p>	S 300		

If deficiencies are cited, an approved plan of correction must be returned within 10 days after receipt of this statement of deficiencies.

STATE FORM

6900

QEU211

If continuation sheet 12 of 12

# EXHIBIT 4

*Alvin S. Smith*  
CLERK OF THE COURT

**ORDR**

PAUL S. PADDA

Nevada Bar No.: 10417

Email: *psp@paulpaddalaw.com*

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Tele: (702) 366-1888

Fax: (702) 366-1940

*Attorneys for Plaintiffs*

**DISTRICT COURT**

**CLARK COUNTY, NEVADA**

ESTATE OF REBECCA POWELL, through  
Brian Powell as Special Administrator;  
DARCI CREECY, individually; TARYN  
CREECY, individually; ISAIAH KHOSROF,  
individually; LLOYD CREECY, individually;

Plaintiffs,

vs.

VALLEY HEALTH SYSTEM, LLC (doing  
business as "Centennial Hills Hospital Medical  
Center"), a foreign limited liability company;  
UNIVERSAL HEALTH SERVICES, INC., a  
foreign corporation; DR. DIONICE S.  
JULIANO, M.D., an individual; DR.  
CONRADO C.D. CONCIO, M.D., an  
individual; DR. VISHAL S. SHAH, M.D., an  
individual; DOES 1-10; ROES A-Z;

Defendants.

CASE NO. A-19-788787-C  
DEPT. XXX (30)

**ORDER DENYING DEFENDANTS  
CONRADO CONCIO, M.D. AND  
DIONICE JULIANO, M.D.'S MOTION  
TO DISMISS PLAINTIFFS'  
COMPLAINT**

The above-referenced matter was scheduled for a hearing on September 25, 2019.

Appearing on behalf of Plaintiffs were Paul S. Padda, Esq. and Suneel J. Nelson, Esq.

Appearing on behalf of Defendants the movant, was Brad J. Shipley, Esq. and Zachary J.  
Thompson, Esq.

...

...

I.

**PROCEDURAL POSTURE**

1. On February 4, 2019, Plaintiffs filed a Complaint alleging medical malpractice, wrongful death and negligent infliction of emotional distress (“NIED”). Plaintiffs attached to their Complaint a sworn affidavit from Dr. Sami Hashim, M.D. in support of their first cause of action alleging medical malpractice.

2. On June 12, 2020, Defendants Conrado Concio, M.D. and Dionice Juliano, M.D. filed a motion to dismiss Plaintiffs’ Complaint alleging that Plaintiffs failed to timely file their Complaint within the statute of limitations time of one year pursuant to NRS 41A.097(2) and also failing to meet the threshold requirements of NRS 41A.071 for the claims of negligent infliction of emotional distress and professional negligence.

3. On June 13, 2019 Defendant Vishal Shah, M.D. filed a joinder to Defendants Conrado, M.D. and Dionice Juliano, M.D.’s motion to dismiss.

4. On June 26, 2019, Defendant Centennial Hills Hospital filed a joinder to Defendants Conrado, M.D. and Dionice Juliano, M.D.’s motion to dismiss.

5. On September 23, 2019, Defendant Universal Health Services, Inc. filed a joinder to Defendants Conrado, M.D. and Dionice Juliano, M.D.’s motion to dismiss.

6. The motion to dismiss and related matters were heard by the Court on September 25, 2019.

7. After considering the papers on file in this matter and the arguments of counsel, the Court hereby renders the following findings of fact and conclusions of law:

I.

**FINDINGS OF FACT AND CONCLUSIONS OF LAW**

8. The Court, addressing the statute of limitations issue, noted that the Supreme Court has been clear that the standard of when a claimant “knew or reasonably should have known” is generally an issue of fact for a jury to decide. However, the Court also noted that in this case, it does appear that the Complaint was not filed until a substantial period after the date of Rebecca Powell’s death. Therefore, Defendants may revisit the statute of limitations issue in

1 the future through a motion for summary judgment at which point the Court will reconsider the  
2 issue at that time. (Transcript 18:4-13).

3 9. The Court further stated there is at least an insinuation that there was  
4 concealment, and the Court understands the argument that you cannot hold one defendant  
5 responsible for another defendant's concealment. However, if there was concealment in this  
6 case, it also arguably prevented the Plaintiffs from having the inquiry notice they needed in  
7 order to comply with the statute of limitations. (Transcript 18:14-23).

8 10. The Court further stated that, in medical malpractice cases, an issue of fact is  
9 determined when that inquiry notice starts, and arguably, the inquiry notice may not start until  
10 Plaintiffs receive the pertinent records (Transcript 18:24-19:3).

11 11. The Court further stated regarding a Nevada Rule of Civil Procedure 12(b)(5)  
12 motion based upon a "failure to state a claim upon which relief can be granted" that Defendants  
13 must show that "under no circumstances would Plaintiffs able to prevail." At this point in the  
14 litigation, the Court determined that this an issue of fact to be determined at a later date as  
15 Defendants have not met their burden. (Transcript 19:4-7).

16 12. With regard to the NIED claim, Court stated that Plaintiffs' correctly pled the  
17 claim, and Plaintiffs' Complaint meets the requirements of NRS 41A.071. However, there is  
18 inconsistency within Plaintiffs' Affidavit which creates a genuine issue of fact. Therefore,  
19 some arguments may be brought up in a motion for summary judgment that the Court will  
20 consider at a later time after more evidence is available (Transcript 19:12-19:25).

21 13. Defendant Centennial Hills Hospital Medical Center's motion to dismiss  
22 Plaintiffs' Complaint based upon NRS 41A.097 and NRCP 12(b)(5) must be denied (Transcript  
23 19:25-20:2).

24 14. The Court concludes that Plaintiffs' Complaint should not be dismissed at this  
25 time with the evidence available to the Court.

26 . . .

27 . . .

28 . . .

III.

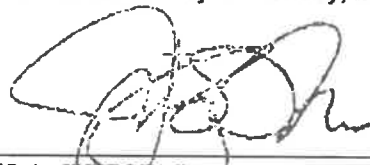
ORDER

Based upon the foregoing,

IT IS HEREBY ORDERED that Defendants Conrado Concio, M.D. and Dionice Juliano, M.D.'s Motion to Dismiss Plaintiffs' Complaint, and the subsequent joinders to that motion, on the grounds that (1) Plaintiffs untimely filed their complaint to satisfy the requirements of NRS 41A.097 and (2) that Plaintiffs failed to meet the threshold pleading requirements pursuant to NRS 41A.071 regarding Plaintiffs' claims of negligent infliction of emotional distress and professional negligence is DENIED without prejudice.

Dated this \_\_\_\_\_ day of \_\_\_\_\_, 2021.

Dated this 6th day of February, 2021



JERRY A. WIESE, II  
DISTRICT COURT JUDGE  
EIGHTH JUDICIAL DISTRICT COURT  
DEPARTMENT 30  
JERRY A. WIESE  
District Court Judge

*Respectfully submitted by:*

*Approved as to Form and Content By:*

PAUL PADDA LAW

JOHN H. COTTON & ASSOCIATES, LTD.

By: /s/ Paul S. Padda

By: /s/ Brad J. Shipley

Paul S. Padda, Esq.  
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Brad J. Shipley, Esq.  
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Las Vegas, Nevada 89117

*Attorneys for Plaintiffs*

*Attorneys for Defendants Dionice S. Juliano,  
M.D., Conrad Concio, M.D. and Vishal S.  
Shah, M.D.*

Dated this 4<sup>th</sup> day of February 2021.

**From:** Brad Shipley  
**To:** Jennifer Greening; Garth, Adam  
**Cc:** Vogel, Brent; Rokni, Roya; Whitbeck, Johana; Armantrout, Heather; Atkinson, Arielle; Paul Padda  
**Subject:** RE: Powell v. Valley Health - Proposed Orders re: 9/25/2019 Hearing  
**Date:** Thursday, February 4, 2021 12:56:32 PM  
**Attachments:** [image001.png](#)  
[image002.png](#)  
[image003.png](#)  
[image004.png](#)  
[image005.png](#)  
[image006.png](#)

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We have no objection to either order. You may use my e-signature for approval of the proposed orders.

Brad J. Shipley, Esq  
John H. Cotton and Associates  
7900 W. Sahara Ave. #200  
Las Vegas, NV 89117  
(702) 832-5909  
(630) 269-1717

---

**From:** Jennifer Greening <Jennifer@paulpaddalaw.com>  
**Sent:** Thursday, February 4, 2021 12:51 PM  
**To:** Garth, Adam <Adam.Garth@lewisbrisbois.com>; Brad Shipley <bshipley@jhcottonlaw.com>  
**Cc:** Vogel, Brent <Brent.Vogel@lewisbrisbois.com>; Rokni, Roya <Roya.Rokni@lewisbrisbois.com>; Whitbeck, Johana <Johana.Whitbeck@lewisbrisbois.com>; Armantrout, Heather <Heather.Armantrout@lewisbrisbois.com>; Atkinson, Arielle <Arielle.Atkinson@lewisbrisbois.com>; Paul Padda <psp@paulpaddalaw.com>  
**Subject:** RE: Powell v. Valley Health - Proposed Orders re: 9/25/2019 Hearing

Thank you, Mr. Garth.

**Jennifer C. Greening**  
Paralegal  
**PAUL PADDA LAW, PLLC**  
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12655 West Jefferson Blvd., 4<sup>th</sup> Floor  
Los Angeles, California 90066  
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# EXHIBIT 5

**ORDR**

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Fax: (702) 366-1940  
*Attorneys for Plaintiffs*

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

\* \* \* \* \*

ESTATE OF REBECCA POWELL, through  
Brian Powell as Special Administrator; DARCI  
CREECY, individually; TARYN CREECY,  
individually; ISAAH KHOSROF, individually;  
LLOYD CREECY, individually;

Plaintiffs,

vs.

VALLEY HEALTH SYSTEM, LLC (doing  
business as "Centennial Hills Hospital Medical  
Center"), a foreign limited liability company;  
UNIVERSAL HEALTH SERVICES, INC., a  
foreign corporation; DR. DIONICE S.  
JULIANO, M.D., an individual; DR.  
CONRADO C.D. CONCIO, M.D., an individual;  
DR. VISHAL S. SHAH, M.D., an individual;  
DOES 1-10; ROES A-Z;

Defendants.

CASE NO. A-19-788787-C  
DEPT. XXX (30)

**ORDER DENYING DEFENDANT  
CENTENNIAL HILLS HOSPITAL  
MEDICAL CENTER'S MOTION TO  
DISMISS PLAINTIFFS' COMPLAINT**

The above-referenced matter was scheduled for a hearing on September 25, 2019.

Appearing on behalf of Plaintiffs was Paul S. Padda, Esq. and Suneel J. Nelson, Esq.

Appearing on behalf of Defendant Centennial Hills Hospital Medical Center, the movant, was  
Brad J. Shipley, Esq. and Zachary J. Thompson, Esq.

...

I.

**PROCEDURAL HISTORY**

1. On February 4, 2019, Plaintiffs filed a Complaint alleging medical malpractice, wrongful death and negligent infliction of emotional distress (“NIED”). Plaintiffs attached to their Complaint a sworn affidavit from Dr. Sami Hashim, M.D. in support of their first cause of action alleging medical malpractice.

2. On June 19, 2019, Defendant Centennial Hills Hospital Medical Center filed a motion to dismiss pursuant to Nevada Rule of Civil Procedure (“NRCPP”) 12(b)(5) alleging that Plaintiffs failed to timely file their Complaint within the statute of limitations time of one year pursuant to NRS 41A.071.

3. On September 23, 2019, Defendant Universal Health Services, Inc. filed a joinder to Defendant Centennial Hills Hospital Medical Center’s motion to dismiss.

4. The motion to dismiss and related matters were heard by the Court on September 25, 2019 (“the hearing”).

5. After considering the papers on file in this matter and the arguments of counsel, the Court hereby renders the following findings of fact and conclusions of law:

I.

**FINDINGS OF FACT AND CONCLUSIONS OF LAW**

6. The Court, addressing the statute of limitations issue at the hearing, noted that the Supreme Court of Nevada has been clear that the standard of when a claimant “knew or reasonably should have known” is generally an issue of fact for a jury to decide. However, the Court also noted that in this case it does appear that claim was not filed until a substantial period after the date of Rebecca Powell’s death. Therefore, the Court determined at the hearing that some arguments may be brought up later in a motion for summary judgment that the Court will consider following the filing of such a motion. (Transcript 18:4-13).

7. The Court further stated at the hearing that there is at least an insinuation that there was concealment, and the Court understands the argument that you cannot hold a Defendant responsible for another Defendants concealment. However, if there is concealment,

1 it arguably prevents the Plaintiffs from having the inquiry notice they need in order to comply  
2 with the statute of limitations. (Transcript 18:14-23).

3 8. The Court further stated at the hearing that an issue of fact is determined when  
4 that inquiry notice starts, and arguably, the inquiry notice may not start until a Plaintiff receives  
5 the pertinent records (Transcript 18:24-19:3).

6 9. The Court further stated at the hearing that an NRCP 12(b)(5) motion for “failure  
7 to state a claim upon which relief can be granted,” requires a defendant to show that “under no  
8 circumstances would the plaintiffs be able to prevail.” The Court found that Defendants’s  
9 motion did not meet this standard. Therefore, the Court determined this to be an issue of fact to  
10 be determined at a later date (Transcript 19:4-7).

11 10. The Court finds and concludes that Defendant Centennial Hills Hospital Medical  
12 Center’s motion to dismiss Plaintiffs’ Complaint based upon NRS 41A.097 and NRCP 12(b)(5)  
13 must be denied (Transcript 19:25-20:2).

14 11. The Court also finds and concludes that Plaintiffs’ Complaint should not be  
15 dismissed at this time with the evidence available to the Court.

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PAUL PADDA LAW, PLLC  
4560 South Decatur Boulevard, Suite 300  
Las Vegas, Nevada 89103  
Tele: (702) 366-1888 • Fax (702) 366-1940

III.

**ORDER**

Based upon the foregoing,

IT IS HEREBY ORDERED that Defendant Centennial Hills Hospital Medical Center's Motion to Dismiss Plaintiffs' Complaint, and the subsequent joinders to that motion, on the grounds that Plaintiffs untimely filed their Complaint to satisfy the requirements of NRS 41A.097 is DENIED without prejudice.

Dated this \_\_\_\_\_ day of \_\_\_\_\_, 2021.

Dated this 6th day of February, 2021



JERRY A. WIESE II  
DISTRICT COURT JUDGE  
EIGHTH JUDICIAL DISTRICT COURT  
DEPARTMENT 30  
109-830-7885 F30D  
Jerry A. Wiese  
District Court Judge

*Respectfully submitted by:*

*Approved as to Form and Content By:*

**PAUL PADDA LAW**

**LEWIS BRISBOIS BISGAARD & SMITH**

By: /s/ Paul S. Padda

By: /s/ Adam Garth

Paul S. Padda, Esq.  
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S. Brent Vogel, Esq.  
Nevada Bar No. 6858  
Adam Garth, Esq.  
Nevada Bar No. 15045  
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Las Vegas, Nevada 89118

*Attorneys for Plaintiffs*

*Attorneys for Defendant Valley Health  
System, LLC dba Centennial Hills Hospital  
Medical Center*

Dated this 4<sup>th</sup> day of February 2021.

**From:** Garth, Adam  
**To:** Jennifer Greening; Brad Shipley  
**Cc:** Vogel, Brent; Rokni, Roya; Whitbeck, Johana; Armantrout, Heather; Atkinson, Arielle; Paul Padda  
**Subject:** RE: Powell v. Valley Health - Proposed Orders re: 9/25/2019 Hearing  
**Date:** Thursday, February 4, 2021 12:40:51 PM  
**Attachments:** image001.png  
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You can sign my e-signature to the stipulation and submit for filing regarding the Centennial Hills order only. We can take no position regarding the other order as that pertains to co-defendant's motion and he will need to provide his approval.

Adam Garth



**Adam Garth**  
Partner  
Adam.Garth@lewisbrisbois.com  
T: 702.693.4335 F: 702.366.9563

6385 South Rainbow Blvd., Suite 600, Las Vegas, NV 89118 | [LewisBrisbois.com](http://LewisBrisbois.com)

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**From:** Jennifer Greening <Jennifer@paulpaddalaw.com>  
**Sent:** Thursday, February 4, 2021 12:34 PM  
**To:** Garth, Adam <Adam.Garth@lewisbrisbois.com>; Brad Shipley <bshipley@jhcottonlaw.com>  
**Cc:** Vogel, Brent <Brent.Vogel@lewisbrisbois.com>; Rokni, Roya <Roya.Rokni@lewisbrisbois.com>; Whitbeck, Johana <Johana.Whitbeck@lewisbrisbois.com>; Armantrout, Heather <Heather.Armantrout@lewisbrisbois.com>; Atkinson, Arielle <Arielle.Atkinson@lewisbrisbois.com>; Paul Padda <psp@paulpaddalaw.com>  
**Subject:** [EXT] RE: Powell v. Valley Health - Proposed Orders re: 9/25/2019 Hearing

Attached is the hearing transcript for your review.

Thank you.

**Jennifer C. Greening**  
Paralegal  
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# EXHIBIT 6

**DISTRICT COURT  
CLARK COUNTY, NEVADA  
-oOo-**

ESTATE OF REBECCA POWELL, through )  
BRIAN POWELL, as Special Administrator; )  
DARCI CREECY, individually and as an Heir; )  
TARYN CREECY, individually and as an Heir; )  
ISAIAH KHOSROF, individually and as an )  
Heir; LLOYD CREECY, individually, )

Plaintiffs, )

vs. )

VALLEY HEALTH SYSTEM, LLC (doing )  
Business as "Centennial Hills Hospital )  
Medical Center"), a foreign limited liability )  
Company; UNIVERSAL HEALTH SERVICES, )  
INC., a foreign corporation; DR. DIONICE )  
S. JULIANO, M.D., an individual; DR. )  
CONRADO C.D. CONCIO, M.D., an individual; )  
DR. VISHAL S. SHAH, M.D., an individual; )  
DOES 1-10; and ROES A-Z, )

Defendants. )

CASE NO.: A-19-788787-C  
DEPT. NO.: XXX

**ORDER**

The above-referenced matter was scheduled for a hearing on November 4, 2020, with regard to Defendant Valley Health System LLC's (Valley's) and Universal Health Services, Inc.'s (Universal's) Motion for Summary Judgment Based upon the Expired Statute of Limitations. Defendants Dionice Juliano, M.D., Conrado Concio, M.D., and Vishal Shah, M.D. joined the Motion for Summary Judgment. Additionally, Defendant, Juliano's Motion for Summary Judgment and Defendants Concio and Shaw's Motion for Partial Summary Judgment on Emotional Distress Claims is on calendar. Finally, Plaintiff's Counter-Motion to Amend or Withdraw Plaintiffs' Responses to Defendants' Requests for Admissions is on calendar. Pursuant to A.O. 20-01 and subsequent administrative orders, these matters are deemed "non-essential," and may be decided after a hearing, decided on the papers, or continued. This Court has determined that it



1 would be appropriate to decide these matters on the papers, and consequently, this  
2 Order issues.

3 **Defendants, Valley's and Universal's Motion for Summary Judgment Based**  
4 **upon the Expiration of the Statute of Limitations.**

5 On May 3, 2017 Rebecca Powell ("Plaintiff") was taken to Centennial Hills  
6 Hospital, a hospital owned and operated by Valley Health System, LLC ("Defendant")  
7 by EMS services after she was discovered with labored breathing and vomit on her face.  
8 Plaintiff remained in Defendant's care for a week, and her condition improved.  
9 However, on May 10, 2017, Plaintiff complained of shortness of breath, weakness, and  
10 a drowning feeling. In response to these complaints, Defendant Doctor Vishal Shah  
11 ordered Ativan to be administered via IV push. Plaintiff's condition did not improve.  
12 Defendant, Doctor Conrado Concio twice more ordered Ativan to be administered via  
13 IV push, and Plaintiff was put in a room with a camera in order to better monitor her  
14 condition. At 3:27 AM on May 11, 2017, another dose of Ativan was ordered. Plaintiff  
15 then entered into acute respiratory failure, resulting in her death.

16 Plaintiff brought suit on February 4, 2019 alleging negligence/medical  
17 malpractice, wrongful death pursuant to NRS 41.085, and negligent infliction of  
18 emotional distress. Defendant previously filed a Motion to Dismiss these claims, which  
19 was denied on September 25, 2019. The current Motion for Summary Judgment was  
20 filed on September 2, 2020. Defendants Dionice Juliano, MD, Conrado Concio, MD,  
21 and Vishal Shah, MD joined in this Motion on September 3, 2020. Plaintiff filed their  
22 opposition September 16, 2020. Defendant filed its reply on October 21, 2020 and  
23 Defendants Dionice Juliano, MD, Conrado Concio, MD, and Vishal Shah, MD joined  
24 the reply on October 22, 2020.

25 Defendant claims that, pursuant to NRS 41A.097 Plaintiff's claims were brought  
26 after the statute of limitations had run. In pertinent part, NRS 41A.097 states in  
27 pertinent part: "an action for injury or death against a provider of health care may not  
28 be commenced more than 3 years after the date of injury or 1 year after the plaintiff  
discovers or through the use of reasonable diligence should have discovered the injury,  
whichever occurs first." NRS 41A.097(2). There appears to be no dispute that the  
Complaint was filed within 3 years after the date of injury (or death). The issue is  
whether the Complaint was filed within 1 year after the Plaintiffs knew or should have

1 known of the injury. Defendants claim that they fall under the definition of a “provider  
2 of health care” under NRS 41A.017 and that all of Plaintiff’s claims sound in  
3 professional negligence. Therefore, all the claims are subject to NRS 41A.097.

4 Defendant claims that Plaintiff was put on inquiry notice of the possible cause of  
5 action on or around the date of Plaintiff’s death in May of 2017 and therefore the suit,  
6 brought on February 4, 2019, was brought after the statute of limitations had tolled.  
7 Defendant makes this claim based on several theories. Defendant claims that since  
8 Plaintiffs are suing for Negligent Infliction of Emotional Distress, and an element of  
9 that claim is contemporaneous observation, that Plaintiff was put on notice of the  
10 possible claim on the date of Ms. Powell’s death. Alternatively, Defendant argues that  
11 since Plaintiff ordered and received Ms. Powell’s medical records no later than June  
12 2017, they were put on notice upon the reception of those records. Finally, Defendant  
13 argues that since Plaintiffs made two separate complaints alleging negligence, they  
14 were aware of the possible claim for negligence and thus on inquiry notice. (On May 23,  
15 2017, Defendants provide an acknowledgement by the Nevada Department of Health  
16 and Human Services (“HHS”) that they received Plaintiff Brian Powell’s complaint  
17 made against Defendants. And on June 11, 2017, Plaintiff Brian Powell filed a  
18 complaint with the Nevada State Board of Nursing alleging negligence in that Decedent  
19 was not properly monitored.)

20 Plaintiff argues that the date of accrual for the statute of limitations is a question  
21 of fact for the jury and summary judgment is not appropriate at this stage where there  
22 are factual disputes. Plaintiffs claim they were not put on inquiry notice of Defendant’s  
23 negligence until they received the February 5, 2018, HHS report and therefore the  
24 complaint, filed on February 4, 2019, was brought within the one-year statute of  
25 limitations. Plaintiff makes this claim based on several pieces of evidence. First, while  
26 the medical records were mailed to Plaintiffs on June 29, 2017, there is no evidence  
27 that shows the records were ever received. Additionally, on June 28, 2017, Plaintiffs  
28 were informed via the Certificate of Death, that Ms. Powell’s death was determined to  
be a suicide. This prevented Plaintiff from ever considering negligence contributed to  
her death. Plaintiffs argue the first time they could have suspected negligence was  
when they received the report from HHS on February 5, 2018, that stated the facility

1 had committed violations with rules and/or regulations and deficiencies in the medical  
2 care provided to Decedent.

3 Plaintiff claims that Defendant's present Motion for Summary Judgment is just  
4 a regurgitation of Defendant's prior Motion to Dismiss on the same facts in violation of  
5 Eighth Judicial District Court Rule (EJDCR) 2.24(a). Plaintiff claims this Motion is a  
6 waste of time, money, and resources that rehashes the same arguments that the court  
7 had already decided, and the Motion should be denied pursuant to EJDCR 2.24(a).

8 Summary judgment is appropriate if the pleadings, depositions, answers to  
9 interrogatories, and admissions on file, together with the affidavits, if any, show that  
10 there is no genuine issue as to any disputed material fact and that the moving party is  
11 entitled to a judgment as a matter of law. NRCP 56(c). The tolling date ordinarily  
12 presents a question of fact for the jury. *Winn v. Sunrise Hospital and Medical Center*,  
13 128 Nev. 246, 252 (2012). "Only when the evidence irrefutably demonstrates that a  
14 plaintiff was put on inquiry notice of a cause of action should the district court  
15 determine this discovery date as a matter of law." *Id.* A plaintiff discovers an injury  
16 when "he knows or, through the use of reasonable diligence, should have known of facts  
17 that would put a reasonable person on inquiry notice of his cause of action." *Massey v.*  
18 *Linton*, 99 Nev. 723 (1983). The time does not begin when the plaintiff discovers the  
19 precise facts pertaining to his legal theory but when there is a general belief that  
20 negligence may have caused the injury. *Id.* at 728.

21 There is a suggestion in the Defendants' Reply Brief that the Plaintiffs may have  
22 been arguing that any delay in filing the Complaint may have been due to a fraudulent  
23 concealment of the medical records, and that such a defense needs to be specifically  
24 pled. This Court has not interpreted the Plaintiff's position to be one that the records  
25 were "fraudulently concealed," only that there was no evidence that they had timely  
26 received them. This Court will not take a position on this issue at this time, as it is not  
27 necessary as part of the Court's analysis, and it does not change the opinion of the  
28 Court either way.

Although the Complaints filed by Brian Powell, suggest that Plaintiff may have at  
least been on inquiry notice in 2017, the fact that the family was notified shortly after  
the decedent's death that the cause of death was determined to be a "suicide," causes  
this Court some doubt or concern about what the family knew at that time period.

1 Since the family did not receive the report from the State Department of Health and  
2 Human Services, indicating that their previously determined cause of death was in  
3 error, it is possible that the Plaintiffs were not on inquiry notice until February 4, 2019.  
4 This Court is not to grant a Motion to Dismiss or a Motion for Summary Judgment on  
5 the issue of a violation of the Statute of Limitations, unless the facts and evidence  
6 irrefutably demonstrate that Plaintiff was put on inquiry notice more than one year  
7 prior to the filing of the complaint. This Court does not find that such evidence is  
8 irrefutable, and there remains a genuine issue of material fact as to when the Plaintiffs  
9 were actually put on inquiry notice. Such issue is an issue of fact, appropriate for  
10 determination by the trier of fact. Consequently, Summary Judgment would not be  
11 appropriate, and the Motion for Summary Judgment, and the Joinders thereto, must  
12 be denied.

13 **Defendant, Juliano's Motion for Summary Judgment, and Defendant**  
14 **Concio and Shah's Motion for Partial Summary Judgment on Emotional**  
15 **Distress Claims.**

16 On or about 05/03/17, 41-year-old Rebecca Powell was transported to  
17 Centennial Hospital. Rebecca ultimately died on 05/11/17. Plaintiffs allege that the  
18 death was due to inadequate and absent monitoring, a lack of diagnostic testing, and  
19 improper treatment. Furthermore, Plaintiffs allege that Rebecca Powell's negligent  
20 death caused them Negligent Infliction of Emotional Harm.

21 Defendant, Doctor Dionice Juliano, argues that based on the discovery which  
22 has taken place, the medical records, and specifically his own affidavit, there are no  
23 material facts suggesting he was responsible for the care and treatment of Rebecca  
24 Powell after May 9, 2017.<sup>1</sup> Further, Defendant argues that for a claim for Negligent  
25 Infliction of Emotional to survive, the plaintiff must be physically present for the act  
26 which is alleged to have inflicted that emotional distress.

27 Defendants further argue that Summary Judgment is warranted because the  
28 Plaintiff failed to timely respond to Requests for Admission, and consequently,

---

<sup>1</sup> Dr. Dionice Juliano's Affidavit indicates that the patient was admitted on May 3, 2017, by the physician working the night shift. Dr. Juliano saw her for the first time on May 4, 2017, and was her attending physician, until he handed her off at the end of a "week-on, week-off" rotation on Monday, May 8, 2017. He had no responsibility for her after May 8, as he was off duty until Tuesday, May 16, 2017. The Plaintiffs' Complaint is critical of the acts or omissions which occurred on May 10 and 11, 2017.

1 pursuant to NRCP 36, they are deemed admitted. Defendants argue that Plaintiffs have  
2 no good cause for not responding.

3 Plaintiffs argue that Defendants prematurely filed their motions since there is  
4 over a year left to conduct discovery. Moreover, Plaintiffs argue that Defendants acted  
5 in bad faith during a global pandemic by sending the admission requests and by not  
6 working with Defendants' counsel to remind Plaintiffs' counsel of the missing  
7 admission requests. Moreover, since Defendants have not cited any prejudice arising  
8 from their mistake of submitting its admission requests late, this Court should deem  
9 Plaintiffs' responses timely or allow them to be amended or withdrawn. Plaintiffs ask  
10 this Court to deny the premature motions for Summary Judgment and allow for  
discovery to run its natural course.

11 Pursuant to NRCP 56, and the relevant case law, summary judgment is  
12 appropriate when the evidence establishes that there is no genuine issue of material  
13 fact remaining and the moving party is entitled to judgment as a matter of law. All  
14 inferences and evidence must be viewed in the light most favorable to the non-moving  
15 party. A genuine issue of material fact exists when a reasonable jury could return a  
16 verdict for the non-moving party. See NRCP 56, *Ron Cuzze v. University and*  
17 *Community College System*, 123 Nev. 598, 172 P.3d 131 (2008), and *Golden Nugget v.*  
18 *Ham*, 95 Nev. 45, 589 P.2d 173 (1979), and *Oehler v. Humana, Inc.*, 105 Nev. 348  
19 (1987). While the pleadings are construed in the light most favorable to the non-  
20 moving party, however, that party is not entitled to build its case on "gossamer threads  
of whimsy, speculation, and conjecture." *Miller v. Jones*, 114 Nev. 1291 (1998).

21 With regard to the Requests for Admissions, NRCP 36(a)(3) provides that a  
22 matter is deemed admitted unless, within 30 days after being served, the party sends  
23 back a written answer objecting to the matters. Here, Plaintiff's counsel failed to  
24 respond to Defendants' counsel request for admissions during the allotted time.  
25 Defendants' counsel argues that Plaintiffs should not be able to withdraw or amend  
26 their responses because their attorney was personally served six different times and  
27 emailed twice as notice that they were served the admission requests. On the other  
28 hand, Plaintiffs' counsel argued that their late response was due to consequences from  
the unprecedented global pandemic that affected their employees and work. NRCP  
36(b) allows the Court to permit the admission to be withdrawn or amended if it would

1 promote the presentation of the merits. Since Nevada courts, as a public policy, favor  
2 hearing cases on its merits, and because this Court finds that the global pandemic  
3 should count as “good cause,” this Court will allow Plaintiffs’ late responses to be  
4 recognized as timely responses. They were filed approximately 40 days late, but the  
5 Court finds that the delay was based on “good cause,” and that they will be recognized  
6 as if they had been timely responses.

7 Under *State v. Eaton*, 101 Nev. 705, 710 P.2d 1370 (1985), to prevail in a claim  
8 for Negligent Infliction of Emotional Distress, the following elements are required: (1)  
9 the plaintiff was located near the scene; (2) the plaintiff was emotionally injured by the  
10 contemporaneous sensory observance of the accident; and (3) the plaintiff was closely  
11 related to the victim. The Plaintiffs argue that although there has been a historical  
12 precedent requiring the plaintiff to have been present at the time of the accident. This  
13 Court previously held in this case that the case of *Crippens v. Sav On Drug Stores*, 114  
14 Nev., 760, 961 P.2d 761 (1998), precluded the Court from granting a Motion to Dismiss.  
15 Although the burden for a Motion for Summary Judgment is different, the Court is still  
16 bound by the Nevada Supreme Court’s decision in *Crippins*, which indicated, “it is not  
17 the precise position of plaintiff or what the plaintiff saw that must be examined. The  
18 overall circumstances must be examined to determine whether the harm to the plaintiff  
19 was reasonably foreseeable. Foreseeability is the cornerstone of this court’s test for  
20 negligent infliction of emotional distress.” *Id.* The Court still believes that the  
21 “foreseeability” element is more important than the location of the Plaintiffs, pursuant  
22 to the Court’s determination in *Crippins*, and such an analysis seems to be a factual  
23 determination for the trier of fact. Consequently, Summary Judgment on the basis of  
24 the Plaintiff’s failure to be present and witness the death of the decedent, seems  
25 inappropriate.

26 With regard to the argument that Dr. Juliano did not participate in the care of  
27 the Plaintiff during the relevant time period, the Plaintiff’s objection simply indicates  
28 that the motion is premature, but fails to set forth any facts or evidence to show that  
29 Dr. Juiliano was in fact present or involved in the care of the decedent during the  
30 relevant time period. The Court believes that this is what the Nevada Supreme Court  
31 was referring to when it said that a Plaintiff is not entitled to build its case on  
32 “gossamer threads of whimsy, speculation, and conjecture.” *Miller v. Jones*, 114 Nev.

1 1291 (1998). As the Plaintiffs have been unable to establish or show any facts or  
2 evidence indicating that Dr. Juliano was present during the relevant time period, the  
3 Court believes that no genuine issues of material fact remain in that regard and Dr.  
4 Juliano is entitled to Summary Judgment. With regard to all other issues argued by the  
5 parties, the Court finds that genuine issues of material fact remain, and summary  
6 judgment would therefore not be appropriate.

7 Based upon the foregoing, and good cause appearing,

8 **IT IS HEREBY ORDERED** that Defendants Valley's and Universal's Motion  
9 for Summary Judgment Based upon the Expiration of the Statute of Limitations, and  
all Joinders thereto are hereby **DENIED**.

10 **IT IS FURTHER ORDERED** that Defendant Juliano's Motion for Summary  
11 Judgment is hereby **GRANTED**, and Dr. Juliano is hereby Dismissed from the Action,  
without prejudice.

12 **IT IS FURTHER ORDERED** that the Defendants, Concio and Shah's Motion  
13 for Partial Summary Judgment on the Negligent Infliction of Emotional Distress  
14 Claims is hereby **DENIED**. All joinders are likewise **DENIED**.

15 **IT IS FURTHER ORDERED** that because the Court has ruled on these  
16 Motions on the papers, the hearing scheduled for November 4, 2020, with regard to the  
foregoing issues is now moot, and will be taken off calendar.

17 Dated this 28<sup>th</sup> day of October, 2020.

Dated this 29<sup>th</sup> day of October, 2020

18  
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20 

21 JERRY A. WIESE II  
22 DISTRICT COURT JUDGE  
23 EIGHTH JUDICIAL DISTRICT COURT  
24 DENVER, COLORADO  
25 Jerry A. Wiese  
26 District Court Judge  
27  
28

1 **CSERV**

2  
3 **DISTRICT COURT**  
4 **CLARK COUNTY, NEVADA**

5  
6 Estate of Rebecca Powell,  
7 Plaintiff(s)

CASE NO: A-19-788787-C

8 vs.

DEPT. NO. Department 30

9 Valley Health System, LLC,  
10 Defendant(s)

11 **AUTOMATED CERTIFICATE OF SERVICE**

12  
13 This automated certificate of service was generated by the Eighth Judicial District  
14 Court. The foregoing 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:

15 Service Date: 10/29/2020

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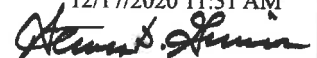


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If indicated below, a copy of the above mentioned filings were also served by mail via United States Postal Service, postage prepaid, to the parties listed below at their last known addresses on 11/2/2020

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# EXHIBIT 7

  
CLERK OF THE COURT

**ORDR**

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*Attorneys for Plaintiffs*

**DISTRICT COURT  
CLARK COUNTY, NEVADA**

ESTATE OF REBECCA POWELL, through  
Brian Powell as Special Administrator;  
DARCI CREECY, individually; TARYN  
CREECY, individually; ISAIAH KHOSROF,  
individually; LLOYD CREECY, individually;

Plaintiffs,

vs.

VALLEY HEALTH SYSTEM, LLC (doing  
business as "Centennial Hills Hospital Medical  
Center"), a foreign limited liability company;  
UNIVERSAL HEALTH SERVICES, INC., a  
foreign corporation; DR. DIONICE S.  
JULIANO, M.D., an individual; DR.  
CONRADO C.D. CONCIO, M.D., an  
individual; DR. VISHAL S. SHAH, M.D., an  
individual; DOES 1-10; ROES A-Z;

Defendants.

CASE NO. A-19-788787-C  
DEPT. 30

**ORDER DENYING DEFENDANT  
VALLEY HEALTH SYSTEM, LLC'S  
MOTION TO STAY ON ORDER  
SHORTENING TIME**

The above-referenced matter was scheduled for a hearing on November 25, 2020 with regard to Defendant Valley Health System's Motion for Stay. Pursuant to Administrative Order 20-01, and subsequent administrative orders, this matter was deemed "non-essential," and as

1 such, this Court has determined that it would be appropriate to decide this matter on the papers.  
2 A minute order was circulated on November 23, 2020 to the parties, the contents of which  
3 follows:

4 On May 3, 2017, Plaintiff was found by EMS at her home. She was unconscious, labored  
5 in her breathing, and had vomit on her face. EMS provided emergency care and transported her  
6 to Defendant Hospital, and she was admitted. Plaintiff continued to improve while she was  
7 admitted. However, on May 10, 2017 Plaintiff complained of shortness of breath, weakness, and  
8 a "drowning feeling." One of her doctors ordered Ativan to be administered via an IV push. On  
9 May 11, another doctor ordered two more doses of Ativan and ordered several tests, including a  
10 chest CT to be performed. However, the CT could not be performed due to Plaintiff's inability to  
11 remain still during the test. She was returned to her room where she was monitored by a camera  
12 to ensure she kept her oxygen mask on. Plaintiffs, in their complaint, alleged the monitoring was  
13 substandard and Defendant should have used a better camera or in person monitoring, among  
14 other theories of substandard care. Another dose of Ativan was ordered at 3:27 AM and Plaintiff  
15 entered into acute respiratory failure, which resulted in her death. The other named Plaintiffs  
16 claimed they were in Decedent's hospital room and observed Defendant's negligence.

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20 Plaintiffs ordered Decedent's medical records on May 25, 2017; however, there were  
21 issues with delivery, and it is unclear exactly when Plaintiffs received them. Decedent's husband,  
22 a named Plaintiff, filed a complaint with the State of Nevada Department of Health and Human  
23 Services ("HHS") sometime before May 23, 2017. Approximately six weeks after the death of  
24 Decedent, Plaintiffs received the death certificate which listed the cause of death as a suicide from  
25 Cymbalta Intoxication. On February 5, 2018 HHS responded to Plaintiff's complaint. The letter  
26 said that after an investigation, HHS concluded that the facility had committed violations by not  
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1 following rules and/or regulations as well as finding there were deficiencies in the medical care  
2 provided to Decedent.

3 On February 4, 2019, Plaintiff's filed suit alleging negligence/medical malpractice,  
4 wrongful death pursuant to NRS 41.085, and negligent infliction of emotional distress. Defendant  
5 did not file an answer but filed a Motion to Dismiss on June 19, 2020 alleging the statute of  
6 limitations had tolled. Plaintiff answered the motion. The court denied the Motion to Dismiss on  
7 September 25, 2019. Defendant filed an Answer to Plaintiff's complaint on April 15, 2020.  
8

9 Defendants Valley Health System, LLC and Universal Health Services, Inc. then filed a  
10 'Motion for Summary Judgment Based Upon the Expiration of the Statute of Limitations.'  
11 Defendants Dionice Juliano, M.D., Conrado Concio, M.D., and Vishal Shah, M.D. joined the  
12 Motion for Summary Judgment. Additionally, Defendant Juliano filed a Motion for Summary  
13 Judgment, and Defendants Concio and Shaw filed a Motion for Partial Summary Judgment on  
14 Emotional Distress Claims. Plaintiffs filed a Counter-Motion to Amend or Withdraw Plaintiffs  
15 Responses to Defendants Requests for Admissions. All of these items were on the November 04,  
16 2020 calendar. An Order deciding these motions was filed on October 29, 2020. The Order denied  
17 Defendants, Valley Health System and Universal's Motion for Summary Judgment and related  
18 Joinders; granted Defendant Juliano's Motion for Summary Judgment, and dismissed Dr. Juliano  
19 from the case without prejudice; and denied Defendants Concio and Shah's Motion for Partial  
20 Summary Judgment on the Emotional Distress Claims.  
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24 Now, Defendant Valley Health System, LLC (VHS) seeks an order staying the case  
25 pending an appeal of the October 29, 2020, Order denying its Motion for Summary Judgment  
26 Based Upon the Expiration of the Statute of Limitations. Defendant VHS alleges that it may be  
27 irreparably prejudiced by having to continue defending this action and potentially being forced  
28

1 to try all issues when the matter raised by the aforesaid Motion is case dispositive.

2 This matter has been pending since February, 2019. It is currently set for trial on May 23,  
3 2022. Initial expert disclosures are to be made on or before June 18, 2021, rebuttal expert  
4 disclosures are due on August 27, 2021, and discovery is to be completed on or before October  
5 28, 2021. Valley argues that it is currently preparing a Petition for Writ of Mandamus, and is first  
6 seeking a stay with the district Court pursuant to NRAP 8(a)(1)(A). The decision whether to grant  
7 a motion for a stay in proceedings is left to the sound discretion of the Court. Nevada Tax  
8 Commission v. Brent Mackie, 74 Nev. 273, 276 (1958). The factors to be considered by the Court  
9 when considering whether to issue a stay in the proceedings when an appellate issue is pending  
10 before the Nevada Supreme Court are (1) whether the object of the writ petition will be defeated  
11 if the stay is denied; (2) whether the petitioner will suffer irreparable or serious injury if the stay  
12 is denied; (3) whether the real party in interest will suffer irreparable or serious injury if the stay  
13 is granted; and (4) whether petitioner is likely to prevail on the merits in the writ petition. NRAP  
14 8(c); Fritz Hansen A/S v. Eighth Judicial District Court, 116 Nev. 650, 657 (2000).

15 Defendant, VHS argues that each of the 4 factors weigh in favor of granting a stay. The  
16 Plaintiffs, on the other hand, argue that none of the factors weigh in favor of the Defendant. This  
17 Court finds and concludes as follows: 1) Trial is currently not scheduled until May of 2022, and  
18 consequently, even if a stay is denied, it is likely that the Supreme Court would rule on the  
19 "potential" Writ of Mandamus, prior to the parties going to Trial. Consequently, the Court does  
20 not find that the purpose of the writ petition would be defeated if the stay were denied. 2) The  
21 only injury or damage that the Petitioner would suffer if the stay were denied, would be continued  
22 litigations and the costs associated therewith. The Court has consistently held that ongoing  
23 litigation and the expenses associated therewith do not cause "irreparable harm." Consequently,  
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1 the Court does not find that the Petitioner would suffer irreparable harm or serious injury if the  
2 stay were denied. 3) Although the Plaintiffs are correct that memories dim as time passes, such a  
3 fact applies to all witnesses equally Plaintiff's witnesses as well as Defendants' witnesses.  
4 Consequently, the Court does not find that the Plaintiffs would suffer irreparable or serious injury  
5 if the stay were granted. 4) The Court cannot find that the Petitioners are likely to prevail on the  
6 merits, as this Court previously found, and continues to believe, that the Death Certificate  
7 identifying Ms. Powell's cause of death as a "suicide," may have tolled the statute of limitations,  
8 in that such a conclusion or determination by the Medical Examiner, would clearly not suggest  
9 "negligence" on the part of any medical care provider. Although the Defendants suggest that the  
10 Plaintiffs possessed inquiry notice much earlier, the Court could not find that the families  
11 questioning of the cause of death equated with inquiry notice of negligence. Consequently, this  
12 Court concluded that when the Plaintiffs knew or should have known, of the alleged negligence  
13 of the Defendants, was an issue of fact which overcame the Defendants' Motion for Summary  
14 Judgment. Consequently, the Court cannot find that there is a likelihood of success on the merits.

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18 Another issue which is important in this Court's analysis, is the fact that a Writ has  
19 apparently not yet been filed. If the Court were to grant the Stay as requested, it is possible that 6  
20 months, or even a year from now, the Writ may still not be filed, so the Court would have stayed  
21 the case for no reason.  
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**PAUL PADDA LAW, PLLC**  
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Las Vegas, Nevada 89103  
Tele: (702) 366-1888 • Fax (702) 366-1940

1 Based upon all these reasons, considering the relevant factors set forth above, finding that  
2 they weigh in favor of the non-moving party, and good cause appearing,

3 **IT IS HEREBY ORDERED** that the Defendant's Motion for Stay is hereby **DENIED**.

4 Dated this \_\_\_\_\_ day of December, 2020.

Dated this 17th day of December, 2020



JERRY A. WIESE, II  
DISTRICT COURT JUDGE  
EIGHTH JUDICIAL DISTRICT COURT  
DEPARTMENT 30  
APR 23 2021 10:30 AM  
JERRY A. WIESE  
District Court Judge

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9  
10 *Respectfully submitted by:*

11 **PAUL PADDA LAW**

12 /s/ Paul S. Padda

13 Paul S. Padda, Esq.  
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15 James P. Kelly, Esq.  
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1 **CSERV**

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3 DISTRICT COURT  
4 CLARK COUNTY, NEVADA

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6 Estate of Rebecca Powell,  
7 Plaintiff(s)

CASE NO: A-19-788787-C

8 vs.

DEPT. NO. Department 30

9 Valley Health System, LLC,  
10 Defendant(s)

11 **AUTOMATED CERTIFICATE OF SERVICE**

12  
13 This automated certificate of service was generated by the Eighth Judicial District  
14 Court. The foregoing 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:

15 Service Date: 12/17/2020

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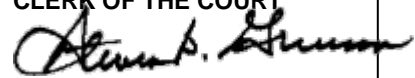
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# EXHIBIT C



1 **RIS**  
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6 Nevada Bar No. 15045  
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11 Telephone: 702.893.3383  
12 Facsimile: 702.893.3789  
13 *Attorneys for Defendant Valley Health System,*  
14 *LLC dba Centennial Hills Hospital Medical*  
15 *Center*

9 DISTRICT COURT

10 CLARK COUNTY, NEVADA

11 ESTATE OF REBECCA POWELL, through  
12 BRIAN POWELL, as Special Administrator;  
13 DARCI CREECY, individually and as Heir;  
14 TARYN CREECY, individually and as an  
15 Heir; ISAAH KHOSROF, individually and as  
16 an Heir; LLOYD CREECY, individually,

17 Plaintiffs,

18 vs.

19 VALLEY HEALTH SYSTEM, LLC (doing  
20 business as "Centennial Hills Hospital Medical  
21 Center"), a foreign limited liability company;  
22 UNIVERSAL HEALTH SERVICES, INC., a  
foreign corporation; DR. DIONICE S.  
JULIANO, M.D., an individual; DR.  
CONRADO C.D. CONCIO, M.D., an  
individual; DR. VISHAL S. SHAH, M.D., an  
individual; DOES 1-10; and ROES A-Z,

23 Defendants.

Case No. A-19-788787-C

Dept. No.: 30

**DEFENDANT VALLEY HEALTH  
SYSTEM, LLC DBA CENTENNIAL  
HILLS HOSPITAL MEDICAL CENTER'S  
REPLY IN FURTHER SUPPORT OF  
MOTION FOR ATTORNEYS' FEES  
PURSUANT TO N.R.C.P. 68, N.R.S. §§  
17.117, 7.085, 18.010(2), AND EDCR 7.60**

**Hearing Date: February 9, 2022**

**Hearing Time: 9:00 a.m.**

23 Defendant VALLEY HEALTH SYSTEM, LLC (doing business as "Centennial Hills  
24 Hospital Medical Center") by and through its counsel of record, S. Brent Vogel and Adam Garth of  
25 the Law Firm LEWIS BRISBOIS BISGAARD & SMITH LLP, hereby file their Reply in Further  
26 Support of Their Motion for Attorneys' Fees Pursuant to N.R.C.P. 68 and N.R.S. §§ 17.117, 7.085,  
27 18.010(2) and EDCR 7.60.

28 This Motion is based upon the Memorandum of Points and Authorities below, Defendant's

1 Motion in Chief, the pleadings and papers on file herein, any oral argument which may be  
2 entertained by the Court at the hearing of this matter.

3 DATED this 2<sup>nd</sup> day of February, 2022

4  
5 LEWIS BRISBOIS BISGAARD & SMITH LLP

6  
7 By /s/ Adam Garth  
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17 *Medical Center*  
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1 **MEMORANDUM OF POINTS AND AUTHORITIES**

2 **I. INTRODUCTION**

3 Plaintiffs' entire opposition is predicated on a false assertion that they possessed a viable  
4 case in the first instance. To put Plaintiffs' argument in the proper light, they effectively state "We  
5 were winning until we lost everything, but since we thought we were winning, we had a good faith  
6 basis to proceed." So, according to Plaintiffs, as long as they won a number of battles but still lost  
7 the war, they are on firm ground – not so.

8 Their entire argument is that because this Court repeatedly denied dismissal attempts by the  
9 respective defendants despite clear, convincing, and irrefutable evidence of inquiry notice which  
10 each and every plaintiff possessed, they are somehow absolved from either their malpractice or  
11 unethical practice of pursuing a case which was dead on arrival when filed. The overarching factor,  
12 which Plaintiffs seem to "gloss over," is the Nevada Supreme Court held that the "district court  
13 manifestly abused its discretion when it denied summary judgment."<sup>1</sup> In other words, it was so  
14 plainly obvious at the outset of the litigation that Brian Powell's two State agency complaints,  
15 standing alone, let alone Plaintiffs sought and obtained Ms. Powell's complete medical record from  
16 CHH, that this case should have been dismissed a year ago at the latest when the summary judgment  
17 motion was made.

18 Even more stunning in this case, as the Supreme Court also pointed out, was that Plaintiffs  
19 possessed the entire medical record for the decedent from CHH within one month of her death.<sup>2</sup>  
20 Either possession of the record or the State agency complaints was sufficient to trigger the  
21 commencement of inquiry notice, let alone the two combined. All other arguments advanced by  
22 Plaintiffs disregard their lawyer's incompetence in prosecuting a lawsuit he refused to admit was  
23 legally non-revivable, and where he failed to provide any evidence which formed the basis of his  
24 own concocted theories of alleged confusion as to cause of death or some fraudulent concealment  
25 of records. Plaintiffs' counsel failed to interpose an affidavit or declaration from any plaintiff in  
26 this case even suggesting these as a basis to support his theory, and for good reason – either it was

27  
28 <sup>1</sup> Exhibit "B" to CHH's motion in chief, p. 2

<sup>2</sup> Exhibit "B" to CHH's motion in chief, pp. 3-5

1 a lie and could not be presented to the Court, or it was gross incompetence to fail to support any  
2 claim with admissible evidence in opposition to unopposed evidence in support of a motion for  
3 summary judgment. Either way, Plaintiffs' counsel acted in bad faith here.

4 If Plaintiffs' procedural bad faith was not enough, Plaintiffs had no good faith factual basis  
5 for starting the lawsuit. What will be plainly evident below is that Plaintiffs' counsel commenced  
6 this action with their usual "go to" physician expert (who they regularly drop as an expert once time  
7 for expert exchanges, but utilize in an effort to get over the NRS 41A.071 hurdle) on some half-  
8 baked theory that Ms. Powell was overdosed on Ativan which suppressed her breathing and caused  
9 her death. After CHH demonstrated through unimpeachable expert reporting and evaluations that  
10 given the timing of the Ativan, it had almost completely metabolized in Ms. Powell long before her  
11 death and had no effect whatsoever on the outcome of her hospital course. Even more revealing  
12 was the fact that CHH's experts concluded, and upon which Plaintiffs' experts actually agreed, that  
13 Ms. Powell died from an acute mucous plug event, not Ativan overdosing or anything else, an event  
14 which was not predictable. Her demise was predetermined by her own suicide attempt and resulting  
15 aspiration pneumonia which created a cascading decline in her health condition, that only  
16 temporarily improved, but which could not be reversed by the best of care.<sup>3</sup> Plaintiffs' counsel spends  
17 considerable time in opposition attempting to garner sympathy due to the death of Ms. Powell which  
18 was precipitated by her own purposeful actions and had nothing whatsoever to do with the care she  
19 received at CHH. This is another perpetration of the continuing web of lies by Plaintiffs' counsel  
20 which has been put to an end by the Nevada Supreme Court due to Plaintiffs' counsel's improper  
21 advancement of an expired lawsuit.

22 What is even more disturbing is that Plaintiffs' counsel attempts to legitimize their actions  
23 by asserting that a previously scheduled mediation somehow validates their claims. Nothing can be  
24 further from the truth. CHH attempted to limit the constant hemorrhaging of money and time  
25 devoted to this illegitimate lawsuit which was only being given oxygen by repeated denials of a  
26

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27 <sup>3</sup> Exhibit "D" hereto consisting of CHH's initial and rebuttal expert disclosures demonstrating the  
28 complete absence of an underlying good faith factual basis for lawsuit.

1 pause in expenses while this matter worked its way through the Nevada Supreme Court for final  
2 determination of its legitimacy. As previously noted in CHH's motion in chief, Plaintiffs  
3 vehemently opposed any efforts to stem of tidal wave of expenses, opposing any motion for a stay  
4 on multiple occasions. They forced an increase in costs and expenses and now do not want to pay  
5 for their actions.

6 In short, Plaintiffs' gambled, lost, and now have to pay up. Denial of this motion would  
7 represent an invitation to lawyers to commence lawsuits late, encourage them to not provide any  
8 evidentiary support for positions they take, and after presented with an opportunity to walk away  
9 free and clear after being shown the impropriety of their actions, to continue to pursue baseless and  
10 untenable litigation. The Nevada Supreme Court would likely be interested in weighing in on this  
11 issue as well.

## 12 **II. LEGAL ARGUMENT**

### 13 **A. The Beattie Factors Weigh Completely In Favor of CHH**

14 In awarding attorneys' fees pursuant to NRCP 68, the district court must analyze the  
15 following factors: "(1) whether the plaintiffs claim was brought in good faith; (2) whether the  
16 defendants' offer of judgment was reasonable and in good faith in both its time and amount; (3)  
17 whether the plaintiff's decision to reject the offer and proceed to trial was grossly unreasonable or  
18 in bad faith; and (4) whether the fees sought by the offeror are reasonable and justified in amount."  
19 *Beattie v. Thomas*, 99 Nev. 579, 588-89, 688 P.2d 268, 274 (1983). However, no single *Beattie*  
20 factor is determinative, and a review of the factors shows this Court should award CHH its attorneys'  
21 fees. *Frazier v. Drake*, 131 Nev. 632, 642, 357 P.3d 365, 372 (Nev. App. 2015). While this Court's  
22 order need not go into detail regarding each and every *Beattie* factor, its findings must be supported  
23 by substantial evidence. *Logan v. Abe*, 131 Nev. 260, 266, 350 P.3d 1139, 1143 (2015). The district  
24 court abuses its discretion if the *Beattie* factors are not supported by substantial evidence. *Id.*

25 Further, attorneys' fees are warranted even with a finding that two of the *Beattie* factors  
26 weigh in favor of the moving party. *See Lafrieda v. Gilbert*, 435 P.3d 665 (Nev. 2019) (upholding  
27 district court's award of attorneys' fees when it found the offer of judgment was reasonable in both  
28 time and amount and the fees were necessary and reasonably incurred.) In the instant case, all four



1 factors weigh completely in CHH's favor.

2 **B. Plaintiffs' Lawsuit Was Brought in Bad Faith**

3 As previously demonstrated in CHH's motion in chief and in the introduction above,  
4 Plaintiffs' lawsuit was not brought in good faith. The mere fact that a 41 year old woman died, due  
5 to her own suicide attempt, does not require CHH to open its checkbook and pay. Plaintiff had both  
6 procedural and substantive hurdles to overcome, neither of which they did.

7 The Nevada Supreme Court cited multiple times which Plaintiffs received inquiry notice in  
8 this case. Specifically the Court stated:

9 Here, **irrefutable evidence demonstrates that the real parties in interest were**  
10 **on inquiry notice by June 11, 2017 at the latest**, when real party in interest  
11 Brian Powell, special administrator for the estate, filed a complaint with the State  
12 Board of Nursing. There, Brian alleged that the decedent, Rebecca Powell, "went  
13 into respiratory distress" and her health care providers did not appropriately  
14 monitor her, abandoning her care and causing her death. Thus, Brian's own  
15 allegations in this Board complaint demonstrate that he had enough information  
16 to allege a prima facie claim for professional negligence-that in treating Rebecca,  
17 her health care providers failed "to use the reasonable care, skill or knowledge  
ordinarily used under similar circumstances by similarly trained and experienced  
providers of health care." NRS 41A.015 (defining professional negligence);  
Winn, 128 Nev. at 252-53; 277 P.3d at 462 (explaining that a "plaintiffs general  
belief that someone's negligence may have caused his or her injury" triggers  
inquiry notice).<sup>3</sup> **That the real parties in interest received Rebecca's death  
certificate 17 days later, erroneously listing her cause of death as suicide,  
does not change this conclusion.**<sup>4</sup> Thus, the real parties in interest had until June  
11, 2018, at the latest, to file their professional negligence claim. Therefore, their  
February 4, 2019 complaint was untimely.

18 **3 The evidence shows that Brian was likely on inquiry notice**  
19 **even earlier. For example, real parties in interest had observed**  
20 **in real time, following a short period of recovery, the rapid**  
21 **deterioration of Powell's health while in petitioners' care.**  
22 **Additionally, Brian had filed a complaint with the Nevada**  
23 **Department of Health and Human Services (NDHHS) on or**  
24 **before May 23, 2017. Similar to the Nursing Board complaint,**  
25 **this complaint alleged facts, such as the petitioners' failure to**  
26 **upgrade care, sterilize sutures properly, and monitor Powell,**  
27 **that suggest he already believed, and knew of facts to support**  
28 **his belief, that negligent treatment caused Powell's death by**  
**the time he made these complaints to NDHHS and the Nursing**  
**Board.**

26 **4 The real parties in interest do not adequately address why**  
27 **tolling should apply under NRS 41A.097(3)** (providing that the  
28 limitation period for a professional negligence claim "is tolled for  
any period during which the provider of health care has concealed  
any act, error or omission upon which the action is based"). Even  
if they did, such an argument would be unavailing, as the medical

1 records provided were sufficient for their expert witness to  
2 conclude that petitioners were negligent in Powell's care. *See*  
3 *Winn*, 128 Nev. at 255, 277 P.3d at 464 (holding that tolling under  
4 NRS 41A.097(3) is only appropriate where the intentionally  
5 concealed medical records were "material" to the professional  
6 negligence claims). Finally, we have not extended the doctrine of  
equitable tolling to NRS 41A.097(2), and the real parties in  
interest do not adequately address whether such an application is  
appropriate under these facts. *See Edwards v. Emperor's Garden*  
*Rest.*, 122 Nev. 317, 330 n.38, 130 P.3d 1280, 1288 n.38 (2006)  
(refusing to consider arguments that a party did not cogently argue  
or support with relevant authority).

7  
8 **Given that uncontroverted evidence demonstrates that the petitioners are**  
9 **entitled to judgment as a matter of law** because the complaint is time-barred  
10 under NRS 41A.097(2), see NRCP 56(a); *Wood*, 121 Nev. at 729, 121 P.3d at  
11 1029 (recognizing that courts must grant summary judgment when the pleadings  
and all other evidence on file, viewed in a light most favorable to the nonmoving  
party, "demonstrate that **no genuine issue as to any material fact [remains]** and  
that the moving party is entitled to a judgment as a matter of law" (internal  
quotations omitted)) . . .<sup>4</sup>

12 Let's review the timing of the notice. Independent from anything that Brian Powell did with  
13 reporting alleged and suspected medical negligence to two State agencies, Plaintiff Taryn Creecy  
14 sought and obtained a Probate Court order directing that she be permitting to obtain Ms. Powell's  
15 medical records from CHH, and that court order was issued on May 24, 2017, 13 days after Ms.  
16 Powell's death.<sup>5</sup> Does Plaintiffs' counsel expect that everyone is so stupid as to believe that Ms.  
17 Creecy sought a complete copy of the medical records from CHH for fun? Who requests medical  
18 records from a hospital for a deceased individual if not to review them to determine what happened  
19 due to some suspected impropriety of care? The Supreme Court noted that CHH presented  
20 "uncontroverted evidence" that Plaintiffs' received a complete copy of Ms. Powell's entire CHH  
21 medical chart which was demonstrated to this Court on the motion for summary judgment and again  
22 on appeal through the affidavits of CHH's custodian of records and the medical records retrieval  
23 service which processed Ms. Creecy's order for the records. Due to an improper address provided  
24 by Ms. Creecy, the records were sent twice, the last time on June 29, 2017.<sup>6</sup> As the Supreme Court  
25 noted in its writ of mandamus order, Plaintiffs proffered a theory of fraudulent concealment but  
26

27 <sup>4</sup> Exhibit "B" to CHH's motion in chief, pp. 3-5 (emphasis supplied)

28 <sup>5</sup> Exhibit "E" hereto

<sup>6</sup> Exhibit "G"

1 failed to demonstrate any evidence of it. The Supreme Court acknowledged that Plaintiffs were in  
2 full possession of the entire medical record which was available to them and at least partially  
3 reviewed by their medical expert in support of his NRS 41A.071 declaration.

4 In an effort to extricate themselves from the mess of their own creation, Plaintiffs' counsel  
5 erroneously seeks *en banc* reconsideration of the Supreme Court's order in this case, falsely stating  
6 that the only evidence of inquiry notice here was Brian Powell's two State agency complaints, and  
7 that noting that his complaints were initiated without knowledge of the remaining Plaintiffs in this  
8 case (an assertion which is unsupported by any evidence whatsoever in the record but is again being  
9 unethically advanced by ethically bankrupt counsel). That motion is almost assuredly doomed to  
10 failure.

11 Plaintiffs further contends in their pending motion in Supreme Court that only the Estate's  
12 claims could be barred by the statute of limitations since it was Brian Powell, the Estate's special  
13 administrator, who allegedly "went rogue" and filed these complaints without any knowledge by  
14 other Plaintiffs. Thus, Plaintiffs' counsel asserts the remaining Plaintiffs cannot be bound by Mr.  
15 Powell's rogue actions. Again, to think everyone is so stupid as to believe that nonsense is insulting  
16 to say the least. Plaintiffs' counsel conveniently omitted that all of the Plaintiffs prosecuted this  
17 lawsuit having received records from CHH independent from any State agency complaints. In  
18 *Christina Kushnir, M.D. et al. v. Eighth Judicial District Court*, 137 Nev. Adv. Op. 41 (2021), the  
19 Court of Appeals stated that NRS 41A.097's one year discovery period for the purposes of inquiry  
20 notice in a professional negligence case begins to run when a party receives the complete medical  
21 record and "had facts before him that would have led an ordinarily prudent person to investigate  
22 further." Plaintiffs' possession of the hospital records in this case coupled with their expert's ability  
23 to review them and opine on the alleged malpractice for NRS 41A.071 purposes commenced the  
24 running of the statute of limitations.

25 Conspicuously absent from Plaintiffs' opposition on this motion as well as to the Supreme  
26 Court in their motion for *en banc* reconsideration, is any citation to this binding authority and the  
27 cases preceding it. Thus, the mere possession of the complete medical record in June, 2017 by  
28 Plaintiffs commenced the running of the statute of limitations here. The Nevada Supreme Court's

1 decision in this case made that perfectly clear. Thus, Plaintiffs lacked a good faith basis for their  
2 claim in the first place since they possessed the medical records within 6 weeks of Ms. Powell's  
3 death and did nothing to preserve their rights for 20 months thereafter before filing this illegitimate  
4 and untimely lawsuit. This fact alone presents evidence of bad faith.

5 Moreover, the Nevada Supreme Court also stated in footnote 3 to its decision cited above,  
6 "The evidence shows that Brian was likely on inquiry notice even earlier. For example, real parties  
7 in interest had observed in real time, following a short period of recovery, the rapid deterioration of  
8 Powell's health while in petitioners' care." In other words, Plaintiffs made assertions in the case  
9 that they personally observed Ms. Powell's rapid deterioration. By so asserting, they admit they  
10 were on the very inquiry notice required. Again, Plaintiffs' counsel conveniently forgets to highlight  
11 his claim on Plaintiffs' behalf in this regard since it will not support the misrepresentation of facts  
12 he now attempts to perpetrate on this Court in opposition to the instant motion.

13 In summary, Plaintiffs' bad faith has been determined in three different ways – (1)  
14 possessing the entire medical record on or about June 29, 2017, (2) all Plaintiffs allegedly witnessing  
15 Ms. Powell's rapid deterioration of condition, and (3) two State agency complaints specifically  
16 alleging malpractice and requesting investigations. Any one of these is sufficient for inquiry notice.  
17 All combined, it screams inquiry notice. All of this information was within Plaintiffs' exclusive  
18 possession at the time of the lawsuit's filing. For Plaintiffs' counsel to manufacture a nonsensical  
19 and completely unsubstantiated claim of "confusion", lacking any shred of evidentiary support,  
20 demonstrates the very bad faith for which the penalties of the statutes and rules were established to  
21 deter. Therefore, this was a bad faith lawsuit by Plaintiffs' and their counsel, plain and simple.

22 **C. CHH's Offer of Judgment Was Brought in Good Faith in Both Timing and**  
23 **Amount**

24 Plaintiffs' opposition to this factor is based upon the galling and false claim that just because  
25 Ms. Powell died at CHH at the age of 41, CHH's offer of judgment should have included a cash  
26 award to Plaintiffs rather than a waiver of over \$58,000 in costs and fees precipitated by Plaintiffs'  
27 bad faith lawsuit.

28 CHH's Offer was reasonable as to time. The Offer was served on August 28, 2020. CHH's

1 motion for summary judgment was served on September 2, 2020, 5 days after the Offer and well  
2 within the time to accept it, 9 days to be exact. Moreover, the Offer was made about 1½ years from  
3 the lawsuit's commencement. As previously demonstrated herein, on the original motion for  
4 summary judgment, on appeal to the Nevada Supreme Court, and in the Supreme Court's decision  
5 thereon, every single one of the Plaintiffs was on inquiry notice of alleged malpractice in three  
6 different ways, where only one means was sufficient to commence the running of the statute of  
7 limitations. These were made abundantly clear in CHH's summary judgment motion pending  
8 coterminously with the Offer. Plaintiffs were the parties in exclusive possession of evidence of  
9 inquiry notice. The fact that this Court previously denied CHH's predecessor counsel's motion to  
10 dismiss did not delegitimize the arguments which were only amplified and irrefutably demonstrated  
11 by CHH in its motion for summary judgment to which a wholly different standard applied and to  
12 which Plaintiffs were obligated to provide evidence in opposition thereto. This they failed to do,  
13 and the Supreme Court noted it.

14 Moreover, Plaintiffs were in possession of CHH's respective requests for production of  
15 documents and interrogatories six weeks prior to the motion for summary judgment having been  
16 filed, and they produced the "smoking gun" documents demonstrating irrefutable evidence of  
17 inquiry notice prior to the motion for summary judgment having been made and even while said  
18 motion was pending before this Court prior to the final submission of the motion. Plaintiffs were on  
19 notice of the statute of limitations issues even as early as the motion to dismiss made by predecessor  
20 counsel in July, 2019, just months after commencing this action, yet they still pursued their  
21 untenable claim while in full possession of the documents which defeated it.

22 Plaintiffs' counsel further falsely assumes that because this Court denied CHH's summary  
23 judgment motion, an error corrected by the Nevada Supreme Court, that somehow provides cover  
24 to Plaintiffs for their improper commencement of the action in the first place. It does not. CHH's  
25 Offer was made based upon Plaintiffs' exclusive possession of the very evidence necessary to defeat  
26 their assertions of a lack of inquiry notice. Therefore, the timing of the Offer was completely proper.

27 Likewise, the amount of fees and costs sought by CHH are completely reasonable and are at  
28 least supported by persuasive authority, i.e. *Busick v. Trainor*, 437 P.3d 1050 (Nev. 2019) which

1 notes that a waiver of costs is sufficient consideration. An offer of judgment containing only a  
2 mutual waiver of attorneys' fees and costs in exchange for a dismissal of a lawsuit is not nominal,  
3 and may constitute a reasonable offer made in good faith. *See Busick v. Trainor*, 2019 Nev. Unpub.  
4 LEXIS 378 at \*6-8 (No. 72966 March 28, 2019). In *Busick*, the plaintiffs alleged \$ 1-3 million  
5 dollars in damages in a medical malpractice claim. In preparing for trial, the defendant served an  
6 offer of judgment on the plaintiffs for a mutual waiver of attorneys' fees and costs. *Id.* At the time  
7 the offer of judgment was made, the defendant had incurred approximately \$ 95,000 in costs. Since  
8 an award of costs is mandated under NRS 18.020, the district court found the waiver of such is a  
9 meaningful sum to be included in the offer of judgment, and awarded defendant its costs and  
10 attorneys' fees pursuant to NRCP 68.

11 In this case, CHH's Offer was to waive over \$58,000 in costs and fees. Plaintiffs did nothing  
12 about the Offer, which under the Rule, expired after 14 days. In a separate memorandum of costs,  
13 which Plaintiffs failed to timely move to retax, CHH provided supporting authority for same. On  
14 this motion, CHH offered to present to this Court for *in camera* inspection (to preserve  
15 attorney/client privilege and work product privilege) to provide time sheets for all time keepers and  
16 all invoices, costs, disbursements and fees. What have Plaintiffs offered – nothing. They provide  
17 not one shred of evidence that the costs are unreasonable or any basis for so stating. The only  
18 unreasonable factor in Plaintiffs' counsel's mind is that they lost and have now subjected their  
19 clients to a judgment due to their counsel's hubris. Lest we forget here – it was CHH which  
20 attempted to reduce costs here by seeking stays of discovery. Plaintiffs opposed those efforts at  
21 every turn. Plaintiffs now oppose paying for the costs they forced CHH to incur. Unfortunately for  
22 Plaintiffs, the law provides a recovery mechanism to counter Plaintiffs' efforts. In fact, it can be  
23 assumed that Plaintiffs purposefully sought to increase CHH's costs to extract a settlement despite  
24 the untenable claim they advanced as a dead lawsuit at its filing.

25 All of these demonstrate Plaintiffs' bad faith, pure and simple. Given the likelihood of  
26 Plaintiffs losing on this issue, the offered waiver of the right to seek reimbursement of costs was  
27 reasonable in both timing and amount, especially given the multiple opportunities for Plaintiffs to  
28 be on notice of the issue.

1           **D.     Plaintiffs’ Decision to Reject the Offer of Judgment Was in Bad Faith and**  
2           **Grossly Unreasonable**

3           Plaintiffs claim that since this Court kept allowing Plaintiffs to win instead of  
4 properly dismissing this case from the outset, or at a minimum, when irrefutable evidence of inquiry  
5 notice was supplied by CHH to which Plaintiffs interposed **nothing in opposition**, they were  
6 justified in rejecting the Offer. Timing of the Offer does not support Plaintiffs’ counsel’s assertion.  
7 As previously noted, CHH’s summary judgment motion was made 5 days after the Offer. Plaintiffs  
8 knew they possessed irrefutable evidence of inquiry notice by having received the medical records  
9 of Ms. Powell more than three years earlier. They knew they provided the records to their medical  
10 expert who opined thereon. Plaintiffs’ expert, Dr. Sami Hashim, stated in clear terms the following:

11           **Based upon the medical records**, the patient did not and with high probability  
12 could not have died from the cause of death stated in the Death Certificate. The  
13 patient died as a direct consequence of respiratory failure directly **due to below**  
14 **standard of care violations as indicated by her medical records and**  
15 **reinforced** by the Department of Health and Human Services – Division of  
16 Health Quality and Compliance Investigative Report.<sup>7</sup>

17 (Emphasis supplied). **Dr. Hashim noted that he primarily relied upon the very medical records**  
18 **which Plaintiffs obtained in May/June, 2017, and the HHS Report was only a “reinforcement”**  
19 **of what was contained in the medical records.**

20           The issue from the commencement of this action involved the timeliness of it. Plaintiffs’  
21 counsel’s sole argument is that “there was no bad faith as Plaintiffs wholeheartedly believed in their  
22 causes of action which was supported by the report issued by HHS in February of 2018.” First of  
23 all, Plaintiffs’ counsel’s belief in their causes of action is of no moment here. The sole issue is  
24 whether Plaintiffs possessed the very information they needed, and were on notice of the law  
25 regarding same, when they commenced the action, to have commenced a timely lawsuit. They  
26 possessed all necessary information on multiple fronts but nevertheless pursued a case which was  
27 dead on arrival. Plaintiffs alleged that they watched Ms. Powell rapidly deteriorate during her stay  
28 at CHH. The Supreme Court said that was sufficient inquiry notice.

          Plaintiffs sought and obtained a Probate Court order granting them access to Ms. Powell’s

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<sup>7</sup> Exhibit “F” hereto, ¶6(B)

1 entire CHH medical record. Before commencing the lawsuit, Plaintiffs' counsel obtained the  
2 records provided by CHH to Plaintiffs and forwarded them to Dr. Hashim to obtain his opinion for  
3 NRS 41A.071 purposes. There was no other mechanism in place to obtain the records other than  
4 what Plaintiffs engaged since no lawsuit was pending to provide said records pursuant to NRC  
5 16.1. Plaintiffs' counsel knowingly advanced a completely unsubstantiated and unsupported theory  
6 of either confusion by his clients or fraudulent concealment by CHH. As noted by the Supreme  
7 Court, neither theory had any basis whatsoever. Thus, Plaintiffs' counsel purposely failed to support  
8 their opposition to irrefutable evidence warranting summary judgment on the inquiry notice issue,  
9 underscoring their bad faith here.

10 Finally, Plaintiffs possessed and then provided evidence of Plaintiffs' inquiry notice by  
11 supplying the two State agency complaints. The Supreme Court considered that as additional  
12 irrefutable evidence of Plaintiffs' inquiry notice. Now, Plaintiffs' counsel attempts to deflect from  
13 their own incompetence and claim that the Supreme Court imposed a standard never contemplated,  
14 namely that all of the Plaintiffs were bound by the State agency complaints initiated by Brian Powell.  
15 Again, Plaintiffs' counsel presents no evidence of that, just their own assertion which is not only  
16 improper, but false. Plaintiffs' bad faith is further underscored by the fact that they tacitly admit  
17 that the Estate's claims in this case were made in bad faith because the State agency complaints  
18 were made solely by Brian Powell on behalf of the Estate, not on behalf of the remaining Plaintiffs.  
19 By so admitting, Plaintiffs' counsel acknowledges that, at a minimum, the Estate possessed  
20 sufficient inquiry notice by June 11, 2017, and that the Estate's lawsuit was untimely when filed.  
21 That is further evidence of bad faith by pursuing a claim known to be untimely.

22 Additionally, Plaintiffs blocked every opportunity CHH provided to "stop the financial  
23 bleeding" by staying the litigation while this case dispositive issue made its way through the courts.  
24 They opposed two stay motions and a motion to reconsider a stay. They opposed a motion to dismiss  
25 and a motion for summary judgment, presenting not one shred of evidence by anyone with personal  
26 knowledge of the facts, supporting their claim of a timely commencement of the action. They forced  
27 CHH to incur substantial legal costs and expenses to defend the action, requiring the engagement of  
28 counsel along with multiple experts, to pursue a lawsuit they knew could not be maintained from



1 the start. Furthermore, they provided unresponsive answers to discovery requests seeking to avoid  
2 addressing the underlying claims in the lawsuit necessitating EDCR 2..34 conferences and their  
3 supplementation of a large number of discovery responses. At every turn and opportunity, Plaintiffs  
4 stonewalled providing materials and information supportive of their claims while placing CHH in  
5 the position of having to incur massive expenses to obtain that to which it was legally entitled and  
6 seek dismissal of what Plaintiffs clearly knew was an untenable claim. The Plaintiffs' failure to  
7 accept CHH's Offer of Judgment was both in bad faith and grossly unreasonable.

8 **E. Costs and Fees Sought By CHH Are Both Reasonable and Justified**

9 In what has to be the most ridiculous, baseless and nonsensical argument yet, Plaintiffs'  
10 counsel stated in opposition that "it is Defendant [sic] continued filing of Motions based upon the  
11 same theory that Plaintiffs did not file their lawsuit within the prescribed statute of limitations that  
12 drove up Defendant's fees." So, to boil it down to its simplest "logic", because CHH pursued its  
13 rights, filed a motion for summary judgment based upon statute of limitations which should have  
14 been granted as the Supreme Court noted, and because Plaintiffs filed an untimely lawsuit, it is  
15 CHH's fault that Plaintiffs' counsel pursued an untenable case.

16 What drove up costs from the first dollar was the filing of an untimely lawsuit. The fact that  
17 Plaintiffs were allowed to get away with it for so long underscores the need for costs and fees to be  
18 imposed. Plaintiffs drove up the costs and fees here by initiating the lawsuit and then, when  
19 un rebutted evidence of their counsel's practice failures was plainly evident and presented for all to  
20 see, Plaintiffs' counsel chose to press forward with an unwinnable case. As this Court is aware,  
21 Plaintiffs are not without a remedy here. If Plaintiffs engaged their counsel prior to the expiration  
22 of the statute of limitations, it was a clear breach of the standard of care to have not timely filed the  
23 lawsuit. The issue if the lawsuit's timeliness has already been fully adjudicated. Plaintiffs' counsel  
24 already admitted in their opposition to this motion that they had a completely viable case against  
25 CHH if not for that darn statute of limitations. Thus, we have judicial determination of a breach  
26 in the standard of care, depending upon when Plaintiffs' counsel was engaged, and an admission  
27 by said counsel as to the viability of Plaintiffs' underlying case. Plaintiffs may then pursue a legal  
28 malpractice case against Mr. Padda's office, and since he so firmly believes that just because Ms.

1 Powell died, Plaintiffs are entitled to something, he can feel free to pay them.

2 An analysis of the *Beattie* factors shows that an award of attorneys' fees to CHH from the  
3 time of the Offer of Judgment served on Plaintiffs to the present is warranted and appropriate.

4 **F. Amount of Fees Incurred**

5 When awarding fees in the offer of judgment context under N.R.C.P. 68 and N.R.S. 17.115  
6 [currently N.R.S. 17.117], the district court must also consider the reasonableness of the fees  
7 pursuant to *Brunzell v. Golden Gate National Bank*, 85 Nev. 345, 455 P.2d 31 (1969). *Id.* When  
8 determining the amount of attorneys' fees to award, the District Court has wide discretion, to be  
9 "tempered only by reason and fairness" *Shuette v. Beazer Homes*, 121 Nev. 837, 864 (2005).<sup>8</sup> If  
10 the district court's exercise of discretion is neither arbitrary nor capricious, it will not be disturbed  
11 on appeal. *Schouweiler*, 101 Nev. at 833.

12 "In determining the amount of fees to award, the [district] court is not limited to one specific  
13 approach; its analysis may begin with any method rationally designed to calculate a reasonable  
14 amount, so long as the requested amount is reviewed in light of the . . . *Brunzell* factors." *See Haley*  
15 *v. Eighth Judicial Dist. Court*, 128 Nev. 171 (2012); *see also, Gunderson v. D.R. Horton, Inc.*, 319  
16 P.3d 606, 615-616, 130 Nev. Adv. Rep. 9 (2014).

17  
18 The following four *Brunzell* factors are to be considered by the court:

- 19 (1) the qualities of the advocate: ability, training, education, experience,  
20 professional standing and skill;
- 21 (2) the character of the work to be done: its difficulty, its intricacy, its  
22 importance, time and skill required, the responsibility imposed and the  
prominence and character of the parties where they affect the importance of the  
litigation;
- 23 (3) the work actually performed by the lawyer: the skill, time and attention  
24 given to the work;
- 25 (4) the result: whether the attorney was successful and what benefits were  
derived.

26 *Brunzell v. Golden Gate*, at 349-50.

27 <sup>8</sup> Reasonable attorneys' fees also include fees for paralegal and non-attorney staff "whose labor  
28 contributes to the work product for which an attorney bills her client." *See Las Vegas Metro. Police*  
*Dep't v. Yeghiazarian*, 312 P.3d 503, 510 (Nev. 2013).

From August 28, 2020 to present, the attorneys' fees incurred by CHH are as follows:

Partner Adam Garth	405.6 hours	\$91,260.00
Partner Brent Vogel	39.8 hours	\$ 8,955.00
Associate Heather Armantrout	33.1 hours	\$ 6,404.85
Paralegal Arielle Atkinson	46.9 hours	\$ 4,221.00
Paralegal Joshua Daor	0.1 hours	\$ 90.00
<b>Total</b>		<b>\$110,930.85</b>

Plaintiffs provide not one shred of evidence of justification in opposition to the instant motion to demonstrate that the fees associated herewith are not in line with what is charged in the community, and the fact that the hourly rates are even below average. A consideration of the *Brunzell* factors shows that the recovery of the entire billed amount of fees from August 28, 2020, to present is entirely appropriate.

**G. Award of Pre-NRCP Rule 68 Offer of Judgment Costs and Fees Pursuant to NRS 7.085**

Despite Plaintiffs' counsel's entreaties to the contrary, this case was not brought in good faith for all of the reasons articulated hereinabove and in CHH's motion in chief. Plaintiffs had no viable case from the inception. It was not even close. Moreover, all of the evidence concerning the timing issues in this case fell squarely within the exclusive possession of Plaintiffs, not CHH. They knew when they requested the medical records and received them. They knew what they allegedly witnessed at the hospital. They knew they went to Probate Court for the express purpose of obtaining Ms. Powell's medical records. They knew they pursued two State agency inquiries into the allegations of malpractice they requested be undertaken. Through their lawyer only, without interposing anything during the pendency of the motions, they feign ignorance of the State agency investigations when it comes to commencing the statute of limitations clock, but then collectively utilize the results of those investigations to prosecute the lawsuit on behalf of all Plaintiffs, not just the Estate. In other words, Plaintiffs want to selectively apply what works for them, but eliminate what injures their case when it comes time to pay up. They cannot have it both ways. The law was clearly made out that possession of the entirety of the medical records provides inquiry notice.

1 Plaintiffs' report to the State agencies alleging the very malpractice they allege in this case is  
2 another. Moreover, Plaintiffs claimed to be bystanders during Ms. Powell's rapid deterioration at  
3 the time of the alleged incident. Each of these alone provided the requisite inquiry notice and all of  
4 the rules associated with the respective conditions for such notice were firmly established.  
5 Unfortunately for Plaintiffs, they hired a lawyer who failed to either know or follow them and have  
6 now been subjected to costs and fees.

7 NRS § 7.085 defines the very behavior exhibited by Plaintiffs' counsel in this case. There  
8 could not have been a more textbook example of inquiry notice than what existed in this case, but  
9 still Plaintiffs' counsel persisted in not only lying about the facts, but **failed to interpose any**  
10 **evidence opposing the irrefutable evidence of inquiry notice provided by CHH.** How much  
11 more egregious can such conduct be? Plaintiffs' counsel even has the audacity to accuse our firm  
12 of unethical conduct in calling them out for their lies, misrepresentations and professional  
13 incompetence.

14 As NRS 7.085 states within its terms, courts are mandated to hold parties and their counsel  
15 accountable and to liberally construe the facts in favor of the prevailing party who demonstrates  
16 the impropriety of litigation pursued without legal basis for doing so. As noted by a sister  
17 Department, "NRS 7.085 essentially provides, where an attorney violates NRS 18.010(2), NRCPC 11  
18 or EDCR 7.60, the delinquent lawyer may be required to personally pay the additional costs,  
19 expenses and/or attorney's fees in all appropriate situations. Notably, as shown above, NRS  
20 18.010(2)(b), EDCR 7.60 and NRS 7.085 do not require Defendants to be "prevailing parties" and  
21 attorneys' fees may be awarded without regard to the recovery sought." *Berberich v. S. Highland*  
22 *Cnty. Ass'n*, 2019 Nev. Dist. LEXIS 130, \*11 (Nev. Dist. Ct., Case No. A-16-731824-C, January  
23 29, 2019).

24 Hereinabove and in CHH's motion in chief, CHH provided a long documented recitation of  
25 case law and facts which specifically and directly contradict anything and everything advanced by  
26 Plaintiffs' counsel in this matter. Plaintiffs' counsel did everything he could to force CHH to incur  
27 expenses. He filed a case well beyond the statute of limitations, despite clear case law demonstrating  
28 when inquiry notice commences. He was faced with two motions on the issue and misrepresented

1 the facts. He provided not one shred of evidence to support his personal theories about confusion,  
2 refusing and unable to produce any supporting evidence. He provided no support for a suggestion  
3 of fraudulent concealment, and opposed any motions for a stay of proceedings while the statute of  
4 limitations issue made its way through the appellate system. In short, Plaintiffs' counsel advanced  
5 a case which was dead on arrival. He knew it, was reminded of it, and pursued it anyway, hoping  
6 for a judicial lifeline. The Supreme Court made certain to cover all possible avenues for Plaintiffs'  
7 counsel's attempt to scurry away from his late and improper case filing. Adding insult to injury, he  
8 did everything he could to increase expenses. Elections have consequences. Those consequences  
9 are sanctions under NRS 7.085 which include the \$58,514.36 in pre-NRCP 68 offer fees and  
10 expenses incurred from the commencement of this litigation. Based upon Plaintiffs counsel's  
11 violation of the two prongs of NRS 7.085, the Supreme Court has determined:

12       The language of NRS 7.085 is straightforward. Subsection 1 of NRS 7.085  
13 provides **that district courts "shall" hold attorneys "personally" liable for**  
14 **"additional costs, expenses and attorney's fees" under certain circumstances. If**  
15 **the statutory conditions are met, "the court shall" impose a sanction of**  
16 **taxable fees and costs "reasonably incurred because of such conduct."** *Id*  
17 With respect to "such conduct," the statute requires no more than what it states:  
18 in relevant part, that "a court find[] that an attorney has" (i) "[brought or]  
maintained ... a civil action" that (ii) either (a) "is not well-grounded in fact," (b)  
"is not warranted by existing law," or (c) "is not warranted ... by a[] [good faith]  
argument for changing the existing law." See NRS 7.085(1)(a). Subsection 2  
requires Nevada courts to "liberally construe" subsection 1 "in favor of awarding  
costs, expenses and attorney's fees in all appropriate situations." NRS 7.085(2)  
(emphasis added).

19 *Washington v. AA Primo Builders, Ltd. Liab. Co.*, 440 P.3d 49 (Nev. 2019) (Emphasis supplied).  
20 "The statutes are clear—parties who bring and maintain an action without grounds shall have  
21 attorney fees imposed against them." *Lopez v. Corral*, Nos. 51541, 51972, 2010 Nev. LEXIS 69, at  
22 \*24, 2010 WL 5541115 (Dec. 20, 2010).

23       There is no clearer case for the imposition of attorney's fees than this one. Plaintiffs' case  
24 was entirely frivolous as it was knowingly filed beyond the statute of limitations. Even if it was not  
25 known from the outset, which the evidence clearly demonstrated that it was, it became abundantly  
26 clear that the Plaintiffs themselves not only suspected, but actually accused CHH of malpractice and  
27 sought investigations by the State into their allegations. Plaintiffs supplied the very evidence  
28 damning their own assertions of "confusion" which make Plaintiffs' counsel's advancement thereof

1 all the more egregious.

2 Thus, in addition to all NRCP Rule 68 post offer fees and costs, CHH requests that sanctions  
3 be imposed against Plaintiffs' counsel for all pre-NRCP Rule 68 costs and fees totaling \$58,514.36  
4 in accordance with NRS 7.085.

5 **H. EDCR 7.60 Authorizes the Imposition of Fines, Costs, and/or Attorneys' Fees**  
6 **Due to an Attorney's Presentation of Frivolous Opposition to a Motion or Who**  
7 **Multiplies the Proceeding in a Case to Increase Costs**

8 Again, in opposition to CHH's instant motion, Plaintiffs' counsel decided to take the "best  
9 defense is a good offense" approach to this section's relief. The only problem is that the offense is  
10 far from good. Plaintiffs' counsel states that fees increased for two reasons: (1) CHH filed multiple  
11 motions pertaining to dismissal, summary judgment and for stays, forcing Plaintiffs to respond, and  
12 (2) CHH propounded extensive discovery in an effort to ascertain the theory of liability and  
13 causation associated with Plaintiffs' untenable claim, as well as additional supporting  
14 documentation of Plaintiffs' inquiry notice which Plaintiffs' provided during the pendency of the  
15 motion for summary judgment, to wit, Plaintiffs' State agency complaints.

16 So what is Plaintiffs' counsel really saying – Plaintiffs could file a lawsuit where the statute  
17 of limitations expired 8 months before, and CHH was not permitted to ascertain any discovery to  
18 contradict that, and was not permitted to obtain Plaintiffs' substantiation for their underlying claims.  
19 Plaintiffs' assertion in this regard is not only meritless, it is the most foolish argument they made in  
20 this case, and that is really saying something. The better perspective, and the one by which the  
21 statutes require the matter be viewed, is that had Plaintiffs' counsel properly ascertained the state of  
22 the law, they would have recognized their lawsuit was filed too late. Once they were advised of it  
23 on multiple occasions, they were given the opportunity to extricate themselves for no costs but  
24 instead, they doubled down and then lost their entire case. Bringing an untenable lawsuit from the  
25 beginning is what caused Plaintiffs' to be in this position, not anything CHH did.

26 Plaintiffs' counsel commenced and maintained a completely unsustainable action from the  
27 beginning. They knowingly possessed the full medical file. They went to court to obtain an  
28 authorization to get the medical file. They never denied receiving the medicals, and in fact, utilized  
the medicals they did receive to obtain a medical affidavit for use with the Complaint. They

1 knowingly possessed multiple complaints to State agencies alleging malpractice against CHH and  
2 requesting formal investigations thereof. Then, for purposes of the motion for summary judgment,  
3 Plaintiffs' counsel feigned confusion on his client's behalf as to decedent's cause of death (a fact  
4 which none of the Plaintiffs confirmed in any sworn statement or testimony). After creating chaos  
5 for no reason, when given the opportunity to prevent CHH from incurring further costs, Plaintiffs'  
6 counsel opposed any request for a stay of proceedings, three times in this case, requiring the  
7 continued discovery process, expert evaluations and expert reporting. They refused to agree to  
8 postpone the trial date to allow this matter to make its way through the Supreme Court, with  
9 knowledge that the Court would be ruling one way or another on this case dispositive issue. In all,  
10 Plaintiffs' counsel knowingly caused enormous costs on CHH only to have the very issues raised in  
11 this Court result in a total dismissal. CHH should not be required to pay for Plaintiffs' folly,  
12 especially when Plaintiffs' counsel purposely looked to increase expenses while pursuing a defunct  
13 case from the outset. Thus, EDCR 7.60 provides a further avenue of deterrence to attorneys, like  
14 Plaintiffs' counsel, who engage in these unnecessary and flagrantly frivolous lawsuits which are  
15 dead before they are even filed, justifying an award of **\$110,930.85** in attorneys' fees per N.R.C.P.  
16 68 and N.R.S. §§ 17.117, plus **\$58,514.36** in pre-NRCP 68 offer fees and expenses pursuant to  
17 N.R.S. §§ 7.085, 18.010(2) and EDCR 7.60.

18 **I. CHH Is Also Entitled to Its Fees and Costs Per NRS 18.010(2)**

19 Likewise, CHH is entitled to an award of his attorney's fees and costs under NRS  
20 §18.010(2)(b) and Plaintiffs' opposition is unavailing in this regard. It has been determined by this  
21 State's highest Court that Plaintiffs possessed inquiry notice as late as June, 2017, merely a month  
22 after Ms. Powell's death, but by their own admissions as to their contemporaneous observance of  
23 events, as early as the time of her death on May 11, 2017. In other words, the Supreme Court  
24 already determined that Plaintiffs' case was groundless because it was filed too late. Anything else  
25 is immaterial. Plaintiffs' counsel made the foolhardy move to file a lawsuit 8 months beyond the  
26 latest date to do so, failed to support any motion by CHH with any evidentiary support for their  
27 fallacious and concocted theories, and now claim that they either did not commence, or even more  
28 egregiously continued to maintain a knowingly untenable claim in light of the overwhelming and

1 uncontroverted evidence submitted by CHH. they had a fair chance to back out gracefully but  
2 thumbed their nose at it and are now crying that it is unfair to hold them accountable. That is  
3 precisely what the Legislature did by enacting this statute – hold lawyers like Plaintiffs’ counsel  
4 accountable for untenable lawsuits and the creation of increased costs to attempt to strongarm a  
5 defendant into a settlement. Plaintiffs’ plan failed miserably and now is time to pay the piper.

6 For the reasons discussed above, CHH respectfully requests an award of attorney’s fees and  
7 costs that it incurred in this matter, and enter an order awarding **\$110,930.85** in attorneys’ fees per  
8 N.R.C.P. 68 and N.R.S. §§ 17.117, plus **\$58,514.36** in pre-NRCP 68 offer fees and expenses pursuant  
9 to N.R.S. §§ 7.085, 18.010(2) and EDCR 7.60.

10 **III. CONCLUSION**

11 Based upon the legal authority and reasons stated above, Defendants respectfully request the  
12 Court grant their Motion and award them **\$110,930.85** in attorneys’ fees per N.R.C.P. 68 and  
13 N.R.S. §§ 17.117, plus **\$58,514.36** in pre-NRCP 68 offer fees and expenses pursuant to N.R.S. §§  
14 7.085, 18.010(2) and EDCR 7.60.

15 DATED this 2<sup>nd</sup> day of February, 2022.

16 LEWIS BRISBOIS BISGAARD & SMITH LLP  
17  
18

19 By /s/ Adam Garth  
20 S. BRENT VOGEL  
Nevada Bar No. 006858  
21 ADAM GARTH  
Nevada Bar No. 15045  
22 6385 S. Rainbow Boulevard, Suite 600  
Las Vegas, Nevada 89118  
23 Tel. 702.893.3383  
24 *Attorneys for Attorneys for Defendant Valley*  
*Health System, LLC dba Centennial Hills Hospital*  
25 *Medical Center*  
26  
27  
28



1 **CERTIFICATE OF SERVICE**

2 I hereby certify that on this 2<sup>nd</sup> day of February, 2022, a true and correct copy  
3 of **DEFENDANT VALLEY HEALTH SYSTEM, LLC DBA CENTENNIAL HILLS**  
4 **HOSPITAL MEDICAL CENTER'S REPLY IN FURTHER SUPPORT OF MOTION FOR**  
5 **ATTORNEYS' FEES PURSUANT TO N.R.C.P. 68, N.R.S. §§ 17.117, 7.085, 18.010(2), AND**  
6 **EDCR 7.60** was served by electronically filing with the Clerk of the Court using the Odyssey E-File  
7 & Serve system and serving all parties with an email-address on record, who have agreed to receive  
8 electronic service in this action.

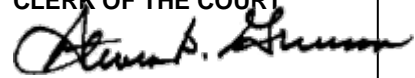
9 Paul S. Padda, Esq.  
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11 4560 S. Decatur Blvd., Suite 300  
12 Las Vegas, NV 89103  
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14 Fax: 702.366.1940  
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*Attorneys for Defendants Dionice S. Juliano,*  
*M.D., Conrado Concio, M.D And Vishal S.*  
*Shah, M.D.*

17  
18  
19 By

/s/ Heidi Brown  
An Employee of  
LEWIS BRISBOIS BISGAARD & SMITH LLP

# EXHIBIT D



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3 Nevada Bar No. 15045  
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5 Las Vegas, Nevada 89118  
T: 702.893.3383  
6 F: 702.893.3789  
*Attorneys for Defendant Valley Health System,  
7 LLC dba Centennial Hills Hospital Medical  
Center*

8  
9 DISTRICT COURT

10 CLARK COUNTY, NEVADA

11 ESTATE OF REBECCA POWELL, through  
BRIAN POWELL, as Special Administrator;  
12 DARCI CREECY, individually and as Heir;  
TARYN CREECY, individually and as an  
13 Heir; ISAIAH KHOSROF, individually and as  
an Heir; LLOYD CREECY, individually,;

14 Plaintiffs,

15 vs.

16 VALLEY HEALTH SYSTEM, LLC (doing  
business as "Centennial Hills Hospital Medical  
17 Center"), a foreign limited liability company;  
UNIVERSAL HEALTH SERVICES, INC., a  
18 foreign corporation; DR. DIONICE S.  
JULIANO, M.D., an individual; DR.  
19 CONRADO C.D. CONCIO, M.D., an  
individual; DR. VISHAL S. SHAH, M.D., an  
20 individual; DOES 1-10; and ROES A-Z,;

21 Defendants.  
22

Case No. A-19-788787-C

Dept. No. 30

**DEFENDANT VALLEY HEALTH  
SYSTEM, LLC DBA CENTENNIAL  
HILLS HOSPITAL MEDICAL CENTER'S  
INITIAL EXPERT DISCLOSURE**

23 Defendant Valley Health System, LLC dba Centennial Hills Hospital Medical Center, by  
24 and through their attorneys of record, S. Brent Vogel and Adam Garth of Lewis Brisbois Bisgaard  
25 & Smith, LLP, hereby discloses the following expert witness, pursuant to NRCP 16.1 as follows:

26 ...

27 ...

28 ...

1           1.       Hiren Shah, M.D.  
2                   2730 North Dayton Street  
3                   Chicago, Illinois 60614

4           Dr. Hiren Shah is a retained expert witness and is expected to testify regarding his  
5 understanding of the facts and circumstances surrounding the subject complaint, standard of care,  
6 causation, medical treatment, prognosis, and costs of medical expenses. Dr. Shah has been board  
7 certified in Internal Medicine in Chicago, Illinois since 2002. He is medical staff in the  
8 Department of Internal Medicine at Northwestern Memorial Hospital currently. **Exhibit A** hereto  
9 is Dr. Shah's *Curriculum Vitae*. **Exhibit B** hereto is Dr. Shah's testimony list. **Exhibit C** hereto is  
10 Dr. Shah's fee schedule. **Exhibit D** hereto is Dr. Shah's initial expert report.

11           Dr. Shah is expected to testify, *inter alia*, that the care and treatment provided to Rebecca  
12 Powell was within the applicable standard of care, consistent with his Report, and will further  
13 testify the acts of Centennial Hills Hospital Medical Center did not cause the damages alleged by  
14 Plaintiffs. Dr. Shah is also expected to provide opinions regarding the facts in this case as they  
15 relate to his medical specialties, which may include but are not limited to rebuttal testimony. Dr.  
16 Shah reserves the right to supplement and/or revise his Report as new information is provided.

17           2.       Abraham M. Ishaaya, M.D., F.C.C.P., F.A.A.S.M., F.A.C.G.S., M.A.C.G.S.  
18                   5901 West Olympic Boulevard, Suite 200  
19                   Los Angeles, CA 90036

20           Dr. Abraham Ishaaya is a retained expert witness and is expected to testify regarding his  
21 understanding of the facts and circumstances surrounding the subject complaint, standard of care,  
22 causation, medical treatment, prognosis, and costs of medical expenses. Dr. Ishaaya is board  
23 certified on The American Board of Internal Medicine, Pulmonary Medicine, Sleep Medicine, and  
24 Geriatrics. Dr. Ishaaya has been an expert witness since 2003. He is currently a assistant clinical  
25 professor at UCLA School of Medicine.

26           **Exhibit E** hereto is Dr. Ishaaya's *Curriculum Vitae*. **Exhibit F** hereto is Dr. Ishaaya's fee  
27 schedule. **Exhibit G** hereto is Dr. Ishaaya's trial appearances and depositions list. **Exhibit H**  
28 hereto is Dr. Ishaaya's initial expert report.

29           Dr. Ishaaya is expected to testify, *inter alia*, that the care and treatment provided to  
30 Rebecca Powell was within the applicable standard of care, consistent with his Report, and will

1 further testify the of Centennial Hills Hospital Medical Center did not cause the damages alleged  
2 by Plaintiffs. Dr. Ishaaya is also expected to provide opinions regarding the facts in this case as  
3 they relate to his medical specialties, which may include but are not limited to rebuttal testimony.  
4 Dr. Ishaaya reserves the right to supplement and/or revise his Report as new information is  
5 provided.

6 3. Richard Ruffalo, M.D., Pharm.D., M.A., F.A.C.C.P.  
7 11 Sea Shell  
8 Newport Coast, California 92657

9 Dr. Ruffalo is a retained expert witness and is expected to testify regarding his  
10 understanding of the facts and circumstances surrounding the subject complaint, standard of care,  
11 causation, medical treatment, prognosis, and the pharmacology. Dr. Ruffalo is in fellowship with  
12 American College of Clinical Pharmacology as well as an affiliate since 1987. Since 1986, he has  
13 been a member of Alpha Omega Alpha, National Medical Honor Society. **Exhibit I** hereto is Dr.  
14 Ruffalo's s *Curriculum Vitae*. **Exhibit J** hereto is Dr. Ruffalo's s fee schedule. **Exhibit K** hereto is  
15 Dr. Ruffalo's initial expert report.

16 Dr. Ruffalo is expected to testify, *inter alia*, that the care and treatment provided to  
17 Rebecca Powell was within the applicable standard of care, consistent with his Report, and will  
18 further testify the of Centennial Hills Hospital Medical Center did not cause the damages alleged  
19 by Plaintiffs. Dr. Ruffalo is also expected to provide opinions regarding the facts in this case as  
20 they relate to his medical specialties, which may include but are not limited to rebuttal testimony.  
21 Dr. Ruffalo reserves the right to supplement and/or revise her Report as new information is  
22 provided.

23 ...

24 ...

25 ...

26 ...

27 ...

28 ...

1 Defendant specifically reserves the right to designate any witnesses designated by any  
2 party. Defendant further reserves the right to supplement this list as any witnesses become known  
3 through the course of discovery.  
4

5 DATED this 18<sup>th</sup> day of June, 2021.  
6

7 LEWIS BRISBOIS BISGAARD & SMITH LLP  
8

9 By /s/ Adam Garth  
10 S. BRENT VOGEL  
11 Nevada Bar No. 06858  
12 ADAM GARTH  
13 Nevada Bar No. 15045  
14 6385 S. Rainbow Boulevard, Suite 600  
15 Las Vegas, Nevada 89118  
16 702.893.3383  
17 *Attorneys for Attorneys for Defendant Valley*  
18 *Health System, LLC dba Centennial Hills Hospital*  
19 *Medical Center*  
20  
21  
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1 **CERTIFICATE OF SERVICE**

2 I hereby certify that on this 18<sup>th</sup> day of June, 2021, a true and correct copy of  
3 **DEFENDANT VALLEY HEALTH SYSTEM, LLC DBA CENTENNIAL HILLS**  
4 **HOSPITAL MEDICAL CENTER'S INITIAL EXPERT DISCLOSURE** was served by  
5 electronically filing with the Clerk of the Court using the Odyssey E-File & Serve system and  
6 serving all parties with an email-address on record, who have agreed to receive electronic service  
7 in this action.

8 Paul S. Padda, Esq.  
9 PAUL PADDA LAW, PLLC  
10 4560 S. Decatur Blvd., Suite 300  
11 Las Vegas, NV 89103  
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13 Fax: 702.366.1940  
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[bshipleyr@jhcottonlaw.com](mailto:bshipleyr@jhcottonlaw.com)  
*Attorneys for Defendants Dionice S. Juliano,*  
*M.D., Conrado Concio, M.D And Vishal S.*  
*Shah, M.D.*

16  
17 By /s/ Roya Rokni  
18 An Employee of  
19 LEWIS BRISBOIS BISGAARD & SMITH LLP  
20  
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26  
27  
28

**Exhibit A**

**Exhibit A**



**HIREN SHAH, M.D.**  
2730 N. Dayton Street  
Chicago, Illinois 60614  
(312) 330-4096 / [hshah@nmh.org](mailto:hshah@nmh.org)

## **EDUCATION**

2000 - 2002	<b>KELLOGG SCHOOL OF MANAGEMENT NORTHWESTERN UNIVERSITY</b> <b>Master of Business Administration degree, June 2002</b> <ul style="list-style-type: none"><li>• Majors in healthcare management, economics, and management strategy</li></ul>	Evanston, IL
1992 – 1996	<b>DREXEL UNIVERSITY SCHOOL OF MEDICINE</b> <b>Doctor of Medicine, June 1996</b>	Philadelphia, PA
1987 - 1992	<b>UNIVERSITY OF PENNSYLVANIA, Philadelphia, PA</b> <b>Bachelor of Arts in neuroscience, June 1992</b>	

## **GRADUATE MEDICAL EDUCATION**

1999	<b>UNIVERSITY OF PENNSYLVANIA MEDICAL CENTER</b> <i>Fellow, Quality and Disease Management / Fellow, DoctorQuality, Inc.</i>	Philadelphia, PA
1997-1999 1996-1997	<b>THOMAS JEFFERSON UNIVERSITY HOSPITAL</b> <i>Resident, Department of Internal Medicine</i> <i>Intern, Department of Internal Medicine</i>	Philadelphia, PA

## **PROFESSIONAL EXPERIENCE- Administrative Appointments**

2008-2016 2010-2012 2004-2007	<b>NORTHWESTERN MEMORIAL HOSPITAL</b> <i>Medical Director</i> <i>Director, Clinical Affairs, Division of Hospital Medicine</i> <i>Associate Director, Division of Hospital Medicine</i>	Chicago, IL
-------------------------------------	--	-------------

## **PROFESSIONAL EXPERIENCE- Faculty Appointments**

2007-present 2002-2007	<b>NORTHWESTERN UNIVERSITY, FEINBERG SCHOOL OF MEDICINE</b> <i>Assistant Professor of Medicine</i> <i>Clinical Instructor of Medicine</i>	Chicago, IL
---------------------------	---	-------------

## **PROFESSIONAL EXPERIENCE- Hospital Appointments**

2002-present	<b>NORTHWESTERN MEMORIAL HOSPITAL</b> <i>Medical Staff, Department of Internal Medicine</i>	Chicago, IL
2000	<b>PERMANENTE MEDICAL GROUP</b> <i>Associate Physician</i>	Vallejo, CA

## **BOARD CERTIFICATION AND MEDICAL LICENSURE**

2002-present	State of Illinois (036107424)
2000-2002	State of California (A70699) - inactive
1999-2000	State of Pennsylvania (MD-068814-L) – inactive
1999	Diplomat, American Board of Internal Medicine

## **COMMITTEE MEMBERSHIP**

2008-present	Medical Peer Review Committee
2007-present	Strategic Planning Committee, Division of Hospital Medicine
2007-present	Productivity and Billing Committee, Division of Hospital Medicine
2007-present	Feinberg School of Medicine, Clinical Competency Committee
2007-present	Patient Care Committee
2007-present	Department of Medicine Quality Committee-Sitter Utilization
2006-present	Department of Medicine Quality Management Committee
2006-present	Pharmacy and Therapeutics, Medication Safety Subcommittee
2006-present	Executive Utilization Management Committee
2006-present	Utilization Management, Department of Medicine Subcommittee
2005	Hospitalist Budget Committee, Chair
2004-2005	Medical Records Committee
2004-2005	Timely Comfort Care Orders Committee, Clinical Sponsor
2004-2006	Physician Clinical Information Systems Leadership Committee
2004-2005	Congestive Heart Failure Leadership Committee
2004-2006	Pneumonia Project Leadership Committee, Clinical Sponsor and Member
2003-2004	Computer Physician Order Entry Committee
2004	Hospitalist/Attending Service Reform Working Group
2003	Hospitalist Attending Service Operations Committee
2002	Healthcare Biotechnology Conference Committee, Northwestern University
2001	Business of Healthcare Conference Committee, Northwestern University
2001	Student Health Insurance Reform Committee and Working Group, Northwestern University

## **TEACHING EXPERIENCE**

2006-present	Medical Decision Making, Conference Leader
2005-present	Organization and Economics of Medicine, Lead Lecturer and Course Teacher
2005	Patient, Physician and Society, Physical Exam Skills, Conference Leader
2003, 2004	Organization and Economics of Medicine, Conference Leader
2003-present	Northwestern Service Ward Attending, Resident and Medical Student Clinical Teaching
2003-present	Medicine Consult Service Attending, Department of Internal Medicine
2002-2003	Patient, Physician and Society, Physical Exam Skills, Conference Leader

## **PROFESSIONAL AND SCIENTIFIC SERVICE**

2009	Senior Fellow, Society of Hospital Medicine
2008-present	Chapter Support Committee, Society of Hospital Medicine
2008	Research and Abstract Judge, Society of Hospital Medicine Annual Meeting
2007-present	Journal of Hospital Medicine
2006-present	Journal Reviewer- Journal of General Internal Medicine
2005	Innovations in Medical Education Abstract Review Committee, Society of General Internal Medicine

## **HONORS AND AWARDS**

2012	Partner in Care, Leadership in Observation Unit, Northwestern Memorial Hospital
2011	Excellence in Quality Improvement, Best Project, Northwestern Memorial Hospital
2008	Outstanding Reviewer Award, Journal of Hospital Medicine

2006	Best Resident Teacher Award, Section of Hospital Medicine 2004 Best Resident Teacher Award, Section of Hospital Medicine 2002 Dean's List, Kellogg School of Management
1987	Miriam P. Webb Memorial Scholarship, University of Pennsylvania

## SCHOLARLY BIBLIOGRAPHY

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O'Leary KJ, Haviley C, Slade ME, Shah HM, Lee J, Williams MV. Journal of Hospital Medicine. 2011 Feb;6(2):88-93. Improving teamwork: impact of structured interdisciplinary rounds on a hospitalist unit.

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Sehgal NL, Shah HM, Parekh VI, Roy CL, Williams MV. Non-housestaff medicine services in academic centers: models and challenges. *Journal of Hospital Medicine*. 2008 May;3(3):247-255.

## **BOOK CHAPTERS**

Shah H. Infective Endocarditis. In: Glasheen J. 2006. *Hospital Medicine Secrets*. Secrets. Philadelphia: Mosby Elsevier

Shah H, Masica A, Chun E, Jaffer A. Hospital-Based Quality Improvement in Stroke Prevention for Patients with Non-Valvular Atrial Fibrillation, Society of Hospital Medicine. Philadelphia.

## **RESEARCH ACTIVITY**

2007-2008            Blue Cross and Blue Shield of Illinois, Technology Assessment Center, Research Associate.

1990-1992            University of Pennsylvania, research fellow  
Department of Environmental and Pulmonary Medicine, Supervisor, Sheldon Fienstein, MD, PHD  
Genetic Cloning research of pulmonary surfactant gene "A Portion of the Surfactant SP-A Gene  
Consists of a Pseudogene" presented at annual research symposium, January 1992

1998-1999            Thomas Jefferson University Hospital, research fellow  
Office of Health Policy and Clinical Outcomes, Supervisor, David Nash, MD, MBA  
Examined collaboration between Academic Medical Centers, HMOs, and Pharmaceutical Industry in  
clinical outcomes studies, 1998-1999

## **PRESENTATIONS- available upon request**

## **PROFESSIONAL AND SCIENTIFIC ACTIVITY**

Society of Hospital Medicine, Senior Fellow

Board of Internal Medicine, Diplomat

**Exhibit B**

**Exhibit B**



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December 15, 2019

Please find below a list of cases in which I have provided trial testimony as a medical expert.

1. New Hampshire- testimony on behalf of plaintiff- Guyer vs NH Medical Center
2. Ohio- testimony on behalf of plaintiff- West vs Hawley
3. Indiana- testimony on behalf of plaintiff- Hammer vs Adams
4. IL- Cook county- testimony on behalf of defense- Paula Chibe vs Manzar
5. Ohio- testimony on behalf of plaintiff- Rodney Pugh vs Mercy Health/St. Joseph's Hospital
6. New York- testimony on behalf of plaintiff- Inguitti vs Strong Memorial Hospital
7. Michigan- testimony on behalf of plaintiff- Baker vs. Goldfaden
8. Illinois- testimony on behalf of defense- Sandoval vs Advocate
9. Illinois- testimony on behalf of defense- Mertins vs. Northwest Community Hospital
10. Illinois- testimony on behalf of defense- Altiveros vs Advocate
11. Illinois- testimony on behalf of defense- Winters vs St. Alexius Medical Center
12. Maryland- testimony on behalf of the plaintiff- Walsh vs Kim
13. Nevada- testimony on behalf of the defense- Center vs Rives
14. Nevada- testimony on behalf of the defense- Chicarelli vs North Vista
15. Florida- testimony on behalf of plaintiff- Brown vs Orlando Health

Sincerely,

A handwritten signature in black ink, appearing to read 'Hiren Shah MD'.

Hiren Shah, MD SFHM

**Exhibit C**

**Exhibit C**

Hiren Shah, M.D., MBA

Fee Schedule 2021

\$475/hr to review records, and for discussions and consultations

\$600/hr for deposition testimony (3hr min)

\$6000/day for out of town trial testimony



**Exhibit D**

**Exhibit D**



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June 5, 2021

Adam Garth  
6385 South Rainbow Blvd., Suite 600  
Las Vegas, NV 89118

Dear Adam:

Thank you for the opportunity to review the case of Ms. Rebecca Powell and her admission to Centennial Hills Hospital on 5/03/2017. I am a physician licensed and currently practicing medicine in the State of Illinois. In 1999, I became board certified in Internal Medicine and have maintained my board certification. I am an Assistant Professor of Medicine at the Feinberg School of Medicine at Northwestern University and have been a practicing internist and hospitalist for over 15 years during which time I have managed the evaluation, workup, and treatment of hospitalized medical patients. I routinely evaluate and admit patients who have respiratory infections, pneumonia, and agitation and who require antibiotic and airway clearance treatments. I also coordinate care with consultants such as pulmonologists and infectious disease physicians in patients with acute and chronic infections. Thus, I am familiar with the standard of care in the evaluation and treatment of patients who have conditions similar to Ms. Powell, whose case I have reviewed in this report. In the preceding five years, I spent more than 95% of my professional time in the clinical practice of medicine in each year.

My background has also included numerous leadership positions at Northwestern, including Associate Director of Hospital Medicine, Director of Clinical Affairs and Medical Director at Northwestern Memorial Hospital. In these capacities, I have had supervisory oversight for the care and treatment provided by our hospitalist group of over 80 physicians to patients similar to Ms. Powell and can speak to the acceptable standard of care issues as well as causation in this case. Please find attached a CV which further provides my experience and qualifications.

I have reviewed the following to provide a basis of my opinions:

- 1) Medical records from the admission to Centennial Hills Hospital on 5/3/2017(CHH00001-01166);
- 2) Complaint with affidavit;
- 3) Records from plaintiff's disclosure including autopsy findings; and
- 4) Centennial Hills Hospital policy and records including event reporting and health care peer review, patient rights and responsibilities, policy sentinel events, and rapid response teams.

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**Case Summary:**

**5/3/2017**

Ms. Powell was a 41-year-old female who was found unresponsive at her home in the early morning hours of 5/3/2017. She was found lying in vomit and reportedly had ingested an overdose amount of Ambien and Cymbalta, which was suspected given empty bottles found by her bedside. Upon arrival by EMS, she was in distress and was intubated in the field. EMS brought her to Centennial Hills Hospital Medical Center after she was stabilized. She was seen in the emergency room by Dr. Suresh Rodil and Dr. Kevin Hyer. An emergency room history and physical was entered at 3:13 AM on 5/3/2017. It indicated that there was concern for possible aspiration and there was hypotension upon arrival to the emergency room. There were no visible signs of trauma. Vitals included heart rate 102, and blood pressure 89/52. Ms. Powell was placed on a ventilator upon arrival. She was acidotic with a pH of 7.251 on an arterial blood gas done at 3:38 AM. WBC count was 9.36 and creatinine was elevated at 1.07. After multiple doses of IV fluids, her blood pressure improved. She was then admitted to the intensive care unit and the admitting hospitalist was notified. The emergency room note was signed by Suresh Rodil at 5:44 AM.

A history and physical was performed by hospitalist physician Dr. Trent Richardson who documented a note at 5:59 AM. He indicated that the patient had acute respiratory failure from an apparent intentional drug overdose. He documented that Ms. Powell's daughter lived with her and had seen her at about 8:00 or 9:00 PM taking doses of Benadryl. Throughout the evening, she was monitored by her daughter and became progressively less responsive. Dr. Richardson confirmed there was nonbloody emesis, and bottles of Ambien and Cymbalta that had been recently filled were found empty by the bedside. He indicated the patient had acute respiratory failure and polysubstance overdose with altered mental status.

CT brain without contrast showed no acute abnormality. Chest x-ray showed clear lungs. Right upper quadrant ultrasound showed only gallstones. Pulmonary and critical care was consulted at 21:45.

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Dr. Christopher Breeden from pulmonary and critical care medicine documented an admission consultation at 21:45. He further supported the history that was documented by the emergency room doctor and the hospitalist. He indicated that Mrs. Powell's daughter had checked on her mother at 2:30 AM and found her with emesis in her bed in an unresponsive state. The last witnessed normal was at approximately 10:00 PM the night prior. Dr. Breeden felt the patient's respiratory secretions were consistent with aspiration. Antibiotics were started to treat for aspiration pneumonia. Dr. Breeden's diagnosis was drug ingestion with suicidal intent requiring intubation.

**5/4/2017**

The hospitalist the following day, Dr. Dionice Juliano, documented a note at 11:12 AM. He indicated that due to agitation, Ms. Powell required a lot of sedation on ventilation. Arterial blood gas showed an improved pH of 7.28 relative to that at admission. He indicated that there was ongoing encephalopathy that was toxic and metabolic in nature due to an unintentional drug overdose. Suspected drugs were Benadryl, Ambien, Cymbalta, and alcohol. There was concern for aspiration pneumonia with the patient being treated on IV ceftriaxone. Urine drug screens and serum toxicology screens were ordered.

Dr. Christopher Breeden documented a note the next day at 13:49. He indicated the patient was sedated and intubated and was having gastric-looking contents from the endotracheal tube the night prior. Chest x-ray that day showed an appearance of an infiltrate on the left. There was suggestion of significant airway secretions. Given the gastric contents in the ET tube and a new infiltrate on a chest x-ray, a bronchoscopy was ordered to evaluate for infection. One dose of vancomycin was given and ceftriaxone was continued. Tube feeds were provided through an oral gastric tube.

Dr. Breeden performed a fiberoptic bronchoscopy and bronchoalveolar lavage. There were significant mucosal purulent appearing secretions noted. Corticosteroids were added given the degree of secretions and Zosyn was planned in addition to vancomycin.

**5/5/2017**

Dr. Juliano documented a note at 11:35 AM. He noted the bronchoscopy findings. Given the secretions on bronchoscopy, the diagnosis of aspiration pneumonia was further supported. Cultures from the bronchoalveolar lavage were to be followed. ABG showed an improving pH at 7.33. At 18:44, Dr. Breeden documented a progress note. He documented that there were still

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ongoing secretions from the ET tube and felt the secretions were consistent with aspiration. He continued corticosteroids and antibiotics.

**5/6/2017**

Dr. Juliano indicated that Ms. Powell was extubated that morning. She was still drowsy. The plan was to continue her current care and to downgrade her out of the ICU if she remained stable. Dr. Breeden documented a note at 16:00. After removing from the patient from the ventilator, Ms. Powell was placed on CPAP and tolerated this well. He indicated that vancomycin and Rocephin were to be continued for aspiration given her secretions and given the findings on bronchoscopy. Steroids were to begin a taper in dose. He suggested downgrading out of the ICU if a bed was needed.

**5/7/2017**

Dr. Juliano documented a note at 09:38 AM and wrote that a swallow evaluation was successful with a plan to advance her diet as tolerated. Vancomycin and ceftriaxone were continuing. He wrote to downgrade Ms. Powell's care to medicine telemetry.

A speech therapy assessment was performed by Tiffany Vetter at 11:20 AM that indicated Ms. Powell completed an evaluation without any signs of aspiration.

Dr. Gary Skankey from infectious diseases documented a note at 15:38 for an initial consultation. He indicated that the WBC count had begun to increase. Ms. Powell was feeling a little short of breath but better than the day prior. There was minimal cough. His diagnosis was aspiration pneumonia due to MRSA. He recommended continuing vancomycin and to discontinue the Rocephin.

**5/8/2017**

Ms. Powell was seen by Dr. Skankey on follow up who documented a note at 14:57. He reported Ms. Powell was still a little short of breath. He reported the bronchioloalveolar lavage cultures as showing moderate growth of methicillin-resistant *Staphylococcus aureus* (MRSA). He recommended continuing vancomycin. A chest x-ray was ordered for the following day.

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Dr. Breeden documented a note at 22:01. He reported that Ms. Powell had some cough and reported feeling swollen. WBC count had decreased to 12.31 from 12.52 the day prior. On 5/6/2017, the WBC count was normal at 9.45. He recommended continuing antibiotics per infectious disease. He also suggested providing diuretic medications to remove fluid.

**5/9/2017**

Speech therapy evaluated the patient and nurse Joyce Arenas documented at 14:00 that Ms. Powell was cleared to have regular foods.

Ms. Powell was seen by hospitalist, Dr. Vishal Shah, who documented a note at 14:05. He wrote the patient denied any shortness of breath. The patient denied any suicidal ideation at the time. She admitted to taking Ambien the night of her admission. WBC count increased to 13.35 from 12.31 the day prior. His diagnosis was respiratory failure requiring intubation due to MRSA aspiration pneumonia. The plan was to await psychiatric placement.

Dr. Skankey from infectious disease documented a note at 16:33 and wrote that she was improving from MRSA aspiration pneumonia. White blood cells were slowly rising which he felt was due to prior doses of steroids which were being tapered. His plan was to change vancomycin to oral bactrim for 7 more days.

Dr. Breeden documented a note at 17:47 and noted less cough. He recommended continuing the plan of care as outlined previously.

**5/10/2017**

At 2:00 AM, nurse Bernadine Rebogio documented that Ms. Powell had coughing which was nonproductive. She was short of breath and 2 L of oxygen was placed. Breathing treatments were provided. At 7:00 AM, nurse Nicholas Muir accepted care and noted the patient had complaints of shortness of breath at that time.

At 11:35, Ms. Powell underwent a physical therapy session with Shannon Roling. She indicated that Ms. Powell was exhibiting very shallow and more labored breathing compared to her prior evaluation. Saturations remained in the 90s on 3 L of oxygen. After ambulating 10 feet, she required very long seated rest breaks and had pursed lip breathing. She had significantly decreased oxygen tolerance.

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Dr. Vishal Shah documented a note at 13:16 and indicated that Ms. Powell had no new complaints, and her shortness of breath was better. He remained unsure if the WBC elevations were due to steroids. Ms. Powell's room air oxygenation was 93%. The patient was awaiting oxygen arrangements and for physical therapy clearance prior to possible psychiatry transfer.

At 16:00, nurse Nicholas Muir documented that Ms. Powell was complaining of increased labored breathing and felt like she was drowning. Breathing treatments were ordered and Ativan for anxiety was given by Dr. Shah with no improvement. When Dr. Shah was called, he ordered a stat arterial blood gas and a Chest x-ray.

Respiratory therapy evaluation at 16:31 indicated that there was respiratory distress in the radiology department at the time of the Xray and a rapid response team was activated but Ms. Powell was found to be stable with an oxygen saturation of 98% on 6 liters by nasal canula and had a respiratory rate of 28. The chest x-ray showed bilateral interstitial infiltrates.

In the patient's discharge summary, Dr. Shah documented these events. He documented that earlier that day, the patient had worsening leukocytosis and her bactrim was changed to Zyvox and cefepime and repeat cultures were ordered. Dr. Shah then documented that he was called by the RN at 5:00 PM stating the patient was short of breath. He ordered a stat chest x-ray and an ABG. He advised the nurse to follow-up with the pulmonary doctors for further orders, which was done. A rapid response was also called while the patient was at chest x-ray. Ms. Powell's vital signs were stable including oxygenation. Dr. Shah then noted that the patient was seen by infectious disease and pulmonary medicine after the chest x-ray and a CT angiography of the chest was ordered by the ID doctor.

An arterial blood gas was drawn at 16:32 and indicated a pH of 7.37 with a PO<sub>2</sub> oxygen level of 89 on 6 liters of supplemental oxygen given by nasal cannula.

Medication administration records indicate that a 0.5 mg dose of Ativan was given at 16:01 as ordered by Dr. Vishal Shah at 15:54. The dose was administered by nurse Nicholas Muir.

Dr. Skankey then documented a note at 17:05. He noted the patient had extreme shortness of breath and was complaining of a dry feeling in her mouth, her throat, and her lungs. She was unable to cough the respiratory secretions that were present. WBC count had now risen up to 23.14. On 6 L of oxygen, he indicated an ABG showed a PO<sub>2</sub> of 89. He noted a chest x-ray that

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day showed prominent bilateral interstitial infiltrates. Dr. Skankey felt that it was necessary to discontinue the bactrim and to start oral Zyvox and IV cefepime given the increase in WBC count and worsening clinical condition. He was concerned about possible sepsis and documented this. He ordered a CT angiography of the chest and wrote to order blood cultures.

Dr. Breeden documented a note at 17:12 indicating that the patient had shortness of breath and that a rapid response was called when the patient was down at chest x-ray. Ms. Powell was then sitting up still having shortness of breath and some cough at the time of Dr. Breeden's evaluation. He wrote to resume steroids every 8 hours. He started low-dose theophylline. He supported the order of a CT angiography of the chest as suggested by Dr. Skankey.

Nurse Michael Pawlak indicated in the note that Ms. Powell had shortness of breath during movement between the bed and the bedside commode which began as early as the start of his 7:00 AM shift. Ms. Powell responded to as needed breathing treatments. He documented that a stat CTA of the chest was ordered at 2:00 AM.

RT evaluation at 22:22 noted a saturation of 92% on 3 liters supplemental oxygen. Vital signs 23:52 indicated a heart rate of 100 and respiratory rate of 22 at the time of nebulizer therapy at 23:52.

### **5/11/17**

Vital signs at 00:10 indicated a heart rate of 101 and a respiratory rate of 20. Ms. Powell was still on 3L of oxygen saturating at 95%.

According to nurse Pawlak's note, as needed Ativan that was ordered in her profile was given at a dose of 0.5 mg dose at 2:20 AM. The patient was then transported to CT scan at 2:30 AM. At approximately 2:40 AM, the CT scanner staff called nurse Pawlak and indicated that the patient could not complete the test due to shortness of breath and anxiety and was returned back to her room. Charge nurse Karen Valdez was then called to assist in assessing the patient.

Nurse Pawlak's note also indicated that Nurse Valdez evaluated Ms. Powell who reported shortness of breath and that the first dose of Ativan was not effective. A page was made to night hospitalist Dr. Coronado Concio to discuss the patient's complaints. She spoke to nurse Valdez and ordered an additional dose of 0.25 mg of Ativan. This was administered by nurse Valdez at 3:27 AM. This second dose of Ativan appeared to be effective in calming Ms. Powell.



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At 3:15 AM, nurse Karen Valdez documented her own version of events. She indicated in her own note that she saw the patient with the primary nurse, RN Pawlak. Ms. Powell was very anxious and was having shortness of breath. Respiratory therapy was notified to evaluate Ms. Powell. Dr. Concio was paged again and ordered an additional dose of Ativan to help the patient relax. The dose was 0.25 mg IV push. The respiratory therapist named Vanessa Mower indicated that Ms. Powell was pulling her oxygen off. It was decided to place Ms. Powell in wrist restraints. Patient did seem to improve. There was a conversation with the camera operator John about visualizing the patient closely.

Respiratory therapist Mower indicated that to facilitate oxygen delivery a face mask was used at approximately 3:00 AM since it was difficult for Ms. Powell to keep her nasal canula in place. Ms. Powell's oxygen saturation was 90% at the time of RT evaluation at 4:08am.

Nurse Pawlak's note indicated that Ms. Powell was more calm and her breathing appeared less labored at approximately 4:15 AM.

A pain assessment at 4:00 AM by nurse Michael Pawlak indicated a score of 0 with no pain. It was reported that a CNA found Ms. Powell to be "ok" at 5:00 AM and was in no distress. Video monitoring every 15 minutes was ongoing and showed nothing out of the ordinary.

Medical administration records confirm that the 0.25 mg Ativan dose was given at 2:23 AM. Another dose of Ativan was given at 3:27 AM and Ms. Powell was reevaluated at 3:42 AM where the dose was found to be effective. She received acetylcysteine nebulizer therapy at 4:18 AM, ipratropium nebulizer at 4:18 AM and Xopenex nebulizer treatment at 4:18 AM.

Vital signs at 4:08 AM and at 4:18am indicated a heart rate of 130 and a respiratory rate of 30 and at 4:47 AM indicated a heart rate of 140 and a respiratory rate of 30.

At 6:10 AM, the patient was found sitting in her bed and unresponsive with the oxygen mask at her feet. Chest compressions, bag ventilation and code blue were initiated at that time.

L2K patient video observation record indicates that John Lotito was monitoring the patient and that Ms. Powell last appeared to be sitting in close to an upright position with fingers possibly in her mouth for approximately 1 hour prior to the code blue event at 6:10 AM. There was no documentation of respiratory distress or any difficulty. Documentation in the L2K flowsheet

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indicates that she was last seen at 6:00 AM by Mr. Lotito. This form was reviewed by charge nurse Karen Valdez who signed the document at 07:10.

Dr. Coronado Concio, the night hospitalist, documented that she was paged to attend a code blue and upon her arrival, Dr. Blumberg indicated that the code had begun around 6:15 AM when the patient was found unresponsive on her bed. Dr. Blumberg intubated the patient upon her arrival and was able to suction a thick mucus plug from her throat. Upon Dr. Concio's arrival at 06:45, the patient had already received 11 units of epinephrine, 3 doses of bicarbonate and maximum doses of a dopamine drip. She had asystole at the start of the code and subsequently PEA. Dr. Concio continued the code blue at the request of Dr. Blumberg. She continued resuscitation for an additional 15 more minutes, but Ms. Powell remained in PEA arrest. After 45 minutes of resuscitation without any improvement, a decision was made to discontinue further care after no signs of pulses were palpated. Time of death was documented at 6:57 AM.

Dr. Vishal documented a discharge summary dated 5/20/2017 at 19:00. He reviewed the clinical course in his note and indicated that he was notified by the night physician that a code event was called early that morning with an unsuccessful resuscitation. He had a face-to-face discussion with the family including Ms. Powell's daughter, husband, son, and a friend. He indicated that the cause of death was cardiopulmonary arrest with an unknown cause at that time.

**Standard of care opinions:**

Ms. Rebecca Powell was a 41-year-old female who was admitted after suspected ingestion of medications such as Ambien and Cymbalta leading to respiratory failure and unresponsiveness requiring intubation in the field by emergency medical services. After arrival to Centennial Hills hospital, she had evidence of aspiration given oropharyngeal secretions and a rising WBC count along with worsened radiographic findings of pneumonia as noted by the pulmonary physician. Bronchoscopy confirmed the presence of significant secretions within the airways with cultures consistent with MRSA which supported the diagnosis of MRSA aspiration pneumonia. As noted above in the extensive case summary, there was some clinical improvement from the time of her admission on 5/3/2017 supporting extubation on 5/6/2017. There was further clinical improvement until 5/8/2017 when she began to have a rising WBC count. Documentation indicates that it was suspected that this WBC elevation may be due to steroids which were also given, but her subsequent clinical course suggested otherwise. Beginning in the early morning of 5/10/2017 at early as 2:00 AM, her clinical course was consistent with progression of her respiratory infection supported by a history indicating worsening shortness of breath and respiratory difficulty. Her

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WBC had increased significantly to 13.35 on 5/9/2017 and it went further up to 23.14 on 5/10/2017. This level of rise in the WBC was not consistent with steroid effect and given the increased respiratory symptoms, supported a progression of infection. Her worsening shortness of breath was documented on 5/10/2017 by both by pulmonary medicine and infectious disease physician who were concerned with the progression of her pulmonary infection.

On 5/10/2017, Dr. Skankey, the infectious disease physician, was concerned for possible sepsis and documented the need to transition back from oral antibiotics to IV antibiotics. He indicated Ms. Powell had extreme shortness of breath and needed CT imaging to better evaluate the progression of this infection. An x-ray on 5/9/2017 showed ongoing infiltrates. The rapid response team evaluation in the chest x-ray department supported the need for assessment of this change in her respiratory function.

Physical therapy assessment on 5/10/2017 earlier in the day also indicated a markedly different level of performance relative to the prior evaluation. The physical therapist noted that Ms. Powell was short of breath, had pursed lips, and had significantly decreased exercise tolerance. She required long rests in between any activity. Nurse Muir indicated that Ms. Powell had difficulty with movement from bed to commode with more difficulty breathing.

When Dr. Vishal Shah was called about worsening shortness of breath, he appropriately directed the nurse to the infectious disease and pulmonary doctors for further management. He ordered an arterial blood gas that showed Ms. Powell had a significantly decreased oxygen requirement having an oxygen PO<sub>2</sub> of only 89 despite being on 6 L of oxygen. This represented difficulty oxygenating due to worsening secretions and airway difficulty. It was within the acceptable standard of care for Dr. Shah to address the patient's anxiety with a small dose of Ativan that had no meaningful effect in causing any respiratory suppression as further hyperventilation due to anxiety would lead to a worsening condition. There is no evidence that this dose of Ativan led to worsening respiratory depression given the preservation of Ms. Powell's respiratory rate with no evidence of a drop in her respiratory drive to suggest drug-induced suppression. In fact, she remained agitated. Dr. Shah met the acceptable standard of care in the evaluation, and management of Ms. Powell, and nothing that he did or failed to do contributed to her subsequent respiratory failure.

Throughout the night, Ms. Powell had worsening shortness of breath and respiratory difficulty which required nebulizer therapy including an evaluation by the respiratory therapist at 4:00 AM. This event further supports worsening secretions and a need for better respiratory clearance

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strategies. Given Ms. Powell's level of anxiety, the 2 doses of Ativan that she received as ordered by Dr. Concio were appropriate and within the standard of care to address these anxiety symptoms. These doses of Ativan had no effect in decreasing her respiratory drive or causing the subsequent respiratory arrest that occurred at 6:10 AM. Vital signs indicate respiratory rates at 4:08 AM, 4:18 AM and 4:47 AM to be 30. If one hypothesizes that Ativan had a respiratory suppressant effect, there would be an immediate decrease in respiratory drive which there is no evidence of in Ms. Powell's situation. In fact, the respiratory rates of 30 represent a significant increase from her baseline levels of 18-20 and supports that her pathophysiology was advancing and worsening secretions rather than any sedative effect from Ativan. Given the pharmacology of IV Ativan, if there was a sedative effect, this would have been immediately apparent after the dose was given which did not occur after either dose of Ativan.

In addition, Ms. Powell was appropriately monitored on the floor and had multiple contact points by care providers prior to her code blue event at 6:10 AM. A pain assessment was done at 4:00 AM. A respiratory treatment was done at 4:10 AM. Vital signs were obtained at 4:08 AM, 4:18 AM, and 4:47 AM. The patient was evaluated both by the floor nurse and the charge nurse during those early morning hours. Nurse Pawlak indicates that the patient was evaluated at 4:15 AM. A CNA saw Ms. Powell at 5:00 AM. At none of these evaluations, was Ms. Powell in a condition that indicated distress or the need for escalation of care. In addition, L2K patient frequency observation records indicate that Ms. Powell was monitored by video device. She was seen as late as 6:00 AM as documented on the L2K flowsheet by John Lotito. There is no evidence that Ms. Powell had removed her face mask. The face mask was placed by the respiratory therapist for ease of oxygen administration rather than for distress or the need to provide more oxygen than a nasal canula can provide. Ms. Powell's saturations were affected by her agitation and cooperation and remained mostly above 92% and often as high as 95%. At no time were oxygen saturations at a level that indicated distress or transfer to another floor.

In fact, the code blue event occurred just 10 minutes after the last documented visualization by video monitoring which showed nothing out of the ordinary. Although it may have been difficult to see a nasal canula on the monitor, a face mask would be more visible. In any event, there is no evidence that it was not in place for any prolonged period of time. In addition, the standard of care did not require a one-to-one sitter in the room given the adequacy of video monitoring and the patient's condition which was stable but worsening lung infection due to secretions rather than respiratory distress or collapse. Thus, although she had a worsening respiratory infection, there is no evidence that she was in respiratory distress requiring transfer to a higher level of care or the intensive care unit.

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Contrary to the plaintiff expert's opinion, there is no evidence that the dose of Ativan given by Dr. Shah or the two doses given by Dr. Concio had any contribution to respiratory depression or the code blue event. There is ample evidence that Ms. Powell maintained a strong and adequate respiratory effort based on her vital signs and respiratory rate which was as high as 30. In addition, if there was any sedation, it would have been immediate given the method of Ativan deliver was intravenous which is rapidly acting. Thus, Ms. Powell exhibited no sedation or a decrease in respiratory drive as IV Ativan would be expected to provide immediately visible adverse effects. Her agitation and lack of cooperation at the CT scan further supports the fact that the Ativan given 20 minutes earlier did not have a respiratory depressant effect.

The plaintiff's expert affidavit also claims that Ms. Powell had six sedating drugs on her medication list. There is no evidence that any of the agents referenced had a meaningful effect on Ms. Powell's level of alertness or that there was an interaction between any of these drugs and Ativan to cause sedation. Furthermore, the opinion that acetylcysteine, a cough medicine or a drug used with nebulizers, caused sedation in Ms. Powell's case is not supported by any evidence.

The standard of care did not require a chest x-ray in the early hours after it was determined that Ms. Powell could not cooperate with the CT scan due to shortness of breath. Obtaining a chest x-ray would not have any meaningful effect on the outcome in this case. Ms. Powell was already receiving antibiotics for a known respiratory infection. She was also receiving frequent nebulizer therapy for airway clearance. It was also quite evident from the above events that the indication for imaging was not to obtain and report results to determine pulmonary involvement as indicated in the plaintiff expert's affidavit as it was clear that worsening secretions were ongoing as the cause of Ms. Powell's symptoms. A chest x-ray would not change the medical plan or alter Ms. Powell's management in any way.

A documentation of a differential diagnosis is not required by the standard of care especially if the care provided adhered to the acceptable standard. There is no evidence to support the opinion that the possibility of medication side effects was required as documentation given the clinical course does not support any medication-induced sedation. In addition, the standard of care did not require each of the three physicians outlined in the plaintiff expert's affidavit to evaluate the patient's administered medications.

Transfer to a higher level of care was not required based on Ms. Powell's condition. Although she had a worsening respiratory infection, she was not unstable and did not require any higher level of

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treatment or monitoring. A rapid response team even if activated at the time of the respiratory treatment at 04:10 AM would not have provided any additional care as Ms. Powell responded to the nebulizer therapy and was comfortable as indicated by the assessments subsequently. Ms. Powell's tachycardia as documented in the early morning hours around 4:00 AM was likely due to the recent nebulizer therapy, which can lead to an elevated heart rate. There is no indication that Ms. Powell was in respiratory distress or that the tachycardia was evidence of such. In addition, cardiac monitoring was not required as the IV Ativan was not leading to any cardiac depression. Ms. Powell had no known cardiac disease and rather had a worsening but stable respiratory condition that did not require monitoring on telemetry. Although, Ms. Powell had a documented respiratory rate of 30 at 4:18 and 4:37 AM, this was not sustained as she was subsequently more comfortable as documented by nurse Pawlak and charge nurse Valdez. She was not seen in any distress on the video monitor or at the time of the CNA rounds that occurred at 5:00 AM or during the multiple healthcare provider encounters mentioned above. Her elevated respiratory rates were related to anxiety and agitation and not due to hypoxia as her saturations remained in a range that were appropriately managed by supplemental oxygen.

Ms. Powell's autopsy record indicates a pathologic diagnosis of acute and chronic pneumonia and foreign body giant cells along with pulmonary edema. In addition, both lungs show marked and extensive consolidation of both upper and lower lobes. The lower trachea and major bronchi revealed marked congestion and apparent infection. Microscopic exam also supports acute on chronic inflammation in the lungs.

Thus, as supported by the clinical course and the autopsy findings above, Ms. Powell's most likely cause of death was worsening pneumonia complicated by with acute mucus plugging that led to respiratory failure at 06:10am. Given the extent of her secretions, as documented at the start of her hospital course and their recurrence in the early morning of 5/10/17, along with Dr. Concio's note indicating that Dr. Blumberg had removed a thick mucus plug at the time of the resuscitation, the most likely cause of her respiratory arrest was the large mucus plug that occluded her airway. Vital signs and pulse oximetry reading ranged mostly in the 92 to 98% range on supplemental oxygen, indicating no distress or instability. When Ms. Powell was placed on a face mask with higher flow oxygen, it was to support better oxygen delivery given her hyperventilation and high respiratory rates due to agitation and anxiety rather than due to acute respiratory decompensation as is incorrectly postulated and not supported in the plaintiff's expert affidavit. In fact, although Ms. Powell had worsening pneumonia symptoms due to secretions, she was hemodynamically and otherwise stable such that she did not require transfer to a higher level of care. In addition, as noted above, her tachycardia was likely nebulizer related and also possibly due to agitation and her

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respiratory rates that were recorded as high as 30 were due to hyperventilation due to agitation. An RRT even if called at the time of these vitals were taken would not have led to any additional management. In fact, Ms. Powell's agitation improved, and she was comfortable by the time of the nurse Pawlak's reassessment at 04:15 and the CNA rounds at 05:00. There is no evidence that Ms. Powell had removed her mask or was in any distress that would have required closer monitoring. In addition, at no time did the standard of care require the presence of a sitter despite this been suggested by some hospital staff in this case.

Ms. Powell was also never diagnosed with an anxiety disorder but was rather treated appropriately and within the standard of care of anxiety symptoms. The plaintiff's affidavit states that the code blue event occurred within 90 minutes of the administration of Ativan, which is incorrect. The last dose of Ativan given was at 3:27 AM with the code occurring at 6:10 AM which was 2 hours and 43 minutes later. This gap of time does not support a causal link between the two events given the rapid onset of action of IV Ativan. As noted above, there is no evidence of respiratory suppression from the doses of Ativan that were given based on the respiratory rate and the clinical symptoms and course.

There is no evidence that the care provided by Dr. Dionice had any impact of the clinical course or events of 5/10/17 or the code event. In addition, the standard of care did not require Drs. Dionice, Concio, and Shah to review Ms. Powell's medication list and to document drug side effects or interactions as there was no meaningful effect of Ms. Powell's medications on her clinical status or subsequent course. There is no evidence that medications were the cause of her symptoms or her health status. Finally, the findings of the Department of Health and Human Services provide no evidence that the issues noted had any bearing of Ms. Powell's clinical outcome, which would have been the same regardless of their occurrence.

In summary, the cause of Ms. Powell's death was an acute mucus plug that led to sudden respiratory failure at 6:10 AM on top of superimposed bilateral pneumonia. She had ongoing secretions clinically, progression of lower airway congestion, and bilateral pneumonia at autopsy and was noted to have the removal of a large mucus plug at the time of her code event, which represent the basis of this opinion. Although she had progression of her pneumonia and significant secretions prior to the code blue, there is no indication that she was unstable and required transfer to a different level of care or required additional monitoring. Her increased respiratory rate further supports that she had no sedative effect for respiratory depression from the Ativan or by any other drug that was given by any of the physicians in this case. Her tachycardia was the result of the nebulizer treatment she had received and due to agitation and not due to any form of distress that



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required any action that was not taken in this case. Nothing that the providers did or failed to do resulted in Ms. Powell's code blue and subsequent death.

All my opinions noted above are stated to a reasonable degree of medical probability. Please do not hesitate to contact me should you have any further questions.

Sincerely,

A handwritten signature in black ink, appearing to read 'Hiren Shah MD'.

Hiren Shah, MD SFHM



**Exhibit E**

**Exhibit E**

**CURRICULUM VITAE**  
**ABRAHAM (AVI) M. ISHAAYA, M.D., F.C.C.P., F.A.A.S.M.,**  
**F.A.C.G.S., M.A.C.G.S.**  
**ASSISTANT CLINICAL PROFESSOR, UCLA SCHOOL OF MEDICINE**

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**BUSINESS ADDRESS:**

5901 W. Olympic Blvd.  
Suite 200  
Los Angeles, CA 90036  
Tel. (323) 954-1788      Fax (323) 954-1822

**PERSONAL INFORMATION:**

Citizenship:                      U.S.A.  
Languages:                      English, Hebrew, Russian, Spanish

**BOARD CERTIFICATION:**

1994    The American Board of Internal Medicine  
1996    The American Board of Pulmonary Medicine  
1997    The American Board of Sleep Medicine  
2006    The American Board of Geriatrics

**APPOINTMENTS:**

1996-97	Assistant Director, Cedars-Sinai Medical Center Sleep Disorders Center
1996-98	Clinical Instructor, UCLA School of Medicine
1998-Present	Assistant Clinical Professor, UCLA School of Medicine
1998-Present	Fellow, College of Chest Physicians
1998-present	Fellow, American Academy of Sleep Physicians
1999-2001	Director, Century City Hospital Sleep Lab
1999-2003	Director, Brotman Medical Center Sleep Lab
2000-2002	Clinical Chief, Pulmonary Division Brotman Medical Center
1999-2002	Medical Director, Country Villa South Nursing Home
2009-2010	
2001-2003	Director, Pulmonary Rehabilitation Unit, Midway Hospital
2002-2009	Medical Director, Country Villa Cheviot
2002-2006	Medical Director, Los Angeles region, Sleepmed of California
2002-2006	Member, Utilization Review Department, New Vista Nursing Home
2002-2010	Member, Utilization Review Department, Country Villa Wilshire
2002-Present	Director, Respiratory Therapy, Midway/Olympia Hospital
2005-Present	Director, Western Convalescent, Subacute Department
2006-2011	Medical Director, New Vista nursing home
2006	Fellow, American Board of Geriatric Specialists
2006-2011	Medical Director, ICU Brotman Hospital
2007-2014	Corporate Medical Director, Country Villa Health System
2007	Master of the American College of Geriatrics Specialists
2007-2009	Medical Director, Take Off Bariatric Program
2009-11	Director, Wound and Risk Management, Olympia Medical Center
2008-present	Certified, Hyperbaric Oxygen Therapy
2009-present	Maximus Federal Services Medical Consultant
2010-2011	Medical Director, Shangri La Hospice
2012-present	Chief of Medicine, Miracle Mile Medical Center
2012-present	Medical Director, Concorde School
2012-present	Chief of Medicine, Miracle Mile Medical Center
2014-present	Medical Director, Marina Pointe- Subacute

**APPOINTMENTS (continued):**

2014-2016 Medical Director, Southern California Hospital, Culver City,  
Readmission  
2016-present Medical Director, Southern California Hospital, Culver City, Respiratory  
therapy Department

**COMMITTEES:**

1996-2000 Member, Pharmacy and Therapeutics, Brotman Medical Center  
1996-2004 Member, Peer Review Committee, Century City Hospital  
2000-2002 Member, Peer Review Committee, Pulmonary Division, Cedars Sinai  
2000-2003 Member, Medicine Working Committee, Brotman Medical Center  
2000-present Member, Pulmonary and Infection Diseases performance and Improvement  
Committee, Cedars-Sinai Medical Center  
2002-2003 Member, Medical Executive Committee, Brotman Hospital  
2002-2007 Member, Medicine Working Committee, Olympia Medical Center  
2007- 2010 Member, Peer Review committee, Brotman Hospital

**EDUCATION:**

1986-1990 University of Maryland Medical School  
Baltimore, Maryland  
Degree: M.D.  
1983-1986 University of California, Los Angeles  
Los Angeles, California  
Degree: B.S. Psychology/Biology, Cum Laude

**POST-GRADUATE TRAINING:**

1993-1996 Fellow, Pulmonary & Critical Care  
Cedars-Sinai Medical Center, Los Angeles, California  
1990-1993 Resident, Internal Medicine  
Cedars-Sinai Medical Center, Los Angeles, California

**AWARDS & HONORS:**

1992 Young Investigators Award  
Southern California Pulmonary Research Conference  
1993 Paul Rubenstein Award  
Excellence in Original Research  
Cedars-Sinai Medical Center  
1991 Excellence in Research Award, Solomon Scholar  
1992 Paul Rubenstein Award  
Excellence in Original Research  
Cedars-Sinai Medical Center

**MEMBERSHIP IN MEDICAL SOCIETIES:**

2007-present American Medical Association  
2006 American Society of Bariatric Medicine  
1993-Present American College of Chest Physicians  
1993-Present American Thoracic Society  
1997-Present American Sleep Disorders Association  
1993-1999 American Israeli Medical Society

**ABSTRACTS:**

Ishaaya, AM, Nathan SN, Koerner SK, Belman MJ. Accuracy of work of breathing prediction with pressure support ventilation during weaning. ARRD 1992; 145:A518

Ishaaya AAM, Nathan SN, Belman MJ. Work of breathing in the immediate post extubation period. ARRD 1993; 147:A875.

**PUBLICATIONS:**

Ishaaya AM, Nathan SN, Belman MJ. Work of breathing after extubation. Chest 1995,107: 204-209.

Ishaaya, AM, Nathan SN, Koerner SK, Belman MJ. Prediction of pressure support during weaning from mechanical ventilation. Chest 1993; 103: 1215-1219.

**TEACHING:****Academic Year 1996-1997**

Sleep Disorders Clinic, fellow teaching (12 months)

Pulmonary Consult Team, fellow and resident teaching (one month)

Pulmonary Clinic, fellow and resident teaching (one month)

Medicine Ward Team, resident and student teaching (one month)

**Academic Years 1997-1998, 1998-1999, 1999-2000, 2000-2001, and 2001-2002**

Sleep Clinic, fellow teaching (part of a team of sleep medicine specialists, teaching throughout the year).

Pulmonary Consult Team, fellow and resident teaching (one month)

Pulmonary Clinic, fellow and resident teaching (one month)

Medicine Ward Team (one month)

**TEACHING Continue:****Academic Years 2003-present**

Pulmonary Consult Team, fellow and resident teaching

Pulmonary Clinic, fellow and resident teaching

**EXPERT WITNESS:**

2003-Present Provide expert witness services including review of records, deposition and court testimony. Testified in both plaintiff and defense.

**Exhibit F**

**Exhibit F**

**Abraham Ishaaya, M.D., F.C.C.P.  
5901 West Olympic Blvd. #200  
Los Angeles, CA 90036**

**MEDICAL LEGAL FEE SCHEDULE – EXPERT WITNESS**

Record review, report preparation, conferences, travel	\$550.00 / hour
Deposition (Two hours minimum)	\$1,000.00 / hour
Appearance as witness (Trial or arbitration)	
Half day	\$5,500.00
Full day	\$8,500.00

Retainer of \$2,000.00 waved.

Full fee will be charged if cancellation occurs less than 48 hours prior to scheduled proceedings.

Sincerely,



Abraham M. Ishaaya M.D., F.C.C.P.  
President, Abraham M Ishaaya M.D., A Professional Corporation  
Tax ID 30-0004319

Please sign to indicate your agreement to these fees.

\_\_\_\_\_  
Case name

\_\_\_\_\_  
Signature

\_\_\_\_\_  
Date

**Exhibit G**

**Exhibit G**

## TRIAL APPEARANCES/DEPOSITIONS (since 2015)

### TRIAL APPEARANCES:

1. United States vs. Villabroza et al. 2016 (defense)
2. Perona vs. Time Warner 2016 (defense)
3. Martinez vs. Avalon 2017 (defense) (Tucson, Arizona)
4. Higgins et al. v. Providence Little Company of Mary Medical Center San Pedro et al. 2017 (defense)
5. People vs. Najee A've 2017 (defense)
6. Haroutunyan v. HPMC, et al 2017 (defense)
7. Kinsella vs. Kaiser 2018 (plaintiff)

### DEPOSITIONS:

1. Beatrice Raya v. TRA PAC 2015 (plaintiff)
2. Daniels v. Allstate 2015 (plaintiff)
3. Carlson v. Gaidry 2015 (defense)
4. Villagrana v. Glendale et al 2015 (plaintiff)
5. Taylor v. LCC of South Mountain 2015 (defense)
6. Perona v. TWC 2016 (defense)
7. Guillermina Pulido v County of Orange 2016(plaintiff)
8. Fouche v. Cola et al. 2016 (plaintiff)
9. Smith v. City of LA 2016 (defense)
10. Stickler vs. Optum 2016 (defense)
11. Gomez v. Garcia 2016 (plaintiff)
12. Johnson v. Life Care 2017 (defense)
13. Martinez v. Avalon 2017 (defense)
14. Harmon v. Avalon 2017 (defense)
15. Higgins v. Little Co of Mary 2017 (defense)
16. Keltner v. Magnolia 2017 (defense)
17. Avalon v. Sudarich 2017 (defense)
18. Haroutunyan v. HPMC, et al 2017 (defense)
19. Evans v. Lakshimapathy et al 2018 (defense)
20. Kinsella v. Kaiser 2018 (plaintiff)
21. Millitech v. Shiekha et al 2018 (plaintiff)
22. Lubormiski vs PBAL-BB et al 2018 (defense)
23. Gomez v. Ports of America 2018 (plaintiff)
24. Clark v. First Student 2019 (plaintiff)
25. Dorel vs. MMMC et al 2019 (defense)
26. Lewis, Miletta v. Corizon Health, 2019 (defense)
27. Kudelka vs Specialty hospitals 2020 (defense)



**Exhibit H**

**Exhibit H**

I have undertaken an analysis of the above case and formulated opinions based upon my knowledge, experience and training with a reasonable degree of medical certainty regarding the care and treatment provided to Rebecca Powell while she was a patient at Centennial Hills Hospital in Las Vegas, Nevada in May, 2017, on behalf of Centennial Hills Hospital and its employees. To that end, I have reviewed the following medical records and documents in forming my opinions regarding the care and treatment rendered to Rebecca Powell:

1. Complaint with Medical Affidavit;
2. Centennial Hills Hospital records (CHH00001-01166);
3. Rebecca Powell Death Certificate;
4. Affidavit of Death of Rebecca Powell;
5. Clark County Coroner Report of Investigation;
6. Nevada State Board of Nursing Coworker Complaint Report dated June 11, 2017;
7. Letter from DHHS and Complaint Process Fact Sheet to Brian Powell dated May 23, 2017; and
8. Letter and Report from DHHS to Brian Powell dated February 5, 2018;

I am currently director of Western Convalescent Subacute Department, chief of medicine at Miracle Mile Medical Center and currently DOCS surgical hospital, and Medical Director of the Respiratory Department at Southern California Hospital in Culver City, CA. Until recently, I was the director of respiratory therapy at Midway/Olympia Hospital in Los Angeles, CA which shut its doors. I obtained my medical degree from University of Maryland Medical School in 1990. I completed my residency in Internal Medicine at Cedars-Sinai Medical Center in Los Angeles from 1990-1993, followed by a fellowship in pulmonary and critical care medicine at Cedars-Sinai from 1993-1996. I am quadruple boarded in Internal Medicine, Pulmonary Medicine, Sleep Medicine and Geriatrics. I also hold the title of Assistant Clinical Professor of Medicine at the UCLA School of Medicine. A copy of my curriculum vitae outlining my qualifications, educational background and related employment is attached hereto as Exhibit "A".

All the opinions I have formed and express herein are made to a reasonable degree of medical probability.

Rebecca Powell was a 41-year-old female admitted to the hospital with acute respiratory failure due to an apparent drug overdose after being found at home unconscious with labored breathing and vomitus material. Patient was confirmed to have had a prior suicide attempt by her husband, requiring a psychiatric admission. Patient was intubated on arrival to the hospital on May 3, 2017. The initial toxicology screen was negative. She was admitted with an apparent overdose believed to be due to Ambien and Cymbalta. Poison control was notified on admission. Patient was admitted to the ICU where she was also followed by pulmonary and critical care. Infectious disease was also consulted for a diagnosis of aspiration pneumonia. Chest imaging was consistent with bilateral infiltrates. ECG was consistent with sinus tachycardia and a right bundle branch block. Patient was eventually extubated on May 6, 2017. She underwent a bronchoscopy on May 4. Sputum cultures later grew MRSA.

Ms. Powell was subsequently downgraded to floor care. She was showing some improvement on May 10, although chest imaging was notable for bilateral infiltrates and labs for an elevated WBC at 23. She was later seen by Dr. Skankey on May 10 at 1706 and was described as extremely short of breath and was placed on IV Zyvox and Cefepime with repeat cultures ordered. A CT angiogram was as well ordered.

On May 10, at 311PM, Patient was noted to be in bed with complaint of shortness of breath and fatigue, but otherwise no complaint. It was described that camera was on for patient safety, as patient was on a legal hold. On or about 5 PM on May 10, 2017, Ms. Powell was noted to be short of breath and breathing treatments including a stat chest x-ray and arterial blood gas were ordered, by Dr. Shah. The chest x-ray showed no significant new changes with persistence of the bilateral infiltrates. Arterial gas results were performed and were called to the pulmonologist, who documented the findings in his note on May 10.

Patient underwent a rapid response at approximately at 421PM and was placed on 6 liters nasal cannula oxygen. She was seen by the pulmonologist, Dr. Breeden, after the rapid response on May 10, with a note opened at 1715 and electronically signed at 2209, with impression of secretions compatible with aspiration, increased



dyspnea, possibly due to rapid steroid taper. It was recommended to resume q8 steroids, low dose theophylline, and CTA of chest. On exam, patient was noted to have moderate coarse with mid-to-late expiratory wheezes with a regular cardiac exam. Oxygen saturation was 97% on 3 liters of oxygen. No recommendations for a higher level of care were given.

Patient asked for Ativan and was given 0.5mg at 223am on May 11. She had a prior order of Ativan 0.5mg IV push q8 as needed on file, which was last given at 1601 on May 10. She was transported to CT at 230AM, but it could not be completed due to patient's reported shortness of breath and anxiety. Per report, Dr. Concio gave an additional one-time order of .25mg of Ativan which was given at 327AM, which appeared to be somewhat effective. Patient eventually calmed down and her breathing appeared to be less labored at approximately 415AM, per nursing report. At 610AM, she was found sitting in her bed, unresponsive, with the oxygen mask at her feet. The patient underwent a CODE BLUE and was intubated by Dr. Blumberg who was able to suction a thick mucus plug. She was noted to be in asystole and thereafter PEA and eventually expired at 6:57 AM.

Review of the Coroner's investigation confirmed the pathological diagnoses of acute on chronic pneumonia with foreign body giant cells, pulmonary edema and hyaline membrane formation consistent with aspiration pneumonia, with Cymbalta over-medication as a contributing factor. Manner of death was considered suicide.

Rebecca Powell presented to Centennial Hills Hospital Medical center with acute respiratory failure and was critically ill on May 3, 2017. Patient was successfully extubated and was eventually transferred out of the ICU. On May 10, she was noted to have labored breathing at 411PM and a chest Xray and ABG was ordered. She was thereafter seen by Dr. Breeden, the pulmonary specialist, late that evening with a signature time stamp of 2209. Per RT documentation, her oxygen saturation was 92% on 3 liters at 1022PM.

Patient imaging done on May 9, was notable for bilateral diffuse interstitial opacities and on May 10, was repeated and noted to be without change.

Documentation of her oxygen saturation revealed that on May 6, she was requiring up to 70% oxygen with improvement over the following days and again a worsening in oxygenation reported by RT, requiring 15 liters oxygen on May 11 at 447AM.



Based on the above noted review of the Centennial Hills Hospital Medical Center records and the Coroner's investigation, it is evident that Ms. Powell had a significant aspiration event upon arrival to the medical center and was critically ill. This was a direct result of the Cymbalta overdose and what was perceived to be her attempted suicide. She was followed by Infectious Disease, Pulmonary, and the hospitalist team. Although she was noted to have some improvement during her hospital course, she was again noted to have respiratory difficulties on May 10, 2017. She was attended to throughout the night, by nursing, respiratory therapy, a rapid response team, and was seen that evening by Dr. Breeden. She was receiving broad spectrum antibiotics, including Zyvox and Cefepime, as well as Solumedrol IV and Heparin SQ. Based on the record review, she received 0.5mg of Ativan IV at 223am and .25mg at 337AM on May 11 with prior dose of 0.5mg given at 1601 on May 10. No other sedatives or any other medications that would impact sedation were given.

Upon review of the lung pathology, Ms. Powell developed diffuse alveolar damage which is manifested by injury to the alveolar lining and endothelial cell, pulmonary edema, hyaline membrane formation in the acute phase, much of which was found by the Coroner. Features include acute and progressive hypoxia with bilateral pulmonary edema due to alveolar injury, which was seen with Ms. Powell. This severe damage is the most common morphological pattern of adult respiratory distress syndrome (ARDS). Diffuse alveolar damage pattern is often characterized by hyaline membrane disease in the acute phase, which was confirmed by the Coroner.

Based on the above findings, to a reasonable degree of medical probability it is more likely than not that Ms. Powell's death was a consequence of her massive aspiration event from the time of admission, that progressed acutely to diffuse alveolar damage and ARDS, carrying with it a significant mortality. It is also very likely that Ms. Powell had a combined aspiration of acid and gastric contents, which also likely presented with a reversible non-infectious chemical pneumonitis and progressed to diffuse alveolar damage and ARDS.

It is highly unlikely that the total Ativan dose given would have led to any significant respiratory depression, with a sum of .75mg given the morning before her death. Doses much higher are often needed to cause a significant respiratory



deterioration and reduction in mental status. This was clearly not evident with Ms. Powell as she was observed to be awake and comfortable at 447AM on May 11. Had the amount of Ativan been of any significance, it would be expected that she would have been obtunded or at the very least difficult to arouse at 447AM. Contrary to the statement of Plaintiffs' expert, Dr. Hashim, Ms. Powell did not receive any other medications that would lead to sedation and was no longer receiving Midazolam. Acetylcysteine was given in an inhaled form and does not lead to excess sedation. In fact, only Metoclopramide may cause sedation but was written PRN and had not been given for greater than 36 hours prior to her death.

The multiple physicians documented diagnoses of Aspiration Pneumonia, Respiratory Failure, MRSA, suicide attempt, and leukocytosis. All of these diagnoses were very appropriate and correct for Ms. Powell.

Based on the pathology findings, and to a reasonable degree of medical probability, Ms. Powell progressed to diffuse alveolar damage and ARDS and would likely not have survived regardless of any care she received at Centennial Hills Hospital. Appropriate interventions were called in the evening prior to her death, on May 10, and were reported timely. Likewise, she underwent a rapid response and was appropriately attended to and evaluated that evening. She was well covered with IV antibiotics and steroids and was given adequate DVT prophylaxis. Finally, she was seen by Drs. Skankey and Shah and Dr. Breeden, the Pulmonologist assigned, who was fully able to assess her change in condition as he signed off on her note at 2209 on May 10. Ms. Powell was monitored adequately throughout her stay and did not require transfer to the ICU on May 10. Had she been moved to the ICU earlier the morning of May 11, to a reasonable degree of medical probability, her outcome would not have been different based on the coroner's report and diffuse changes noted on lung pathology. Moreover, the Ativan dosing did not in any way contribute to her death as she was noted to be alert over one hour after the final .25mg of Ativan dose was given, which is considered a negligible dose, and the combined total of any remaining, nonmetabolized Ativan in her system at the time of her death would not have suppressed her breathing as plaintiffs have alleged.

In conclusion, I disagree with Dr. Hashim's statement that the Ativan given was in any way contributory to Ms. Powell's death, that a repeat chest Xray would in any



way be of any assistance, as a recent one was done only several hours prior, and that she had been given other drugs which would have led to additional sedation.

I, likewise, disagree with him that Ms. Powell was misdiagnosed with Anxiety. Ms. Powell was clearly diagnosed with respiratory failure and aspiration pneumonia. It is not unusual that a physician may call in small doses of Ativan to help cope with breathing difficulty, which in no way labels the patient as having anxiety but simply helps with her symptoms.

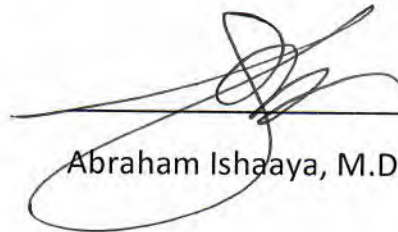
Furthermore, from my review of the entire Centennial Hills Hospital chart for Ms. Powell, there is no problem whatsoever with the hospital documentation. The communication between the hospital staff and the physicians was perfectly acceptable and well within the standard of care. Staff made calls to Dr. Shah between 2:00 a.m. and 2:30 a.m. to report on Mrs. Powell's condition, which was entirely appropriate. Moreover, the nurses followed the instructions of the physicians timely and appropriately. The standard of care requires only that hospital staff notify the physician of the patient's condition and vital signs, which was done here.

To a reasonable degree of medical probability, Rebecca Powell died as described by the Coroner from an aspiration pneumonia that led to acute and diffuse alveolar damage, ARDS, and death. The Ativan dosing was in no way contributory to the event as the airways were clear of any debris, foreign body, or secretions.

Based on my education and practice, the physicians and staff acted within the standard of care and all actions or lack of actions did not in any way contribute to her death. Allegations by plaintiffs of more frequent monitoring by Centennial Hills Hospital, staff and independent physicians is unsupported. Ms. Powell's death stemmed from an acute event which more frequent monitoring or care could not have prevented. Statements made by nursing staff at Centennial Hills Hospital to Department of Health and Human Services personnel do not accurately reflect the standard of care applicable to the care and treatment provided to Ms. Powell and those similarly diagnosed. Her death did not result from any departures from the standard of care by Centennial Hills Hospital or its personnel, nor did any such individuals breach the standard of care as it was applied to Ms. Powell's care and treatment. Her death, while tragic, resulted from the affirmative actions Ms. Powell took pertaining to her drug overdose and suicide attempt, and the

conditions which developed directly therefrom. Moreover, her death was an imminent event which was not predictable. Additionally, Nurse Pawlak's opinion that Ms. Powell could have been dead for up to an hour is medically unsupported. Ms. Powell was in PEA at the time the Code Blue was called. Had she been dead for an hour, there is no way her heart could have been restarted as it had during the Code. No further interventions by Centennial Hills Hospital or its personnel could have prevented this outcome.

Dated: MAY 19, 2021

  
Abraham Ishaaya, M.D.



# **Exhibit I**

# **Exhibit I**



## CURRICULUM VITAE

***Richard Lewis Ruffalo, M.D., Pharm.D., M.A., F.A.C.C.P.***

*Diplomat, American Board of Anesthesiology*

*Fellow, American College of Clinical Pharmacology*

*Assistant Clinical Professor Anesthesiology, UCLA School of Medicine*

*Past Chairman, Department of Anesthesiology, Hoag Memorial Hospital, Past  
Chairman, Pharmacy & Therapeutics Committee 1996-2008 and current Vice Chairman*

Date of Birth:	October 9, 1949
Place of Birth:	Glendale, California
Mailing Address:	11 Sea Shell Newport Coast, California 92657
Telephone Numbers:	(949) 400-7310 (cell) (949) 640-0624 (home)
Fax Number:	(949) 675-0525
Email:	richard@ruffaloassociates.com

### EDUCATIONAL BACKGROUND:

#### Under Graduate

University of California at Los Angeles (UCLA)	1967 - 1971 (BA - Zoology)
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#### 1. Post Graduate

University of California at Los Angeles (UCLA)	1971 - 1972 (MA - Molecular Biology)
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University of Southern California, School of Pharmaceutical Sciences	1973 - 1977 (Pharm.D. - Doctor of Pharmacy)
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University of Southern California/ Los Angeles County/USC Medical Center	1977 - 1978 (Post-Doctoral Residency - Clinical Pharmacology and Clinical Pharmacy)
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### Medical School

George Washington University School of Medicine and Health Sciences-Washington, D.C.	1983 - 1987 (M.D. - Doctor of Medicine with Distinction)
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### Post M.D. Residency Training

Washington Hospital Center/George Washington University School of Medicine, Washington, D.C.	1987 - 1988 (Internal Medicine Internship)
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Post M.D. Residency Training University of California at Los Angeles (UCLA) School of Medicine-Department of Anesthesiology	1988 - 1991 (Anesthesiology Residency)
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Board Certification: American Board of Anesthesiology	1992
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Board Recertification: American Board of Anesthesiology	2009
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Advanced Cardiac Life Support Recertification – continuously through	2015
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### Institution/Faculty Appointments

Assistant Clinical Professor of Anesthesiology, David Geffen School of Medicine, University of California, Los Angeles	1991 - Present
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Chairman, Department of Anesthesiology, Hoag Memorial Hospital, Newport Beach, CA	1994 - 1996
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Chairman, Pharmacy and Therapeutics Committee Hoag Memorial Hospital, Newport Beach, CA	1996 - 2008
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Vice-Chairman, Pharmacy and Therapeutics Committee, Hoag Memorial Hospital, Newport Beach, CA	2008 - Present
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Member, Medical Executive Committee Hoag Memorial Hospital, Newport Beach, CA	1994 - 1996
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Member of the Medical Staff, Hoag Memorial Hospitals Health Care Systems	1991 - Present
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Clinical Instructor/Lecturer, George Washington University, School of Medicine, Washington D.C.	1984 - 1988
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Assistant Professor of Family Medicine, Loma Linda University School of Medicine, Loma Linda, CA	1980 - 1984
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Visiting Professor in Clinical Pharmacology, Al Hada Hospital, Taif, Kingdom of Saudi Arabia	1982
Instructor-Advanced Cardiac Life Support (ACLS)	1980 - 1984
Assistant Clinical Professor of Clinical Pharmacy and Clinical Pharmacology USC School of Pharmaceutical Sciences	1988 - 1990
Research Associate USC School of Pharmaceutical Sciences	1980 - 1983
Assistant Clinical Professor of Clinical Pharmacy and Clinical Pharmacology USC School of Pharmaceutical Sciences	1978 - 1980
Clinical Instructor USC School of Pharmaceutical Sciences	1977 - 1978
Graduate Teaching Assistant, Department of Molecular Biology (UCLA)	1971 - 1972
<u>Faculty-Research</u>	
Co-Investigator Department of Cardiology George Washington University School of Medicine	1986 - 1988
Co-Investigator Department of Infectious Diseases George Washington University School of Medicine	1984 - 1986
Co-Investigator-NIH/NCHSR Research Grant #1-R-18-0398-01 Drug Prescribing and Evaluation by Clinical Pharmacists in the Long Term Care Patient". USC School of Pharmaceutical Sciences	1980 - 1984
Research Associate, Hyland Laboratories, Division of Travenol Laboratories, Inc., Los Angeles, CA	1972 - 1976
NIH Research Fellow in Molecular Biology Department of Molecular Biology/Parasitology, University of California at Los Angeles (UCLA)	1971 - 1972

#### HONORS. AWARDS AND FELLOWSHIPS

##### Medical - Post Graduate

Diplomat, American Board of Anesthesiology.	1992
American Board of Anesthesiology Board Recertified	2009

### Medical - Post Graduate

Fellow, American College of Clinical Pharmacology	1987 - present
ALPHA OMEGA ALPHA, National Medical Honor Society awarded at George Washington University School of Medicine	1986 - present
Doctor of Medicine (M.D.) with Distinction (Suma Cum Laude) George Washington University School of Medicine	1987
Merck Manual Award for Academic Excellence George Washington University School of Medicine	1987
1st Place-Edward A. O'Rorke Manuscript Competition in Clinical Pharmacology Sponsored by <u>Cardiovascular Reviews &amp; Reports</u>	1985
National Pharmacology Essay Award-1st Place The Boehringer Ingelheim Centennial Award	1985
Lederle Pharmaceuticals Research Award for Young Investigators	1984

### Graduate

NJH/NCHSR Research Grant #1-R-18-0398-01 to study physicians and clinical pharmacists prescribing for the long term care patient	1980 - 1984
RHO CHI National Honor Society Fraternity in Pharmacy	1977
NIH Research Fellowship in Molecular Biology UCLA Department of Molecular Biology	1971 - 1972
UCLA Department of Parasitology & Molecular Biology Research Fellowship	1971 - 1972

### Undergraduate

UCLA College of Letters and Sciences Dean's Honor List	1969 - 1971
UCLA Department of Zoology Senior Honor's Research Traineeship	1970 - 1971

## MEMBERSHIPS AND PROFESSIONAL AFFILIATIONS

1. Diplomate, American Board of Anesthesiology, 1992, Board Recertified 2009
2. ALPHA OMEGA ALPHA, Medical Honor Society
3. Fellow: American College of Clinical Pharmacology
4. American Society of Anesthesiologists
5. California Society of Anesthesiologists
6. American Medical Association
7. California Medical Association
8. Society of Teachers of Family Medicine
9. American College of Clinical Pharmacy
10. Expert Reviewer, Medical Board of California

## PUBLICATIONS

1. Ruffalo RL, Master's Thesis: Design and Isolation of Kinetoplast RNA from Trypanosomes. UCLA, Dec 1972.
2. Ruffalo R, Namikas E, Thompson J, Pharmacotherapy Evaluation Service: An Innovative Approach to Better and More Cost Effective Care for Patients in the Long Term Care Facility. California Pharmacist, June 1978, Editorial.
3. Ruffalo R, Kalb I, Timolol A review of its Pharmacology and Therapeutics in Glaucoma, Drug Information Bulletin, 1979:3 : (3) pp 2-4. Brotman Memorial Medical Center, Culver City, California.
4. Price A, Ruffalo RL, Glaucoma: An Update, California Pharmacist, 1980: 28 pp 40-52.
5. Ruffalo RL, Thompson JF, Effect of Cimetidine on the Clearance of Benzodiazepines. NEJM 1980:303 pp753-54.
6. Ruffalo RL, Thompson JE, Segal J, Cimetidine-Benzodiazepine Drug Interaction. AJHP 1981:28 pp 1365-66.
7. Ruffalo RL, Thompson JF, Segal J, Diazepam-Cimetidine Drug Interaction: A Clinically Significant Effect. So Med J 1981:74 pp 1075-78.
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9. Ruffalo RL, Thompson JF, More on Cimetidine-Benzodiazepine Drug Interactions. So Med J 1982:75 pp382.
10. Ruffalo RL, Thompson JF, Use of Cimetidine and Acetylcysteine as Combined Antidotal Therapy in the Treatment of Acetaminophen Overdose. So Med J 1982:75(8) pp 954-58.
11. Ruffalo RL, Brummel-Smith K, Evaluation of Family Practice Residents' Skills in Clinical Pharmacology and Rational Therapeutics: A Novel Method of Dealing With an Old Problem. Abstract. Proceedings from 15th Annual Spring Conference, Chicago, Illinois. The Society of Teachers of Family Medicine. May 1982.
12. Thompson JF, Ruffalo RL, Nursing Home Care Improved by Physician/Pharmacist Teamwork. Am Pharm 1983:NS 23 pp 16-17.

13. Ruffalo RL, Thompson JF. Cimetidine and Acetylcysteine as an Antidote for Acetaminophen Overdose. In: Wagner D. (ed.) Year Book of Emergency Medicine 1984.
14. Ruffalo RL, Garabedian-Ruffalo SM. Penicillin G for Anaerobic Lung Abscess. Ann Int Med 1983; 99(1) pp 125-6.
15. Thompson JF, Mc Ghan WF, Ruffalo RL, et al. Clinical Pharmacists Prescribing Drug Therapy in a Geriatric Setting: Outcome of a Trial. J Am Ger Soc 1984; 32(2) pp 154-9.
16. Garabedian-Ruffalo SM, Gray DL, Sax M, Ruffalo RL. A Retrospective Evaluation of a Clinical Pharmacist Managed Anticoagulation Clinic: Effect on Prothrombin Time Monitoring and Hospitalizations. AJHP 1985;42(2) pp 304-8.
17. Garabedian-Ruffalo SM, Ruffalo RL. Adverse Effects Secondary to Baclofen Withdrawal. Drug Intel & Clin Pharm 1985;19(4) pp 304-6.
18. Ruffalo RL, Garabedian-Ruffalo SM, Pawlson LG, Patient Compliance: The Major Impedance to Successful Medical Therapy. Am Fam Phys 1985;31(6) pp 93-100.
19. Garabedian-Ruffalo SM, Ruffalo RL, Morrison P, Polis M. Augmentin. Drug Information Bulletin. George Washington University Medical Center. 1985; 10(1) pp 1-4.
20. Garabedian-Ruffalo SM, Ruffalo RL. Drug and Nutrient Interactions. Am Fam Phys. 1986; 33(2)165-76.
21. Ruffalo RL, Garabedian-Ruffalo SM, Garrett BL. A Rational Therapeutic Approach to the Treatment of Essential Hypertension. Part I. Cardiovascular Reviews & Reports. 1986; 7(8): 692-700.
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24. Garabedian-Ruffalo SM, Ruffalo RL. Nutritional Influence on Drug Therapies. Am J Cont Ed Nurse 1987;2(1-3):28-36.
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27. Levy WS, Katz RJ, Ruffalo RL et al. Methionine Potentiates The Vasodilatory Effects of Nitroglycerin. Am Col Cardiol (Abstract)37th Annual Scientific Session 1988.
28. Garabedian-Ruffalo SM, Ruffalo RL. Drug-Induced Jaundice: An Uncommon But Puzzling Reaction. Postgrad Med 1988;84(5): 205-16.
29. Ruffalo RL, Aspiration Pneumonitis: Risk Factors and Management of the Critically Ill Patient. DICP, The Annals of Pharmacotherapy, 1990; November; 24: S12-S16.
30. Ruffalo RL, Jackson RL, Ofman JJ. The impact of NSAID selection on gastrointestinal injury and risk for cardiovascular events: Identifying and treating patients at risk. P & T 2002; 27(11):570-577.

## PRESENTATIONS

Numerous lecture presentations made to audiences consisting of Physicians, Pharmacists, Nurses and other administrative and Allied Health Professionals in the following medical and Pharmacologic Areas:

### Geriatrics

Treatment and Management of Glaucoma  
Geriatric Pharmacology and Therapeutics  
Use of Psychotherapeutic Agents in the Elderly  
Drug-Induced Mental Status Changes in the Elderly  
Post-Operative Delirium in the Elderly  
Multimodal pain management in the Elderly  
Multimodal analgesia in the Elderly  
Multimodal antiemetic therapy in the Elderly  
Sedative Hypnotics and Conscious Sedation in the Elderly

### Pharmacokinetics

Clinical Pharmacokinetics for the Physician  
Clinical Pharmacokinetics for the Pharmacists  
Pharmacokinetic and Pharmacodynamic considerations and Drug-Drug interactions and the Cytochrome P450 Enzyme System

### Intensive Care Medicine

Drug Use in the Intensive Care Patient  
ICU Psychosis and Delirium and drugs  
Aspiration Pneumonitis-Prevention and Management  
Emergency Airway Management

### Cardiology

Pharmacologic Management of Hypertension  
Pharmacologic Management of Arrhythmias  
Perioperative diagnosis and of Hypertension “White Coat Syndrome”  
Anxiety and Pain induced cardiovascular complications

### Infectious Disease

Antibiotic Prophylaxis in the Neutropenic Patient  
Treatment of Periorbital & Orbital Cellulitis  
Treatment of Aspiration Pneumonia  
Treatment of Atypical Pneumonia  
Treatment of Pelvic Inflammatory Disease  
Drug induced Skin and Mucus membrane diseases (SJS/TENS, Linear IgA Bullous Dermatitis, Vasculitis, etc.)

### Oncology

Pharmacology & Therapeutics in the Cancer Patient  
Drug-Induced Neutropenia in the Oncology Patient

## Clinical Pharmacology

Multi-Modal analgesia and anesthesia  
Anti-Emetic multimodal drug management  
Clinical Pharmacology of Drug and Food Interactions  
Clinical Pharmacology of Drug Herbal interaction and toxicology  
Adverse Drug Reactions & Interactions  
H2 Antagonists and Benzodiazepine Interactions  
Identification and Management of Adverse Drug Reactions  
Drug-Drug Interactions and Pharmacogenomics of the Cytochrome P450 Enzyme System

## Pulmonary

Treatment of Asthma and Status Asthmaticus and COPD  
Emergency management of the Difficult Airway in the Emergency Department and the ICU settings

## Neurology

Assessment and Treatment of Parkinson's Disease  
Perioperative management of Epilepsy and acute onset Seizures  
Anticonvulsants and SJS/TENS and Acute Hepatitis

## OB/GYN

Thromboembolic Disorders Secondary to Estrogens  
Treatment of Primary Dysmenorrhea  
Diagnosis and treatment of Amniotic Fluid Embolism  
Anti-Emetic treatment in Laboring Patients  
Post C-Section treatment of Nausea

## Emergency Medicine/Toxicology

Treatment of Drug(s) Overdose  
Treatment of Acetaminophen Overdose  
Treatment of Tricyclic Antidepressant Overdose  
Treatment of Calcium Channel Blocker Overdose  
Diagnosis and treatment of SSRI induced Serotonin Syndrome

## Anesthesiology

Management of the Difficult Airway  
Multi Modal treatment of Peri-Operative Pain  
Multi Modal treatment of Post-Operative Pain  
Multi Modal Anti-Emetic Prophylaxis  
Conscious Sedation management and Monitoring

**Exhibit J**

**Exhibit J**



Fee Schedule for Richard L. Ruffalo, M.D., Pharm.D., M.A.

My Fee Schedule is as follows:

\$600.00/hour for record and deposition review, meetings, medical and/or pharmacology literature search and/or review, phone conferences, travel time, writing and review of motions, reports, opinions, etc.

\$1,000.00/hour with a two hour minimum and four day cancellation notice, to take my expert deposition testimony locally in the Newport Beach, Ca. area. Travel time to anywhere else is at \$600.00/hour, (excluding any other expenses, eg. airline flights, hotels, meals, etc.).

\$5,000.00/day (for any part of a day), for my appearance at trial or arbitration in Orange County, California. Appearing anywhere outside of Orange County, California, will include travel time at \$600.00/hour, not to exceed \$5,000.00/day, (excluding any other expenses, eg., airline flights, hotels, meals, etc.).

Please be advised of the following agreement:

Upon the closing, dismissal, settlement, etc., of any case in which I have been retained and not informed that my services are no longer required within 30 days of these issues and therefore have continued to retain the case as "open" in my files for which I have not yet billed for services rendered, your firm/company and or responsible agent will be responsible for payment in full.

Firm/Company and responsible agent agreement and date:

\_\_\_\_\_ date \_\_\_\_\_

Richard L. Ruffalo, M.D. date:

\_\_\_\_\_ date \_\_\_\_\_

**Exhibit K**

**Exhibit K**

June 14, 2021

Adam Garth, Esq.  
Lewis Brisbois  
6385 South Rainbow Blvd., Suite 600  
Las Vegas, Nevada 89118

Re: Estate of Rebecca Powell vs. Valley Health System, LLC (dba) Centennial Hills Hospital Medical Center

Dear Mr. Garth,

At your request I have reviewed the following documents:

1. Rebecca Powell's Centennial Hills Hospital records CHH00001-01166;
2. Ms. Powell's autopsy report;
3. Toxicology report of the decedent Rebecca Powell from Centennial Hills Medical Center;
4. Plaintiffs' Complaint and associated medical affidavit of Sami Hashim, MD regarding his assertion that the "administering the drug (Ativan) several times IV-Push in a respiratory compromised patient, inclusively & directly led to the patient's wrongful death."

I utilized these records and reports to facilitate my analysis whether it was appropriate to use and titrate of small doses of lorazepam (Ativan) in order to alleviate Ms. Powell's continuing anxiety, over approximately 31-33 hours prior to her death.

As you know, my background is not only as a physician but also as a clinical pharmacologist and an assistant clinical professor of anesthesiology and critical care at the David Geffen/UCLA School of Medicine. I am a physician licensed to practice medicine in California. As listed in my curriculum vitae (Exhibit 1), I have been an assistant clinical professor of anesthesiology at the David Geffen/UCLA School of Medicine continuously since 1991. In addition, I have in the past, also been an assistant clinical professor of Family Practice Medicine at Loma Linda University School of Medicine and an assistant clinical professor of Clinical Pharmacy and Clinical Pharmacology at the USC School of Pharmaceutical Sciences. I am board Certified in Anesthesiology and am a Fellow of the American College of Clinical Pharmacology. I obtained my M.D. degree in 1988 and my PharmD. in 1977. My clinical and academic practice is in anesthesiology, critical care and clinical pharmacology. As a clinical pharmacologist, I am called upon to evaluate patients regarding diverse medical and pharmacologic and toxicologic problems in various hospital settings (e.g., ED, ICUs, Med/Surg., Psych., etc.). I have been qualified as an expert witness in the states of California, Nevada, Alaska, Hawaii, Maryland, and Arizona. I have also been qualified as an expert witness in Federal Court. I have served as a consultant and expert for the California Medical Board. I have also served as an expert for the office of the U.S. Attorney in various states. I have also trained medical residents and fellows and personally cared for patients such as Ms. Powell having the same or similar circumstances and utilized lorazepam to treat anxiety to minimize anxiety and agitation driven tachypnea/hyperventilation issues to decrease the work of breathing and allow patients to tolerate face masks and/or CPAP and BiPAP oxygenation and therefore minimize the need for intubation and mechanical ventilation. My opinions contained herein are made to a reasonable degree of medical based upon my knowledge, experience and training.

Based upon the medical records Ms. Powell was admitted to Centennial Hills Medical Center Emergency Department at 03:27. May 3, 2017, due to an overdose of Benadryl, Cymbalta and Ambien and possibly ETOH according to the EMS report. The ED physician's diagnoses were respiratory failure, low BP, sinus tachycardia and acidosis. The patient was then intubated and mechanically ventilated and admitted to the ICU. In order to minimize the stress, agitation and pain and gaging when mechanically intubated and ventilated Ms. Powell was titrated and started on continuous infusions of the anesthetic drug propofol and the sedative/hypnotic drug midazolam. Both propofol and midazolam are very potent GABA(a) agonists that bind to the GABA(a) receptors in the central nervous system (e.g., the brain and spinal cord). Depending on the dose and potency, GABA(a) agonists induce sedation, decrease agitation, create amnesia, analgesia and decrease respiratory drive and the stress responses of elevated heart rate and hypertension. Lorazepam (Ativan) and Ambien (zolpidem) are less potent GABA(a) agonists and are given at much smaller doses primarily to decrease anxiety and create minimal to very mild sedation and have a minimal effect on respiratory drive. When a moderate single dose of lorazepam 2 mg is given to drug naïve patients it results in a minimal to mild decrease respiratory function. The effects of respiratory depression of both lorazepam and zolpidem even in significantly large overdoses that result in deep sedation rarely require the need for supplemental oxygen. More importantly, patients who take chronic doses of lorazepam and zolpidem will develop tolerance within 1-2 weeks, especially to the sedative and respiratory depressant effects. This tolerance to the sedative and respiratory effect of lorazepam (and other benzodiazepines; alprazolam, diazepam, temazepam, flurazepam, oxazepam, etc.) engendered the FDA to state that lorazepam and other benzodiazepines to not be used to treat insomnia for more than two weeks due to tolerance and possible addiction.

Of major importance, Ms. Powell's post-mortem toxicology report only noted duloxetine (Cymbalta) present and no other medications due to not having enough blood to analyze. However, it must be noted that there were empty bottles recently filled of both duloxetine and zolpidem. Therefore, one cannot state that Ms. Powell did not also have both Ambien and Benadryl in her blood at the time of admission and it is likely that she did in fact overdose on Ambien and Benadryl as well.

Significantly, Ambien was prescribed to Ms. Powell and that she most likely was not only taking it for insomnia and possibly anxiety as well, but that Ambien (zolpidem) is a GABA(a) agonist, similar to other GABA(a) agonists: Ativan (lorazepam), propofol and midazolam by binding to the GABA(a) receptors in the central nervous system. It is also likely that her chronic use of Ambien would lead to tolerance to its GABA(a) agonist effects. Small doses of GABA(a) agonists will lead to tolerance within one to two weeks. It has even been demonstrated the drug naïve subjects given a single average dose of a GABA(a) agonist will lead to a mild acute tolerance in a dose and potency manner due to rapid down regulation of GABA(a) receptors. However, it is well known that large doses of much more potent GABA(a) agonists propofol and midazolam while in the ICU would also cause very significant rapid tolerance within less than a week due to the downregulation and a decrease the number of cell membrane GABA(a) receptors. When either propofol or midazolam is discontinued, patients commonly have mild to moderate "withdrawal" affects within a couple of days, such as having difficulty sleeping, anxiety and sometimes jitteriness and agitation and need to continue low doses of a GABA(a) agonist most often lorazepam, to control these withdrawal side effects. However, when both propofol and midazolam are given together in the ICU it is very common that patients will have even more tolerance and side effects from tolerance/withdrawal of these potent GABA(a) agonists. With low doses of GABA(a) agonists the tolerance will dissipate within a one to two weeks. With larger doses and more potent GABA(a) agonists it can take from two to three weeks or more to dissipate.



Considering that the last doses of both propofol and midazolam were stopped about 3 ½ days prior to the patient developing moderate anxiety and mild respiratory problems on the afternoon of May 9, 2017. Of note, the half life of midazolam is normally 3 to 5 hours [with a single dose] but will be up to 6 to 8 hours [with continuous infusions over a few days especially when it is given simultaneously with propofol which inhibits the metabolism of midazolam]. The definition of a drug's half-life is the time it takes for a drug to be metabolized or excreted by 50%. Therefore, if a drug's half life is 8 hours, 50% is eliminated; in another 8 hours another 50% of the original 50% is eliminated which is 25%; during the next 8 hours only half of the 25% remains = 12.5%, next 8 hours 6.25% remains, next 8 hours 3.125% remains; the next 8 hours only 1.75 remains. Based upon the study of pharmacokinetics and metabolism, after 6 half-lives less than 1 % of a drug would remain. Therefore, if we assume that midazolam has an 8-hour half-life then after 6 half-lives = about 48 hours or two days less than 1% of midazolam remains.

Propofol's half-life is only 1.5 to 4 hours after a single dose. However, the longer and greater the amount of propofol that is infused the longer the metabolic half-life. Studies have demonstrated that after a ten-day infusion, the half-life is between 24 to 72 hours versus shorter infusion times of 3 to 5 days the half-life is between 12 to 18 hours. Therefore, after 3 ½ days of a propofol infusion, and using a half-life of 12 hours then after 6 half-lives = 72 hours, less than 1% of propofol remains in the body.

Based upon Ms. Powell's overdose of Cymbalta (duloxetine) the ante-mortem blood that was drawn in the hospital on 5/05/2017 at 04:00 AM versus her admission date of 5/03/2017 about 03:00 AM was found by EMS at about 02:30 AM, about 48 hours after her multidrug overdose. Ms. Powell's duloxetine blood level was 200 ng/ml (which is the same as 0.2 mg/L) which is more than 10 times greater than therapeutic blood levels of 0.023 mg/L – 0.08 mg/L. The half-life of duloxetine between 8-17 hours and using an average of 12 hours means that after 6 half-lives = 72 hours less than 1% of duloxetine remains in the body. Ms. Powell's psychiatric history is that of depression/anxiety and insomnia. Duloxetine is a SNRI anti-depressant meaning that it binds both the serotonin and norepinephrine reuptake receptors which allows it to better treat both depression and anxiety than SSRIs. Unfortunately, when there is an abrupt discontinuation of duloxetine there will be an abrupt return of depression, anxiety, agitation and insomnia which is termed antidepressant "withdrawal." Therefore, between 5/05/2017 and 5/09/2017 Ms. Powell is having anxiety, which required the physicians' order of the first dose of lorazepam 0.5 mg that was given 16:09 PM and to be repeated every 8 hours as needed.

What is also important is that it took two days or less for both the propofol and midazolam to be clinically insignificant. It is now that the rapid onset of tolerance/withdrawal effects will begin to manifest. Thus, the very next day in the afternoon of May 9, 2017, Ms. Powell begins to develop anxiety similar to the above withdrawal of duloxetine and therefore the need to treat anxiety with 0.5 mg of lorazepam. This was followed with another dose of lorazepam 0.5 mg IV push at 00:28 (28 minutes after midnight on 5/10/2017).

At 15:15 in the afternoon of 5/10/2017, Ms. Powell's partial vital signs were as follows: Oxygen saturation of 97% on only 3 liters/min of oxygen by nasal cannula, which is about only 25-26% oxygen (versus room air oxygen at 20.5% oxygen), her respiratory rate was 18 (which is normal), and heart rate of 95/min. which is normal especially in a patient with anxiety. At 16:01 5/10/2017, a third dose of lorazepam 0.5 mg IV push was given in the afternoon to treat anxiety. Based upon the minimal amount of supplemental oxygen and an oxygen saturation of 97% and respiratory rate of 18, it becomes clear that Ms. Powell developed tolerance/withdrawal induced anxiety and is not displaying any clinically

significant sign of hypoxia or respiratory decompensation or distress. It is important to note that when lorazepam is given IV push the peak effects in the brain occur within about 5 minutes. Approximately 25 minutes after the third 0.5 mg of IV push lorazepam and its peak effects, Ms. Powell's ABG (arterial blood gas) drawn at 16:32 5/09/2017, showed the following: pH 7.37, PaCO<sub>2</sub> 30.2 mm/hg, Pao<sub>2</sub> of 89 mm/hg, HCO<sub>3</sub> 17.4, O<sub>2</sub> SAT of 97% on 3 liters/min of oxygen. These above levels demonstrate that there was no lorazepam induced hypoxia, and only mild metabolic acidosis and very mild hypocarbia due to her anxiety and possibly to offset the mild metabolic acidosis. Furthermore, there was no tachypnea (increased respiratory rate) at this time.

However, there was a respiratory therapist progress note at the same time of 16:32 on 5/10/2017, as the above ABG. The note stated that the patient (Ms. Powell) went to get a chest CT – but became SOB (short of breath) during radiology with the rapid response team called and noted a heart rate of 115/min., respiratory rate of 28/min. However, the above ABG results only demonstrate mild metabolic acidosis (lactic acidosis likely due to her increased anxiety and work of breathing) and hypocarbia with a possible uncharted increased respiratory rate. It is very likely that the combined acute withdrawal of duloxetine and propofol and midazolam led to what one might surmise that Ms. Powell was frightened by being put into the CT Scanner and became very anxious and agitated with hyperventilation and calmed down when taken back to her room as the partial vital signs taken the following times: 19:19 heart rate 95/min. and respiratory rate 17/min; at 19:47 and 19:54 heart rate 99/min and respiratory rate 16/min; at BP 142/77, heart rate 95/min., respiratory rate of 18. The nursing note by Michael Pawlak RN, indicate that the "Pt complained of SOB during any movement between bed and bedside commode from the beginning of shift at 19:00. RT responded to requests to assess and perform breathing treatment (PRN per MAR), and pt indicated some relief from treatments."

The next partial set of vital signs were taken at 23:51, 5/10/2017: heart rate 102 (mild tachycardia), which was followed at 00:10 5/11/2017: heart rate 101/min, O<sub>2</sub> sat 95% on 3 liters/minute of oxygen, respiratory rate of only 20/minute. These vital signs are indicative of no more than mildly- moderate respiratory decompensation as well as the of withdrawal effects from duloxetine, propofol and midazolam. Therefore, the treatment in patients with mildly-moderate respiratory decompensation with concurrent anxiety supports the need for low doses of lorazepam to minimize Ms. Powell's anxiety and decrease her work of breathing and fatigue. Unfortunately, due to Ms. Powell's long-term use of Ambien (zolpidem) and duloxetine and recent use of large doses of propofol and midazolam Ms. Powell was very tolerant to the effects of lorazepam. Each of the three 0.5 mg doses of lorazepam were of a mild benefit to treat her anxiety without any significant respiratory depression. Therefore, the combined prior three doses of lorazepam also had minimal effects upon her respiratory function.

Nurse Powlak continued: "However, pt continued to state some SOB was present, and a stat CT Angio Chest was ordered at 02:00. Pt asked for Ativan (PRN per MAR, 0.5 mg), given at 02:20. Pt was transported to CT at approx. 02:30. At approx. 02:40, CT called to state that the pt was returning to the room (&) and the CT could not completed (sic) due to pt's complaints of SOB and anxiety. The charge nurse (Karen) was asked to assist in assessing the pt, and she attended the pt at the bedside. The pt stated she felt short of breath and that the Ativan she received was not effective. A page was made to Dr. Concio shortly afterward to discuss the pt's complaints. He returned the call, which was taken by Karen. A one-time additional dose of (Ativan 0.25 mg) was approved by Dr. Concio and administered by Karen at 0327. It appeared to be somewhat effective in calming the pt. RT was again called to assess the pt, and the RT tech (Venessa) indicated that the pt was not cooperating with the respiratory assessment and treatment, removing the mask repeatedly. Vanessa also stated that the pt needed to be monitored by a "sitter."

Even after the above four 0.5 mg doses of lorazepam Ms. Powell remained significantly agitated and anxious and that in order to try to allow her to tolerate the mask on her face the last a small 0.25 mg dose of Ativan (lorazepam) was indicated.

Similar to the above note by nurse Pawlak, a nursing note by Karen Valdez, RN on 5/11/2013 3:15 PDT: "Into see patient with Primary RN, Michael P. Patient is very anxious, states she is having hard time breathing. Respiratory notified and will come up. Paged Dr. Concio for additional dose of Ativan to help patient relax. Order received for Ativan 0.25 mg IVP one. Patient medicated per orders. Vanessa, RT, states patient keeps pulling her oxygen off and need to be monitored closely.

Nurse Pawlak nursing note also stated: "From approx. midnight, the pt repeatedly stated "I can't do this anymore," and that "it isn't worth it." However, she did eventually calm down, and her breathing appeared less labored (approx. 0415). At approx. 0610 the pt was found sitting in her bed, unresponsive, with the oxygen mask at her feet."

Overall, it should be noted that 40 minutes after the last small 0.25 mg dose of lorazepam given 03:27 Ms. Powell's blood and brain levels had already peaked at 03:35 and she eventually calmed down and her breathing appeared less labored at (approx 0415). Despite the combined doses and of the blood levels of lorazepam, Ms. Powell continued to be anxious and agitated and continued pulling off her oxygen mask and was found dead two hours later. Therefore, I can state with a reasonable degree of medical certainty that the multiple doses of lorazepam were not contributory to Ms. Powell's death.

A handwritten signature in blue ink, appearing to read "Richard Ruffalo", with a stylized flourish at the end.

Richard Ruffalo, MD, PharmD, FACC

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*Attorneys for Defendant Valley Health System,*  
7 *LLC dba Centennial Hills Hospital Medical*  
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8  
9 DISTRICT COURT

10 CLARK COUNTY, NEVADA

11 ESTATE OF REBECCA POWELL, through  
BRIAN POWELL, as Special Administrator;  
12 DARCI CREECY, individually and as Heir;  
TARYN CREECY, individually and as an  
Heir; ISAIAH KHOSROF, individually and as  
13 an Heir; LLOYD CREECY, individually,;

14 Plaintiffs,

15 vs.

16 VALLEY HEALTH SYSTEM, LLC (doing  
business as "Centennial Hills Hospital Medical  
17 Center"), a foreign limited liability company;  
UNIVERSAL HEALTH SERVICES, INC., a  
18 foreign corporation; DR. DIONICE S.  
JULIANO, M.D., an individual; DR.  
19 CONRADO C.D. CONCIO, M.D., an  
individual; DR. VISHAL S. SHAH, M.D., an  
20 individual; DOES 1-10; and ROES A-Z,;

21 Defendants.  
22

Case No. A-19-788787-C  
Dept. No. 30

**DEFENDANT CENTENNIAL HILLS  
HOSPITAL MEDICAL CENTER'S  
REBUTTAL EXPERT DISCLOSURE**

23 Defendant Valley Health System, LLC dba Centennial Hills Hospital Medical Center, by  
24 and through their attorneys of record, S. Brent Vogel, Esq. and Adam Garth, Esq. of Lewis Brisbois  
25 Bisgaard & Smith, LLP, hereby submits their Rebuttal Designation of Expert Witnesses and  
26 Reports, pursuant to NRCP 16.1 as follows:  
27  
28



1           1.       Hiren Shah, M.D.  
2                   2730 North Dayton Street  
3                   Chicago, Illinois 60614

4           Dr. Hiren Shah is a retained expert witness who is expected to offer his expert opinions as  
5 to Rebecca Powell's (herein after referred to as "Decedent") alleged medical conditions resulting  
6 from the incident(s) and action(s) which are the subject of Plaintiffs' Complaint. Dr. Shah is  
7 expected to testify, *inter alia*, that the care and treatment provided to Rebecca Powell was within  
8 the applicable standard of care, consistent with his Report, and will further testify the acts of  
9 Centennial Hills Hospital Medical Center did not cause the damages alleged by Plaintiffs. Dr.  
10 Shah is also expected to provide opinions regarding the facts in this case as they relate to his  
11 medical specialties, which may include but are not limited to rebuttal testimony. Dr. Shah  
12 reserves the right to supplement and/or revise his Report as new information is provided.  
13 Additionally, Dr. Shah is expected to give rebuttal opinions response to other witnesses or experts  
14 designated in this matter. He reserves his right to supplement and/or revise his report as new  
15 information is provided.

16           Dr. Shah is certified by the American Board of Internal Medicine since 1999. Dr. Shah's  
17 CV, fee schedule, and testimony list were previously disclosed in Defendant's Initial Expert  
18 Disclosure. **Exhibit A** hereto is Dr. Shah's rebuttal expert report.

19           2.       Abraham M. Ishaaya, M.D., F.C.C.P., F.A.A.S.M., F.A.C.G.S., M.A.C.G.S.  
20                   5901 West Olympic Boulevard, Suite 200  
21                   Los Angeles, CA 90036

22           Dr. Abraham Ishaaya is a retained expert witness and is expected to testify regarding his  
23 understanding of the facts and circumstances surrounding the subject complaint, standard of care,  
24 causation, medical treatment, prognosis, and costs of medical expenses. Dr. Ishaaya has been  
25 board certified by the American Board of Internal Medicine, Pulmonary Medicine, Sleep  
26 Medicine, and Geriatrics. Dr. Ishaaya's CV, fee schedule, and testimony list were previously  
27 disclosed in Defendant's Initial Expert Disclosure. **Exhibit B** hereto is Dr. Ishaaya's rebuttal  
28 expert report.

          Dr. Ishaaya is expected to testify, *inter alia*, that the care and treatment provided to  
Rebecca Powell by Centennial Hills Hospital Medical Center was within the applicable standard

1 of care, consistent with his Report, and will further testify the acts of Centennial Hills Hospital  
2 Medical Center did not cause the damages alleged by Plaintiffs. Dr. Ishaaya is also expected to  
3 provide opinions regarding the facts in this case as they relate to his medical specialties, which  
4 may include but are not limited to rebuttal testimony. Dr. Abraham Ishaaya reserves the right to  
5 supplement and/or revise his Report as new information is provided.  
6

7 3. Richard Ruffalo, M.D., Pharm.D., M.A., F.A.C.C.P.  
8 11 Sea Shell  
9 Newport Coast, California 92657

10 Richard Ruffalo, M.D. is a retained expert witness and is expected to testify regarding his  
11 understanding of the facts and circumstances surrounding the subject complaint, standard of care,  
12 causation, medical treatment, prognosis, and pharmacology. Dr. Ruffalo has been a member of  
13 Alpha Omega Alpha, National Medical Honor Society since 1986. Dr. Ruffalo's CV, fee schedule,  
14 and testimony list were previously disclosed in Defendant's Initial Expert Disclosure. **Exhibit C**  
15 hereto is Dr. Ruffalo's rebuttal expert report.

16 Richard Ruffalo, M.D. is expected to testify and to provide opinions regarding the facts in  
17 this case as they relate to his specialties including the pharmacology issues alleged by Plaintiffs,  
18 which may include but are not limited to rebuttal testimony. Richard Ruffalo, M.D. reserves the  
19 right to supplement and/or revise his Report as new information is provided.

20 4. Erik Volk  
21 1155 Alpine Road  
22 Walnut Creek, CA, 94596

23 Erik Volk is a retained expert witness and is expected to testify regarding his  
24 understanding of the facts and circumstances surrounding the subject complaint, and costs of  
25 medical expenses as well as the past and future earning capacity of Decedent and the economic  
26 costs associated with her death. Mr. Volk specializes in valuation of economic losses in  
27 businesses, personal injury, wrongful death, and labor litigation. Mr. Volk's CV, fee schedule, and  
28 testimony list were previously disclosed in Defendant's Initial Expert Disclosure. **Exhibit D**  
hereto is Mr. Volk's rebuttal expert report.

Mr. Erik Volk is expected to testify and to provide opinions regarding the facts in this case

1 as they relate to his specialties including the economic losses alleged by Plaintiffs, which may  
2 include but are not limited to rebuttal testimony. Erik Volk reserves the right to supplement and/or  
3 revise his Report as new information is provided.

4 Defendants specifically reserve the right to designate any witnesses designated by any  
5 party. Defendants further reserves the right to supplement this list as any witnesses become known  
6 through the course of discovery.

7  
8 DATED this 27<sup>th</sup> day of August, 2021.

9  
10 LEWIS BRISBOIS BISGAARD & SMITH LLP

11  
12 By /s/ Adam Garth  
13 S. BRENT VOGEL  
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20 *Attorneys for Attorneys for Defendant Valley*  
21 *Health System, LLC dba Centennial Hills Hospital*  
22 *Medical Center.*  
23  
24  
25  
26  
27  
28

1 **CERTIFICATE OF SERVICE**

2 I hereby certify that I am an employee of Lewis Brisbois Bisgaard & Smith LLP and that  
3 on this 27<sup>th</sup> day of August, 2021, a true and correct copy of **DEFENDANT CENTENNIAL**  
4 **HILLS HOSPITAL MEDICAL CENTER'S REBUTTAL EXPERT DISCLOSURE** was  
5 served electronically using the Odyssey File and Serve system to all parties with an email-address  
6 on record, who agreed to receive electronic service in this action, as follows:

7 Paul S. Padda, Esq.  
8 PAUL PADDA LAW, PLLC  
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*Shah, M.D.*

15  
16 By /s/ Roya Rokni  
17 an Employee of  
18 LEWIS BRISBOIS BISGAARD & SMITH LLP  
19  
20  
21  
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**Exhibit A**

**Exhibit A**



Division of Hospital Medicine  
Hiren M. Shah, MD SFHM  
211 E Ontario Street 7<sup>th</sup> Floor  
Chicago, Illinois 60611  
Phone: 312.926.3681

August 24, 2021

Adam Garth  
6385 South Rainbow Blvd., Suite 600  
Las Vegas, NV 89118

Dear Mr. Garth:

Thank you for the opportunity to provide additional information and responses to defense expert reports in the case of Ms. Rebecca Powell who was admitted to Centennial Hills Hospital on 5/3/2017. Please find this report a supplemental report to my initial case summary and analysis and opinions provided in a report dated 6/5/2021 after having reviewed the following additional items in this case: Expert reports by Dr. James Leo, Dr. Thomas Cumbo, Dr. James Lineback, Dr. Kenneth Stein, and Mr. Michael Griffith. I provide the following rebuttal to the aforesaid reports. All opinions provided herein are to within a reasonable degree of medical probability.

Ms. Powell was admitted on 5/3/17 with respiratory failure after drug overdose with her clinical course attributed to aspiration pneumonia due to MRSA based on sputum cultures. A bronchoscopy was performed 5/4/2017 and she was managed by pulmonary medicine and antibiotics were managed by infectious disease. As noted, after extubation on 5/6/2017, she was improving. On 5/10/2017, she began to have leukocytosis and her antibiotics were broadened to IV cefepime and zyvox. Her shortness of breath was appropriately attributed with progression on her underlying aspiration pneumonia. She was saturating at 93% on room air during Dr. Vishal Shah's evaluation at 13:16 on 5/10/201. After he was contacted about shortness of breath symptoms, he appropriately ordered a chest Xray and an arterial blood gas which showed a preserved pH of 7.37 while on 6L of oxygen. Despite receiving a dose of Ativan at 16:01, vital signs and ABG results at 16:32 do not indicate any respiratory depressant effects of the Ativan. After a chest Xray, she was then seen by Gary Skankey from infectious disease at 17:05 and Dr. Christopher Breeden from pulmonary medicine at 17:12. Although she had shortness of breath due to her known aspiration pneumonia, neither consultant determined Ms. Powell to be unstable or in need for a higher level of care. Appropriately, antibiotics were broadened, and a chest CT scan was ordered. At 22:22, she was on 3L of oxygen at 92% saturation and on 3L oxygen saturation 95% at 00:10. Respiratory assessment at 22:22 also supported continuing care on the medical floor by providing nebulizer therapy.

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RN Pawlak's note of Ms. Powell having shortness of breath with movement supports the clinical course of a patient with pneumonia. It was then appropriate to provide Ativan at 02:20 given Ms. Powell's anxiety so she could proceed with the chest CT. Ms. Powell requested the Ativan dose as indicated in RN Pawlak's note. Subsequently, Ms. Powell's shortness of breath at the time of the CT scan was expected as patients with pneumonia complicated by secretions often have difficulty lying flat and often report shortness of breath symptoms. In addition, the record indicates that along with shortness of breath, she was anxious at the time of the CT scan and could not complete the scan.

After returning from the CT scan, once again RN Valdez indicates that Ms. Powell was very anxious. After a second dose of Ativan was given at 03:27 as ordered by Dr. Concio, Ms. Powell was seen by the respiratory therapist who did not escalate care based on her respiratory assessment of the patient. Her main concern was Ms. Powell's cooperation with nasal canula use. At 03:15, the respiratory therapist indicated in her note that Ms. Powell's anxiety was causing her to remove her nasal canula and to facilitate oxygen delivery, a face mask was used.

In his report, Dr. Cumbo indicates that at 4:08 AM, the oxygen saturation dropped to 90% on a nonrebreather mask. Although factually correct that the saturation was 90%, the mask was only placed to facilitate oxygen delivery and not used as escalation of oxygen amount due to hypoxia from a worsening clinical condition on nasal canula as is suggested by Dr. Cumbo. Her drop in saturations correlated with anxiety and hyperventilation preventing appropriate oxygenation in a patient with ongoing pneumonia. There was no indication to notify physician staff as multiple follow-up assessments by nursing staff showed clinical stability. There was an evaluation by nursing staff or hospital support staff during multiple visits subsequent to this time in question. At 4:15 AM, the nurse noted the patient was calm. At 4:18 AM, the patient received a nebulizer treatment. At 5 AM she was seen by the CNA who noted the patient was okay. Vital signs were also obtained at 4:47 AM which although demonstrated tachycardia, was most likely due to her recent nebulizer treatment. In addition, anxiety likely contributed to her respiratory rate of 30. She was seen on the video camera at 5:10 AM sitting up and the L2 K records indicate she was seen on camera at 6 AM which was 10 minutes prior to her code event. Thus, during all of these patient encounters, it was apparent that Ms. Powell was stable and although she had ongoing significant respiratory infection, there was no indication to require a physician assessment, transfer to a higher level of care, or initiating a rapid response call.

Dr. Cumbo indicates that hospital protocol requires that an RRT should be called for shortness of breath with acute mental status change. However, patients often have shortness of breath and

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each of those instances where this complaint is reported is not an indication for an RRT. Similarly, a patient's mental status is difficult to assess in the early morning hours, and there is no indication that she was disoriented but was instead anxious and non-cooperative. The decision to call a rapid response team is based on nursing experience and training as well as RN assessment and judgment. In this situation, the staff's actions were appropriate and did not warrant notification to physicians or the rapid response team.

Dr. Cumbo indicates that the rapid response team would have stabilized her condition. However, the clinical record indicates that at 4:15 AM, the nurse noted that the patient was calm and at 5 AM she was seen by the CNA and noted to be stable. Thus, a rapid response team was neither required to assess the patient nor would there have been an alteration in the treatment plan. Dr. Cumbo also indicates that the rapid response team would have done appropriate imaging, that her respiratory condition required monitoring in the ICU and treatment with pharmacotherapy. Although patients can be monitored more closely in an ICU setting, for the reasons stated above, there was no indication to transfer Ms. Powell to the ICU such that she required closer monitoring. She was evaluated on the L2 K system and was seen at 5:10 AM and at 6 AM. In addition, as indicated earlier in this report, she was seen by multiple care providers during these early morning hours and was appropriately monitored. At 04:00, a pain assessment was completed. At 04:08, vital signs were obtained. At 04:15, RN Pawlak indicates that Ms. Powell was calm. At 04:18, a respiratory treatment is underway by the therapist. At 04:47, the respiratory treatment is completed by the therapist. At 05:00, a CNA does bedside rounding and indicates that Ms. Powell was ok. The basis for Dr. Cumbo's opinion that Ms. Powell required an RRT call is due to her elevated HR and respiratory rate but he fails to take into consideration what was happening to the patient (nebulizer therapy and ongoing anxiety symptoms) and fails to consider that multiple care providers assessed Ms. Powell in her room (at six points in time between 04:00 to 05:00) and all appropriately determined that she was stable and did not require escalation of treatment.

In regard to the criticism that the rapid response team would have done appropriate imaging, provided respiratory support and pharmacotherapy, there is no basis to support this criticism. Ms. Powell already had evidence of bilateral infiltrates earlier that evening and did not require additional imaging. The CT scan was attempted at 2 AM but could not be completed due to the patient's anxiety but the basis for this study was to evaluate for a pulmonary embolism which we know Ms. Powell did not have based on her autopsy results. In addition, even if another chest x-ray was done, it would have had no meaningful effect in changing the treatment course. She was already receiving respiratory support and had a nebulizer therapy at 4:18 AM by the respiratory

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services who did not feel needed escalation of care. Furthermore, she was already on adequate pharmacotherapy which was being delivered intravenously.

Dr. Cumbo indicates that anxiety is a diagnosis of exclusion once other causes of dyspnea have been evaluated. In Ms. Powell's case, her dyspnea was appropriately attributed to pneumonia and thus her tachycardia and elevated respiratory rates were appropriately attributed to anxiety symptoms. Dr. Cumbo indicates the benzodiazepines likely suppressed Ms. Powell's respiratory drive but as noted extensively in my initial report, an elevated respiratory rate of 30 does not support evidence of respiratory depression from benzodiazepines. In addition, the last dose of Ativan was given at 3:42 AM which was 3 hours and 47 minutes prior to the code event and if there was respiratory depression, it would have manifested itself within an immediate time period given the rapid onset of action of iv Ativan. Thus, there is no evidence that Ativan led to respiratory depression or was the cause of respiratory failure and subsequent code. Ms. Powell's decompensation was rather due to pneumonia and acute mucous plugging that led to her sudden event at 06:15 as supported by the large mucus plug removed at time of intubation. Dr. Cumbo indicates that it is uncommon to have clinical worsening after an initial improvement on antibiotics. However, there is significant patient heterogeneity in regard to response to antibiotics and a patient's specific clinical course. Patients can have improvement initially and can then worsen over time. In addition, a mucous plug is an additive event that leads to acute hypoxia and immediate respiratory failure which is independent of the association of clinical worsening and antibiotic therapy.

Dr. Cumbo's reference to identification and care of a patient at risk for suicide in the acute care setting is not interpreted appropriately in his report. The patient's suicide attempt was prior to admission and she was not demonstrating ongoing suicidal ideation which would place her at high risk for self-harm. Ms. Powell did not show a change in behavior as related to suicidal ideation in any way and did not require a sitter for this reason.

In summary, I disagree that Ms. Powell's situation was preventable. She had a pneumonia that was progressive but adequately treated on the medical floor until she had an acute mucous plug superimposed on her pneumonia at 6:10 AM that led to her code blue event. Her monitoring was appropriate, physician notification was not required and would not have changed the plan of care and a rapid response was not necessary for the reasons outlined above.

Similarly, Dr. Lineback's statement that Ativan led to respiratory suppression is not supported by the facts in this case. As indicated in my initial report, the Ativan dose was last given at 3:27

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AM which was almost 3 hours and 45 minutes prior to her code blue event. There is no evidence of a temporal association between the two given the rapid onset of action of Ativan. Ms. Powell's respiratory rate was in the 30s which does not support respiratory suppression. This respiratory rate was elevated due to anxiety and was appropriately treated by Ativan which was given at very low doses.

Dr. Lineback claims that the patient was complaining of shortness of breath and not cooperating with respiratory assessments and removing her mask repeatedly and saying "I can't do this anymore and it's not worth it". This clinical course and her statements do not support that the standard of care was violated. Shortness of breath is expected in a patient with ongoing pneumonia. There was no labored breathing at 4:15 AM after her anxiety improved. There was no excessive sedation based on Ms. Powell's vitals, documentation by staff, and numerous bedside assessments by the providers in this case. In addition, even if Ms. Powell was not perfectly visible as suggested on the video monitor, this referred to her nasal cannula. One, however, would be able to assess for distress and a change in condition and L2K signatures at 05:00 and 06:00 supported stability.

Although it is correct that Ms. Powell had progressive pneumonia and an elevation of WBC count, Dr. Lineback inappropriately refers to this as deterioration such that a higher level of care was needed. Although she may have been short of breath, this is not unexpected given the patient had pneumonia. Dr. Lineback then states that the entries from the medical record describe a classical presentation of hypoxia where a normal response is anxiety and lack of cooperation including removing masks. A saturation of 90% early that morning prior to the code event and a normal PO<sub>2</sub> on an ABG late the day prior does not support profound hypoxia such that a patient was demonstrating a change in mental status and lack of cooperation. Dr. Lineback further states that it's inappropriate to treat with a drug that further suppresses respiratory drive. As indicated above and in my initial report, there is no indication of any respiratory suppression by Ativan. In addition, an arterial blood gas was not indicated at the time of event in question as the patient was stable. The respiratory therapist also did not find a need to escalate care or to obtain an ABG at the time she began the nebulizer therapy at 04:08 or completed the treatment at 04:47. The standard of care was not violated by Dr. Concio in providing Ativan given her anxiety symptoms even though her pneumonia was ongoing and clinically more prominent on the 10<sup>th</sup>. Similarly, Dr. Shah did not violate the standard of care in the use of Ativan. Dr. Lineback indicates that Ativan should not be given following an episode of acute respiratory failure that required endotracheal intubation and mechanical ventilation. There is no reasoning for this. After patients have been intubated and subsequently extubated, appropriate clinical judgment should

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guide the use of anti-anxiety medications and prior intubation and mechanical ventilation would not be exclusionary criteria for the use of such drugs.

As noted in Dr. Stein's report, Dr. Skankey and Dr. Breeden were not required by the standard of care to contemporaneously obtain vital signs at the time of patient evaluation. The standard of care however does require appropriate clinical decision making based on the diagnostic information a physician obtains at the time a patient is evaluated which occurred in this case. I disagree with Dr. Stein's assertion that Ms. Powell was too unstable at the time of CT angiography to have the test. Although she did have shortness of breath, it is not unusual for patients who have pneumonia to have trouble lying flat due to significant pulmonary secretions. In addition, multiple RN and physician notes indicate that Ms. Powell had anxiety related symptoms in addition to shortness of breath which would be expected from her pneumonia.

There is no evidence that Ms. Powell's failure to cooperate with the respiratory assessment and treatment along with removing her mask was due to anything other than anxiety and agitation. Her hypoxia based on saturation was not profound enough to lead to level of non-cooperation. Even though it was discussed between the house supervisor and the camera monitor operator on moving Ms. Powell to a different room, her condition significantly stabilized as she calmed down and was less labored at 4:15 AM. Thus, her clinical condition no longer required any escalation of care for monitoring or change in room with different video capabilities.

Ms. Powell did have a worsening in her pneumonia with relative hypoxia and elevated WBC count with infiltrates on her chest x-ray as Dr. Stein indicates. As the evening progressed after Dr. Skankey's evaluation at 17:05, Ms. Powell was short of breath but was being adequately treated. There is no evidence that she needed increasing amounts of oxygen that could not be provided safely and appropriately on the medical floor. Respiratory therapy would be most experienced in understanding the need to escalate care and felt no need to do so aside from providing a face mask for more comfort rather than nasal cannula and providing nebulizer therapy while antibiotics were ongoing for her pneumonia. Nursing staff appropriately contacted the night physician who appropriately ordered Ativan for anxiety symptoms. Nursing staff also appropriately discussed Ms. Powell's condition with their supervisor and were discussing options to ensure Ms. Powell was getting appropriate care. Her condition improved by 4:18 AM and she did not require any change in her treatment plan or require transfer to higher level of care. As indicated in my initial report, there was no indication to transfer Ms. Powell to the intensive care unit. She did not require noninvasive ventilation or endotracheal intubation and mechanical ventilation as her condition had improved significantly and she was seen by care providers at

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04:00, 04:08, 04:15, 04:18, 04:47, and 05:00 and was found to be stable. Dr. Steinberg refers to the use of Lasix which could have been provided in Ms. Powell's case but her outcome would have been no different with Lasix which was not indicated. She did not require transfer to a higher level of care and the outcome would not have been any different based on any additional treatments had she moved to an intensive care unit setting.

Contrary to Dr. Stein's allegation, Dr. Concio was provided appropriate information regarding Ms. Powell's condition and had access to her medical record and appropriately ordered antianxiety medications. The Ativan that was prescribed had no impact in causing any respiratory depression or leading to her subsequent code blue event which was due to pneumonia complicated by an acute mucous plug.

In addition, Ms. Powell's vital signs, respiratory status, and symptoms of shortness of breath in an attempt to lie flat at radiology at the time of her CT represented her ongoing pneumonia and did not warrant a rapid response call as alleged by Dr. Stein.

At 4:08 AM, Ms. Powell's tachycardia and high respiratory rate were due to anxiety along with a subsequent nebulizer therapy. Her saturation of 90% was adequate and appropriate given her medical diagnosis. Ativan had no respiratory depressant effect as alleged by Dr. Stein. There is no indication for cardiac telemetry with continuous pulse oximetry nor would either have changed the outcome.

In addition, Ms. Powell had pneumonia as determined by the autopsy and did not have a pulmonary embolism. Thus, even if the CT angiography of the chest was done at 5:08 PM as suggested by Dr. Stein, it would have been negative for any acute thromboembolic event and would not have changed the treatment course.

The autopsy does not indicate congestive heart failure leading to edema or acute respiratory distress syndrome as Dr. Stein indicates but the autopsy finding does indicate Ms. Powell had pneumonia with significant secretion burden and clinically had acute mucous plugging.

I disagree with nurse Griffin's opinions that nursing staff at Centennial Hills Hospital failed to initiate a rapid response at 4:08 AM. Her oxygen delivery was changed from 3 L nasal cannula to a nonrebreather mask with a flow rate of 15 L mainly for comfort and due to anxiety rather than for acute hypoxia from a change in her clinical condition. There is no evidence that the

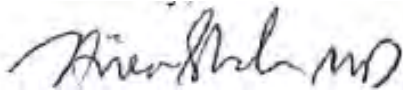


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failure to visually monitor Ms. Powell led to her subsequent respiratory event or any delays in identifying her condition.

Thank you for allowing me to provide addition information to support the opinion in my initial report. All my opinions noted above are stated to a reasonable degree of medical probability. Please do not hesitate to contact me should you have any further questions.

Sincerely,

A handwritten signature in black ink, appearing to read "Hiren Shah MD". The signature is fluid and cursive, with the letters "H", "S", and "M" being particularly prominent.

Hiren Shah, MD SFHM

**Exhibit B**

**Exhibit B**

Mr. Garth,

I was asked to respond to Plaintiff's expert allegations. My opinions stated below are to a reasonable degree of medical probability based on my experience and training. For convenience, I have added the main allegations for each of the experts. As previously noted in my original declaration, I am currently director of Western Convalescent Subacute Department, chief of medicine at Miracle Mile Medical Center, and Medical Director of the Respiratory Department at Southern California Hospital in Culver City, CA. Until recently, I was the director of respiratory therapy at Midway/Olympia Hospital in Los Angeles, CA which shut its doors. I obtained my medical degree from University of Maryland Medical School in 1990. I completed my residency in Internal Medicine at Cedars-Sinai Medical Center in Los Angeles from 1990-1993, followed by a fellowship in pulmonary and critical care medicine at Cedars-Sinai from 1993-1996. I am quadruple boarded in Internal Medicine, Pulmonary Medicine, Sleep Medicine and Geriatrics. I also hold the title of Assistant Clinical Professor of Medicine at the UCLA School of Medicine. A copy of my curriculum vitae outlining my qualifications, educational background and related employment was attached to my original declaration and is incorporated herein.

**Dr. Thomas Cumbo:**

*Assessment and Rationale:*

*As noted by the State of Nevada/Department of Health and Human Services/Division of Behavioral Health/Bureau of Health Care Quality and Compliance's investigation, Centennial Hills Hospital Medical Center did not respond to Ms. Powell's respiratory distress and failed to upgrade her to a higher level of care (complaint # NV 00049271). Ms. Powell clearly demonstrated worsening respiratory failure over the course of approximately 27 hours which ultimately resulted in acute cardiopulmonary arrest. Her autopsy confirmed severe aspiration pneumonia. There was plenty of opportunity to assess and stabilize Ms. Powell before she died. If the Rapid Response Team Policy (last updated 12/2016) were followed, the patient would more likely than not been afforded care that would have stabilized her condition. Section II, part A indicates that two reasons for calling a Rapid Response include acute mental status change and shortness of breath. Both applied in this situation. A Rapid Response would likely have included, but would not be limited to, appropriate imaging, respiratory support, closer monitoring in an ICU setting and pharmacotherapy. Instead, imaging attempts were aborted and she was treated with benzodiazepines without a proper assessment. Although anxiety was in the differential diagnosis, it is a diagnosis of exclusion only to be assigned after a proper work up and evaluation for more exigent causes of her dyspnea. Instead, the benzodiazepines likely suppressed her respiratory drive and hampered her ability to compensate for a worsening pneumonia. Staphylococcus aureus pneumonia can take weeks to completely clear especially after a large aspiration event. It is not uncommon to have clinical worsening after an initial improvement on antibiotics.*

*Additionally, the policy "Identification and Care of the Patient at Risk for Suicide in the Acute Care Setting (last updated 02/2016)" was also ignored. She was clearly a high-risk patient having been admitted with a near fatal suicide attempt (section IV- Assessment). More importantly, however, is that according to section VII (Patient Safety Instructions), subsection 4.g. "the safety attendant should notify the assigned nurse immediately for any change in behavior." Clearly this did not occur because the patient was not visualized for over one hour despite the attendant's request to have the patient moved to another room for unimpeded*



visualization.

*In summary, this unfortunate situation was preventable. Multiple policies were ignored and the patient's respiratory failure was misdiagnosed. If proper monitoring was in place, physicians were notified appropriately, a Rapid Response was called, and the patient was properly assessed I am of the opinion Ms. Powell would not have died that morning.*

**My response to Dr. Cumbo's opinions:**

Centennial Hills Hospital Medical Center staff did respond to Ms. Powell's respiratory distress. A rapid response was called earlier that evening, and she had ongoing monitoring thereafter. She was receiving IV antibiotics, IV steroids and adequate oxygen to maintain a saturation of 90% or above and was repeatedly assessed throughout the night.

Ms. Powell was monitored throughout the night and was noted to be oxygenating adequately prior to her cardiopulmonary arrest. It is highly unlikely that a transfer to the ICU would have changed her course, as she likely progressed to fulminant ARDS, as a direct result of her initial aspiration event, not from anything which Plaintiffs allege any defendant did or failed to do in this case. Likewise, the nurses and physicians were aware of and monitored her status throughout the night, and it is also highly unlikely that another rapid response would have changed her overall outcome, since a rapid response was called several hours prior, and she was already receiving all of the appropriate medical interventions. It is my opinion to a reasonable degree of medical probability that no other interventions would have made any medically significant impact on her prognosis or chance of recovery.

**Dr. James Lineback**

*Based on the fact pattern in this case and the information contained in these medical records, it is medically probable that this patient's death was related to respiratory suppression secondary to the administration of a benzodiazepine (Ativan) in the early morning hours of May 11, 2017. It was below the standard of care for this patient to be treated with a known respiratory suppressant in the face of a deteriorating clinical status which resulted in her continually complaining of shortness of breath and exhibiting classic signs of hypoxia. It is medically probable that this patient's death was a direct result of respiratory suppression due to treatment with intravenous Ativan, a known respiratory suppressant. It is also medically probable that had this patient been evaluated properly and intubated in the early morning hours of May 11, 2017, that her death would have been prevented.*

**My response to Dr. Lineback's opinions:**

It is highly unlikely that the patient's death was in any way related to respiratory depression as result of the total doses of benzodiazepine used. The total amount given was minimal and would in no way suppress Ms. Powell's respiratory drive and lead to any significant CO<sub>2</sub> retention or narcosis. It is not unusual in the acute setting to provide small doses of benzodiazepine to help with patients that are suffering from respiratory issues, as anxiety frequently occurs as a result of the underlying breathing difficulties. Based on my experience, the amount of Ativan given would not have caused Ms. Powell's



death, as much higher doses would have certainly been required to lead to any significant respiratory suppression.

**Dr. Kenneth Stein**

*Throughout the day on May 10, 2017, and the early morning of May 11, 2017, Ms. Powell was showing signs and symptoms of worsening condition including respiratory distress (stating she felt like she was "drowning"), relative hypoxia requiring increasing amounts of oxygen, respiratory alkalosis from rapid breathing, elevated white blood cell count, anxiety, restlessness and increased interstitial markings on her chest X-ray. After being sent to radiology for a chest X-ray a "Rapid Response" was called because of respiratory distress. Dr. Breeden and Dr. Skankey both evaluated her within 1 hour after the rapid response. Dr. Skankey documented that at approximately 5:00 PM Ms. Powell on examination was "Acutely Dyspneic" (Short of Breath). As the evening progressed and Ms. Powell was requiring increasing amounts of oxygen and was becoming more anxious rather than calling for a physician to evaluate Ms. Powell the nursing staff increased the amount of oxygen being delivered and contacted Dr. Concio to request additional dose of Ativan to treat anxiety. When Ms. Powell was becoming more anxious and was pulling off her oxygen and not cooperating with breathing treatments nursing staff contacted the nursing supervisor David who recommended that instead of obtaining a "Sitter" to sit in the room and observe Ms. Powell (as requested by nursing staff, respiratory therapy, and the monitor tech), or moving Ms. Powell to a room that had better abilities to monitor her via video, David recommended that instead restraints be placed on Ms. Powell's hands. The autopsy showed significant findings in the lungs including extensive acute and chronic pneumonia with extensive pulmonary edema. In essence her lungs were filling with fluid and products of inflammation in addition to being damaged by the inflammation. These findings are consistent with her worsening symptoms of respiratory distress, anxiety, feeling like she was "Drowning", higher oxygen requirements, lower oxygen saturations, rapid breathing and rapid heart rate. However, her condition was treatable and if proper care had been provided then within a reasonable degree of medical probability, she would have survived this hospitalization. The indicated and proper medical treatment for these conditions would have included admissions to the intensive care unit, re-evaluation by a physician, respiratory /pulmonary treatments to be ordered at the discretion of the physician which may have included high flow oxygen, noninvasive ventilation or endotracheal intubation and mechanical ventilation. In addition, medications that may have been administered as indicated including furosemide, nebulizers and other medications as needed based on patients clinical course. The failure to transfer Ms. Powell to a higher level of care and the failure to provide these treatments as needed within a reasonable degree of medical probability were the immediate cause of her death.*

*On May 10, 2017 the treating physicians breached the standard of care by not transferring Ms. Powell to a higher level of care for further evaluation and treatment. The nursing staff breached the standard of care if, on the early morning of May 11, 2017 when contacting Dr. Concio they did not provide an adequate history concerning Ms.*

*Powell's vital signs, respiratory status (including amount of oxygen delivered, oxygen saturation and respiratory rate), her rapid response earlier in the evening for respiratory distress and that she had been rushed back to the floor from radiology at approximately 2:40 AM as she was too unstable.*

*Furthermore, if the nursing staff did not specifically request for Dr. Concio to come to the bedside to evaluate miss Powell the nursing staff breached the standard of care. If nursing staff did appropriately inform Dr. Concio of Ms. Powell's condition, Ms. Powell's vital signs, respiratory status (including amount of oxygen delivered, oxygen saturation and respiratory rate) rapid response having been called in radiology on the afternoon of May 10, 2017, and Ms. Powell being sent back emergently from radiology at 2:40 am because of inability to tolerate a CT scan secondary to respiratory distress and Dr. Concio did not either come to the bedside to evaluate Ms. Powell or order that a Rapid Response be activated but instead ordered Ativan to treat anxiety then Dr. Concio breached the standard of care.*

*Nursing staff breached the standard of care by not activating a Rapid Response at approximately 3:15 am on May 11, 2017 when Ms. Powell complained of anxiety, difficulty breathing and she was pulling off her oxygen. Instead they called D. Concio to request Ativan for anxiety.*

*Nursing staff breached the standard of care at 4:08 AM by not activating a Rapid Response when Ms. Powell's respiratory status had worsened to the point that she now required a Non-Rebreather mask to deliver oxygen, her heart rate had increased to 130 beats/min and her respiratory rate had increased to 30 breaths/minute and her oxygen saturation was only 90%. or at 4:40 AM when her heart rate was 140 beats/min.*

*Dr. Concio and nursing staff breached the standard of care by administering Ativan to decrease Ms. Powell's anxiety rather than having a physician or rapid response team re evaluate Ms. Powell's respiratory difficulties which within a reasonable degree of medical probability was the cause of her anxiety. Within a reasonable degree of medical probability, the Ativan that was administered worsened Ms. Powell's respiratory status.*

*The treating physicians and the nursing staff at Centennial Hills Hospital all breached the standard of care by not transferring Ms. Powell to a higher level of care that would have included reevaluation by a physician, cardiac telemetry, continuous pulse oximetry and either constant direct visual observation by a nurse/sitter or adequate constant observation via video camera with monitoring.*

*It was a breach of the standard of care at 5:08 pm on May 10th, 2017 for the CT Angiogram of the chest to have not been ordered on a STAT basis.*

*Within a reasonable degree of medical probability, the worsening of Ms. Powell's condition was secondary to worsening pulmonary status from either pneumonia, cardiogenic pulmonary edema or non-cardiogenic pulmonary edema/ARDS. The indicated and proper medical treatment for these conditions would have included admission to the intensive care unit, re-evaluation by a physician, respiratory /pulmonary treatments to be ordered at the discretion of the physician which may have included high flow oxygen, noninvasive*



*ventilation or endotracheal intubation and mechanical ventilation. In addition, medications may have been administered as indicated including furosemide, nebulizers and other medications as needed based on patient's clinical course.*

*If the above breaches of the standard of care had not occurred on May 10-11, 2017 then within a reasonable degree of medical probability Ms. Powell would not have died on the morning of May 11, 2017. Stated differently within a reasonable degree of medical probability Ms. Powell would not have died on the morning of May 11, 2017, had the above breaches to the standard of care not occurred.*

#### **My response to Dr. Stein's opinions:**

Ms. Powell underwent a rapid response on the afternoon of May 10. Shortly thereafter, the patient was seen by both the pulmonologist and the infectious disease physicians and further orders were given, including an order for a chest CT. She was attended to appropriately and was given IV antibiotics, steroids, additional oxygen, and was seen by the nursing and respiratory staff throughout the night. As previously stated, it is unlikely that she had an acute aspiration event. The findings noted on the autopsy were likely a direct result of her initial aspiration event with a likely progression to ARDS. It is also highly likely that Ms. Powell suffered from an acute mucous plug event just prior to her death, which more frequent or a higher level of monitoring would have prevented.

I disagree with Dr. Stein that a transfer to ICU was mandatory. In certain situations, close monitoring is adequate for patients with severe hypoxia, depending on staff scope of practice and abilities. It is very unlikely that any medications administered, including furosemide and nebulizer therapy (bronchodilation) would have been of any benefit, as Ms. Powell was not fluid overloaded and was not suffering from Asthma or COPD.

Furthermore, as previously discussed, the nursing staff did discuss Ms. Powell's status with Dr. Concio, and the very low dose of Ativan was not below the standard of care to help relieve the associated anxiety as a result of Ms. Powell's respiratory issues. Although Dr. Stein suggests that a rapid response should have been called again at various times throughout the night, it is not unusual, nor is it below the standard of care, for nursing staff to continue to care for a patient if they are competent and able to manage the patient at the current level of care. The main aim of a rapid response is to intervene when nursing cannot adequately manage the patient and therefore is not always mandatory.

In response to the elevation of heart rate and respiratory rate, a small dose of Ativan many times may lead to a reduction in both and an improvement in oxygen saturation, as it would potentially help reduce the exaggerated sympathetic response and work of breathing.

Finally, the CT chest when ordered was not a stat order, further suggesting that Ms. Powell's status at the time and did not warrant emergent intervention. It is not the staff's duty nor the that of the hospitalist to oversee or change the recommendations of the specialists.

In conclusion, I disagree with the allegations of Dr. Stein. Ms. Powell had clear evidence of diffuse alveolar damage on autopsy and likely died from ARDS because of her initial massive aspiration. Any intervention, as suggested by Dr. Stein, inclusive of high flow oxygen, noninvasive ventilation, or mechanical ventilation would most likely not have changed the outcome for Ms. Powell. Moreover,

another rapid response evaluation would not have changed the ongoing management nor her overall outcome.

**Michael Griffith, RN**

*I am of the opinion that Michael Pawlak, RN and Karen, Charge RN departed from the acceptable standards of nursing care for Rebecca Powell in the following manner:*

*-Failure to initiate Rapid Response when a patient's heart rate is greater than 130 beats per minute, a respiratory rate is greater than 28 breaths per minute, and when an acute change in patient status is present. It was documented on 5/11/2017 at 0408 that the patient, Rebecca Powell, required an oxygen delivery increase from 3 liters nasal cannula to a non-rebreather mask with a flow rate of 15 liters. The increase in oxygen requirements suggest an acute change in patient condition. It was also documented that on 5/11/2017 at 0447 Rebecca Powell had a heart rate of 140 beats per minute. Finally, it was documented on 5/11/2017 at 0408 that Rebecca Powell had a respiratory rate of 30 breaths per minute.*

*-Failure to adequately monitor patient when under suicide precautions. The patient must be placed in a space that provides continuous observation that can clearly identify and detect patient's movements and actions. If unable to clearly visualize patient, a 1:1 sitter must be placed in the room to continuously monitor the patient actions and movements.*

*It is my opinion that, within a reasonable medical-nursing probability, the above referenced deviations from the acceptable standard(s) of nursing care caused an increased chance of harm to Rebecca Powell*

**My response to Nurse Griffith's opinions:**

As previously discussed, a rapid response need not be initiated, especially if one was done earlier that evening, especially if a nurse is competent and able to care for a patient (as was the case here) and management would like remain the same.

An activation of the rapid response team would have more likely than not have led to similar ongoing management that Ms. Powell was already receiving. Even a transfer to the ICU would have likely not changed Ms. Powell's management as she went into fulminant ARDS and would have, in all likelihood, had a similar outcome with any additional or more intensive oversight.


As previously discussed, although both the respiratory rate and heart rate were elevated, ongoing monitoring at the current level was appropriate under these circumstances, based on the staff's capability to intervene.



## Conclusion

As I previously noted in my earlier report, which I fully incorporate as if fully outlined herein, based on my education and practice, the physicians and staff acted within the standard of care and all actions or lack of actions did not in any way contribute to her death. Allegations by plaintiffs of more frequent monitoring by Centennial Hills Hospital, staff and independent physicians is unsupported. Ms. Powell's death stemmed from an acute event which more frequent monitoring or care could not have prevented. Statements made by nursing staff at Centennial Hills Hospital to Department of Health and Human Services personnel do not accurately reflect the standard of care applicable to the care and treatment provided to Ms. Powell and those similarly diagnosed. Her death did not result from any departures from the standard of care by Centennial Hills Hospital or its personnel, nor did any such individuals breach the standard of care as it was applied to Ms. Powell's care and treatment. Her death, while tragic, resulted from the affirmative actions Ms. Powell took pertaining to her drug overdose and suicide attempt, and the conditions which developed directly therefrom. Moreover, her death was an imminent event which was not predictable. Additionally, Nurse Pawlak's opinion that Ms. Powell could have been dead for up to an hour is medically unsupported. Ms. Powell was in PEA at the time the Code Blue was called. Had she been dead for an hour, there is no way her heart could have been restarted as it had during the Code. No further interventions by Centennial Hills Hospital or its personnel could have prevented this outcome.

Dated: August 4, 2021

  
Abraham Ishaaya, M.D.

**Exhibit C**

**Exhibit C**



Adam Garth, Esq.  
Lewis Brisbois  
6385 South Rainbow Blvd., Suite 600  
Las Vegas, Nevada 89118

Re: Estate of Rebecca Powell vs. Valley Health System, LLC (dba) Centennial Hills Hospital Medical Center

Dear Mr. Garth,

At your request I have reviewed the following documents:

1. Report of Plaintiff's Expert James F. Lineback, M.D.;
2. Report of Plaintiff's Expert Thomas A. Cumbo, M.D.;
3. Report of Plaintiff's Expert Kenny A. Stein, M.D.;
4. Report of Plaintiff's Expert Michael Griffith, R.N.

I utilized these reports and compared them to my analysis and findings contained in my initial report on this matter as whether it was appropriate to use and titrate of small doses of lorazepam (Ativan) in order to alleviate Ms. Powell's continuing anxiety, over approximately 31-33 hours prior to her death.

Upon review of the aforementioned, none of the opinions I offered in my prior report have been altered in any way and are fully incorporated herein as part of my rebuttal.

In conclusion, please note that all work is based on information provided to date, and opinions are expressed to a reasonable degree of medical certainty and probability. As additional information is provided, I may augment or amend my opinions.



Richard Ruffalo, MD, PharmD, FACC

Dated: July 29, 2021

**Exhibit D**

**Exhibit D**



August 24, 2021

Mr. Adam Garth  
Lewis, Brisbois LLP  
6385 South Rainbow Boulevard, Suite 600  
Las Vegas, Nevada 89118

**Re: Estate of Powell et al. v. Valley Health System LLC, et al.**

Dear Mr. Garth:

As executive vice president with JS | Held, I have been retained to evaluate economic losses claimed by plaintiffs in the above-captioned case. I have also been retained to comment upon work product and/or testimony of plaintiffs' retained damages experts. All opinions contained herein are made to a reasonable degree of economic certainty.

I have been provided with the following documents:

1. Second Supplemental Responses to Defendant Valley Health System, LLC's First Set of Interrogatories to Plaintiff Estate of Rebecca Powell Through Brian Powell as Special Administrator, dated June 17, 2021;.
2. Plaintiffs' Third Supplement to Initial Designation of Experts and Pre-Trial List of Witnesses and Documents Pursuant to NRCP 16.1(A)(3), dated June 18, 2021;
3. "Preliminary Report on Lifetime Earnings of Ms. Rebecca Powell," prepared by Terrence M. Clauretie, Ph.D, dated 6/18/2021.

I have also considered Nevada Revised Statute (NRS) 41.085.

**Response to Report of Terrence M. Clauretie, Ph.D.:**

The wrongful death statute in Nevada is NRS 41.085. It sets forth the recoverable damages in a wrongful death lawsuit. Representatives on behalf of the estate may only recover a) Any special damages, such as medical expenses, which the decedent incurred or sustained before the decedent's death, and funeral expenses; and b) Any penalties, including, but not limited to, exemplary or punitive damages, that the decedent would have recovered if the decedent had lived.

An heir may be awarded pecuniary damages for the person's grief or sorrow, loss of probable support, companionship, society, comfort and consortium, and damages for pain, suffering or disfigurement of the decedent.

I am unaware of any category of recoverable wrongful death damages that would be measured based solely on a projection of the lifetime earnings of a decedent. While "loss of probable support" is often related to the earnings of the decedent, Dr. Clauretie's report does not attempt to measure, nor does it quantify the loss of probable support to the heirs. Dr. Clauretie's analysis does not differentiate which part of those earnings, if any, would have gone towards the probable support of the heirs, in accordance with the Nevada wrongful death statute. As such, his conclusions do not provide any guidance as to the actual economic damages, if any, suffered by the heirs of Ms. Powell. A finder of fact looking to Dr. Clauretie's report for numerical guidance in reaching a relevant determination of the probable support that would have been provided to 3 adult heirs could easily be misled by the current presentation.

Dr. Clauretie bases the lifetime earnings analysis on the assumption that Ms. Powell was earning \$5,000 per month, as indicated in Brian Powell's interrogatory responses. Dr. Clauretie assumes that the decedent would have continued to earn at a level commensurate with the initial assumption of \$5,000 per month until the end of a worklife expectancy for a female "with a college degree." Dr. Clauretie does not cite any review or analysis of Ms. Powell's historical income amounts from the customary sources relied upon by forensic economists, including but not limited to: income tax documents, payroll records, employment records, fringe benefit documentation, Social Security Earnings History statement, etc., nor does it appear that Dr. Clauretie was in possession of any of these materials in forming his opinions. These types of records are important for consideration, as they can assist practitioners and finders of fact in verifying the accuracy and the reasonableness of the claims being made. For example, when an earnings stream is being projected at a certain level for 16-plus years, it becomes important to look at the decedent's earnings for an extended period of time prior to death in order to assess whether the projection is reasonably supported by the data. Without additional data and documentation such as is mentioned above, one cannot verify the reliability or accuracy of Dr. Clauretie's projections.

Dr. Clauretie indicates that he based his worklife expectancy calculation on white females with a college degree, based on tables from the Richards and Donaldson 2<sup>nd</sup> edition book, "Life and Worklife Expectancies." The reference to college degree is ambiguous, as there are several different college degree categories, including Associates degree, Bachelor's degree, etc. Generally, the worklife expectancy for someone with an Associate degree is not the same as the worklife expectancy for someone the same age with a Bachelor's degree. Dr. Clauretie does not specify which worklife table and level of education he

Mr. Adam Garth  
August 24, 2021  
Page 3 of 3

assumed in estimating a 16.4 year worklife expectancy for Ms. Powell. As such, I am unable to opine on whether Dr. Clauretie's worklife expectancy calculation is accurate at this time. As additional information is received on this topic, I may amend or augment my comments and opinions accordingly.

Although Dr. Clauretie's report provides some interest rate data from June 4, 2021, and an Abstract from a 2014 journal article, his report does not address his rationale for selecting an "offset" method (as opposed to any other method utilized in the field of forensic economics) in this particular case. As such, I am unable to provide meaningful commentary on Dr. Clauretie's choice of the "offset" method at this time. As additional information is received on this topic, I may amend or augment my comments and opinions accordingly.

**Conclusion:**

In conclusion, please note that all comments in this report are based on information provided to date. As additional information is provided, I may amend or augment my comments and opinions.

Please find enclosed copies of my CV, my list of testimonies, and a company fee schedule.

If you have any questions, please do not hesitate to contact me.

Sincerely,

A handwritten signature in blue ink, appearing to read 'Karl Erik Volk'.

Karl Erik Volk, M.A.

Enclosures

# EXHIBIT E



RECEIVED

CASSADY LAW OFFICES, P.C.

10799 W. Twain Avenue  
Las Vegas, Nevada 89135  
(702) 650-4480 - Fax 650-5561

MAY 25 2017

CLERK OF THE COURT

- DISPOSITIONS
- ☐ - Voluntary Dismissal
  - ☐ - Transferred (before/during trial)
  - ☐ - Involuntary (statutory) Dismissal
  - ☐ - Judgment on Arbitration Award
  - ☐ - Stipulated Dismissal
  - ☐ - Stipulated Judgment
  - ☒ - Summary Judgment
  - ☐ - Non-Jury (bench) Trial
  - ☐ - Jury Trial

1 **ORDER**  
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13 Las Vegas, Nevada 89135  
14 Phone: (702) 650-4480  
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16 Attorneys for the Estate

Electronically Filed  
05/25/2017

*Heather S. Shuman*  
CLERK OF THE COURT

**DISTRICT COURT  
CLARK COUNTY, NEVADA**

In the Matter of the Estate of

REBECCA ANN POWELL a/k/a  
REBECCA A. POWELL a/k/a  
REBECCA POWELL,

Deceased.

CASE NO.: P-17-091793-E

DEPT NO.: PC-1

Probate

**ORDER TO RELEASE MEDICAL RECORDS**

THE COURT, having reviewed the Ex Parte Petition to Release Medical Records, and good cause appearing,

IT IS HEREBY ORDERED, ADJUDGED AND DECREED that the medical records for REBECCA ANN POWELL a/k/a REBECCA A. POWELL a/k/a REBECCA POWELL, held with any and all medical facilities, hospitals, clinics, physicians, rehabilitation facilities, acute care facilities, nurse practitioners, and any other person or entity having medical records for the Decedent, including, but not limited to:

**CENTENNIAL HILLS HOSPITAL and its health care providers, nurses, doctors, staff, nurse practitioners, on-site pharmacy, and/or affiliates;**

shall release copies of said medical records to TARYN CREECY or her attorneys.

DATED this 24 day of May, 2017.

Submitted by:

CASSADY LAW OFFICES, P.C.

By: *Brendan M. McGraw*  
Brendan M. McGraw, Esq.  
Nevada Bar No. 11653

*[Signature]*  
DISTRICT COURT JUDGE

**CERTIFIED COPY  
DOCUMENT ATTACHED IS A  
TRUE AND CORRECT COPY  
OF THE ORIGINAL ON FILE**

*Heather S. Shuman*  
CLERK OF THE COURT

MAY 25 2017

# EXHIBIT F

**AFFIDAVIT OF DR. SAMI HASHIM, M.D.**

**STATE OF NEW YORK**

}

**COUNTY OF WESTCHESTER**

}

The undersigned affiant, Dr. Sami Hashim, M.D., being first duly sworn, hereby deposes and says:

1. I have reviewed the medical records pertaining to Rebecca Powell (Date of Birth: May 30, 1975 / Date of Death: May 11, 2017).
2. This affidavit is offered based upon my personal and professional knowledge. I am over the age of eighteen and competent to testify to the matters set forth herein if called upon to do so.
3. I am a medical doctor and senior attending physician in the Division of Endocrinology and Metabolism at St. Luke's Hospital/Medical Center at Mount Sinai in New York, New York. I have been a Professor of Endocrinology, Internal Medicine, Metabolism & Nutritional Medicine at Columbia University College of Physicians & Surgeons since the early 1970's and was Chief of Metabolic Research from 1971 to 1997. I have published over 200 papers in peer-reviewed journals and am a recognized expert in the fields of internal medicine (including general medicine, which includes cardiology, neurology, pulmonology and other specialties), endocrinology, metabolism and nutrition. I have served on research review committees of the National Institute of Health. I earned my MD degree from the State University of New York, with post graduate training at Harvard University.
4. I have worked as a senior attending physician and professor at St. Luke's Hospital and Medical Center, a Mount Sinai Medical Center affiliate hospital (previously affiliated with Columbia University) for over 20 years. As a professor, I teach medical students, interns, residents all aspects of internal and general medicine, in-patient and out-patient medical care. I complete medical rounds each day seeing patients with and without medical students, interns, residents and I train Fellows in many different specialties including Emergency Medicine, Cardiology, and Pulmonary Medicine. I also attend to private patients at St. Luke's.
5. As a senior attending physician and Professor with decades of teaching and training medical students, Interns, Residents and Fellows as well as attending to my own private patients, I can attest that following Standard of Care ("SOC") protocols is crucial and essential for proper diagnosis, treatment and care management. Obviously, there are numerous SOC protocols, which begin from the time the patient is first seen and examined at a hospital/medical center, post-admission, at time of discharge and following discharge. Many of the protocols are basic, yet of critical importance to the patient's overall health welfare and ultimate recovery during the recuperation period following discharge. That is why all hospitals/medical centers respect and adhere to strict guidelines and protocols described & defined by each healthcare facility and even by federal law(s). Certainly, real-time information stated

and revealed in a patient's medical records such as all chart notes, must be carefully evaluated and considered as primary SOC as part of patient care management. Disregard of even basic protocols can lead to catastrophic events and outcomes.

6. I have reviewed the available medical records, summary reports and the HHS-Investigative Report pertaining to Rebecca Powell. Evaluation of her medical records and reconstruction of an accurate timeline was available in part (all records were requested, not all records were provided by Centennial Hills Hospital & Medical Center). In my opinion, stated to a reasonable degree of medical probability, the conduct of *Centennial Hills Hospital & Medical Center* (including its hospitalists/nurses and other healthcare providers including *Dr. Juliano Dionice, M.D., Dr. C. Concio, M.D., Dr. Vishal Shah* - presumed employees)—fell below the appropriate standards of care that were owed to Rebecca Powell. The medical records and additional medical related information I have reviewed reveal the following:

- A. On May 3, 2017 at 3:27PDT, Rebecca Powell, a 41-year old adult female, was found by EMS at home, unconscious with labored breathing and vomitus on her face. It was believed she ingested an over-amount of Benadryl, Cymbalta and Ambien. EMS intubated Ms. Powell and transported her to Centennial Hills Hospital—Emergency Department (ED). At ED, patient was evaluated and diagnosed with:

- Respiratory Failure and low BP
- “Overdose on unknown amount of Benadryl, Cymbalta and ETOH”
- Review of Systems: “Within Normal Limits” (WNL)
- Sinus Tachycardia – no ectopy
- Lab results consistent with respiratory failure and over-dosage of suspected medications
- Acidosis

- B. Notwithstanding clear evidence of intentional over-dosing of the substances mentioned, the Death Certificate noted the *only* cause of death was due to: “Complications of Cymbalta Intoxication.” Based on medical records, the patient did not and with high probability could not have died from the cause of death stated in the Death Certificate. The patient died as a direct consequence of respiratory failure directly due to below standard of care violations as indicated by her medical records and reinforced by the Department of Health and Human Services—Division of Health Quality and Compliance Investigative Report. Furthermore:

- After being admitted to Centennial Hills Hospital on 05/03/17, the patient's health status steadily improved over the course of almost a week.
- Patient was extubated in the ICU and moved to a medical floor.
- Patient's lab results improved daily.
- Pulmonologist consultation stated that the patient felt well enough and wanted to go home. The specialist made no note to delay discharge.
- Healthcare providers told family members from out-of-town that the patient was doing much better and “would be discharged soon.” Family returned to their homes out-of-state based on the information they received.

- Metabolically, Cymbalta has a half-shelf life of approximately 12-24 hours, up to 48 hours if an over-amount is ingested. The patient didn't have a downward health status until 150 hours+ had transpired. *Therefore, the possibility that she died from Cymbalta intoxication or complication of, is not realistic.*
  - There was no medical evidence of the patient ingesting Ambien, Benadryl or ETOH, nor did toxicology reports reveal any of those substances.
  - On 05/04/17, the patient underwent a bronchoscopy and bronchoalveolar lavage. The report stated, *"There was no foreign material or deciduous matter evidenced."* Had the patient aspirated vomitus, there would have been some endotracheal or bronchial evidence of foreign or deciduous matter.
  - From 05/07/17 – 05/11/17 – Over a period of nearly five days, medical records state the patient steadily improved.
  - 05/07/17– PROGRESS NOTES state *"Patient alert and stable"* and *"Can upgrade diet to GI soft."*
  - 05/08/17 – *"Patient vitals remain stable"* and *"No significant event during shifts."*
  - 05/09/17 – PROGRESS NOTES (stating the patient had significantly improved and was expected to be discharged)
  - *"Patient eager to go home. Denies any shortness of breath. No cough, shortness of breath or sputum production."*
  - Review of Systems – Normal
  - Vitals – Normal
- C. Late on 05/10/17 and early hours of 05/11/17, the patient's health status changed. Initially, the changes were not even approaching critical by any stretch of consideration or concern. However, the *below standard of care related to inadequate and absent monitoring, lack of diagnostic testing and improper treatment were directly related to the patient's acutely failing health status and ultimately her pronounced death at 6:57 AM on 05/11/17.*
- On 05/10/17 at 2AM, patient started coughing and complained of SOB. Patient was receiving O2-2L/NC
  - At 10:51AM – Patient's SO2 dropped to 92%
  - At 3:11PM – *Patient complained of continued SOB and weakness*
  - At 4:11PM – Patient complaining of increased labor for breathing, states she feels like she's *"drowning"*
  - Order for breathing treatment and **Ativan IV Push** ordered by Dr. Shah & administered for anxiety with no improvement.
  - Dr. Shah contacted who ordered STAT ABG and 2 view x-ray – Results showed possible infiltrates or edema.
- D. On 05/11/17, the patient's health status markedly declined.
- At 2AM – A STAT CT scan of chest was ordered.
  - At 2:20AM – **Ativan IV Push** (.5mg) was ordered by Dr. Concio & administered.
  - At 2:40AM – *CT Lab called to state patient was being returned to her room (701) and CT could not be completed due to patient's complaint of SOB and anxiety.*
  - (Note: At the very least, a portable x-ray should have been ordered when the patient was returned to her room. It wasn't.)
  - At 3:27AM – **Ativan IV Push** was again ordered by Dr. Concio & administered.

- At 3:45AM – RT-Tech (Venessa) was called to assess the patient. Indicated that the patient was not cooperative and kept removing the O2 mask. Also stated the patient needed to be monitored with a “sitter.” Karen contacted House Supervisor David to explain that a sitter was needed. He suggested placing the patient in wrist restraints. When asked to closely monitor the patient, the camera monitor (John) noted that the resolution of the camera/monitor did not allow him to see the patient enough to discern when she attempted to remove the mask. He advised moving the patient to a room with better video capability. The patient did not receive a “sitter” nor was she moved to another room with adequate monitoring capability.
- The patient was mis-diagnosed with ‘anxiety disorder’ by an unqualified healthcare provider and there was no differential diagnosis presented by any physician at any time on 05/11/17 when the patient was suffering from respiratory insufficiency.
- Based on the administration of multiple doses of Ativan IV Push, the fact that the patient had been receiving daily doses of Midazolam (another Benzodiazepine causing respiratory depression), Acetylcysteine (can also cause respiratory symptoms), (at least four other drugs with side effects of SOB, labored breathing and cough) and the period of time from Ativan dosing to Code Blue was within less than 90 minutes. Given the medication regimen the patient was on, it’s highly probable that administering the back to back doses of Ativan IV Push to this patient (already in respiratory distress), the inadequate and absent monitoring of the patient and other below standards of care as verified in the Investigative Report, were all directly related to the patient’s acute respiratory failure leading to the final cardiorespiratory event and death.

7. Dr. Dionice, Dr. Concio and Dr. Shah, in my expert opinion, each one breached their duty.

- A. Based on radiological reports as late as 05/10/17, stating there were no significant changes from 05/08/17, noting “*possible infiltrates or edema.*” This is extremely relevant in diagnosing and treating the patient’s sudden respiratory change in health status late 05/10/17 and 05/11/17.
- Since the patient was unable to undergo a CT scan due to “anxiety”, at the very least a portable x-ray should have been ordered to determine if and what significant pulmonary changes were present based on the presence of acute signs & symptoms. Each of the three physicians aforementioned were aware of the patient’s acutely declining health status and were responsible for not only ordering an alternative diagnostic imaging such as a portable x-ray, but also obtaining & reporting the results to determine pulmonary involvement based on her symptoms. Medical records do not reveal a portable x-ray ordered when the CT scan was unable to be completed, nor any results of any x-ray ordered after the attempted CT scan when the patient was returned to her room.
  - Based on the patient’s stable condition until late 05/10/17 and her acute decline in health status on 05/11/17, an immediate differential diagnosis should have been made, which absolutely should have included the possibility of side effect(s) and adverse reaction(s) from medications being administered. Given the nature of the sudden onset of the patient’s symptoms, drug side effects and interactions should have been reviewed by each of the three physicians aforementioned. The patient had been receiving six drugs, including Ativan administered on 05/09/17 and 05/10/17, all having side effects directly

related to the symptoms and findings displayed by the patient at the time her health acutely worsened on 05/10/17 & 05/11/17.

- Without consideration of the probable drug side effects, adverse reactions and interactions, which were most probably directly related to the patient's acute symptoms, the three physicians aforementioned, ignored even the possibility that her medications might be the cause of her symptoms & declining health status. Consequently, not one of the three physicians aforementioned even placed drug(s) side effects/adverse reactions on any differential diagnosis.
- Instead of performing their professional duty related to prescribed and administered medications, all three of the physicians aforementioned were aware of the decision to administer even more Ativan IV-Push, multiple times in a short period of time to treat the patient's symptom of anxiety. It was the responsibility of each of the three physicians to have been aware and knowledgeable that administering Ativan to a respiratory compromised patient has significant risks related to serious pulmonary/respiratory function. The FDA provides warnings with the use of benzodiazepines of such risk. Interactions with other drugs (not only when used concomitantly with opiates) can compound the seriousness of the risk(s).
- *Had any of the three physicians aforementioned, reviewed the patient's drug regimen, they would have realized that several of the drugs caused, shortness of breath (SOB) and associated anxiety, cough, labored breathing, weakness and other related symptoms exhibited by the patient. Had any of the three aforementioned physicians, reviewed the side effects, Ativan (known to potentially cause and/or increase respiratory depression) would not have been administered, especially not by IV-Push (the effects are much faster and more dramatically pronounced).*

8. Department of Health and Human Services—NV Bureau of Health Quality and Compliance Investigative Report, not only reinforced my findings, but revealed many other below standard of care violations, all related directly to the wrongful death of the patient. The information below, provides examples of other below standard of care violations found in the medical records and as part of the HHS—NV Bureau's Investigation:

- There was no specific differential diagnosis shown in the records related to her complaints and abnormal findings between 05/10/17 to 05/11/17.
- The records stated numerous times that the patient needed to be elevated to a higher level of care and required **close** monitoring. **Neither were provided.**
- **Respiratory Therapist** – (“...the RT concluded the physician should have been notified, the RRT activated and the level of care upgraded.”) **The physician was not notified, the RRT was not activated and the level of care was not elevated.**
- **Registered Nurse** – (“...RN explained normal vital signs were: B/P: 100/60, HR: no more than 100 bpm, RR: 16-20 br/m and SPO2 no less than 92%. If a patient with a HR of 130 bpm and RR of 30 br/m, the physician **must** be notified immediately and the RRT activated.”) **The patient had a HR of 130, SPO2 below 92% while receiving 3+ liters of oxygen and a respiratory rate of 30 bpm..”) The physician was not notified.**
- **The Legal 2000 Patient Frequency Observation Record** – (“...they could not see the incident on monitor and again advised to change the patient to room 832 (with working camera). The record revealed at 6:10 AM, Code Blue was announced. The record indicated the patient “last appeared to be sitting in close to upright position with fingers

*possible in mouth for approximately one hour.”) **IMPORTANT NOTE** – The patient was not changed to a different room as earlier advised. Hence, she was not being adequately monitored, which was of critical importance. *The last sentence in this record reveals that for at least one hour the patient was in severe respiratory distress and during that hour, no RN or CNA checked on the patient. This contradicts other records and statements made by the RN and the CNA.**

- **Chief of Nursing Operations** – (“...the Chief of Nursing Operations (CNO) indicated that the patient should have been monitored closely based on the vital signs and condition. The CNO acknowledged the Rapid Response Team (RRT) should have been activated and the patient upgraded to a higher level of care.”) **The RRT was not activated nor was the patient elevated to a higher level of care.**
- **Process Improvement Manager** – (“...the facility Process Improvement Manager indicated the patient was not monitored by telemetry and the cardiac monitoring documentation available for 05/11/17 was the EKG performed during the Code Blue.”) **The patient was already known to be in respiratory distress before she coded. According to this record-note, the patient was not receiving any cardiac monitoring and was only monitored during the code. (This is a shameful and gross example of below standard of care. Any patient in respiratory distress needing a re-breather mask and receiving the same medications for the present acute health status, must be on telemetry to monitor cardiac status. In this patient’s case, it was critically important given the fact she had been administered multiple IV PUSH doses of ATIVAN, a drug known to depress the respiratory system.**
- **Respiratory Therapy Supervisor** – (“...RT Supervisor confirmed according to the vital signs documented in the record on 05/11/17 at 4:08 AM and 4:47 AM, the patient was in respiratory distress and required an upgrade of the level of care.”) **On more than one occasion during the same hour, the patient required being upgraded to a higher level of care, but wasn’t upgraded. This note also indicates that during that hour between 4:00 AM – 5 AM, no RN or CNA checked on the patient. This contradicts other records and statements made by the RN and the CNA.**

9. In my expert opinion, stated to a reasonable degree of medical probability, the failure to properly diagnose the patient before she became acutely critical on 05/11/17, the failure of the healthcare provider staff to adequately monitor the patient (also stated in the HHS-Investigative Report), the failure to properly diagnose the patient, the failure to provide proper treatment (***lacking review of the patient’s medications***) and administering the drug (*Ativan*) several times **IV-Push** in a respiratory compromised patient, inclusively & directly led to the patient’s wrongful death. Additionally, there were many other below Standard of Care violations as revealed and reported by the Department of Health and Human Services, Nevada—Bureau of Health Care Quality and Compliance – Investigation Report (Complaint Number - NV00049271) also related directly to Rebecca’s Powell’s wrongful death.



I declare, under penalty of perjury, that the foregoing is true and correct to the best of my knowledge and belief. I reserve the right to change my opinions pending production and review of additional medical records.

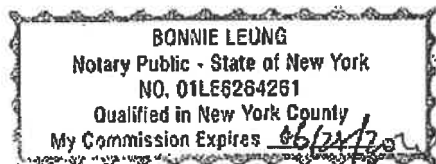
*Sami Hashim*  
Dr. Sami Hashim, M.D.

Dated: 1/23/2019

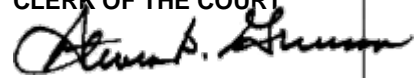
Sworn to me before this 23<sup>rd</sup> day

of January 2019.

*Bonnie Leung*  
Notary Public



# EXHIBIT G



**COMP**

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*Attorneys for Plaintiffs*

**CLARK COUNTY DISTRICT COURT**

**CLARK COUNTY, NEVADA**

**ESTATE OF REBECCA POWELL**,  
through **BRIAN POWELL**, as Special  
Administrator; **DARCI CREECY**,  
individually and as an Heir; **TARYN**  
**CREECY**, individually and as an Heir;  
**ISAIAH KHOSROF**, individually and as an  
Heir; **LLOYD CREECY**, individually;

Plaintiffs,

vs.

**VALLEY HEALTH SYSTEM, LLC** (doing  
business as "Centennial Hills Hospital Medical  
Center"), a foreign limited liability company;  
**UNIVERSAL HEALTH SERVICES, INC.**,  
a foreign corporation; **DR. DIONICE S.**  
**JULIANO, M.D.**, an individual; **DR.**  
**CONRADO C.D. CONCIO, M.D.**, an  
individual; **DR. VISHAL S. SHAH, M.D.**, an  
individual; **DOES 1-10**; and **ROES A-Z**;

Defendants.

A-19-788787-C

Case No. \_\_\_\_\_

Department 14

Dept No. \_\_\_\_\_

**COMPLAINT**

**JURY TRIAL DEMANDED**

***SUBJECT TO AUTOMATIC  
ARBITRATION EXEMPTION –***

1. ***Pursuant To N.A.R. 3(A)-  
Medical Malpractice***
2. ***Amount In Controversy Exceeds  
\$50,000.00***

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*Attorneys for Defendant Valley Health System,*  
7 *LLC dba Centennial Hills Hospital Medical*  
*Center*

8  
9 DISTRICT COURT  
10 CLARK COUNTY, NEVADA  
11

12 ESTATE OF REBECCA POWELL, through  
BRIAN POWELL, as Special Administrator;  
13 DARCI CREECY, individually and as Heir;  
TARYN CREECY, individually and as an  
14 Heir; ISAAH KHOSROF, individually and as  
an Heir; LLOYD CREECY, individually,;

15 Plaintiffs,

16 vs.

17 VALLEY HEALTH SYSTEM, LLC (doing  
18 business as "Centennial Hills Hospital Medical  
Center"), a foreign limited liability company;  
19 UNIVERSAL HEALTH SERVICES, INC., a  
foreign corporation; DR. DIONICE S.  
20 JULIANO, M.D., an individual; DR.  
CONRADO C.D. CONCIO, M.D., an  
21 individual; DR. VISHAL S. SHAH, M.D., an  
individual; DOES 1-10; and ROES A-Z,;

22 Defendants.  
23

Case No. A-19-788787-C

Dept. No.: 30

**DECLARATION OF GINA ARROYO,  
PURSUANT TO NRS 53.045 IN SUPPORT  
OF DEFENDANTS' VALLEY HEALTH  
SYSTEM, LLC AND UNIVERSAL  
HEALTH SERVICES, INC.'S MOTION  
FOR SUMMARY JUDGMENT ON  
STATUTE OF LIMITATIONS**

24  
25 STATE OF NEVADA }

26 COUNTY OF CLARK }

27 I, GINA ARROYO, declare as follows:

28 1. I am over the age of eighteen and I make this affidavit solely in my capacity as an

1 Area Manager for MRO Corp., the company responsible for providing Disclosure Management  
2 Services that include Release of Information (ROI) Services for the processing of requests for copies  
3 of Protected Health Information (PHI) on behalf of Centennial Hills Hospital ("CHH") in Las  
4 Vegas, Nevada.

5 2. In my capacity, I manage a proprietary platform for the secure and compliant  
6 exchange of PHI between CHH and other entities, including other providers, government agencies,  
7 payers, third-party requesters and patients, including law firms as well as to patients and their  
8 families. In my position, I and members of my team, have complete access to all patient medical  
9 records from CHH, and are responsible for processing all medical records requests for said records.  
10 I therefore have personal knowledge of our system through which we have obtained all medical  
11 records requests for CHH. Any such requests are directed to our organization to obtain the records,  
12 process, and transmit to the requesting party. I have held this position during since April, 2017 and  
13 retain it today. Therefore, I am competent to testify to the facts contained herein.

14 3. Upon receipt of a request for medical records from any individual or entity, it is the  
15 responsibility of my organization to review the request, determine whether the requesting party has  
16 provided sufficient documentation to obtain the records, and upon such proof, retrieving those  
17 records from CHH's electronic medical records (EMR) program.

18 4. Once retrieved, we assemble the medical records in accordance with the request from  
19 the person or entity. If required by a legal entity who needs a certificate of the records custodian,  
20 we obtain the required certificate of the custodian of records for CHH, Melanie Thompson. Ms.  
21 Thompson is currently the records custodian for CHH, and she was the custodian at the time the  
22 records requested in this case were received. If a patient or family member requests medical records,  
23 no certificate of the records custodian is required and is not provided.

24 5. I have reviewed our database system in which we log every request for medical  
25 records for CHH to determine the timeline for the records requested in this matter, and the specific  
26 records provided attendant to each request for the information containing the first request which  
27 CHH received concerning Rebecca Powell.

28 6. On May 25, 2017, MRO received a request for medical records from Taryn Creecy,



1 one of the plaintiffs in this matter, along with a copy of a court order requiring that Centennial Hills  
2 Hospital provide a complete copy of Rebecca Powell's medical chart (**Exhibit "A" hereto**).

3 7. Our records indicate that on June 2, 2017, the request for the medical records for  
4 Mrs. Powell was processed by MRO personnel. As part of that process, a ROI specialist validated  
5 the documentation provided by the requesting party to ensure that the requesting party was an  
6 authorized recipient. Thereafter, the ROI specialist used the information on the authorization  
7 request to populate records from the CHH EMR according to patient identifiers, date of service, and  
8 the specific records requested. The ROI specialist then electronically imported the medical records  
9 to our ROI Online® portal and performed a quality review on all pages to ensure accuracy and  
10 compliance with the request documentation. Thereafter, the records were released to MRO's  
11 national service center for a second quality control check and shipment to the requesting party.

12 8. On June 5, 2017, we determined that the records for Mrs. Powell were requested by  
13 Taryn Creecy, her daughter, and that the records were requested to be sent to a post office box. We  
14 confirmed that Ms. Creecy needed to obtain a court order for the records since she was not the  
15 patient. We verified the request along with the attached court order (**Exhibit "A"**).

16 9. On June 7, 2017, we sent an invoice to Ms. Creecy (**Exhibit "B"**) which included all  
17 fees associated with the provision of 1,165 pages of Mrs. Powell's medical records from CHH. The  
18 1,165 pages invoiced represented the entirety of medical records for Mrs. Powell with no exclusions.

19 10. On June 12, 2017, we received payment for the 1,165 pages of records (**Exhibit**  
20 **"C"**). On June 13, 2017, we sent out the complete 1,165 pages to Ms. Creecy to the address provided  
21 on the request documentation.

22 11. On June 23, 2017, we received the package back from the United State Postal Service  
23 due to undeliverability to the addressee (**Exhibit "D"**).

24 12. Upon return of the records, our notes indicate that on June 28, 2017, we contacted  
25 Ms. Creecy and she advised us that the post office box to which she requested the records be sent  
26 was in the name of her father, Brian Powell, and that the Post Office likely returned them since she  
27 was an unknown recipient at the post office box. She thereafter requested that we resend the records  
28 to him at that post office box address.

1        13.    On June 29, 2017, we re-sent the records addressed to Mr. Powell at the post office  
2 box previously provided and we did not receive the records back thereafter.

3        14.    Again, we provided copies of all medical records for Mrs. Powell as part of this  
4 medical records request, since that was what the authorization and court order called for, and no  
5 records for this patient were excluded from that packet.

6        15.    As to those matters stated herein of which I have personal knowledge, I affirm the  
7 truth and accuracy of such facts. As to any facts that are not within my personal knowledge, I am  
8 informed and believe that such matters are true and correct.

9        Dated this 1<sup>st</sup> day of September, 2020.

  
GINA ARROYO

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11 No Notary Required per NRS 53.045  
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# EXHIBIT ‘A’



\* Put Records on CD

## AUTHORIZATION TO USE AND DISCLOSE PROTECTED HEALTH INFORMATION

☐ Initial here if requesting information from Centennial Hills Hospital Medical Center.  
Note: There will be a charge of \$.14 per page if source document is electronic or a charge of \$.16 per page if source document is paper for releases of PHI for all reasons other than continued patient care.

☐ Initial here if requesting access to review original medical records.

☐ Initial here if requesting patient record to be provided in electronic format (CD) or secure e-mail.

Patients are entitled to one (1) free Compact Disc (CD) containing radiology images/films/recordings. Any requests for additional copies will be subject to a \$10 fee per CD.

Patient Name at Time of Treatment: REBECCA ANN POWELL Date of Birth: 5/30/1975 Social Security Number: 275-80-9124  
Street Address: P.O. Box 750131 Home Phone Number: 216 571 9522  
City: LAS VEGAS State: NV Zip Code: 89136-0131 Work Phone Number: \_\_\_\_\_  
Email: \_\_\_\_\_

This document authorizes Centennial Hills Hospital Medical Center to use and disclose Protected Health Information (PHI) as described below. Uses and disclosures of PHI will be consistent with Nevada and Federal law concerning the privacy of PHI. Failure to provide all information requested will delay action on this Authorization.

- Person(s)/Organization(s) authorized to receive the PHI: Centennial Hills Hospital Medical Center
- Purpose of Requested Use or Disclosure: \_\_\_\_\_
- Description of the information included in Use or Disclosure: Treatment date(s): 5/3/2017 to 5/11/2017  
☒ Billing Record ☒ History and Physical ☒ Emergency Department  
☒ All PHI In Medical Record (Complete Chart Copy) ☒ Operative Report ☒ Other (please specify): ALL RECORDS, IMAGES AND TAPES  
☒ Radiology Images CD ☒ X-Ray Report BOTH SOFT AND HARD COPY  
☒ Discharge Summary ☒ Lab Reports/Pathology Reports
- By signing my initials next to the specific category of highly confidential information, I am authorizing Centennial Hills Hospital Medical Center to release the indicated type of information next to my initials pursuant to this Authorization from the treatment date(s) listed above.  
\_\_\_\_\_  
HIV/AIDS \_\_\_\_\_ Drug and Alcohol Information \_\_\_\_\_ Genetic Information  
\_\_\_\_\_  
Mental Health Information \_\_\_\_\_ Sexually Transmitted Disease Information \_\_\_\_\_ Tuberculosis Information
- Please list a date or event at which point this Authorization will expire (not to exceed 1 year): \_\_\_\_\_

### NOTICE OF RIGHTS AND OTHER INFORMATION:

- I understand that I have the right to revoke this authorization at any time. Such requests must be submitted in writing to the attention of Centennial Hills Hospital Medical Center, Health Information Management Department at 6900 North Durango Boulevard, Las Vegas, Nevada, 89149. Phone: (702) 629-1300 Fax: (702) 629-1645. Cancellation of my authorization will be effective when Centennial Hills Hospital Medical Center receives my signed request, but it will not apply to the information that was used or disclosed prior to that date.
- I understand that refusal to sign this authorization will have no effect on my enrollment, eligibility for benefits, or the amount a third party payor pays for the health services I receive.
- I understand that the person or entity that receives this information may not be covered by the federal privacy regulations, in which case the information above may be redisclosed and no longer protected by these regulations. I also understand that the person I am authorizing to use and/or disclose the information may receive compensation for the use and/or disclosure.
- I have a right to receive a copy of this authorization. I may inspect or obtain a copy of the protected health information that I am being asked to use or disclose.

Signature of Patient: [Signature] Date: 5/25/17  
Signature of Legal Representative: Jaryn Creevy Print Name: Jaryn Creevy Date: 5/25/17 Relationship to Patient: Daughter

Witness: \_\_\_\_\_ Date: \_\_\_\_\_  
☐ I Will Pick Up PHI  
☐ Mail PHI  
☐ Please Fax PHI To Physician Indicated

Reason Patient Unable to Sign

☐ Patient received copy of authorization

Staff Initials: \_\_\_\_\_

BAR CODE



R11001

Centennial Hills Hospital  
MEDICAL CENTER

AUTHORIZATION TO USE AND DISCLOSE  
PROTECTED HEALTH INFORMATION

(PMM# 78329158) (R 8/15) (FOD)

PATIENT IDENTIFICATION

RECEIVED

MAY 25 2017

CASSADY LAW OFFICES, P.C.

10799 W. Twain Avenue  
Las Vegas, Nevada 89135  
(702) 650-4480 - Fax 650-5561

CLERK OF THE COURT

- DISPOSITIONS
- ☐ - Voluntary Dismissal
  - ☐ - Transferred (before/during trial)
  - ☐ - Involuntary (statutory) Dismissal
  - ☐ - Judgment on Arbitration Award
  - ☐ - Stipulated Dismissal
  - ☐ - Stipulated Judgment
  - ☒ - Summary Judgment
  - ☐ - Non-Jury (bench) Trial
  - ☐ - Jury Trial

1 **ORDER**  
2 CASSADY LAW OFFICES, P.C.  
3 Jasen E. Cassady, Esq.  
4 Nevada Bar No. 8018  
5 [jasen@cassadylawoffices.com](mailto:jasen@cassadylawoffices.com)  
6 Brandi K. Cassady, Esq.  
7 Nevada Bar No. 12714  
8 [brandi@cassadylawoffices.com](mailto:brandi@cassadylawoffices.com)  
9 Brendan M. McGraw, Esq.  
10 Nevada Bar No. 11653  
11 [brendan@cassadylawoffices.com](mailto:brendan@cassadylawoffices.com)  
12 10799 West Twain Avenue  
13 Las Vegas, Nevada 89135  
14 Phone: (702) 650-4480  
15 Fax: (702) 650-5561  
16 Attorneys for the Estate

Electronically Filed  
05/25/2017

*Heather S. Shuman*  
CLERK OF THE COURT

**DISTRICT COURT  
CLARK COUNTY, NEVADA**

In the Matter of the Estate of

REBECCA ANN POWELL a/k/a  
REBECCA A. POWELL a/k/a  
REBECCA POWELL,

Deceased.

CASE NO.: P-17-091793-E

DEPT NO.: PC-1

Probate

**ORDER TO RELEASE MEDICAL RECORDS**

THE COURT, having reviewed the Ex Parte Petition to Release Medical Records, and good cause appearing,

IT IS HEREBY ORDERED, ADJUDGED AND DECREED that the medical records for REBECCA ANN POWELL a/k/a REBECCA A. POWELL a/k/a REBECCA POWELL, held with any and all medical facilities, hospitals, clinics, physicians, rehabilitation facilities, acute care facilities, nurse practitioners, and any other person or entity having medical records for the Decedent, including, but not limited to:

**CENTENNIAL HILLS HOSPITAL and its health care providers, nurses, doctors, staff, nurse practitioners, on-site pharmacy, and/or affiliates;**

shall release copies of said medical records to TARYN CREECY or her attorneys.

DATED this 24 day of May, 2017.

Submitted by:

CASSADY LAW OFFICES, P.C.

By: *Brendan M. McGraw*  
Brendan M. McGraw, Esq.  
Nevada Bar No. 11653

*[Signature]*  
DISTRICT COURT JUDGE

**CERTIFIED COPY  
DOCUMENT ATTACHED IS A  
TRUE AND CORRECT COPY  
OF THE ORIGINAL ON FILE**

*Heather S. Shuman*  
CLERK OF THE COURT

MAY 25 2017

RECEIVED

CASSADY LAW OFFICES, P.C.

MAY 25 2017

10799 W. Twain Avenue  
Las Vegas, Nevada 89135  
(702) 650-4480 - Fax 650-5561

CLERK OF THE COURT

Electronically Filed  
05/25/2017

*Heather L. Smith*  
CLERK OF THE COURT

1 **ORDER**  
2 CASSADY LAW OFFICES, P.C.  
3 Jasen E. Cassady, Esq.  
4 Nevada Bar No. 8018  
5 [jasen@cassadylawoffices.com](mailto:jasen@cassadylawoffices.com)  
6 Brandi K. Cassady, Esq.  
7 Nevada Bar No. 12714  
8 [brandi@cassadylawoffices.com](mailto:brandi@cassadylawoffices.com)  
9 Brendan M. McGraw, Esq.  
10 Nevada Bar No. 11653  
11 [brendan@cassadylawoffices.com](mailto:brendan@cassadylawoffices.com)  
12 10799 West Twain Avenue  
13 Las Vegas, Nevada 89135  
14 Phone: (702) 650-4480  
15 Fax: (702) 650-5561  
16 Attorneys for the Estate

**DISTRICT COURT  
CLARK COUNTY, NEVADA**

In the Matter of the Estate of

REBECCA ANN POWELL a/k/a  
REBECCA A. POWELL a/k/a  
REBECCA POWELL,

Deceased.

CASE NO.: P-17-091793-E

DEPT NO.: PC-1

Probate

**ORDER TO RELEASE MEDICAL RECORDS**

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16 cause appearing,

17 IT IS HEREBY ORDERED, ADJUDGED AND DECREED that the medical records for  
18 REBECCA ANN POWELL a/k/a REBECCA A. POWELL a/k/a REBECCA POWELL, held  
19 with any and all medical facilities, hospitals, clinics, physicians, rehabilitation facilities, acute care  
20 facilities, nurse practitioners, and any other person or entity having medical records for the  
21 Decedent, including, but not limited to:

**CENTENNIAL HILLS HOSPITAL and its health care  
providers, nurses, doctors, staff, nurse practitioners, on-site  
pharmacy, and/or affiliates;**

shall release copies of said medical records to TARYN CREECY or her attorneys.

DATED this 24 day of May, 2017.

*[Signature]*  
DISTRICT COURT JUDGE

Submitted by:

CASSADY LAW OFFICES, P.C.

By: *[Signature]*  
Brendan M. McGraw, Esq.  
Nevada Bar No. 11653

- DISPOSITIONS
- ☐ - Voluntary Dismissal
  - ☐ - Transferred (before/during trial)
  - ☐ - Involuntary (statutory) Dismissal
  - ☐ - Judgment on Arbitration Award
  - ☐ - Stipulated Dismissal
  - ☐ - Stipulated Judgment
  - ☒ - Summary Judgment
  - ☐ - Non-Jury (bench) Trial
  - ☐ - Jury Trial



JOHN R. KASICH  
GOVERNOR  
Donald J. Petri  
Registrar, BMV

# Ohio

USA

## IDENTIFICATION CARD

1820UL1926900000



Under 21 until 06-20-2018

15 Sex: F  
16 HL: 5-05  
17 Wt: 180  
18 Eyes: BRO  
19 Hair: BRO

06-20-1995

1 CREECY  
2 TARYN NICOLE  
8 4572 TURNEY RD  
CLEVELAND, OH 44105



4d LICENSE NO. 3 BIRTHDATE 1b ISSUE DATE  
TZ901113 06-20-1995 01-07-2015

9 CLASS 1b EXPIRES  
REG 06-20-2018

### NONDRIVER

*Taryn Crecy*



\* Put Records on CD

# AUTHORIZATION TO USE AND DISCLOSE PROTECTED HEALTH INFORMATION

<input checked="" type="checkbox"/>	Initial here if requesting information from Centennial Hills Hospital Medical Center. Note: There will be a charge of \$.14 per page if source document is electronic or a charge of \$.16 per page if source document is paper for releases of PHI for all reasons other than continued patient care.
<input type="checkbox"/>	Initial here if requesting access to review original medical records.
<input type="checkbox"/>	Initial here if requesting patient record to be provided in electronic format (CD) or secure e-mail.
<input type="checkbox"/>	Patients are entitled to one (1) free Compact Disc (CD) containing radiology images/films/recordings. Any requests for additional copies will be subject to a \$10 fee per CD.

REBECCA ANN POWELL	5/30/1975	275-80-9124
Patient Name at Time of Treatment	Date of Birth	Social Security Number
P.O. Box 750131		216 571 9522
Street Address		Home Phone Number
LAS VEGAS	NV	
City	State	Zip Code
		Work Phone Number
Email		

This document authorizes Centennial Hills Hospital Medical Center to use and disclose Protected Health Information (PHI) as described below. Uses and disclosures of PHI will be consistent with Nevada and Federal law concerning the privacy of PHI. Failure to provide all information requested will delay action on this Authorization.

1. Person(s)/Organization(s) authorized to receive the PHI: ☐ Centennial Hills Hospital Medical Center

2. Purpose of Requested Use or Disclosure:

3. Description of the information included in Use or Disclosure: Treatment date(s): 5/3/2017 to 5/11/2017

- |   |   |   |
|---|---|---|
| <input checked="" type="checkbox"/> Billing Record                                  | <input checked="" type="checkbox"/> History and Physical          | <input checked="" type="checkbox"/> Emergency Department    |
| <input checked="" type="checkbox"/> All PHI in Medical Record (Complete Chart Copy) | <input checked="" type="checkbox"/> Operative Report              | <input checked="" type="checkbox"/> Other (please specify): |
| <input checked="" type="checkbox"/> Radiology Images CD                             | <input checked="" type="checkbox"/> X-Ray Report                  | ALL RECORDS, IMAGES AND TRANSCRIPTS                         |
| <input checked="" type="checkbox"/> Discharge Summary                               | <input checked="" type="checkbox"/> Lab Reports/Pathology Reports | BOTH SOFT AND HARD COPY                                     |

4. By signing my initials next to the specific category of highly confidential information, I am authorizing Centennial Hills Hospital Medical Center to release the indicated type of information next to my initials pursuant to this Authorization from the treatment date(s) listed above.

HIV/AIDS	TC Drug and Alcohol Information	Genetic Information
TC Mental Health Information	Sexually Transmitted Disease Information	Tuberculosis Information

5. Please list a date or event at which point this Authorization will expire (not to exceed 1 year):

## NOTICE OF RIGHTS AND OTHER INFORMATION:

- I understand that I have the right to revoke this authorization at any time. Such requests must be submitted in writing to the attention of Centennial Hills Hospital Medical Center, Health Information Management Department at 6900 North Durango Boulevard, Las Vegas, Nevada, 89149. Phone: (702) 629-1300 Fax: (702) 629-1645. Cancellation of my authorization will be effective when Centennial Hills Hospital Medical Center receives my signed request, but it will not apply to the information that was used or disclosed prior to that date.
- I understand that refusal to sign this authorization will have no effect on my enrollment, eligibility for benefits, or the amount a third party payor pays for the health services I receive.
- I understand that the person or entity that receives this information may not be covered by the federal privacy regulations, in which case the information above may be redisclosed and no longer protected by these regulations. I also understand that the person I am authorizing to use and/or disclose the information may receive compensation for the use and/or disclosure.
- I have a right to receive a copy of this authorization. I may inspect or obtain a copy of the protected health information that I am being asked to use or disclose.

Signature of Patient	Date
[Signature]	15/25/17
Signature of Legal Representative	Relationship To Patient
Jaryn Creevy	Daughter

Witness	Date
	<input type="checkbox"/> I Will Pick Up PHI
	<input type="checkbox"/> Mail PHI
	<input type="checkbox"/> Please Fax PHI To Physician Indicated

Reason Patient Unable to Sign

☐ Patient received copy of authorization

Staff Initials: \_\_\_\_\_

BAR CODE



RI1001

Centennial Hills Hospital  
MEDICAL CENTER

AUTHORIZATION TO USE AND DISCLOSE  
PROTECTED HEALTH INFORMATION

(PMM# 78329158) (R 8/15) (FOD)

PATIENT IDENTIFICATION

# EXHIBIT ‘B’

**MRO**  
1000 Madison Avenue, Suite 100  
Norristown, PA 19403

**Verification Needed**  
17117315  
June 07, 2017



Phone: (610) 994-7500  
Fax: (610) 962-8421

**Taryn Creecy**  
P.O. Box 750131  
Las Vegas, NV 89136

Reference ID:

MRO Request ID: 17117315

MRO Online Tracking Number: TVHS7ABJBYXFG

On 5/25/2017 the following healthcare provider received your request for copies of medical records:

**Centennial Hills Hospital**  
6900 North Durango Drive  
Las Vegas, NV 89149

You requested records for: REBECCA POWELL

### Fees

Search and Retrieval Fee:	\$0.00
Number of Pages:	1165
Tier 1:	\$93.20
Tier 2:	\$0.00
Tier 3:	\$0.00
Media pages/materials:	0
Media Fee:	\$0.00
Certification Fee:	\$0.00
Adjustments:	\$0.00
Postage:	\$1.19
Sales Tax:	\$7.69
TOTAL:	\$102.08
Paid at Facility:	( \$0.00)
Paid to MRO:	( \$0.00)
<b>BALANCE DUE:</b>	<b>\$102.08</b>

### VERIFICATION NEEDED

MRO processes requests for copies of medical records on behalf of your healthcare provider.

Your request for medical records has yielded 1165 pages of records. In order to process your request in compliance with HIPAA, we need to verify that you requested these records and that the address listed above is correct. (See 45 CFR § 164.514).

**To verify your request information**, please pay the balance due. Federal and state laws permit healthcare providers and companies like MRO to charge patients a "reasonable, cost-based fee" for copies of their medical records. (See 45 CFR § 164.524(c)(4)). You may pay the balance on the invoice by check by sending payment to MRO, P.O. Box 6410, Southeastern, PA 19398-6410 or online using a credit card at [www.roilog.com](http://www.roilog.com). If you have any questions, please call MRO at (610) 994-7500.

**If you want to modify your request**, please check the modification option on the next page and submit a revised request that is more specific as to which parts (e.g., tests, progress notes, etc.) or dates of service you would like to have sent to you along with this form by fax to (610) 962-8421, via email at [RequestInformation@MROCorp.com](mailto:RequestInformation@MROCorp.com), or by U.S. mail to MRO, 1000 Madison Avenue Suite 100, Norristown, PA 19403.

**If you want to cancel your request**, please check off the cancellation option below and send this form to MRO by fax to (610) 962-8421 or email [RequestInformation@MROCorp.com](mailto:RequestInformation@MROCorp.com), or by U.S. mail to MRO, 1000 Madison Avenue Suite 100, Norristown, PA 19403.

By paying this invoice, you are representing that you have reviewed and approved the charges and have agreed to pay them. Any dispute relating to this invoice must be presented before paying this invoice. Any dispute not so presented is waived. All disputes must be resolved by arbitration under the Federal Arbitration Act through one or more neutral arbitrators before the American Arbitration Association. Class arbitrations are not permitted. Disputes must be brought only in the claimant's individual capacity and not as a representative of a member or class. An arbitrator may not consolidate more than one person's claims nor preside over any form of class proceeding.

**Please contact MRO at (610) 994-7500 for any questions regarding this invoice.**  
**MRO is the medical copy request processor for:**  
**Centennial Hills Hospital**

### PAYMENT:

*You may pay this invoice online at:*

**[www.roilog.com](http://www.roilog.com)**

*You can send a check to:*

**MRO**

P.O. Box 6410,  
Southeastern, PA 19398-6410

MRO Tax ID (EIN): 01-0661910

*Please write the Request # on the check  
or return this invoice with the payment*

# EXHIBIT ‘C’



## CC Payment Receipt

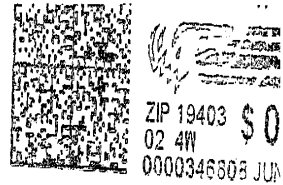
Transaction Status:	<b>Approved</b>
Transaction Date and Time:	<b>6/12/2017 3:44:19 PM</b>
Transaction Reference No.:	<b>961989</b>
Approval Code:	<b>0000932555</b>
Order Number:	<b>17117315</b>
Charge Amount:	<b>\$102.08</b>
Credit Card Number:	<b>XXXXXXXXXXXX2733</b>
Credit Card Holder:	<b>Brian M. Powell</b>

# EXHIBIT ‘D’

MRO  
1000 Mac  
Suite 100  
Norristown, PA 19403

RETURN SERVICE  
REQUESTED

FIRST CLASS



*Handwritten signature*

Taryn Creecy  
Personal  
P.O. Box 750131  
Las Vegas, NV 89136



NIXIE 851 7E 1 0106/23/17  
RETURN TO SENDER  
ATTEMPTED - NOT KNOWN  
UNABLE TO FORWARD  
SC: 1940324262S 2104N174110-0033E

1 S. BRENT VOGEL  
Nevada Bar No. 6858  
2 Brent.Vogel@lewisbrisbois.com  
ADAM GARTH  
3 Nevada Bar No. 15045  
Adam.Garth@lewisbrisbois.com  
4 LEWIS BRISBOIS BISGAARD & SMITH LLP  
6385 S. Rainbow Boulevard, Suite 600  
5 Las Vegas, Nevada 89118  
Telephone: 702.893.3383  
6 Facsimile: 702.893.3789  
*Attorneys for Defendant Valley Health System,  
7 LLC dba Centennial Hills Hospital Medical  
Center*

8  
9 DISTRICT COURT  
10 CLARK COUNTY, NEVADA  
11

12 ESTATE OF REBECCA POWELL, through  
BRIAN POWELL, as Special Administrator;  
13 DARCI CREECY, individually and as Heir;  
TARYN CREECY, individually and as an  
14 Heir; ISAIAH KHOSROF, individually and as  
an Heir; LLOYD CREECY, individually,;

15 Plaintiffs,

16 vs.

17 VALLEY HEALTH SYSTEM, LLC (doing  
18 business as "Centennial Hills Hospital Medical  
Center"), a foreign limited liability company;  
19 UNIVERSAL HEALTH SERVICES, INC., a  
foreign corporation; DR. DIONICE S.  
20 JULIANO, M.D., an individual; DR.  
CONRADO C.D. CONCIO, M.D., an  
21 individual; DR. VISHAL S. SHAH, M.D., an  
individual; DOES 1-10; and ROES A-Z,;

22 Defendants.  
23

Case No. A-19-788787-C

Dept. No.: 30

**DECLARATION OF MELANIE  
THOMPSON, PURSUANT TO NRS 53.045  
IN SUPPORT OF DEFENDANTS'  
VALLEY HEALTH SYSTEM, LLC AND  
UNIVERSAL HEALTH SERVICES,  
INC.'S MOTION FOR SUMMARY  
JUDGMENT ON STATUTE OF  
LIMITATIONS**

24  
25 STATE OF NEVADA }

26 COUNTY OF CLARK }

27 I, MELANIE THOMPSON, declare as follows:

28 1. I am over the age of eighteen and I make this affidavit in my capacity as the Health



1 Information Manager for Centennial Hills Hospital ("CHH") in Las Vegas, Nevada.

2       2.       In my capacity, I am the medical records custodian for CHH and am responsible for  
3 maintaining copies of all medical records for patients of CHH. Medical records for patients are  
4 created from the electronic medical records (EMR) system for CHH. All information pertaining to  
5 the patient, including, but not limited to notes, labs, physician orders, consultations, and anything  
6 having to do with the patient is maintained in our EMR by patient medical record number. It is  
7 cross-referenced by the patient's date of birth to assure that we obtain information on the correct  
8 patient should that record be requested.

9       3.       As the medical records custodian, I provide certifications for all medical records  
10 requests which are requested by some legal entity. If another medical provider, patient or patient's  
11 family requests such records, CHH does not provide a certificate from me.

12       3.       CHH employs MRO as service to process all requests for medical records from any  
13 individual or entity. As part of that role, MRO maintains access to our EMR and assembles all  
14 medical records requests to comport with the specific documents requested by the party seeking the  
15 records. In that regard, MRO downloads all records compliant with the specific request from our  
16 EMR, assembles them into a package, invoices the requesting party before the records are  
17 disseminated, obtains payment from the requesting party and then prepares the records for  
18 dissemination. In the event a legal entity is requesting a copy of the medical records, I provide a  
19 certification that I maintain the records at CHH and attest to the accuracy thereof. If records are  
20 requested by a someone other than who needs a legal certification for evidentiary purposes, my  
21 certificate is not included among the records provided to the requesting party.

22       4.       I have reviewed Ms. Creecy's medical records request for Mrs. Powell's complete  
23 medical records dated May 25, 2017. Since these records were requested by an individual, my  
24 certificate as the custodian would not, and did not, accompany the medical records which were  
25 provided to her. However, I have access to the medical records file which was provided to Ms.  
26 Creecy pertaining to Mrs. Powell in June, 2017. I have compared that file with the EMR, the source  
27 from which all medical records for a patient are derived. In comparing the medical records, with  
28 the EMR, I am able to determine that a full and complete copy of Mrs. Powell's patient file was



1 provided to Ms. Creecy and contained all 1165 pages of medical records. No records were excluded  
2 from those provided to Ms. Creecy in June, 2017.

3 5. As to those matters stated herein of which I have personal knowledge, I affirm the  
4 truth and accuracy of such facts. As to any facts that are not within my personal knowledge, I am  
5 informed and believe that such matters are true and correct.

6 Dated this 26 day of August, 2020.

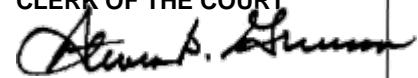
7   
8 MELANIE THOMPSON

9 No Notary Required per NRS 53.045

10  
11  
12  
13  
14  
15  
16  
17  
18  
19  
20  
21  
22  
23  
24  
25  
26  
27  
28

By

# EXHIBIT D



NOED

PAUL S. PADDA, ESQ. (NV Bar #10417)

Email: [psp@paulpaddalaw.com](mailto:psp@paulpaddalaw.com)

SRILATA SHAH, ESQ. (NV Bar #6820)

Email: [sri@paulpaddalaw.com](mailto:sri@paulpaddalaw.com)

**PAUL PADDA LAW, PLLC**

4560 South Decatur Boulevard, Suite 300

Las Vegas, Nevada 89103

Tele: (702) 366-1888

Fax: (702) 366-1940

Attorneys for Plaintiffs

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

ESTATE OF REBECCA POWELL, through  
BRIAN POWELL, as Special Administrator;  
DARCI CREECY, individually and as an Heir;  
TARYN CREECY, individually and as an  
Heir; ISAAH KHOSROF, individually and as  
an Heir; LLOYD CREECY, individually;

Plaintiffs,

vs.

VALLEY HEALTH SYSTEM, LLC (doing  
business as "Centennial Hills Hospital Medical  
Center"), a foreign limited liability company;  
UNIVERSAL HEALTH SERVICES, INC., a  
foreign corporation; DR. DIONICE S.  
JULIANO, M.D., an individual; DR.  
CONRADO C.D. CONCIO, M.D., an  
individual; DR. VISHAL S. SHAH, M.D., an  
individual; DOES 1-10; and ROES A-Z;

Defendants.

Case No. A-19-788787-C

Dept. No. XXX (30)

**NOTICE OF ENTRY OF ORDER AND  
DECISION REGARDING VALLEY  
HEALTH SYSTEM'S MOTION FOR  
FEES AND COUNTERMOTION FOR  
FEES AND COSTS**



PAUL PADDA LAW, PLLC  
4560 South Decatur Boulevard, Suite 300  
Las Vegas, Nevada 89103  
Tele: (702) 366-1888 • Fax (702) 366-1940

1 Notice is hereby provided that the Court filed an Order and Decision pertaining to  
2 Valley Health System's Motion for Fees and the Countermotion for Fees and Costs. A copy of  
3 that Order and Decision is attached hereto as Exhibit A.  
4

5 Respectfully submitted,

6 /s/ Paul S. Padda  
7

8 Paul S. Padda, Esq.  
9 Srilata Shah, Esq.  
10 PAUL PADDA LAW, PLLC  
11 4560 South Decatur Blvd., #300  
12 Las Vegas, Nevada 89103  
13 Tele: (702) 366-1888

14 Counsel for Plaintiffs

15 Dated: February 16, 2022  
16  
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**CERTIFICATE OF SERVICE**

Pursuant to the Nevada Rules of Civil Procedure, the undersigned hereby certifies that on this day, February 16, 2022, a copy of the foregoing **NOTICE OF ENTRY OF ORDER AND DECISION REGARDING VALLEY HEALTH SYSTEM'S MOTION FOR FEES AND COUNTERMOTION FOR FEES AND COSTS** was filed and served through the Court's electronic filing system upon all parties and counsel identified on the Court's master e-service list.

/s/ *Shelbi Schram*

Shelbi Schram, Litigation Assistant  
PAUL PADDA LAW

**EXHIBIT A**

**EXHIBIT A**

  
CLERK OF THE COURT

**DISTRICT COURT  
CLARK COUNTY, NEVADA  
-oOo-**

ESTATE OF REBECCA POWELL, through )  
BRIAN POWELL, as Special Administrator; )  
DARCI CREECY, individually and as an Heir; )  
TARYN CREECY, individually and as an Heir; )  
ISALAH KHOSROF, individually and as an )  
Heir; LLOYD CREECY, individually, )

Plaintiffs, )

vs. )

VALLEY HEALTH SYSTEM, LLC (doing )  
Business as "Centennial Hills Hospital )  
Medical Center"), a foreign limited liability )  
Company; UNIVERSAL HEALTH SERVICES, )  
INC., a foreign corporation; DR. DIONICE )  
S. JULIANO, M.D., an individual; DR. )  
CONRADO C.D. CONCIO, M.D., an individual; )  
DR. VISHAL S. SHAH, M.D., an individual; )  
DOES 1-10; and ROES A-Z, )

Defendants. )

CASE NO.: A-19-788787-C  
DEPT. NO.: XXX

**ORDER RE: VALLEY  
HEALTH SYSTEM'S  
MOTION FOR FEES  
AND COUNTERMOTION  
FOR FEES AND COSTS**

**INTRODUCTION**

The above-referenced matter is scheduled for a hearing on 2/18/22, with regard to Defendant, Valley Health System (Centennial Hospital's) Motion for Attorneys' Fees and Countermotion for Fees and Costs. Pursuant to the Administrative Orders of the Court, as well as EDCR 2.23, these matters may be decided with or without oral argument. This Court has determined that it would be appropriate to decide these matters on the pleadings, and consequently, this Order issues.

**FACTUAL AND PROCEDURAL HISTORY**

On May 3, 2017, Rebecca Powell ("Plaintiff") was taken to Centennial Hills Hospital, a hospital owned and operated by Valley Health System, LLC ("Defendant") by EMS services after she was discovered with labored breathing and vomit on her face. Plaintiff remained in Defendant's care for a week, and her condition improved.

1 However, on May 10, 2017, her condition began to deteriorate and on May 11, 2017, she  
2 suffered an acute respiratory failure, resulting in her death.

3 Plaintiffs brought suit on February 4, 2019 alleging negligence/medical  
4 malpractice, wrongful death pursuant to NRS 41.085, and negligent infliction of  
5 emotional distress. Defendants filed Motions to Dismiss and for Summary Judgment,  
6 which this Court denied. After a recent remand from the Nevada Supreme Court, on  
7 11/19/21, the Court entered an Order Vacating Prior Order Denying Defendant Valley  
8 Health System, LLC DBA Centennial Hills Hospital Medical Center's Motion for  
9 Summary Judgment and Granting Said Defendant's Motion for Summary Judgment  
10 Per Mandamus of Nevada Supreme Court. A Notice of Entry of Order was entered that  
11 same day. On 11/22/21, Defendant Valley Health Systems filed a Motion for Attorneys  
12 Fee and Verified Memorandum of Costs. On 12/3/21, Plaintiffs filed a Motion to  
13 Extend Time to Respond to Defendants' Valley Health Systems, Dr. Dionice S. Juliano,  
14 Dr. Conrado Concio, and Dr. Vishal Shah's Memorandums of Costs. Plaintiffs received  
15 an Order Shortening Time on 12/10/21. Following briefing, the Court entered an Order  
16 denying Plaintiffs' Motion to Extend Time to Respond, because of a lack of diligence on  
17 part of the Plaintiffs. On 12/20/21, Valley filed an Opposition to Plaintiff's Motion to  
18 Extend Time to Retax Costs, and Countermotion for Fees and Costs.

### 19 **SUMMARY OF LEGAL AND FACTUAL ARGUMENTS**

20 Defendant Valley Health System, LLC d/b/a Centennial Hills Hospital Medical  
21 Center (CHH) seeks attorneys' fees pursuant to NRCP 68(f) and NRS 17.117(10). CHH  
22 argues that it is entitled to an award of attorneys' fees because Plaintiffs rejected CHH's  
23 Offer of Judgment and then failed to obtain a more favorable judgment. See *Albios v.*  
24 *Horizon Cmty., Inc.*, 122 Nev. 409, 417, 132 P.3d 1022 (2006); *Logan v. Abe*, 131 Nev.  
25 260, 268, 350 P.3d 1139 (2015).

26 CHH states that it served an Offer of Judgment on Plaintiffs for a waiver of any  
27 presently or potentially recoverable costs, in full and final settlement of the Plaintiff's  
28 claims. Plaintiffs rejected this Offer of Judgment by failing to accept it within 14 days.  
N.R.C.P. 68(e) and N.R.S. 17.117(6). As this Court was directed by the Supreme Court to  
vacate its order denying summary judgment to CHH and instead issue an order  
granting CHH's summary judgment motion, Plaintiffs failed to obtain more a favorable  
judgment than the one offered to them in CHH's Offer of Judgment. Thus, pursuant to

1 N.R.C.P. 68 and N.R.S. 17.117, this Court has discretion to award CHH its attorneys'  
2 fees.

3 CHH cites to *Schouweiler v. Yancey Co.*, for the proposition that a Court must  
4 consider the following factors in exercising its discretion to award fees: (1) whether  
5 the offeree brought his claims in good faith; (2) whether the offeror's offer of judgment  
6 was also brought in good faith in both timing and amount; (3) whether the offeree's  
7 decision to reject the offer of judgment was in bad faith or grossly unreasonable; and  
8 (4) whether the amount of offeror's requested fees is reasonable and justified.

9 *Schouweiler*, 101 Nev. 827, 833, 917 P.2d 786 (1985). CHH argues that all of the  
10 *Schouweiler* factors weigh in favor of CHH.

11 As to the first factor, CHH notes that the Supreme Court determined Plaintiffs  
12 were on notice of any alleged malpractice in this case, in possession of records long  
13 before the statute of limitations expired, and knowingly initiated complaints to State  
14 agencies manifesting definitive knowledge and belief of malpractice. Nevertheless,  
15 CHH argues, Plaintiffs chose to initiate a lawsuit "which was dead on arrival,  
16 continued to maintain it even after irrefutable evidence demonstrated its untenability,  
17 and then used every opportunity to prevent the expenditure of additional resources in  
18 order to prove the impropriety of the lawsuit." Accordingly, Plaintiffs' claims were not  
19 brought in good faith.

20 With regard to the second factor, CHH argues that its Offer of Judgment was  
21 brought in good faith in both timing and amount. At the time of the Offer, CHH had  
22 incurred over \$58,000.00 in costs defending Plaintiffs' claims. The Offer was served  
23 several days prior to CHH's Motion for Summary Judgment and about one and a half  
24 years after the lawsuit's commencement. Before the Motion for Summary Judgment  
25 was filed, Plaintiffs were in possession of documents that demonstrated irrefutable  
26 evidence of inquiry notice. Plaintiffs were on notice of the statute of limitations issues  
27 as early as July 2019 when CHH's prior counsel filed a Motion to Dismiss. Therefore,  
28 given Plaintiffs' likelihood of losing on merits, the offered waiver of the right to seek  
reimbursement of costs was reasonable in both timing and amount.

For similar reasons, CHH argues that Plaintiffs' decision to reject the offer of  
judgment was in bad faith and grossly unreasonable. Instead of abandoning their

1 untimely filed action, Plaintiffs' decision to pursue an untenable case caused CHH to  
2 incur substantial legal costs and expenses to seek dismissal.

3 CHH argues that the fourth factor regarding the reasonableness of CHH's  
4 requested attorneys' fees also weighs in favor of CHH. Pursuant to NRCP 68, CHH may  
5 recover their attorneys' fees from the date of service of the Offer of Judgment to the end  
6 of the matter. In this case, CHH served an Offer of Judgment on 8/28/20 that expired  
7 on 9/11/20. CHH states it incurred a total of \$110,930.85 in attorneys' fees alone (not  
8 inclusive of expenses) from 8/28/20 to the present billing cycle (which does not  
9 include all fees incurred in October 2021). Additionally, CHH incurred \$31,401.10 in  
10 disbursements including expert fees and other expenses since 8/28/20.

11 CHH argues that the amount of its bills is reasonable, given the amount of time  
12 and energy needed to defend this case, engage in extensive written discovery, extensive  
13 motions and appeals practice, and, expert time and expenses, due to Plaintiffs' refusal  
14 to stipulate to stay the litigation while the summary judgment issue made its way  
15 through the court system. Additionally, medical malpractice cases are complex, involve  
16 substantial amounts of expert testimony, and require a great deal of preparation. CHH  
17 states that documents are available for in camera review by this Court, but were not  
18 attached to the Motion in order to preserve attorney-client privilege and protect  
19 information contained within the descriptions of the attorney billing.

20 With regard to the *Brunzell vs. Golden Gate* analysis, CHH indicates that  
21 attorneys Mr. Garth and Mr. Vogel are experienced litigators that focus exclusively on  
22 medical malpractice. Both have practiced many years and are partners at Lewis  
23 Brisbois. They both billed \$225/hour on this matter. Where appropriate, work was also  
24 assigned to associate attorneys (\$193.50/hour) and paralegals (\$90/hour).

25 CHH notes that medical malpractice cases are complex and require an in-depth  
26 understanding of both unique legal issues as well as the medical care and course that is  
27 at issue. Plaintiffs claimed that they were entitled to \$105,000,000.00 in damages  
28 including \$172,728.04 billed by CHH as a recoverable expense, plus a loss of earning  
capacity of \$1,348,596.

There were multiple highly skilled expert witnesses presented by both parties.  
Further, nearly 14 months have passed since CHH's Offer of Judgment expired,  
including the participation in motion practice regarding a motion for summary

1 judgment, two motions to stay proceedings (one in this Court and one in Supreme  
2 Court), a writ petition to the Nevada Supreme Court, as well as extensive written  
3 discovery. CHH argues that its requested attorneys' fees are well below the amounts  
4 Nevada courts have found reasonable. Defendants are only requesting attorneys' fees at  
5 a rate of \$225 and \$193.50 per hour, and a paralegal rate of \$90 per hour. CHH argues  
6 that a consideration of the *Brunzell* factors shows that the recovery of the entire billed  
7 amount of fees from August 28, 2020 to present is entirely appropriate. *Brunzell*, 85  
8 Nev. 345, 455 P.2d 31 (1969).

9 In addition to all NRCP Rule 68 post offer fees and costs, CHH requests that  
10 sanctions be imposed against Plaintiffs' counsel for all pre-NRCP Rule 68 costs and fees  
11 totaling \$58,514.36 in accordance with NRS 7.085. CHH cites to EDCR 7.60, which  
12 provides a further avenue of deterrence to attorneys, like Plaintiffs' counsel who engage  
13 in these unnecessary and flagrantly frivolous lawsuits, which are dead before they are  
14 even filed. Accordingly, CHH argues that an award of \$110,930.85 in attorneys' fees per  
15 N.R.C.P. 68 and N.R.S. §§ 17.117, plus \$58,514.36 in pre-NRCP 68 offer fees and  
16 expenses pursuant to N.R.S. §§ 7.085, 18.010(2) and EDCR 7.60, is justified. CHH  
17 argues that it is entitled to an award of his attorney's fees and costs under NRS  
18 §18.010(2)(b), as Plaintiffs maintained the lawsuit without reasonable grounds or to  
19 harass the Defendants.

20 CHH's separately filed a Verified Memorandum of Costs indicates that it seeks  
21 costs, pursuant to NRS 18.005 and 18.020, as well as NRCP 68 and NRS 17.117, in the  
22 amount of \$42,492.03. A majority of the costs requested (\$41,724.10) are for expert  
23 fees. CHH argues that the experts all meet the factors set forth in *Frazier v. Drake*.

24 In Opposition, Plaintiffs argue that the medical malpractice, wrongful death, and  
25 negligent infliction of emotional distress claims on behalf of the estate and surviving  
26 children of Rebecca Powell were not frivolous, and the claims for wrongful  
27 death/medical malpractice and negligent infliction of emotional distress were brought  
28 in good faith. Because this Court denied several dispositive motions before the Nevada  
Supreme Court ultimately directed this Court to vacate its Order denying CHH's  
Motion for Summary Judgment and enter judgment in favor of all the Defendants,  
CHH did not "win" this matter on the merits.



1 Plaintiffs argue that the dismissal of the case on an incorrect interpretation of  
2 the facts and application of inquiry notice to all the named Plaintiffs by the Supreme  
3 Court does not make the claims of Plaintiffs any less meritorious. Further, pursuant to  
4 NRCP 68, and NRS 17.117(10), a party is not entitled to attorney's fees simply because it  
5 served an offer of judgment on the opposing party and that party failed to achieve a  
6 more favorable verdict. The purpose of NRCP 68 is to encourage settlement; it is not to  
7 force Plaintiffs' unfairly to forego legitimate claims. See *Beattie v. Thomas*, 99 Nev.  
8 579, 668 P.2d 268 (1983).

9 Plaintiffs argue that their claims were brought in good faith, as HHS determined  
10 that there were deficiencies in Ms. Powell's care and the death certificate was  
11 inaccurate. Additionally, this Court repeatedly found merit in Plaintiffs' Complaint and  
12 their causes of action for wrongful death, medical malpractice, and negligent infliction  
13 of emotional harm.

14 Plaintiffs argue that Defendant's Offer of Judgment, to waive costs and fees, of  
15 \$58,514.36 was not reasonable and nor was it in good faith considering Plaintiffs'  
16 causes of action for medical malpractice, wrongful death, and negligent infliction of  
17 emotional harm. Plaintiffs lost their mother, who was only 41 years old at the time of  
18 her death. It was reasonable for Plaintiffs to reject Defendants' Offer of Judgment, as  
19 the terms of the Offer of Judgment did not provide for any monetary recovery to  
20 Plaintiffs to compensate them for the loss of their mother. CHH indicated at the time it  
21 had incurred \$53,389.90 in fees and \$5,124.46 in costs, but no supporting documents  
22 were provided. Moreover, this Court denied the Motion for Summary Judgment.  
23 Therefore, CHH incorrectly states that given the likelihood of losing on this issue, the  
24 offered waiver of right to seek reimbursement of costs was reasonable in both timing  
25 and amount. Further, Plaintiffs contend that their decision to reject the Offer of  
26 Judgment was not grossly unreasonable nor in bad faith because no amount was being  
27 offered in damages to the Plaintiffs.

28 With regard to the fees sought, Plaintiffs argue that CHH won on a technicality  
at the Supreme Court, and not on the merits or by way of a jury verdict in favor of  
Defendants. Plaintiffs argue that CHH incurred so much in fees because it continued  
filing motions based on the same statute of limitations theory. Thus, CHH's fees are  
unreasonable and unjustified. Plaintiffs also claim they are unable to properly evaluate

1 the reasonableness of CHH's attorney's fees because Defendant only presented a  
2 summary of the fees that were incurred.

3 Plaintiffs argue that it is absurd for CHH to suggest that the provisions of NRS  
4 7.085 even apply to the facts of this case, and that Plaintiffs' attorneys violated NRS  
5 18.010(2), NRCP 11 or EDCR 7.60. Plaintiffs further argue that CHH has not provided  
6 factual support to support the request for pre-NRCP 68 costs and fees pursuant to NRS  
7 7.085. Plaintiffs ask that this Court deny the application for fees and costs as the  
8 Plaintiffs did not submit frivolous or vexatious claims and did not over burden the  
9 limited judicial resources nor did it hinder the timely resolution of meritorious claims.  
10 Similarly, Plaintiffs contend that CHH has not provided any factual support for its  
11 request for attorneys' fees pursuant to EDCR 7.60 or 18.010(2).

12 In Reply, CHH argues that Plaintiffs' entire opposition is predicated on the false  
13 assertion that they possessed a viable case in the first instance. CHH argues that,  
14 "Plaintiffs' entire argument is that because this Court repeatedly denied dismissal  
15 attempts by the respective defendants despite clear, convincing, and irrefutable  
16 evidence of inquiry notice which each and every plaintiff possessed, they are somehow  
17 absolved from either their malpractice or unethical practice of pursuing a case which  
18 was dead on arrival when filed."

19 CHH argues that the Nevada Supreme Court held that the "district court  
20 manifestly abused its discretion when it denied summary judgment." CHH argues that  
21 this matter should have been dismissed a year ago at the latest.

#### 22 **FINDINGS OF FACT AND CONCLUSIONS OF LAW**

23 With regard to the requested costs, in *Frazier v. Drake*, 131 Nev. 632, 357 P.3d  
24 365 (NV.Ct.of App., 2015), the Court noted that NRS 18.005(5) provides for the  
25 recovery of "reasonable fees of not more than five expert witnesses in an amount of not  
26 more than \$1,500 for each witness unless the court allows a larger fee after  
27 determining that the circumstances surrounding the expert's testimony were of such  
28 necessity as to require the larger fee." *Id.*, at 644. The Court went on to state the  
following:

... we conclude that any award of expert witness fees in excess of \$1,500  
per expert under NRS 18.005(5) must be supported by an express,  
careful, and preferably written explanation of the court's analysis of  
factors pertinent to determining the reasonableness of the requested fees  
and whether "the circumstances surrounding the expert's testimony were

1 of such necessity as to require the larger fee." See NRS 18.005(5); cf.  
2 *Young v. Johnny Ribeiro Bldg., Inc.*, 106 Nev. 88, 93, 787 P.2d 777, 780  
3 (1990) (requiring an "express, careful and preferably written explanation"  
4 of the district court's analysis of factors pertinent to determining whether  
5 a dismissal with prejudice is an appropriate discovery sanction). *In*  
6 *evaluating requests for such awards, district courts should*  
7 *consider the importance of the expert's testimony to the*  
8 *party's case; the degree to which the expert's opinion aided*  
9 *the trier of fact in deciding the case; whether the expert's*  
10 *reports or testimony were repetitive of other expert witnesses;*  
11 *the extent and nature of the work performed by the expert;*  
12 *whether the expert had to conduct independent investigations*  
13 *or testing; the amount of time the expert spent in court,*  
14 *preparing a report, and preparing for trial; the expert's area*  
15 *of expertise; the expert's education and training; the fee*  
16 *actually charged to the party who retained the expert; the fees*  
17 *traditionally charged by the expert on related matters;*  
18 *comparable experts' fees charged in similar cases; and, if an*  
19 *expert is retained from outside the area where the trial is held,*  
20 *the fees and costs that would have been incurred to hire a*  
21 *comparable expert where the trial was held.*

22 *Id.*, at 650-651.

23 The Defendant, CHH, argues the importance of the testimony of each of the  
24 witnesses, and how their respective opinions were necessary for the Defendant's case.  
25 CHH argues that the medical experts expended "many hours," and "prepared two  
26 written reports." There was no discussion in the briefing about repetitiveness, whether  
27 they had to conduct independent investigations or testing, the amount of time spent in  
28 court, preparing reports, or preparing for trial, the fees charged to the Defendant, and  
the fees traditionally charged, and what they charge compared to other experts, etc.  
Consequently, the Court could allow the expert fee of \$1,500.00, for up to 5 expert  
witnesses, if the Court were able to find that the experts were relevant and the fees  
incurred, but the Court cannot allow expert fees in excess of \$1,500.00 without a  
*Frazier* analysis.

Additionally, the Court notes that any costs awarded need to be itemized and  
documented. The Nevada Supreme Court has stated that without "itemization or  
justifying documentation," the Court is "unable to ascertain whether such costs were  
accurately assessed." *Bobby Berosini, Ltd. V. People for the Ethical Treatment of*  
*Animals*, 114 Nev. 1348, 1353, 971 P.2d 383 (1998). Further, when the "memorandum

1 of costs is completely void of any specific itemization,” and a “lack of supporting  
2 documentation,” it is an abuse of discretion on the part of the Court if it awards the  
3 requested costs. *Id.* The Supreme Court has further indicated that “‘justifying  
4 documentation’ must mean something more than a memorandum of costs.” *Cadle Co.*  
5 *v. Woods & Erickson, LLP*, 131 Nev. 114, 121, 345 P.3d 1049 (2015). The Court has  
6 further indicated that “Without evidence to determine whether a cost was reasonable  
7 and necessary, a district court may not award costs.” *Id.*, citing *Peta*, 114 Nev. at 1353,  
8 971 P.2d at 386. In this case, Defendant produced a “Disbursement Diary,” but based  
9 on the above-referenced cases, this is insufficient to support the requested costs. There  
10 is insufficient evidence submitted for the Court to determine whether the requested  
11 costs were reasonable and necessary, there was no specific itemization, other than the  
12 Disbursement Diary, and there were no supporting documents.

13 Based upon the foregoing, the Court cannot award costs.

14 NRCP 68 provides in pertinent part as follows:

15 **Rule 68. Offers of Judgment**

16 (a) The Offer. At any time more than 21 days before trial, any party  
17 may serve an offer in writing to allow judgment to be taken in accordance  
18 with its terms and conditions. Unless otherwise specified, an offer made  
19 under this rule is an offer to resolve all claims in the action between the  
20 parties to the date of the offer, including costs, expenses, interest, and if  
21 attorney fees are permitted by law or contract, attorney fees.

22 . . . .

23 (d) Acceptance of the Offer and Dismissal or Entry of Judgment.

24 (1) Within 14 days after service of the offer, the offeree may accept  
25 the offer by serving written notice that the offer is accepted.

26 (2) Within 21 days after service of written notice that the offer is  
27 accepted, the obligated party may pay the amount of the offer and obtain  
28 dismissal of the claims, rather than entry of a judgment.

(3) If the claims are not dismissed, at any time after 21 days after  
service of written notice that the offer is accepted, either party may file  
the offer and notice of acceptance together with proof of service. The clerk  
must then enter judgment accordingly. The court must allow costs in  
accordance with NRS 18.110 unless the terms of the offer preclude a  
separate award of costs. Any judgment entered under this section must be  
expressly designated a compromise settlement.

(e) Failure to Accept Offer. If the offer is not accepted within 14  
days after service, it will be considered rejected by the offeree and deemed  
withdrawn by the offeror. . . . Any offeree who fails to accept the offer  
may be subject to the penalties of this rule.

(f) Penalties for Rejection of Offer.

1 (1) In General. If the offeree rejects an offer and fails to obtain a  
2 more favorable judgment:

3 (A) the offeree cannot recover any costs, expenses, or attorney  
4 fees and may not recover interest for the period after the service of the  
5 offer and before the judgment; and

6 (B) the offeree must pay the offeror's post-offer costs and  
7 expenses, including a reasonable sum to cover any expenses incurred by  
8 the offeror for each expert witness whose services were reasonably  
9 necessary to prepare for and conduct the trial of the case, applicable  
10 interest on the judgment from the time of the offer to the time of entry of  
11 the judgment and reasonable attorney fees, if any be allowed, actually  
12 incurred by the offeror from the time of the offer. If the offeror's attorney  
13 is collecting a contingent fee, the amount of any attorney fees awarded to  
14 the party for whom the offer is made must be deducted from that  
15 contingent fee.

16 . . . .

17 NRCP 68.

18 NRCP 68 provides that the Defendant would be entitled to "reasonable attorney  
19 fees, if any be allowed." The language of the Rule specifically provides that Court with  
20 "discretion," as it relates to attorney's fees, and the Court's discretion will not be  
21 disturbed absent a clear abuse of such discretion. *Armstrong v. Riggi*, 92 Nev. 280,  
22 549 P.2d 753 (1976); *Schouweiler v. Yancey Co.*, 101 Nev. 827, 712 P.2d 786 (1985);  
23 *Bidart v. American Title Ins. Co.*, 103 Nev. 175, 734 P.3d 732 (1987).

24 In evaluating whether to grant an award of attorney's fees, pursuant to  
25 *Schouweiler v. Yancey Co.*, 101 Nev. 827, 712 P.2d 786 (1985), the Court must  
26 consider: "(1) whether plaintiff's claim was brought in good faith; (2) whether  
27 defendant's offer of judgment was brought in good faith in both its timing and amount;  
28 (3) whether plaintiff's decision to reject the offer and proceed to trial was grossly  
unreasonable or in bad faith; and (4) whether fees sought by the offeror are reasonable  
and justified in amount." *Schouweiler* at 833, citing *Beattie v. Thomas*, 99 Nev. 579,  
588, 668 P.2d 268 (1983)(the "Beattie Factors").

In analyzing whether to award attorneys' fees, the factors which need to be  
considered pursuant to *Brunzell*, include the following: (1) the qualities of the advocate:  
his ability, training, education, experience, professional standing and skill; (2) the  
character of the work to be done: its difficulty, intricacy, importance, the time and skill  
required, the responsibility imposed and the prominence and character of the parties  
when they affect the importance of the litigation; (3) the work actually performed by  
the lawyer: the skill, time and attention given to the work; and (4) the result: whether

1 the attorney was successful and what benefits were derived. *Schouweiler* at 833-834,  
2 citing to *Brunzell v. Golden Gate Nat'l Bank*, 85 Nev. 345, 349, 455 P.2d 31 (1969)  
3 (quoting *Schwartz v. Schwerin*, 85 Ariz. 242, 336 P.2d 144, 146 (1959)).

4 With regard to the attorney's fees requested, this Motion is different from the  
5 Motion for Fees filed by Drs. Concio and Shaw, in that CHH contends that it incurred  
6 \$110,930.85 in attorney's fees since 8/28/20 (roughly twice the fees incurred by Drs.  
7 Concio and Shaw). In considering the *Beattie* factors, the Court finds and concludes  
8 that the plaintiff's claim was brought in good faith. The Court finds and concludes that  
9 Defendant's offer of judgment, in the amount of \$0.00, (offering to waive  
10 approximately \$58,500.00 in fees and costs), was brought in good faith in both its  
11 timing and amount. The Court acknowledges that the parties disagree about this issue,  
12 but as much as the Plaintiffs believed they had a valid case, the Defendants disputed  
13 any liability. The Court further finds and concludes that Plaintiff's decision to reject the  
14 offer and proceed to trial was not grossly unreasonable or in bad faith. Plaintiffs  
15 believed they had a valid claim, and the Court cannot find that wanting some recovery,  
16 as opposed to \$0.00, to be "grossly unreasonable" or in "bad faith. With regard to a  
17 determination of whether the fees sought by the Defendants are reasonable and  
18 justified in amount, a *Brunzell* analysis is required. *Beattie v. Thomas*, 99 Nev. 579,  
19 588, 668 P.2d 268 (1983).

20 In determining the reasonableness of the fees requested, the Court has analyzed  
21 the *Brunzell* factors, as follows: The Court finds that the qualities of defense counsel,  
22 his ability, training, education, experience, professional standing and skill, favor an  
23 award of fees. When considering the character of the work to be done - its difficulty,  
24 intricacy, importance, the time and skill required, (when dealing with a professional  
25 negligence/medical malpractice case), and finding that the character or prominence of  
26 the parties was unremarkable, the complexity of the case warrants an award of fees.  
27 The Court cannot evaluate the work actually performed by the lawyers, in this case, and  
28 the skill, time and attention given to the work, without a detailed billing statement.  
Although the Defendant has offered to submit a billing ledger to the Court in camera, it  
would have been necessary for the Defendant to have submitted such ledger, and  
disclosed it to the Plaintiff so that the reasonableness could have been addressed by all  
parties, and by the Court. Finally, in considering the result, the Court notes that

1 although the Court found insufficient evidence to establish irrefutably that the statute  
2 of limitations had expired, Defense counsel was successful in convincing the Supreme  
3 Court of that, and consequently, Defendants prevailed. *Brunzell v. Golden Gate Nat'l*  
4 *Bank*, 85 Nev. 345, 349, 455 P.2d 31 (1969). Based upon this NRCP 68 analysis, with  
5 the exception of being able to analyze the reasonableness of the fees allegedly incurred,  
6 the Court would likely have awarded at least some fees to the Defendant, at least for the  
7 period of time after rejection of the Offer of Judgment. Without any evidence of the  
8 fees actually accrued, and based on the amount requested, the Court cannot make a  
9 finding as to the reasonableness of such fees, and consequently, the Court has no choice  
under *Brunzell* and *Beattie*, to deny the request for Fees.

10 **CONCLUSION/ORDER**

11 Based upon the foregoing, and good cause appearing,

12 **IT IS HEREBY ORDERED** that the Defendants' Motion for Fees and Costs is  
13 **DENIED.**

14 The Court requests that Plaintiff's counsel prepare and process a Notice of Entry  
15 with regard to this Order.

16 Because this matter has been decided on the pleadings, the hearing scheduled  
17 for 2/18/22 will be taken off calendar, and consequently, there is no need for any  
18 parties or attorneys to appear.

19 Dated this 15th day of February, 2022

20   
21

22  
23 **99B B52 25DC 68DD**  
24 **Jerry A. Wiese**  
25 **District Court Judge**  
26  
27  
28

1 **CSERV**

2  
3 **DISTRICT COURT**  
4 **CLARK COUNTY, NEVADA**

5  
6 **Estate of Rebecca Powell,**  
7 **Plaintiff(s)**

**CASE NO: A-19-788787-C**

8 **vs.**

**DEPT. NO. Department 30**

9 **Valley Health System, LLC,**  
10 **Defendant(s)**

11 **AUTOMATED CERTIFICATE OF SERVICE**

12  
13 This automated certificate of service was generated by the Eighth Judicial District  
14 Court. The foregoing 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:

15 **Service Date: 2/15/2022**

16 <b>Paul Padda</b>	<b>psp@paulpaddalaw.com</b>
17 <b>S. Vogel</b>	<b>brent.vogel@lewisbrisbois.com</b>
18 <b>Jody Foote</b>	<b>jfoote@jhcottonlaw.com</b>
19 <b>Jessica Pincombe</b>	<b>jpinnacle@jhcottonlaw.com</b>
20 <b>John Cotton</b>	<b>jhcotton@jhcottonlaw.com</b>
21 <b>Brad Shipley</b>	<b>bshipley@jhcottonlaw.com</b>
22 <b>Tony Abbatangelo</b>	<b>Tony@thevegaslawyers.com</b>
23 <b>Adam Garth</b>	<b>Adam.Garth@lewisbrisbois.com</b>
24 <b>Paul Padda</b>	<b>civil@paulpaddalaw.com</b>
25 <b>Diana Escobedo</b>	<b>diana@paulpaddalaw.com</b>

26  
27  
28



1	Srilata Shah	sri@paulpaddalaw.com
2		
3	Shady Sirsy	Shady.Sirsy@lewisbrisbois.com
4	Maria San Juan	maria.sanjuan@lewisbrisbois.com
5	Karen Cormier	.karen@paulpaddalaw.com
6	Kimberly DeSario	kimberly.desario@lewisbrisbois.com
7	Heidi Brown	Heidi.Brown@lewisbrisbois.com
8	Tiffany Dube	tiffany.dube@lewisbrisbois.com
9	Shelbi Schram	shelbi@paulpaddalaw.com

# EXHIBIT E

# LEWIS BRISBOIS BISGAARD & SMITH LLP

LAWYERS  
SUITE 4000  
633 W. FIFTH STREET  
LOS ANGELES, CALIFORNIA 90071  
TELEPHONE (213) 250-1800

FEDERAL I.D. NO 95-3720522

UHS of Delaware, Inc.  
367 South Gulph Road  
King of Prussia, PA 19406

Attn: Richard Kim  
Manager- Claims

June 11, 2020  
Invoice No. 2677924

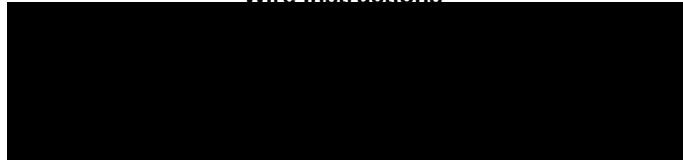
Re: Estate of Rebecca Powell v. Centennial Hills  
Our File No.: 28094-190

Court CLAR  
Court Case No. A-19-788787-C

Current Fees through 05/31/20	725.00
Total Current Charges	\$ 725.00

\*\*\* Please return this page with your payment. \*\*\*

## Wire Instructions



All Charges in US Dollars

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June 11, 2020  
Invoice No. 2677924

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Our File No.: 28094-190

Court CLAR  
Court Case No. A-19-788787-C

Current Fees through 05/31/20	725.00
Total Current Charges	\$ 725.00

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FEDERAL I.D. NO 95-3720522

File Number SBV1 28094-190 UHS of Delaware, Inc.  
Estate of Rebecca Powell v. Centennial Hills 6/11/20  
Page 1 2677924

Date	Atty	Description of Services Rendered	Hours
5/27/20	SBV	Fact Investigation/Development: Communicate (Other Outside Counsel): Telephone conference with transferring counsel regarding case status and history in Powell v. Centennial Hills	.5
5/27/20	SBV	Fact Investigation/Development: Research: Research regarding plaintiff's expert Sami Hashim, MD in Powell v. Centennial Hills	.7
5/27/20	SBV	Fact Investigation/Development: Research: Online search regarding co-defendant Dr. Juliano, Dr. Concio and Dr. Shah	.9
5/27/20	SBV	Pleadings: Review/Analyze: Analyze Complaint in Powell v. Centennial Hills Hospital	.5
5/27/20	SBV	Fact Investigation/Development: Review/Analyze: Analyze court docket in Powell v. Centennial Hills regarding case history	.3

Recap of Services	Hours	Effective Rate	Fees
S. Brent Vogel	2.9	250.00	725.00
<b>Total</b>	<b>2.9</b>		<b>725.00</b>

**Total Fees** 725.00  
**Total Current Charges** \$ 725.00

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FEDERAL I.D. NO 95-3720522

UHS of Delaware, Inc.  
367 South Gulph Road  
King of Prussia, PA 19406

Attn: Richard Kim  
Manager- Claims

July 14, 2020  
Invoice No. 2701173

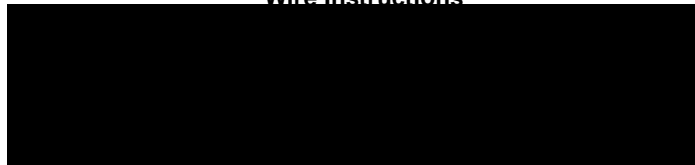
Re: Estate of Rebecca Powell v. Centennial Hills  
Our File No.: 28094-190

Court CLAR  
Court Case No. A-19-788787-C

Current Fees through 06/30/20	3,510.00
Current Disbursements through 06/30/20	27.43
Total Current Charges	\$ 3,537.43

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Wire Instructions



All Charges in US Dollars

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367 South Gulph Road  
King of Prussia, PA 19406

Attn: Richard Kim  
Manager- Claims

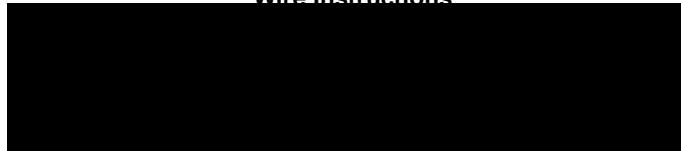
July 14, 2020  
Invoice No. 2701173

Re: Estate of Rebecca Powell v. Centennial Hills  
Our File No.: 28094-190

Court CLAR  
Court Case No. A-19-788787-C

Current Fees through 06/30/20	3,510.00
Current Disbursements through 06/30/20	27.43
Total Current Charges	\$ 3,537.43

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All Charges in US Dollars

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FEDERAL I.D. NO 95-3720522

<b>File Number</b> SBV1	<b>28094-190</b>	<b>UHS of Delaware, Inc. Estate of Rebecca Powell v. Centennial Hills</b>	<b>7/14/20</b> <b>2701173</b> <b>Page 1</b>
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Date	Atty	Description of Services Rendered	Hours
6/01/20	SBV	Fact Investigation/Development: Communicate (With Client): Telephone conference with Amanda Nichols to discuss case and facts of incident	.6
6/01/20	SBV	Fact Investigation/Development: Plan & Prepare For: Preparation for initial meeting with Amanda Nichols to discuss case including review of docket, Complaint and available records	1.3
6/02/20	SBV	Fact Investigation/Development: Review/Analyze: Analyze documents from client, NV Nursing Board request for documents to CHH regarding nurse Pawlak	.2
6/02/20	SBV	Fact Investigation/Development: Review/Analyze: Analyze documents from client, nurse Pawlak written statement	.4
6/02/20	SBV	Fact Investigation/Development: Review/Analyze: Analyze documents from client, NV Nursing Board request for documents against nurse Pawlak	.2
6/02/20	SBV	Fact Investigation/Development: Review/Analyze: Analyze documents from client, Care of Patient at Risk for Suicide Policy	.9
6/02/20	SBV	Fact Investigation/Development: Review/Analyze: Analyze documents from client, time clock records regarding nurse Pawlak	.1
6/02/20	SBV	Fact Investigation/Development: Review/Analyze: Analyze documents from client, nurse Pawlak employee file (50+ pages)	.8
6/02/20	SBV	Fact Investigation/Development: Review/Analyze: Analyze documents from client, billing records	.3
6/02/20	SBV	Fact Investigation/Development: Review/Analyze: Analyze DHHS Complaint, CHH response and related materials	1.2
6/02/20	SBV	Fact Investigation/Development: Review/Analyze: Analyze documents from client, NV Nursing Board Complaint against nurse Pawlak	.2
6/02/20	SBV	Fact Investigation/Development: Review/Analyze: Analyze documents from client, nurse Pawlak employee file (50+ pages)	.8
6/02/20	SBV	Fact Investigation/Development: Review/Analyze: Analyze documents from client, Rapid Response Team report	.2
6/03/20	AA	Experts/Consultants: Communicate (Other Outside Counsel): Correspondence with previous counsel re file of Rebecca Powell via telephone discussion.	.2
6/23/20	AG	Experts/Consultants: Communicate (Other External): Telephone call with potential pharmacology expert, R. Ruffalo, MD to discuss any conflicts of interest and brief case overview for purposes of possible engagement.	.8
6/24/20	AG	Experts/Consultants: Draft/Revise: Finalize letter to Dr. Ruffalo, pharmacology expert, containing documents for his review and opinion.	.1
6/24/20	AG	Experts/Consultants: Communicate (Other External): Teleconference with potential hospitalist expert H. Shah, MD regarding possible retention, conflicts of interest and basics of case.	.5
6/24/20	AG	Experts/Consultants: Communicate (With Client): Comprehensive email to R. Kim requesting authorization to retain Drs. Shah and Ruffalo as experts in the case (hospitalist and pharmacologist) as well as a discussion of case allegations and substantiation of need to retain each of these specialists to address the issues raised by plaintiff.	.5
6/24/20	AG	Experts/Consultants: Draft/Revise: Finalize letter to Dr. Shah, hospitalist expert, containing documents for his review and opinion.	.1
6/25/20	AA	Experts/Consultants: Communicate (Other External): Correspondence with retained expert, Dr. Shah, re Rebecca Powell's medical records for his review and opinion in order to build defense of Powell v Valley Health Systems.	.2
6/25/20	AA	Fact Investigation/Development: Plan & Prepare For: Prepared correspondence and subcontractor agreement for retaining expert, Dr. Ruffalo, re Rebecca Powell's obtained medical records.	.2



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FEDERAL I.D. NO 95-3720522

<b>File Number SBV1</b>	28094-190	<b>UHS of Delaware, Inc. Estate of Rebecca Powell v. Centennial Hills</b>	7/14/20 2701173 Page 2
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Date	Atty	Description of Services Rendered	Hours
6/25/20	AA	Fact Investigation/Development: Plan & Prepare For: Prepared correspondence and subcontractor agreement for retaining expert, Dr. Shah, re Rebecca Powell's obtained medical records.	.2
6/25/20	AA	Experts/Consultants: Communicate (Other External): Correspondence with retained expert, Dr. Ruffalo, re Rebecca Powell's medical records for his review and opinion in order to build defense of Powell v Valley Health Systems.	.2
6/26/20	AG	Written Discovery: Draft/Revise: Commence drafting Valley Health's first set of interrogatories to decedent's estate.	.3
6/29/20	AG	Written Discovery: Draft/Revise: Prepare Centennial Hills Hospital's first set of interrogatories to decedent's estate	2.3
6/29/20	AG	Written Discovery: Draft/Revise: Prepare and draft special interrogatories to plaintiffs' decedent's estate.	.8
6/29/20	AG	Document Production: Draft/Revise: Begin preparation of requests for production of documents to plaintiff's decedent's estate including special requests for production.	2.6

Date	Description of Disbursement	Units	Rate	Amount
6/15/20	Filing Services American Legal Investigation Services Nevada, Inc. Inv#:37032124 06/03/20 McBride Hall 5150163			27.43

Recap of Services	Hours	Effective Rate	Fees
Arielle Atkinson	1.0	90.00	90.00
Adam Garth	8.0	225.00	1,800.00
S. Brent Vogel	7.2	225.00	1,620.00
<b>Total</b>	<b>16.2</b>		<b>3,510.00</b>

<b>Total Fees</b>	<b>3,510.00</b>
<b>Total Disbursements</b>	<b>27.43</b>

<b>Total Current Charges</b>	<b>\$ 3,537.43</b>
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American Legal Investigation Services Nevada, Inc

PI-PS 1452

P.O. BOX 841441

Dallas, TX 75284-1441

55150163	6/03/20	11:51	Lewis Brisbois Bisgaard -Rainbow	Csr: 270
<b>CONTROL NUMBER</b>				
<b>PICKUP</b>			<b>DELIVER</b>	
MCBRIDE HALL			Lewis Brisbois Bisgaard -Rainb	Base 31.00
8329 W. SUNSET RD	# 260		6385 S RAINBOW	Return
LAS VEGAS	NV 89113		STE 600	Wait
See: STEPHANIE			LAS VEGAS	Weight
Req: Johana Whitbec				PDF/Ship
Svce: DELIVERY-REGULAR VEHICLE				Atmpt/Addr
Acct: 37003			PICK UP FILE	Research
Ref: 28094-190				Misc 3.57-
				Fuel Chg
Sign: RETURNED/MARY ESTRAD		15:40		Adv.Fee
				Check Chg
CName:POWELL V CENTENNIAL				
				Total 27.43

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FEDERAL I.D. NO 95-3720522

UHS of Delaware, Inc.  
367 South Gulph Road  
King of Prussia, PA 19406

Attn: Richard Kim  
Manager- Claims

August 10, 2020  
Invoice No. 2723465

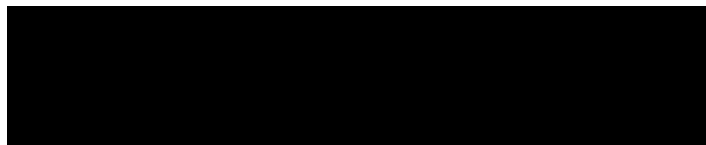
Re: Estate of Rebecca Powell v. Centennial Hills  
Our File No.: 28094-190

Court CLAR  
Court Case No. A-19-788787-C

Current Fees through 07/31/20	10,192.50
Current Disbursements through 07/31/20	4,353.50
Total Current Charges	\$ 14,546.00

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## Wire Instructions



All Charges in US Dollars

# LEWIS BRISBOIS BISGAARD & SMITH LLP

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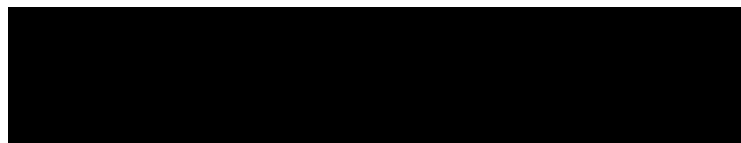
August 10, 2020  
Invoice No. 2723465

Re: Estate of Rebecca Powell v. Centennial Hills  
Our File No.: 28094-190

Court CLAR  
Court Case No. A-19-788787-C

Current Fees through 07/31/20	10,192.50
Current Disbursements through 07/31/20	4,353.50
Total Current Charges	\$ 14,546.00

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All Charges in US Dollars

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FEDERAL I.D. NO 95-3720522

<b>File Number SBV1</b>	<b>28094-190</b>	<b>UHS of Delaware, Inc. Estate of Rebecca Powell v. Centennial Hills</b>	<b>8/10/20</b> <b>2723465</b> <b>Page 1</b>
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Date	Atty	Description of Services Rendered	Hours
7/01/20	AG	Document Production: Draft/Revise: Prepare Valley Health's first set of requests for production of documents to plaintiff Taryn Creecy	.9
7/01/20	AG	Document Production: Draft/Revise: Continue preparation of Valley Health's first set of requests for production of documents to plaintiff's decedent's estate consisting of 84 requests for production plus 14 special request for production.	2.6
7/01/20	AG	Written Discovery: Draft/Revise: Prepare Valley Health's first set of interrogatories to plaintiff Isaiah Khosrof	1.1
7/01/20	AG	Analysis/Strategy: Communicate (Other External): Telephone conference with R. Kim to discuss initial case analysis strategy	.2
7/01/20	AG	Document Production: Draft/Revise: Prepare Valley Health's first set of requests for production of documents to plaintiff Darci Creecy consisting of 87 requests.	2.1
7/01/20	AG	Document Production: Draft/Revise: Prepare Valley Health's first set of requests for production of documents to plaintiff Isaiah Khosrof	.7
7/01/20	AG	Written Discovery: Draft/Revise: Prepare Valley Health's first set of interrogatories to plaintiff Darci Creecy	1.6
7/01/20	AG	Document Production: Draft/Revise: Prepare Valley Health's first set of requests for production of documents to plaintiff Lloyd Creecy	.6
7/01/20	AG	Written Discovery: Draft/Revise: Prepare Valley Health's first set of interrogatories to plaintiff Taryn Creecy	.7
7/01/20	AG	Written Discovery: Draft/Revise: Prepare Valley Health's first set of interrogatories to plaintiff Lloyd Creecy	.6
7/13/20	AA	Fact Investigation/Development: Plan & Prepare For: Prepared medical event history of Rebecca Powell re Centennial Hills Hospital records (583 pgs of 1166) in order to establish an accurate timeline of events in order to build defense in Powell v Centennial Hills Hospital.	6.8
7/14/20	AA	Fact Investigation/Development: Plan & Prepare For: Prepared medical event history of Rebecca Powell re Centennial Hills Hospital records (583 pgs of 1166) in order to establish an accurate timeline of events in order to build defense in Powell v Centennial Hills Hospital.	6.5
7/17/20	AG	Written Discovery: Draft/Revise: Continue preparation of Centennial Hills' first set of interrogatories to Lloyd Creecy	.3
7/17/20	AG	Written Discovery: Draft/Revise: Continue preparation of Centennial Hills' first set of interrogatories to decedent's estate.	.7
7/17/20	AG	Document Production: Draft/Revise: Continue preparation of Centennial Hills' first requests for production of documents to decedent's estate.	.9
7/17/20	AG	Document Production: Draft/Revise: Continue preparation of Centennial Hills' first requests for production of documents to Isaiah Khosrof.	.3
7/17/20	AG	Written Discovery: Draft/Revise: Continue preparation of Centennial Hills' special interrogatories to decedent's estate.	.3
7/17/20	AG	Document Production: Draft/Revise: Continue preparation of Centennial Hills' first requests for production of documents to Taryn Creecy.	.3
7/17/20	AG	Written Discovery: Draft/Revise: Continue preparation of Centennial Hills' first set of interrogatories to Isaiah Khosrof.	.3
7/17/20	AG	Written Discovery: Draft/Revise: Continue preparation of Centennial Hills' first set of interrogatories to Taryn Creecy.	.3
7/17/20	AG	Written Discovery: Draft/Revise: Continue preparation of Centennial Hills' first set of interrogatories to Darci Creecy	.2
7/17/20	AG	Document Production: Draft/Revise: Continue preparation of Centennial Hills' first requests for production of documents to Darci Creecy	.4
7/17/20	AG	Document Production: Draft/Revise: Continue preparation of Centennial Hills' first requests for	

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<b>File Number SBV1</b>	<b>28094-190</b>	<b>UHS of Delaware, Inc. Estate of Rebecca Powell v. Centennial Hills</b>	<b>8/10/20</b> <b>2723465</b> <b>Page 2</b>
-------------------------	------------------	---	---

Date	Atty	Description of Services Rendered	Hours
		production of documents to Lloyd Creecy	.3
7/21/20	AA	Experts/Consultants: Communicate (Other External): Correspondence with retained expert, Dr. Shah, to discuss findings and opinion with Adam Garth via email.	.3
7/21/20	AA	Experts/Consultants: Communicate (Other External): Correspondence with retained expert, Dr. Ruffalo, to discuss findings and opinion with Adam Garth via email.	.3
7/21/20	AG	Experts/Consultants: Communicate (Other External): Telephone call from Dr. Ruffalo, pharmacology expert, regarding representation and issues for discussion tomorrow pertaining to opinions.	.1
7/21/20	AG	Experts/Consultants: Plan & Prepare For: Review and analyze decedent's medical records from Centennial Hills Hospital (1166 pages) for the purpose of preparing for telephone call with experts Drs. Ruffalo and Shah	4.7
7/22/20	AG	Experts/Consultants: Communicate (Other External): Telephone call with Dr. Ruffalo, pharmacology expert, regarding his opinions on standard of care and causation based upon records we have so far.	2.2
7/22/20	AG	Experts/Consultants: Plan & Prepare For: Review and analyze plaintiff's expert's declaration attached to complaint for purposes of preparing for telephone calls with experts Drs. Ruffalo and Shah pertaining to opinions as to standard of care and causation as they relate to both the physicians and the hospital (both direct negligence as well as on ostensible agency theories).	.6
7/22/20	AG	Experts/Consultants: Communicate (Other External): Teleconference with hospitalist expert Dr. Shah regarding his review of records and opinions on standard of care and causation.	1.6
7/22/20	SBV	Experts/Consultants: Review/Analyze: Analysis regarding Dr. Ruffalo's expert review and opinions and potential for pulmonology critical care expert	.7
7/23/20	AG	Analysis/Strategy: Draft/Revise: Begin preparation of report and summary of telephone conferences with expert pharmacologist and hospitalist regarding opinions concerning standard of care and causation.	3.2
7/24/20	AG	Analysis/Strategy: Communicate (Other External): Continue preparation of letter to R. Kim summarizing teleconferences with experts in pharmacology and hospital medicine, incorporating references to hospital record in further support of the basis of said opinions.	3.4
7/24/20	AG	Experts/Consultants: Review/Analyze: Continued review of decedent's medical records from CHH (1166 pages) based upon telephone calls to experts rendering opinions on standard of care and causation for purposes of incorporating the records into report on the phone calls with the experts.	2.7
7/24/20	SBV	Experts/Consultants: Review/Analyze: Analysis regarding Dr. Shah's and Dr. Ruffalo's initial opinions and impact on formulating defense on standard of care and causation	1.2
7/28/20	AG	Experts/Consultants: Review/Analyze: Review and analyze email from R. Kim authorizing use of pulmonology intensivist expert.	.1
7/28/20	SBV	Analysis/Strategy: Draft/Revise: Revise and edit status report to client	1.2
7/29/20	AG	Experts/Consultants: Communicate (Other External): Email to R. Kim requesting authorization to engage Dr. Ishaaya as expert pulmonology/intensivist consultant.	.1
7/29/20	AG	Experts/Consultants: Communicate (Other External): Email to Dr. A. Ishaaya, pulmonology/critical care specialist, regarding potential expert opportunity.	.1
7/29/20	AG	Experts/Consultants: Review/Analyze: Review and analyze credentials for multiple physicians for purposes of ascertaining appropriate pulmonology/critical care expert to assist and opine on standard of care and causation as authorized by R Kim.	.6
7/29/20	AG	Experts/Consultants: Review/Analyze: Review and analyze email from potential expert. Dr. Ishaaya, containing latest CV, rate sheet, testimony list for purposes of determining appropriateness for engagement as expert consultant.	.2

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FEDERAL I.D. NO 95-3720522

<b>File Number SBV1</b>	<b>28094-190</b>	<b>UHS of Delaware, Inc. Estate of Rebecca Powell v. Centennial Hills</b>	<b>8/10/20 2723465 Page 3</b>
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Date	Atty	Description of Services Rendered	Hours
7/29/20	AG	Experts/Consultants: Communicate (Other External): Telephone conference with potential pulmonologist/critical care expert, Dr. Ishaaya, to discuss any conflicts, retention, focus of case and need for opinions on standard of care and causation.	1.1
7/30/20	AG	Experts/Consultants: Review/Analyze: Review and analyze email from R. Kim authorizing use of Dr. Ishaaya as the pulmonology/intensivist expert.	.1
7/30/20	AG	Experts/Consultants: Draft/Revise: Review and finalize letter to pulmonology/critical care expert, Dr. Ishaaya, regarding retention and review of records.	.1
7/30/20	AG	Experts/Consultants: Draft/Revise: Review, revise and finalize business subcontractor agreement with pulmonology/critical care expert, Dr. Ishaaya,	.1
7/31/20	AA	Fact Investigation/Development: Communicate (Other External): Correspondence with retained expert, Dr. Ishaaya, re medical records of Rebecca Powell for his review and opinion in order to build defense in Powell v Centennial Hills Hospital.	.2
7/31/20	AA	Fact Investigation/Development: Plan & Prepare For: Prepared correspondence and medical records from Centennial Hills Hospital in order to be sent to retained expert, Dr. Ishaaya for his review and opinion.	.4

Date	Description of Disbursement	Units	Rate	Amount
7/14/20	Court filing fee Comerica Commercial Card Services Inv#:063020STMT-ANOUWELS Trans Date: 06/08/2020 Nvefile* 006153274-0, Filing fee for substitution of attorney for defendant Valley Health System, LLC dba Centennial Hills Hospital Medical Center.			3.50
7/22/20	E123-Consulting Services Ruffalo & Associates, Inc. Inv#:2441 Professional services rendered on 06/24/20 - 07/22/20.			4,350.00

Recap of Services	Hours	Effective Rate	Fees
Arielle Atkinson	14.5	90.00	1,305.00
Adam Garth	36.4	225.00	8,190.00
S. Brent Vogel	3.1	225.00	697.50
<b>Total</b>	<b>54.0</b>		<b>10,192.50</b>

<b>Total Fees</b>	<b>10,192.50</b>
<b>Total Disbursements</b>	<b>4,353.50</b>

<b>Total Current Charges</b>	<b>\$ 14,546.00</b>
------------------------------	---------------------

**Case # A-19-788787-C - Estate of Rebecca Powell, Plaintiff****Envelope Information**

<b>Envelope Id</b> 6153274	<b>Submitted Date</b> 6/8/2020 3:38 PM PST	<b>Submitted User Name</b> johana.whitbeck@lewisbrisois.com
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**Case Information**

<b>Location</b> Department 30	<b>Category</b> Civil	<b>Case Type</b> Malpractice - Medical/Dental
<b>Case Initiation Date</b> 2/4/2019	<b>Case #</b> A-19-788787-C	
<b>Assigned to Judge</b> Wiese, Jerry A.		

**Filings**

<b>Filing Type</b> EFileAndServe	<b>Filing Code</b> Substitution of Attorney - SUBT (CIV)
-------------------------------------	--

**Filing Description**  
Substitution Of Attorney For  
Defendant Valley Health System,  
LLC dba Centennial Hills Hospital  
Medical Center

**Client Reference Number**  
28094.190

<b>Filing Status</b> Accepted	<b>Accepted Date</b> 6/8/2020 3:40 PM PST
----------------------------------	--

**Accept Comments**  
Auto Review Accepted

**Lead Document**

File Name	Description	Security	Download
Sub of Attorney - LBBS.pdf	Substitution of Attorney - SUBT (CIV)	Public Filed Document	Original File Court Copy

**eService Details**

<https://nevada.tylerhost.net/OfsWeb/FileAndServeModule/Envelope/ViewPrintableEnvelo...> 6/25/2020



Status	Name	Firm	Served	Date Opened
Sent	Paul S. Padda	PAUL PADDA LAW, PLLC	Yes	6/8/2020 4:14 PM PS
Sent	Tony L. Abbatangelo	PAUL PADDA LAW, PLLC	Yes	Not Opened
Sent	James P. Kelly	PAUL PADDA LAW, PLLC	Yes	Not Opened
Sent	Fay Diab	Paul Padda Law, PLLC	Yes	Not Opened
Sent	Paul Padda	Paul Padda Law, PLLC	Yes	6/8/2020 3:52 PM PS
Sent	S. Brent Vogel	Lewis Brisbois Bisgaard & Smith LLP	Yes	Not Opened
Sent	Kellie Piet	McBride Hall	Yes	Not Opened
Sent	Chelsea R. Hueth	McBride Hall	Yes	Not Opened
Sent	Robert C. McBride	McBride Hall	Yes	Not Opened
Sent	Cynthia Crizaldo	McBride Hall	Yes	Not Opened
Sent	Johana Whitbeck	Lewis Brisbois Bisgaard & Smith LLP	Yes	Not Opened
Sent	Michelle Newquist	McBride Hall	Yes	6/9/2020 8:43 AM PS
Sent	Candace Cullina	McBride Hall	Yes	Not Opened
Sent	Tiffane Safar	McBride Hall	Yes	Not Opened
Sent	Stephanie Lazo	McBride Hall	Yes	Not Opened
Sent	Arielle Atkinson	Lewis Brisbois Bisgaard & Smith LLP	Yes	Not Opened
Sent	Richard D. Carroll	Carroll, Kelly, Trotter & Franzen	Yes	Not Opened
Sent	Theresa Lopez	Carroll, Kelly, Trotter & Franzen	Yes	6/9/2020 8:42 AM PS
Sent	Jody Foote	John H. Cotton & Associates, Ltd.	Yes	6/10/2020 3:03 PM PS
Sent	Jessica D. Pincombe	John H. Cotton & Associates, Ltd.	Yes	6/8/2020 3:42 PM PS
Sent	John H. Cotton	John H. Cotton & Associates, Ltd.	Yes	Not Opened
Sent	Brad Shipley	John H. Cotton & Associates, Ltd.	Yes	6/8/2020 3:39 PM PS

## Parties with No eService

**Name** **Address**  
Isaiah Khosrof

**Name** **Address**  
Lloyd Creecy

**Name** **Address**

<https://nevada.tylerhost.net/OfsWeb/FileAndServeModule/Envelope/ViewPrintableEnvelope...> 6/25/2020

Taryn Creecy

<b>Name</b>	<b>Address</b>
Darci Creecy	

<b>Name</b>	<b>Address</b>
Dionice S. Juliano MD	

<b>Name</b>	<b>Address</b>
Vishal S. Shah MD	

<b>Name</b>	<b>Address</b>
Brian Powell	

**Fees****Substitution of Attorney - SUBT (CIV)**

<b>Description</b>	<b>Amount</b>
Filing Fee	\$0.00
<b>Filing Total: \$0.00</b>	

Total Filing Fee	\$0.00
E-File Fee	\$3.50
<b>Envelope Total: \$3.50</b>	

<b>Party Responsible for Fees</b>	Valley Health Syst...	<b>Transaction Amount</b>	\$3.50
<b>Payment Account</b>	Autumn Nouwels	<b>Transaction Id</b>	7281631
<b>Order Id</b>	006153274-0		
<b>Transaction Response</b>	Payment Complete		

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<https://nevada.tylerhost.net/OfsWeb/FileAndServeModule/Envelope/ViewPrintableEnvelo...> 6/25/2020

RUFFALO & ASSOCIATES, INC

RECEIVED

AUG 04 2020

Invoice #: 2441  
Invoice Date: 7/22/2020  
Terms: Net 30

RE: ESTATE OF REBECCA POWELL V. CENTENNIAL HILLS  
HOSPITAL, ET AL / FILE NO. 28024-190

Initial discussion with Mr. Garth and agree to review case

0.25

150.00

Review of the plaintiff's complaint and the affidavit of Sami Hashim,  
MD

0.5

300.00

Review of the decedent's medical records from Centennial Hills  
Hospital sent via e-mail 06/24/2020 and comparison with Dr  
Hashim's opinions

4.75

2,850.00

Discussion of the case with Mr. Garth 07/22/2020

1.75

1,050.00

TOTAL HOURS: 7.25

Total	\$4,350.00
Payments/Credits	\$0.00
Balance Due	\$4,350.00

# LEWIS BRISBOIS BISGAARD & SMITH LLP

LAWYERS  
SUITE 4000  
633 W. FIFTH STREET  
LOS ANGELES, CALIFORNIA 90071  
TELEPHONE (213) 250-1800

FEDERAL I.D. NO 95-3720522

UHS of Delaware, Inc.  
367 South Gulph Road  
King of Prussia, PA 19406

Attn: Richard Kim  
Manager- Claims

September 11, 2020  
Invoice No. 2756453

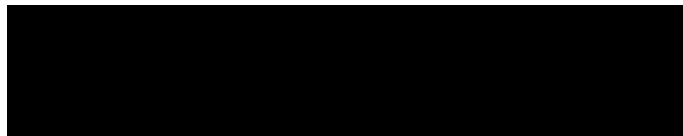
Re: Estate of Rebecca Powell v. Centennial Hills  
Our File No.: 28094-190

Court CLAR  
Court Case No. A-19-788787-C

Current Fees through 08/31/20	9,832.50
Current Disbursements through 08/31/20	6,710.00
Total Current Charges	\$ 16,542.50

\*\*\* Please return this page with your payment. \*\*\*

## Wire Instructions



All Charges in US Dollars

# LEWIS BRISBOIS BISGAARD & SMITH LLP

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LOS ANGELES, CALIFORNIA 90071  
TELEPHONE (213) 250-1800

FEDERAL I.D. NO 95-3720522

UHS of Delaware, Inc.  
367 South Gulph Road  
King of Prussia, PA 19406

Attn: Richard Kim  
Manager- Claims

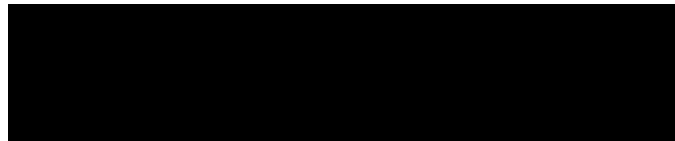
September 11, 2020  
Invoice No. 2756453

Re: Estate of Rebecca Powell v. Centennial Hills  
Our File No.: 28094-190

Court CLAR  
Court Case No. A-19-788787-C

Current Fees through 08/31/20	9,832.50
Current Disbursements through 08/31/20	6,710.00
Total Current Charges	\$ 16,542.50

## Wire Instructions



All Charges in US Dollars

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LOS ANGELES, CALIFORNIA 90071  
TELEPHONE (213) 250-1800

FEDERAL I.D. NO 95-3720522

<b>File Number SBV1</b>	<b>28094-190</b>	<b>UHS of Delaware, Inc. Estate of Rebecca Powell v. Centennial Hills</b>	<b>9/11/20</b> <b>2756453</b> <b>Page 1</b>
-------------------------	------------------	---	---

Date	Atty	Description of Services Rendered	Hours
8/10/20	AG	Dispositive Motions: Draft/Revise: Prepare notice of non-opposition and joinder of co-defendants' motion for summary judgment regarding defendant Juliano and partial summary judgment as to emotional distress claims regarding all defendants.	1.3
8/10/20	AG	Analysis/Strategy: Communicate (Other Outside Counsel): Telephone call from co-defense counsel, B. Shipley, regarding strategy for pursuing summary judgment on statute of limitations, sharing of experts, and plaintiff's failure to produce any documentation supportive of claims.	.5
8/10/20	AG	Dispositive Motions: Review/Analyze: Review and analyze co-defendants' motion for summary judgment (113 pages) regarding defendant Juliano and partial summary judgment as to emotional distress claims regarding all defendants for purposes of ascertaining arguments made therein and need for adoption of same and filing non-opposition to and joinder of motion.	1.6
8/10/20	AG	Experts/Consultants: Communicate (Other External): Email to R. Kim requesting authority to share our experts and fees with co-defendants.	.1
8/10/20	AG	Experts/Consultants: Communicate (Other Outside Counsel): Email to co-defense counsel regarding possible splitting of experts and fees and providing information regarding our experts for his review to obtain consent to fee split.	.2
8/10/20	AG	Experts/Consultants: Plan & Prepare For: Review and analyze Centennial Hills Hospital records (1166 pages) for purposes of preparing for telephone call with pulmonology expert/intensivist, Avi Ishaaya, MD by reviewing order of CHH pulmonologist, Dr. Breeden.	2.3
8/10/20	AG	Experts/Consultants: Communicate (Other External): Telephone call with intensivist expert, Dr. Ishaaya, regarding opinions on standard of care ad causation.	1.1
8/11/20	AG	Written Discovery: Review/Analyze: Review and analyze plaintiff special administrator's responses to co-defendants' requests for admission for purposes of determining the specific claims which may or may not be viable including negligent infliction of emotional distress.	.3
8/11/20	AG	Written Discovery: Review/Analyze: Review and analyze plaintiff Taryn Creecy's responses to co-defendants' requests for admission for purposes of determining the specific claims which may or may not be viable including negligent infliction of emotional distress.	.3
8/11/20	AG	Fact Investigation/Development: Communicate (With Client): Telephone call with A. Nichols, Risk Management Director at CHH regarding medical records inquiry from plaintiffs and case status and strategy as well as request for information on medical records production procedures.	.7
8/11/20	AG	Written Discovery: Review/Analyze: Review and analyze plaintiff Lloyd Creecy's responses to co-defendants' requests for admission for purposes of determining the specific claims which may or may not be viable including negligent infliction of emotional distress.	.2
8/11/20	AG	Fact Investigation/Development: Plan & Prepare For: Review and analyze emails from risk management director as well as medical records produced by plaintiff and interviews with medical staff members at hospital for purposes of ascertaining the specific documents produced to plaintiffs, when the production was provided and the records they requested in order to obtain sufficient evidence to demonstrate that the case was filed beyond the statute of limitations in determining the propriety of summary judgment on that issue.	1.4
8/11/20	AG	Analysis/Strategy: Communicate (Other Outside Counsel): Continued conversation with co-defense counsel regarding strategy of pursuing summary judgment on issue of statute of limitations and further discovery strategies in order to obtain sufficient information from plaintiff on the root causes of action in order to pursue summary judgment on substantive issues of malpractice.	1.0
8/11/20	AG	Written Discovery: Review/Analyze: Review and analyze plaintiff Isaiah Khorsof's responses to co-defendants' requests for admission for purposes of determining the specific claims	

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FEDERAL I.D. NO 95-3720522

<b>File Number SBV1</b>	<b>28094-190</b>	<b>UHS of Delaware, Inc. Estate of Rebecca Powell v. Centennial Hills</b>	<b>9/11/20</b> <b>2756453</b> <b>Page 2</b>
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Date	Atty	Description of Services Rendered	Hours
		which may or may not be viable including negligent infliction of emotional distress.	.2
8/11/20	AG	Experts/Consultants: Draft/Revise: Prepare letter to R. Kim summarizing and reporting upon conference with A. Ishaaya, MD, pulmonology/critical care expert.	2.1
8/11/20	AG	Written Discovery: Review/Analyze: Review and analyze plaintiff Darci Creecy's responses to co-defendants' requests for admission for purposes of determining the specific claims which may or may not be viable including negligent infliction of emotional distress.	.2
8/11/20	SBV	Analysis/Strategy: Draft/Revise: Edit and finalize updated status report to Richard Kim	.5
8/14/20	AG	Fact Investigation/Development: Communicate (With Client): Review, analyze and respond to email from A. Nichols along with attachments thereto regarding records sent to plaintiff prior to commencement of lawsuit and request for custodian of records information for purposes of moving for summary judgment on statute of limitations.	.3
8/14/20	AG	Fact Investigation/Development: Communicate (With Client): Email to G. Arroyo regarding procedures involved in providing records to plaintiff based upon their initial request	.1
8/14/20	AG	Fact Investigation/Development: Communicate (With Client): Extensive and detailed email to both custodian of records and medical records processing service outlining specific information needed regarding process of preparing records for distribution in this case and for purposes of preparing declaration for use on motion for summary judgment on statute of limitations.	.5
8/14/20	AG	Fact Investigation/Development: Communicate (Other External): Telephone call with G. Arroyo from MRO regarding medical records procedures for purposes of obtaining facts to move for summary judgment.	.6
8/17/20	AG	Fact Investigation/Development: Communicate (Other Outside Counsel): Telephone conference with co-defense counsel regarding evidence concerning statute of limitations arguments to make on motion for summary judgment.	.7
8/17/20	AG	Fact Investigation/Development: Review/Analyze: Review and analyze email from MRO medical records services regarding timeline and associated evidence in production of medical records to plaintiffs.	.3
8/17/20	SBV	Written Discovery: Review/Analyze: Analyze Plaintiff Estate's Responses to Co-Defendant's Requests for Admissions	.2
8/17/20	SBV	Written Discovery: Review/Analyze: Analyze D. Creecy's Responses to Co-Defendant's Requests for Admissions	.2
8/17/20	SBV	Written Discovery: Review/Analyze: Analyze I. Khorsrof's Responses to Co-Defendant's Requests for Admissions	.2
8/17/20	SBV	Written Discovery: Review/Analyze: Analyze T. Creecy's Responses to Co-Defendant's Requests for Admissions	.2
8/17/20	SBV	Written Discovery: Review/Analyze: Analyze L. Creecy's Responses to Co-Defendant's Requests for Admissions	.2
8/18/20	AG	Written Discovery: Review/Analyze: Review and analyze emails correspondence between co-defense and plaintiff's counsel regarding plaintiff's counsel's misunderstanding and misrepresentation of agreements for extension of time to respond to discovery and motion for summary judgment.	.2
8/19/20	AG	Dispositive Motions: Communicate (Other Outside Counsel): Email to plaintiff's counsel regarding strategy concerning extension of time for plaintiff to respond to motion for summary judgment.	.2
8/19/20	AG	Dispositive Motions: Review/Analyze: Review and analyze email from plaintiff's counsel along with stipulation seeking extension of time to respond to co-defendant's motion for summary judgment on negligent infliction of emotional distress claims	.2
8/19/20	AG	Fact Investigation/Development: Communicate (With Client): Telephone call with M.	

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TELEPHONE (213) 250-1800

FEDERAL I.D. NO 95-3720522

**File Number SBV1**      **28094-190**

**UHS of Delaware, Inc.  
Estate of Rebecca Powell v. Centennial Hills**

**9/11/20**  
**2756453**  
**Page 3**

Date	Atty	Description of Services Rendered	Hours
		Thompson, CHH's custodian of records, to gather necessary facts to draft declaration in support of motion for summary judgment on statute of limitations.	.4
8/19/20	AG	Written Discovery: Communicate (Other External): Email to plaintiff's counsel regarding stipulations to extend time to respond to summary judgment motion and co-defendant's discovery demands, in addition to reminder of our separate agreement to respond to our discovery demands by deadlines already extended.	.3
8/19/20	AG	Other Written Motions & Submiss.: Review/Analyze: Review, analyze and respond to email from plaintiff's counsel regarding revised stipulation extending time to oppose motion for summary judgment by co-defense counsel and our joinder thereto.	.2
8/21/20	AG	Dispositive Motions: Communicate (Other External): Email to plaintiff's counsel agreeing to stipulations regarding motion for summary judgment and response to co-defendant's discovery.	.1
8/21/20	AG	Other Written Motions & Submiss.: Communicate (Other External): Phone call from plaintiff's counsel regarding stipulations to extend time to respond to co-defendant's summary judgment motion and co-defendants' interrogatories.	.2
8/24/20	AG	Dispositive Motions: Review/Analyze: Review and analyze email from R. Kim approving motion for summary judgment.	.1
8/24/20	AG	Dispositive Motions: Communicate (With Client): Email to R. Kim requesting authorization to move for summary judgment on statute of limitations along with extensive justification for the motion itself.	.4
8/24/20	AG	Dispositive Motions: Communicate (Other External): Telephone call from plaintiff's counsel regarding agreement to stipulation to extend deadlines on co-defendant's motion for summary judgment.	.2
8/24/20	AG	Dispositive Motions: Review/Analyze: Review and analyze court order for hearing on co-defendant's motion and our joinder thereto for summary judgment against plaintiffs oi issue of negligent infliction of emotional distress.	.1
8/24/20	AG	Dispositive Motions: Draft/Revise: Prepare declaration for G. Arroyo from MRO regarding medical records gathering and provision procedures for purposes of supporting motion for summary judgment.	1.2
8/25/20	AG	Dispositive Motions: Draft/Revise: Continue preparation of declaration of Gina Arroyo from MRO regarding procedures involved in gathering medical records and providing same to requestor for purposes of attaching to motion for summary judgment.	.4
8/25/20	AG	Dispositive Motions: Draft/Revise: Prepare declaration for M. Thompson, CHH's custodian of records, for purposes of motion for summary judgment.	.5
8/26/20	AG	Dispositive Motions: Research: Legal research regarding specific instances of inquiry notice of plaintiffs in medical malpractice cases for purposes of incorporating same into motion for summary judgment on statute of limitations.	1.4
8/26/20	AG	Dispositive Motions: Review/Analyze: Review, analyze and respond to email from G. Arroyo requesting changes to declaration and response thereto containing said changes.	.2
8/26/20	AG	Dispositive Motions: Review/Analyze: Review and analyze plaintiffs' complaint and annexed medical affidavit for purposes of incorporating same into motion for summary judgment on statute of limitations.	.8
8/26/20	AG	Dispositive Motions: Communicate (With Client): Email to records custodian, M. Thompson, along with declaration to support motion for summary judgment and request for edits if any.	.1
8/26/20	AG	Dispositive Motions: Draft/Revise: Begin drafting of motion for summary judgment based upon statute of limitations including the incorporation of a complete procedural history of case, timeline for plaintiffs' inquiry notice of professional negligence and legal analysis of recent cases and statutes pertaining to issue.	5.7



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LOS ANGELES, CALIFORNIA 90071  
TELEPHONE (213) 250-1800

FEDERAL I.D. NO 95-3720522

<b>File Number SBV1</b>	<b>28094-190</b>	<b>UHS of Delaware, Inc. Estate of Rebecca Powell v. Centennial Hills</b>	<b>9/11/20 2756453 Page 4</b>
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Date	Atty	Description of Services Rendered	Hours
8/26/20	AG	Dispositive Motions: Communicate (Other External): Email to records retrieval service area manager from MRO, Gina Arroyo, along with declaration to support motion for summary judgment and request for edits if any.	.1
8/27/20	AG	Experts/Consultants: Review/Analyze: Review and analyze email from Dr. Ishaaya, intensivist and pulmonology expert, regarding invoice for review and consultation services and opinions regarding case.	.1
8/27/20	AG	Analysis/Strategy: Communicate (With Client): Email to R. Kim requesting authorization to serve offer of judgment for waiver of costs and analysis of the process and implications thereof.	.3
8/27/20	AG	Dispositive Motions: Communicate (Other Outside Counsel): Telephone conference with co-defense counsel regarding strategy pertaining to motion for summary judgment and possibility of offer of judgment.	.5
8/27/20	AG	Dispositive Motions: Draft/Revise: Continue preparation of motion for summary judgment on issue of statute of limitations including a complete analysis of the procedural history and incorporation of evidence demonstrating that plaintiffs had been placed inquiry notice of all events as of the date of the decedent's death.	4.6
8/28/20	AG	Dispositive Motions: Communicate (Other External): Review, analyze and respond to email from G. Arroyo regarding declaration in support of motion for summary judgment.	.2
8/28/20	AG	Other Written Motions & Submiss.: Review/Analyze: Review and analyze email from R. Kim authorizing the filing of an offer of judgment for waiver of costs.	.1
8/28/20	AG	Other Written Motions & Submiss.: Communicate (Other Outside Counsel): Email to C. Tyler, predecessor counsel, regarding past costs and fees for purposes of incorporating same into offer of judgment to plaintiffs.	.1
8/28/20	AG	Settlement/Non-Binding ADR: Review/Analyze: Review and analyze email from predecessor counsel containing their costs and disbursements as well as current billing records for purposes of incorporating same into offer of judgment.	.4
8/28/20	AG	Other Written Motions & Submiss.: Communicate (With Client): Email to R. Kim along with copy of offer of judgment to plaintiffs and strategy moving forward pertaining to it and upcoming motion for summary judgment.	.1
8/28/20	AG	Dispositive Motions: Draft/Revise: Continue preparation of motion for summary judgment.	3.3
8/28/20	AG	Settlement/Non-Binding ADR: Draft/Revise: Draft offer of judgment pursuant to NRCP Rule 68 to plaintiffs.	.9
8/28/20	SBV	Dispositive Motions: Research: Follow up research on statute of limitations argument in professional negligence cases for use in Motion for Summary Judgment	1.9
8/28/20	SBV	Dispositive Motions: Draft/Revise: Analyze and edit draft Motion for Summary Judgment	.9

Date	Description of Disbursement	Units	Rate	Amount
8/26/20	Medical Expert Services Abraham Ishaaya Inv#:POWELL,R-080220 Expert medical services rendered on 08/02/20 - 08/10/20.			6,710.00

Recap of Services	Hours	Effective Rate	Fees
Adam Garth	39.4	225.00	8,865.00
	.2		No Charge

# LEWIS BRISBOIS BISGAARD & SMITH LLP

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LOS ANGELES, CALIFORNIA 90071  
TELEPHONE (213) 250-1800

FEDERAL I.D. NO 95-3720522

File  
Number  
SBV1

28094-190

UHS of Delaware, Inc.  
Estate of Rebecca Powell v. Centennial Hills

9/11/20  
2756453  
Page 5

Recap of Services		Hours	Effective Rate	Fees
S. Brent Vogel		4.3	225.00	967.50
Total		43.9		9,832.50
Total Fees				9,832.50
Total Disbursements				6,710.00
Total Current Charges				\$ 16,542.50

Abraham Ishaaya, M.D., F.C.C.P.

RECEIVED  
AUG 26 2020

August 26, 2020

#1POWELL

LEWIS BRISBOIS  
ATT: Adam Garth  
6385 South Rainbow Blvd., Suite 600  
Las Vegas, NV 89118

RE: CASE NAME: Estate of Rebecca Powell v Centennial Hills Hospital

Dear Adam:

Enclosed please find my charges to present for the above case.

Review of:

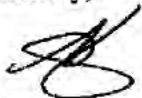
8-2	Complaint	.6 hours
	Affidavit of Dr. Sami Hashim	.4 hours
8-4	Centennial Hills Hospital records (1-600)	5.4 hours
8-6	Centennial Hills Hospital records (601-1166)	4.8 hours
8-10	Telephone call	1 hour

Total hours: 12.2 hours @ \$550

Total owed: \$6,710

If I can be of any further assistance, please do not hesitate to contact me.

Sincerely,



Avi Ishaaya, M.D.

# LEWIS BRISBOIS BISGAARD & SMITH LLP

LAWYERS  
SUITE 4000  
633 W. FIFTH STREET  
LOS ANGELES, CALIFORNIA 90071  
TELEPHONE (213) 250-1800

FEDERAL I.D. NO 95-3720522

UHS of Delaware, Inc.  
367 South Gulph Road  
King of Prussia, PA 19406

Attn: Richard Kim  
Manager- Claims

October 12, 2020  
Invoice No. 2777320

Re: Estate of Rebecca Powell v. Centennial Hills  
Our File No.: 28094-190

Court CLAR  
Court Case No. A-19-788787-C

Current Fees through 09/30/20	19,642.50
Current Disbursements through 09/30/20	3,178.50
Total Current Charges	\$ 22,821.00

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## Wire Instructions



All Charges in US Dollars

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FEDERAL I.D. NO 95-3720522

UHS of Delaware, Inc.  
367 South Gulph Road  
King of Prussia, PA 19406

Attn: Richard Kim  
Manager- Claims

October 12, 2020  
Invoice No. 2777320

Re: Estate of Rebecca Powell v. Centennial Hills  
Our File No.: 28094-190

Court CLAR  
Court Case No. A-19-788787-C

Current Fees through 09/30/20	19,642.50
Current Disbursements through 09/30/20	3,178.50
Total Current Charges	<u>\$ 22,821.00</u>

## Wire Instructions



All Charges in US Dollars

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633 W. FIFTH STREET  
LOS ANGELES, CALIFORNIA 90071  
TELEPHONE (213) 250-1800

FEDERAL I.D. NO 95-3720522

**File Number SBV1**      **28094-190**

**UHS of Delaware, Inc.  
Estate of Rebecca Powell v. Centennial Hills**

**10/12/20**  
**2777320**  
**Page 1**

Date	Atty	Description of Services Rendered	Hours
9/01/20	AG	Written Discovery: Review/Analyze: Review and analyze plaintiff Darci Creecy's responses to CHH's interrogatories (30 pages) for purposes of determining responsiveness and improper objection assertions and for summary purposes to client.	.8
9/01/20	AG	Document Production: Review/Analyze: Review and analyze plaintiff Darci Creecy's responses to CHH's requests for production of documents (55 pages) for purposes of determining responsiveness and improper objection assertions and for summary purposes to client.	.9
9/01/20	AG	Dispositive Motions: Draft/Revise: Revise motion for summary judgment incorporating changes in G. Arroyo declaration.	.4
9/01/20	AG	Written Discovery: Communicate (Other External): Email to plaintiffs' counsel requesting EDCR 2.34 conference and advising of the myriad of discovery issues with their responses.	.4
9/01/20	AG	Written Discovery: Research: Conduct legal research into cases cited by plaintiffs in their objections to discovery to ascertain propriety and applicability of cases and obtain case law which counters that which was asserted by plaintiffs	1.3
9/01/20	AG	Written Discovery: Review/Analyze: Review and analyze plaintiff Lloyd Creecy's responses to CHH's interrogatories (28 pages) for purposes of determining responsiveness and improper objection assertions and for summary purposes to client.	.7
9/01/20	AG	Document Production: Review/Analyze: Review and analyze plaintiff Isaiah Khosrof's responses to CHH's requests for production of documents (55 pages) for purposes of determining responsiveness and improper objection assertions and for summary purposes to client.	.8
9/01/20	AG	Dispositive Motions: Communicate (Other External): Review, analyze and respond to email from G. Arroyo from MRO along with attached revised declaration in support of motion for summary judgment to determine acceptability thereof.	.4
9/01/20	AG	Written Discovery: Communicate (Other External): Telephone call with plaintiffs' counsel and co-defense counsel outlining base issues concerning plaintiffs' discovery responses and request for EDCR 2.34 conference.	.3
9/01/20	AG	Written Discovery: Review/Analyze: Review and analyze plaintiff Isaiah Khosrof's responses to CHH's interrogatories (28 pages) for purposes of determining responsiveness and improper objection assertions and for summary purposes to client.	.8
9/01/20	AG	Document Production: Review/Analyze: Review and analyze plaintiff Lloyd Creecy's responses to CHH's requests for production of documents (55 pages) for purposes of determining responsiveness and improper objection assertions and for summary purposes to client.	.9
9/01/20	AG	Written Discovery: Communicate (Other Outside Counsel): Telephone conference with co-defense counsel regarding plaintiffs' discovery responses to interrogatories and requests for production of documents and strategizing regarding issues associated therewith.	1.2
9/01/20	AG	Written Discovery: Review/Analyze: Review and analyze plaintiff Taryn Creecy's responses to CHH's interrogatories (30 pages) for purposes of determining responsiveness and improper objection assertions and for summary purposes to client.	.8
9/01/20	AG	Document Production: Review/Analyze: Review and analyze plaintiff Taryn Creecy's responses to CHH's requests for production of documents (55 pages) for purposes of determining responsiveness and improper objection assertions and for summary purposes to client.	.9
9/01/20	SBV	Written Discovery: Review/Analyze: Analyze Lloyd Creecy's Responses to Requests for Production	.7
9/01/20	SBV	Written Discovery: Review/Analyze: Analyze Darcy Creecy's Responses to Requests for Production	.6

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FEDERAL I.D. NO 95-3720522

<b>File Number</b> SBV1	<b>28094-190</b>	<b>UHS of Delaware, Inc. Estate of Rebecca Powell v. Centennial Hills</b>	<b>10/12/20</b> <b>2777320</b> <b>Page 2</b>
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Date	Atty	Description of Services Rendered	Hours
9/01/20	SBV	Dispositive Motions: Draft/Revise: Edit and finalize Motion for Summary Judgment based on statute of limitations	.9
9/01/20	SBV	Written Discovery: Review/Analyze: Analyze Isaiah Khosrof's Answers to Interrogatories	.5
9/01/20	SBV	Written Discovery: Review/Analyze: Analyze Taryn Creecy's Answers to Interrogatories	.5
9/01/20	SBV	Written Discovery: Review/Analyze: Analyze Lloyd Creecy's Answers to Interrogatories	.5
9/01/20	SBV	Written Discovery: Review/Analyze: Analyze Darcy Creecy's Answers to Interrogatories	.5
9/01/20	SBV	Written Discovery: Review/Analyze: Analyze Isaiah Khosrof's Responses to Requests for Production	.5
9/01/20	SBV	Written Discovery: Review/Analyze: Analyze Taryn Creecy's Responses to Requests for Production	.5
9/02/20	AG	Written Discovery: Review/Analyze: Review and analyze estate's responses to CHH's special interrogatories for purposes of summarizing same and determining propriety of responses and objections raised therein	.4
9/02/20	AG	Fact Investigation/Development: Review/Analyze: Review and analyze email from A. Nichols containing the joint commission investigation report (32 pages) and associated emails for purposes of ascertaining when plaintiffs suspected potential malpractice.	.5
9/02/20	AG	Written Discovery: Review/Analyze: Review and analyze estate's responses to CHH's interrogatories (30 pages) for purposes of summarizing information contained therein and propriety of responses and objections raised therein.	.9
9/02/20	AG	Written Discovery: Communicate (Other External): Review, analyze and respond to email from plaintiff's counsel regarding EDCR 2.34 conference.	.3
9/02/20	AG	Written Discovery: Draft/Revise: Draft letter to plaintiffs' counsel in advance of EDCR 2.34 conference to specifically outline the objections CHH has to plaintiffs' discovery responses.	1.6
9/02/20	AG	Written Discovery: Research: Legal research of cases cited regarding estate's objections raised by plaintiffs in responses to interrogatories to determine applicability thereof	.6
9/02/20	AG	Analysis/Strategy: Communicate (With Client): Detailed email to R. Kim outlining litigation strategy, updates on discovery and potential responses to our MSJ by plaintiffs with analysis of replies thereto.	.7
9/02/20	AG	Document Production: Review/Analyze: Review and analyze plaintiff estate's responses to CHH's requests for production of documents (64 pages) to ascertain completeness thereof, issues regarding improperly interposed objections for purposes of obtaining proper responses thereto.	1.1
9/02/20	AG	Fact Investigation/Development: Communicate (With Client): Telephone conference with A. Nichols regarding meeting she had with plaintiffs right after the incident as disclosed by estate representative in response to discovery	.9
9/02/20	SBV	Written Discovery: Review/Analyze: Analyze Special Administrator's answers to interrogatories	.5
9/02/20	SBV	Written Discovery: Review/Analyze: Analyze Special Administrator's responses to requests for production	.7
9/02/20	SBV	Written Discovery: Review/Analyze: Analyze Special Administrator's answers to special interrogatories	.4
9/03/20	AG	Dispositive Motions: Review/Analyze: Review and analyze co-defendants' joinder to CHH's motion for summary judgment.	.3
9/03/20	AG	Written Discovery: Draft/Revise: Continue preparation of extensive letter to plaintiffs' counsel (19 pages) analyzing and describing all discovery disputes from plaintiffs' responses to CHH's discovery demands for purposes of providing agenda for upcoming EDCR 2.34 teleconference.	6.2
9/09/20	AG	Analysis/Strategy: Communicate (Other Outside Counsel): Call from co-defense counsel	

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**File Number** 28094-190  
**SBV1**

**UHS of Delaware, Inc.  
Estate of Rebecca Powell v. Centennial Hills**

**10/12/20**  
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**Page 3**

Date	Atty	Description of Services Rendered	Hours
		regarding results of EDCR 2.34 conference and strategy on how to proceed further.	.4
9/09/20	AG	Other Written Motions & Submiss.: Research: Legal research on viability of attorneys' fees and costs for baseless claim in light of disclosure by plaintiffs that they had inquiry notice in June 2017, demonstrating that action was brought beyond the statute of limitations with knowledge thereof.	1.3
9/09/20	AG	Court Mandated Conferences: Appear For/Attend: Attend EDCR 2.34 conference call with plaintiffs' counsel and co-defense counsel to attempt to resolve discovery disputes without need for motion practice.	.6
9/09/20	AG	Document Production: Communicate (Other Outside Counsel): Phone call from co-defense counsel regarding strategy for upcoming EDCR 2.34 conference as well as discussion of plaintiff's disclosures which demonstrate inquiry notice date for running of statute of limitations.	.7
9/09/20	AG	Document Production: Review/Analyze: Review and analyze plaintiffs' first supplemental NRCP 16.1 disclosure with attached documents (1391 pages) for purposes of preparing for EDCR 2.34 conference call and evaluate same to determine relevancy to provide to experts for review as well as to determine applicability to issues raised by plaintiffs	3.7
9/09/20	AG	Written Discovery: Review/Analyze: Review and analyze letter to plaintiffs' counsel outlining the discovery deficiencies in preparation for EDCR 2.34 conference call.	.4
9/09/20	SBV	Document Production: Review/Analyze: Analyze unreferenced document production from plaintiff and comparison to existing productions (450+ pages)	2.8
9/10/20	AA	Fact Investigation/Development: Plan & Prepare For: Prepared Defendant's First Supplement to Initial 16.1 Disclosure supplementing records and additional records disclosed by Plaintiff's in order to continue to build defense in Estate of Rebecca Powell v Centennial Hills Hospital.	.3
9/10/20	AG	Experts/Consultants: Communicate (Other External): Telephone call from pharmacology expert, Dr. Ruffalo, regarding newly exchanged documents including autopsy report and nursing board complaint and findings of state.	.5
9/10/20	AG	Analysis/Strategy: Communicate (With Client): Email to R Kim with report of teleconference with R. Ruffalo, MD, pharmacology expert's? analysis of plaintiffs' disclosure of HHS report and admission contained therein, and strategy with respect to our MSJ and plaintiffs' disclosures demonstrating early inquiry notice.	.8
9/15/20	AG	Experts/Consultants: Communicate (Other External): Telephone cal with expert A. Ishayya, MD to discuss latest disclosures and HHS records and coroner's report for purposes of determining breaches of standard of care and liability as well as possible damage mitigation assessments.	.5
9/15/20	AG	Experts/Consultants: Plan & Prepare For: Review and analyze excerpts from plaintiffs' first supplemental NRCP 16.1 disclosure including affidavit of death, death certificate, coroner's investigation report, nursing board complaint from Brian Powell, HHS report, and additional medical records (approximately 200 pages) for purposes of preparing for phone call with critical care expert, A. Ishaaya, MD.	1.8
9/15/20	AG	Analysis/Strategy: Communicate (With Client): Teleconference with A Nichols to discuss HHS report and admissions of staff as well as expert's evaluation.	.4
9/15/20	AG	Document Production: Communicate (With Client): Email to A. Nichols with HHS report.	.1
9/16/20	AA	Fact Investigation/Development: Review/Analyze: Detailed legal analysis of Plaintiff's First Supplemental 16.1 Disclosure (400 of 1376 pgs) in order the need for additional discovery in order to build defense in Estate of Rebecca Powell v Centennial Hills Hospital.	6.0
9/16/20	AG	Written Discovery: Review/Analyze: Review and analyze plaintiff estate's responses to co-defendant's interrogatories for purposes of comparing same to answers to our interrogatories and for use on reply to our motion for summary judgment regarding notice of	



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FEDERAL I.D. NO 95-3720522

<b>File Number SBV1</b>	<b>28094-190</b>	<b>UHS of Delaware, Inc. Estate of Rebecca Powell v. Centennial Hills</b>	<b>10/12/20</b> <b>2777320</b> <b>Page 4</b>
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Date	Atty	Description of Services Rendered	Hours
		cause of action.	.4
9/16/20	AG	Written Discovery: Review/Analyze: Review and analyze plaintiff Isaiah Khorsof's responses to co-defendant's interrogatories for purposes of comparing same to answers to our interrogatories and for use on reply to our motion for summary judgment regarding notice of cause of action.	.4
9/16/20	AG	Document Production: Review/Analyze: Review and analyze plaintiff Lloyd Creecy's responses to co-defendant's requests for production of documents for purposes of comparing same to answers to our interrogatories and for use on reply to our motion for summary judgment regarding notice of cause of action.	.3
9/16/20	AG	Document Production: Review/Analyze: Review and analyze plaintiff Isaiah Khorsof's responses to co-defendant's requests for production of documents for purposes of comparing same to answers to our interrogatories and for use on reply to our motion for summary judgment regarding notice of cause of action.	.3
9/16/20	AG	Dispositive Motions: Research: Legal research on imputed knowledge of inquiry notice and unity of interest in preparation for reply to plaintiffs' opposition to CHH's motion for summary judgment.	.9
9/16/20	AG	Written Discovery: Review/Analyze: Review and analyze plaintiff Taryn Creecy's responses to co-defendant's interrogatories for purposes of comparing same to answers to our interrogatories and for use on reply to our motion for summary judgment regarding notice of cause of action.	.4
9/16/20	AG	Document Production: Review/Analyze: Review and analyze plaintiff Taryn Creecy's responses to co-defendant's requests for production of documents for purposes of comparing same to answers to our interrogatories and for use on reply to our motion for summary judgment regarding notice of cause of action.	.3
9/16/20	AG	Dispositive Motions: Research: Legal research on issues of inquiry notice of injury for purposes of statute of limitations purposes as issues of discovery and fraudulent concealment in preparation for reply to plaintiffs' opposition to CHH's motion for summary judgment	1.6
9/16/20	AG	Other Written Motions & Submiss.: Review/Analyze: Review and analyze email and accompanying proposed orders from plaintiffs' counsel denying priors motions to dismiss for purposes of determining accuracy thereof in accordance with minutes of hearing.	.3
9/16/20	AG	Experts/Consultants: Communicate (Other External): Email to R. Kim regarding summary of telephone conference with Dr. Ishaaya , our critical care expert, pertaining to plaintiffs' recent disclosure of HHS report.	.3
9/16/20	AG	Written Discovery: Review/Analyze: Review and analyze plaintiff Darci Creecy's responses to co-defendant's interrogatories for purposes of comparing same to answers to our interrogatories and for use on reply to our motion for summary judgment regarding notice of cause of action.	.4
9/16/20	AG	Document Production: Review/Analyze: Review and analyze plaintiff estate's responses to co-defendant's requests for production of documents for purposes of comparing same to answers to our interrogatories and for use on reply to our motion for summary judgment regarding notice of cause of action.	.3
9/16/20	AG	Written Discovery: Review/Analyze: Review and analyze plaintiff Lloyd Creecy's responses to co-defendant's interrogatories for purposes of comparing same to answers to our interrogatories and for use on reply to our motion for summary judgment regarding notice of cause of action.	.3
9/16/20	AG	Document Production: Review/Analyze: Review and analyze plaintiff Darci Creecy's responses to co-defendant's requests for production of documents for purposes of	

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FEDERAL I.D. NO 95-3720522

<b>File Number</b> SBV1	<b>28094-190</b>	<b>UHS of Delaware, Inc. Estate of Rebecca Powell v. Centennial Hills</b>	<b>10/12/20</b> <b>2777320</b> <b>Page 5</b>
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Date	Atty	Description of Services Rendered	Hours
		comparing same to answers to our interrogatories and for use on reply to our motion for summary judgment regarding notice of cause of action.	.3
9/16/20	AG	Dispositive Motions: Communicate (Other Outside Counsel): Telephone call with co-defense counsel to analyze and strategize regarding plaintiffs' proposed orders pertaining to earlier filed motions to dismiss	.9
9/17/20	AA	Fact Investigation/Development: Review/Analyze: Detailed legal analysis of Plaintiff's First Supplemental 16.1 Disclosure (500 of 1376 pgs) in order the need for additional discovery and to establish any additional facilities or witnesses in order to build defense in Estate of Rebecca Powell v Centennial Hills Hospital.	7.5
9/17/20	AG	Dispositive Motions: Review/Analyze: Review and analyze plaintiffs' opposition to CHH's motion for summary judgment and related exhibits (100 pages) including analysis of all cases cited therein for purposes of preparing reply thereto.	1.7
9/17/20	AG	Document Production: Communicate (Other External): Email to plaintiffs' counsel regarding EDCR 2.34 conference.	.1
9/17/20	AG	Dispositive Motions: Draft/Revise: Begin preparation of reply to plaintiffs' opposition to CHH's motion for summary judgment including new arguments for fraudulent concealment and inquiry notice pertaining to the commencement of the running of the statute of limitations, plus incorporation of plaintiffs' recently disclosed evidence demonstrating inquiry notice commencement date.	6.3
9/17/20	AG	Dispositive Motions: Communicate (Other Outside Counsel): Teleconference with co-defense counsel to discuss strategy regarding reply to plaintiffs' opposition to CHH motion for summary judgment.	.3
9/17/20	AG	Document Production: Review/Analyze: Review and analyze letter from plaintiffs' counsel requesting EDCR 2.34 conference regarding medical authorization.	.1
9/17/20	SBV	Written Discovery: Review/Analyze: Analyze L. Creecy's Responses to co-defendants' Requests for Production	.3
9/17/20	SBV	Written Discovery: Review/Analyze: Analyze D. Creecy's Responses to co-defendants' Requests for Production	.3
9/17/20	SBV	Written Discovery: Review/Analyze: Analyze L. Creecy's Responses to co-defendants' Interrogatories	.4
9/17/20	SBV	Written Discovery: Review/Analyze: Analyze D. Creecy's Responses to co-defendants' Interrogatories	.3
9/17/20	SBV	Written Discovery: Review/Analyze: Analyze Estate's responses to co-defendants' interrogatories	.5
9/17/20	SBV	Written Discovery: Review/Analyze: Analyze I. Khosrof's Responses to co-defendants' Interrogatories	.3
9/17/20	SBV	Written Discovery: Review/Analyze: Analyze T. Creecy's Responses to co-defendants' Interrogatories	.3
9/17/20	SBV	Written Discovery: Review/Analyze: Analyze Estate's Responses to co-defendants' Requests for Production	.3
9/17/20	SBV	Written Discovery: Review/Analyze: Analyze I. Khosrof's Responses to co-defendants' Requests for Production	.3
9/17/20	SBV	Written Discovery: Review/Analyze: Analyze T. Creecy's Responses to co-defendants' Requests for Production	.3
9/18/20	AA	Fact Investigation/Development: Plan & Prepare For: Prepared request to Custodian of Records for Psychological Care Associates re plaintiff's medical records.	.2
9/18/20	AA	Fact Investigation/Development: Plan & Prepare For: Prepared request to Custodian of Records for Shadow Emergency Physicians re plaintiff's medical records.	.2

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**File Number SBV1**      **28094-190**

**UHS of Delaware, Inc.  
Estate of Rebecca Powell v. Centennial Hills**

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Date	Atty	Description of Services Rendered	Hours
9/18/20	AA	Fact Investigation/Development: Plan & Prepare For: Prepared request to Custodian of Records for NMS labs re plaintiff's medical records.	.2
9/18/20	AA	Fact Investigation/Development: Plan & Prepare For: Prepared request to Custodian of Records for American Medical Response re plaintiff's medical records.	.2
9/18/20	AA	Fact Investigation/Development: Review/Analyze: Detailed legal analysis of Plaintiff's First Supplemental 16.1 Disclosure (476 of 1376 pgs) in order the need for additional discovery and to establish any additional facilities or witnesses in order to build defense in Estate of Rebecca Powell v Centennial Hills Hospital.	6.5
9/18/20	AA	Fact Investigation/Development: Plan & Prepare For: Prepared request to Custodian of Records for Desert Radiology? re plaintiff's medical records.	.2
9/18/20	AA	Fact Investigation/Development: Plan & Prepare For: Prepared request to Custodian of Records for Medical Care Now re plaintiff's medical records.	.2
9/18/20	AG	Dispositive Motions: Communicate (Other External): Review, analyze and respond to email from court regarding its sua sponte continuance of all dispositive motions.	.2
9/18/20	AG	Dispositive Motions: Draft/Revise: Continue preparation of reply to plaintiffs' opposition to CHH's motion for summary judgment.	2.4
9/18/20	AG	Dispositive Motions: Communicate (With Client): Email to R. Kim advising of the continuance of motions for summary judgment as well as strategy and status pertaining to reply to plaintiffs' opposition thereto.	.1
9/18/20	SBV	Dispositive Motions: Review/Analyze: Analyze plaintiff's opposition to motion for summary judgment	.5
9/18/20	SBV	Dispositive Motions: Draft/Revise: Edit and revise Reply in Support of Motion for Summary Judgment	1.3
9/18/20	SBV	Dispositive Motions: Research: Legal research regarding elements of fraudulent concealment in medical malpractice context	.8
9/21/20	AG	Other Written Motions & Submiss.: Review/Analyze: Review and analyze email from plaintiff's counsel regarding proposed orders pertaining to prior motions to dismiss.	.1
9/21/20	AG	Other Written Motions & Submiss.: Review/Analyze: Review and analyze email from co-defense counsel regarding plaintiff's proposed orders	.1
9/22/20	AG	Court Mandated Conferences: Communicate (Other Outside Counsel): Telephone call with co-defense counsel to organize strategy for upcoming EDCR 2.34 conference call.	.3
9/22/20	AG	Court Mandated Conferences: Review/Analyze: Review and analyze email from plaintiffs' counsel regarding EDCR 2.34 conference.	.1
9/23/20	AG	Dispositive Motions: Draft/Revise: Continue preparation of reply to plaintiff's opposition to our motion for summary judgment to include issues surrounding dismissal of negligent infliction of emotional distress claims and the medical malpractice statute of limitations applicability thereto as they stem from the alleged malpractice.	3.8
9/24/20	AG	Court Mandated Conferences: Plan & Prepare For: Review and analyze plaintiff Darci Creecy's responses to interrogatories in preparation for EDCR 2.34 conference call requested by plaintiff's counsel for purposes of determining pre-existing injuries as justification for medical authorizations.	.3
9/24/20	AG	Court Mandated Conferences: Appear For/Attend: Attend mandatory EDC R 2.34 conference call with all parties regarding plaintiffs' counsel's issues with authorizations for medical records.	.3
9/24/20	AG	Court Mandated Conferences: Plan & Prepare For: Review and analyze plaintiff Taryn Creecy's responses to interrogatories in preparation for EDCR 2.34 conference call requested by plaintiff's counsel for purposes of determining pre-existing injuries as justification for medical authorizations.	.3

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<b>File Number SBV1</b>	<b>28094-190</b>	<b>UHS of Delaware, Inc. Estate of Rebecca Powell v. Centennial Hills</b>	<b>10/12/20 2777320 Page 7</b>
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Date	Atty	Description of Services Rendered	Hours
9/24/20	AG	Court Mandated Conferences: Communicate (Other External): Email to plaintiffs' counsel outlining position regarding authorizations for plaintiffs' medical records.	.2
9/24/20	AG	Court Mandated Conferences: Plan & Prepare For: Review and analyze plaintiff Isaiah Khosrof's responses to interrogatories in preparation for EDCR 2.34 conference call requested by plaintiff's counsel for purposes of determining pre-existing injuries as justification for medical authorizations.	.3
9/24/20	AG	Court Mandated Conferences: Plan & Prepare For: Review and analyze plaintiff Lloyd Creecy's responses to interrogatories in preparation for EDCR 2.34 conference call requested by plaintiff's counsel for purposes of determining pre-existing injuries as justification for medical authorizations.	.3
9/24/20	AG	Court Mandated Conferences: Plan & Prepare For: Review and analyze plaintiff estate's responses to interrogatories in preparation for EDCR 2.34 conference call requested by plaintiff's counsel for purposes of determining pre-existing injuries as justification for medical authorizations.	.4
9/24/20	AG	Court Mandated Conferences: Review/Analyze: Review and analyze email from plaintiff's counsel regarding our position on medical authorizations.	.1
9/25/20	AG	Dispositive Motions: Draft/Revise: Continue drafting reply to plaintiff's opposition to CHH's motion for summary judgment to include additional case authority on applicability of medical malpractice statute of limitations to any additional claims which directly stem therefrom.	2.7

Date	Description of Disbursement	Units	Rate	Amount
9/15/20	Court filing fee Comerica Commercial Card Services Inv#:083120STMT-ANOUWELS Trans Date: 08/10/2020 Nvefile* 006448171-0, Filing fee for non opposition.			3.50
9/15/20	E123-Consulting Services Ruffalo & Associates, Inc. Inv#:2449 Professional services rendered on 09/10/20.			1,800.00
9/17/20	Medical Expert Services Abraham Ishaaya Inv#:#2POWELL Expert medical services rendered on 09/13/20 - 09/15/20.			1,375.00

Recap of Services	Hours	Effective Rate	Fees
Arielle Atkinson	21.5	90.00	1,935.00
Adam Garth	63.2	225.00	14,220.00
S. Brent Vogel	15.5	225.00	3,487.50
<b>Total</b>	<b>100.2</b>		<b>19,642.50</b>

<b>Total Fees</b>	<b>19,642.50</b>
<b>Total Disbursements</b>	<b>3,178.50</b>

<b>Total Current Charges</b>	<b>\$ 22,821.00</b>
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**Case # A-19-788787-C - Estate of Rebecca Powell, Plaintiff****Envelope Information****Envelope Id**

6448171

**Submitted Date**

8/10/2020 3:05 PM PST

**Submitted User Name**

roya.rokni@lewisbrisbois.com

**Case Information****Location**

Department 30

**Category**

Civil

**Case Type**

Malpractice - Medical/Dental

**Case Initiation Date**

2/4/2019

**Case #**

A-19-788787-C

**Assigned to Judge**

Wiese, Jerry A.

**Filings****Filing Type**

EFileAndServe

**Filing Code**

Non Opposition - NONO (CIV)

**Filing Description**

Defendants Valley Health Systems'  
Non-Opposition to Defendant  
Juliano's Motion for Summary  
Judgment and Joinder to  
Defendant Concio and Shah's  
Motion for Partial Summary  
Judgment

**Client Reference Number**

28094-190

**Filing on Behalf of**

Valley Health System, LLC

**Filing Status**

Accepted

**Accepted Date**

8/10/2020 3:07 PM PST

**Accept Comments**

Auto Review Accepted

**Lead Document****File Name****Description****Security**

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Powell - CHH's Non-Opposition &  
Joinder to Co-Defendants' Motion  
for Summary Judgment 4820-  
8468-7815 v.pdf

Non Opposition -  
NONO (CIV)

Original File  
Court Copy

### eService Details

Status	Name	Firm	Served	Date Opened
Sent	Paul S. Padda	PAUL PADDA LAW, PLLC	Yes	Not Opened
Sent	Tony L. Abbatangelo	PAUL PADDA LAW, PLLC	Yes	Not Opened
Sent	James P. Kelly	PAUL PADDA LAW, PLLC	Yes	Not Opened
Sent	Paul Padda	Paul Padda Law, PLLC	Yes	Not Opened
Sent	Marlenne Casillas	PAUL PADDA LAW, PLLC	Yes	8/11/2020 9:00 AM P
Sent	Jennifer C. Greening	PAUL PADDA LAW, PLLC	Yes	Not Opened
Sent	S. Brent Vogel	Lewis Brisbois Bisgaard & Smith LLP	Yes	Not Opened
Sent	Johana Whitbeck	Lewis Brisbois Bisgaard & Smith LLP	Yes	Not Opened
Sent	Adam Garth	Lewis Brisbois Bisgaard & Smith LLP	Yes	Not Opened
Sent	Roya Rokni	Lewis Brisbois Bisgaard & Smith LLP	Yes	8/10/2020 3:27 PM P
Sent	Arielle Atkinson	Lewis Brisbois Bisgaard & Smith LLP	Yes	Not Opened
Sent	Jody Foote	John H. Cotton & Associates, Ltd.	Yes	8/10/2020 4:52 PM P
Sent	Jessica D. Pincombe	John H. Cotton & Associates, Ltd.	Yes	8/10/2020 3:07 PM P
Sent	John H. Cotton	John H. Cotton & Associates, Ltd.	Yes	Not Opened
Sent	Brad Shipley	John H. Cotton & Associates, Ltd.	Yes	8/10/2020 3:07 PM P

### Parties with No eService

**Name** **Address**

Isaiah Khosrof

**Name** **Address**

Lloyd Creecy

**Name** **Address**

Taryn Creecy

**Name** **Address**

Darci Creecy

**Name** **Address**

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Dionice S. Juliano MD

**Name****Address**

Vishal S. Shah MD

**Name****Address**

Brian Powell

**Fees****Non Opposition - NONO (CIV)**

Description	Amount
Filing Fee	\$0.00
<b>Filing Total:</b>	<b>\$0.00</b>

Total Filing Fee	\$0.00
E-File Fee	\$3.50
<b>Envelope Total:</b>	<b>\$3.50</b>

<b>Party Responsible for Fees</b>	Valley Health Syst...	<b>Transaction Amount</b>	\$3.50
<b>Payment Account</b>	Autumn Nouwels	<b>Transaction Id</b>	7582211
<b>Order Id</b>	006448171-0		
<b>Transaction Response</b>	Payment Complete		

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<https://nevada.tylerhost.net/OfsWeb/FileAndServeModule/Envelope/ViewPrintableEnvelo...> 8/26/2020

RUFFALO & ASSOCIATES, INC

RECEIVED

SEP 21 2020

Invoice #: 2449  
Invoice Date: 9/15/2020  
Terms: Net 30

RE: POWELL V. CENTENNIAL HILLS HOSPITAL, ET AL		
Review of the decedent's autopsy report and toxicology report and analysis of the toxicology report regarding drug-drug interactions	1.25	750.00
Review of the plaintiff's letter to the Nevada State Nursing Board and the nursing boards report and comparison with the medical records	1.25	750.00
Discussion with Mr. Garth 09/10/2020	0.5	300.00
TOTAL HOURS: 3.0		
Total		\$1,800.00
Payments/Credits		\$0.00
Balance Due		\$1,800.00

\$1,800.00



Abraham Ishaaya, M.D., F.C.C.P.

RECEIVED

SEP 18 2020

September 17, 2020

#2POWELL

LEWIS BRISBOIS  
ATT: Adam Garth  
6385 South Rainbow Blvd., Suite 600  
Las Vegas, NV 89118

RE: CASE NAME: Estate of Rebecca Powell v Centennial Hills Hospital

Dear Adam:

Enclosed please find my charges to present for the above case.

Review of:


9-13	Coroner/Medical Examiner report	1.1 hours
	DHHS review	1.2 hours
9-15	Telephone call	.2 hours

Total hours: 2.5 hours @ \$550

Total owed: \$1,375

If I can be of any further assistance, please do not hesitate to contact me.

Sincerely,



Avi Ishaaya, M.D.

# LEWIS BRISBOIS BISGAARD & SMITH LLP

LAWYERS  
SUITE 4000  
633 W. FIFTH STREET  
LOS ANGELES, CALIFORNIA 90071  
TELEPHONE (213) 250-1800

FEDERAL I.D. NO 95-3720522

UHS of Delaware, Inc.  
367 South Gulph Road  
King of Prussia, PA 19406

Attn: Richard Kim  
Manager- Claims

November 13, 2020  
Invoice No. 2808914

Re: Estate of Rebecca Powell v. Centennial Hills  
Our File No.: 28094-190

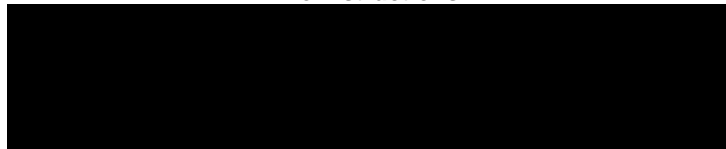
Court CLAR  
Court Case No. A-19-788787-C

Current Fees through 10/31/20	12,559.50
Current Disbursements through 10/31/20	209.50
Total Current Charges	\$ 12,769.00

\*\*\* Please return this page with your payment. \*\*\*

Retainer Balance 104.40

## Wire Instructions



All Charges in US Dollars

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November 13, 2020  
Invoice No. 2808914

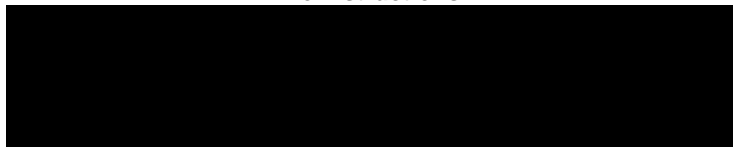
Re: Estate of Rebecca Powell v. Centennial Hills  
Our File No.: 28094-190

Court CLAR  
Court Case No. A-19-788787-C

Current Fees through 10/31/20	12,559.50
Current Disbursements through 10/31/20	209.50
Total Current Charges	<u>\$ 12,769.00</u>

Retainer Balance 104.40

## Wire Instructions



All Charges in US Dollars

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TELEPHONE (213) 250-1800

FEDERAL I.D. NO 95-3720522

<b>File Number SBV1</b>	<b>28094-190</b>	<b>UHS of Delaware, Inc. Estate of Rebecca Powell v. Centennial Hills</b>	<b>11/13/20</b> <b>2808914</b> <b>Page 1</b>
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Date	Atty	Description of Services Rendered	Hours
10/01/20	AA	Fact Investigation/Development: Review/Analyze: Detailed legal analysis of Plaintiff's Second Supplement 16.1 Disclosure in order to establish a running list of additional witnesses and documents that may need additional discovery inquiry to continue to build defense in Powell v Centennial Hills Hospital (300 of 1230 pgs).	.5
10/01/20	AG	Written Discovery: Review/Analyze: Review and analyze plaintiff estate's supplementary responses to interrogatories (36 pages) for purposes of determining propriety of responses, comparing to previous responses and determining extent to which motion to compel is required to obtain additional information attendant thereto.	.7
10/01/20	AG	Written Discovery: Review/Analyze: Review and analyze plaintiff Darci Creecy's supplementary responses to interrogatories (36 pages) for purposes of determining propriety of responses, comparing to previous responses and determining extent to which motion to compel is required to obtain additional information attendant thereto.	.7
10/01/20	AG	Document Production: Review/Analyze: Review and analyze plaintiff estate's supplementary responses to requests for production of documents (93 pages) for purposes of determining propriety of responses, comparing to previous responses and determining extent to which motion to compel is required to obtain additional documents and materials attendant thereto.	1.0
10/01/20	AG	Document Production: Review/Analyze: Review and analyze plaintiff Taryn Creecy's supplementary responses to requests for production of documents (87 pages) for purposes of determining propriety of responses, comparing to previous responses and determining extent to which motion to compel is required to obtain additional information and documents attendant thereto.	.8
10/01/20	AG	Document Production: Review/Analyze: Review and analyze plaintiff Lloyd Creecy's supplementary responses to requests for production of documents (86 pages) for purposes of determining propriety of responses, comparing to previous responses and determining extent to which motion to compel is required to obtain additional information and documents attendant thereto.	.8
10/01/20	AG	Written Discovery: Review/Analyze: Review and analyze plaintiff Isaiah Khosrof's supplementary responses to interrogatories (33 pages) for purposes of determining propriety of responses, comparing to previous responses and determining extent to which motion to compel is required to obtain additional information attendant thereto.	.6
10/01/20	AG	Written Discovery: Review/Analyze: Review and analyze plaintiff estate's supplementary responses to special interrogatories (21 pages) for purposes of determining propriety of responses, comparing to previous responses and determining extent to which motion to compel is required to obtain additional information attendant thereto.	.5
10/01/20	AG	Written Discovery: Review/Analyze: Review and analyze plaintiff Lloyd Creecy's supplementary responses to interrogatories (32 pages) for purposes of determining propriety of responses, comparing to previous responses and determining extent to which motion to compel is required to obtain additional information attendant thereto.	.6
10/01/20	AG	Document Production: Review/Analyze: Review and analyze plaintiff Darci Creecy's supplementary responses to requests for production of documents (90 pages) for purposes of determining propriety of responses, comparing to previous responses and determining extent to which motion to compel is required to obtain additional information and documents attendant thereto.	.9
10/01/20	AG	Document Production: Review/Analyze: Review and analyze plaintiff Isaiah Khosrof's supplementary responses to requests for production of documents (86 pages) for purposes of determining propriety of responses, comparing to previous responses and determining extent to which motion to compel is required to obtain additional information and documents attendant thereto.	.8

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FEDERAL I.D. NO 95-3720522

File Number SBV1	28094-190	UHS of Delaware, Inc. Estate of Rebecca Powell v. Centennial Hills	11/13/20 2808914 Page 2
Date	Atty	Description of Services Rendered	Hours
10/01/20	AG	Written Discovery: Review/Analyze: Review and analyze plaintiff Taryn Creecy's supplementary responses to interrogatories (35 pages) for purposes of determining propriety of responses, comparing to previous responses and determining extent to which motion to compel is required to obtain additional information attendant thereto.	.7
10/01/20	SBV	Written Discovery: Review/Analyze: Analyze plaintiffs' supplemental responses to requests for production, four sets	1.2
10/01/20	SBV	Document Production: Review/Analyze: Begin review and analysis of records in plaintiff's second supplement to disclosure statement including Medical Care Now and CHH for comparison with client records	2.8
10/02/20	AA	Fact Investigation/Development: Review/Analyze: Detailed legal analysis of Plaintiff's Second Supplement 16.1 Disclosure in order to establish a running list of additional witnesses and documents that may need additional discovery inquiry to continue to build defense in Powell v Centennial Hills Hospital (300 of 1230 pgs).	.5
10/02/20	AG	Dispositive Motions: Research: Perform additional legal research based upon recent issuance of Nevada Supreme Court decision pertaining to inquiry notice and running of statute of limitations for purposes of incorporating same into reply to plaintiff's opposition to motion for summary judgment.	.6
10/02/20	AG	Dispositive Motions: Draft/Revise: Continued revisions to reply on our motion for summary judgment incorporating latest opinion and legal analysis of Nevada Supreme Court's decision pertaining to inquiry notice on statute of limitations.	1.8
10/05/20	AA	Fact Investigation/Development: Review/Analyze: Detailed legal analysis of Plaintiff's Second Supplement 16.1 Disclosure in order to establish a running list of additional witnesses and documents that may need additional discovery inquiry to continue to build defense in Powell v Centennial Hills Hospital (300 of 1230 pgs).	.5
10/06/20	AA	Fact Investigation/Development: Review/Analyze: Detailed legal analysis of Plaintiff's Second Supplement 16.1 Disclosure in order to establish a running list of additional witnesses and documents that may need additional discovery inquiry to continue to build defense in Powell v Centennial Hills Hospital (330 of 1230 pgs).	.5
10/08/20	AA	Fact Investigation/Development: Draft/Revise: Detailed analysis of Centennial Hills Hospital records received in Plaintiff's Second Supplement 16.1 Disclosure of plaintiff, Rebecca Powell, to draft medical event history for attorney, Adam Garth, to establish order of events, compose list medical providers, illuminate any/all incidents related to allegations against defendant, which may impact outcome of case, and identify any health information subject to investigation or deserving attorney attention (599 of 1230 pages)."	6.2
10/09/20	AA	Fact Investigation/Development: Draft/Revise: Detailed analysis of Centennial Hills Hospital records received in Plaintiff's Second Supplement 16.1 Disclosure of plaintiff, Rebecca Powell, to draft medical event history for attorney, Adam Garth, to establish order of events, compose list medical providers, illuminate any/all incidents related to allegations against defendant, which may impact outcome of case, and identify any health information subject to investigation or deserving attorney attention (631 of 1230 pages).	6.5
10/12/20	SBV	Written Discovery: Review/Analyze: Analyze correspondence from plaintiff's counsel regarding discovery responses and verifications	.2
10/14/20	AG	Dispositive Motions: Communicate (Other Outside Counsel): Telephone call with co-defense counsel to develop combined strategy to oppose plaintiff's countermotion to amend requests for admission responses and his opposition to co-defendant's countermotion for summary judgment on negligent infliction of emotional distress claims.	.8
10/14/20	AG	Dispositive Motions: Review/Analyze: Review and analyze plaintiff's opposition to co-defendant's countermotion for summary judgment on NIED claims and plaintiff's	

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FEDERAL I.D. NO 95-3720522

<b>File Number SBV1</b>	<b>28094-190</b>	<b>UHS of Delaware, Inc. Estate of Rebecca Powell v. Centennial Hills</b>	<b>11/13/20</b> <b>2808914</b> <b>Page 3</b>
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Date	Atty	Description of Services Rendered	Hours
		countermotion to amend or withdraw his lack of responses to requests (107 pages) for admission for purposes of preparing opposition to countermotion and reply to opposition interposed by plaintiff.	2.3
10/14/20	AG	Dispositive Motions: Research: Perform legal research on plaintiff's opposition to co0-defendant's motion for summary judgment and countermotion to withdraw responses to requests for admission for purposes of checking all of the case citations utilized by plaintiff for accuracy and to develop counterarguments thereto.	2.8
10/14/20	AG	Dispositive Motions: Draft/Revise: Begin drafting opposition to plaintiffs' countermotion to amend or withdraw responses to requests for admission and reply to opposition to co-defendant's motion for summary judgment.	3.3
10/15/20	AG	Dispositive Motions: Draft/Revise: Continue preparation of our reply to plaintiffs' opposition to co-defendants' motion for summary judgment on negligent infliction of emotional distress claims and our opposition to plaintiffs' countermotion to amend or withdraw responses to requests for admissions served by co-defendants.	6.2
10/16/20	SBV	Dispositive Motions: Review/Analyze: Analyze plaintiffs' opposition to motion for summary and counter motion to amend or withdraw responses to RFA's and cited case law (100+ pages)	2.8
10/20/20	AG	Dispositive Motions: Draft/Revise: Continue preparation of and finalize our reply to plaintiff's opposition to our motion for summary judgment on statute of limitations.	1.2
10/20/20	AG	Dispositive Motions: Draft/Revise: Continue preparation of an finalize our reply to plaintiff's opposition to co-defendant's motion for summary judgment on negligent infliction of emotional distress claims (in further support of our joinder) and in opposition to plaintiff's countermotion to amend or withdraw his responses to requests for admission.	1.4
10/20/20	SBV	Dispositive Motions: Draft/Revise: Edit and finalize reply in support of motion for summary judgment	.9
10/21/20	AG	Dispositive Motions: Communicate (Other Outside Counsel): Teleconference with co-defense counsel to plan strategy for oral argument on respective summary judgment motions.	.5
10/21/20	AG	Dispositive Motions: Review/Analyze: Review and analyze co-defendant's joinder to our reply to plaintiff's opposition to co-defendant's motion for summary judgment on negligent infliction of emotional distress claims and countermotion to withdraw or amend responses to requests for admission.	.1
10/21/20	AG	Dispositive Motions: Review/Analyze: Review and analyze co-defendant's reply to plaintiff's opposition to co-defendant's motion for summary judgment on negligent infliction of emotional distress claims and countermotion to withdraw or amend responses to requests for admission.	.4
10/21/20	AG	Dispositive Motions: Review/Analyze: Review and analyze co-defendant's joinder to our reply to plaintiff's opposition to our motion for summary judgment.	.2
10/21/20	SBV	Dispositive Motions: Review/Analyze: Analyze co-defendants' joinder in our reply in support of motion for summary judgment	.2
10/21/20	SBV	Dispositive Motions: Review/Analyze: Analyze co-defendant's reply in support of motion for summary judgment and partial summary judgment on emotional distress claims and cases cited therein	.7
10/26/20	AG	Dispositive Motions: Plan & Prepare For: Prepare for oral argument and hearing on motions for summary judgment by reviewing and analyzing our motion for summary judgment and exhibits annexed thereto (154 pages) and preparing outline for same.	3.6
10/26/20	AG	Dispositive Motions: Review/Analyze: Review and analyze plaintiff's counsel's email requesting continuance of hearing on motions for summary judgment due to illness.	.1
10/26/20	AG	Other Written Motions & Submiss.: Draft/Revise: Prepare ex parte application to strike	

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FEDERAL I.D. NO 95-3720522

<b>File Number SBV1</b>	<b>28094-190</b>	<b>UHS of Delaware, Inc. Estate of Rebecca Powell v. Centennial Hills</b>	<b>11/13/20 2808914 Page 4</b>
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Date	Atty	Description of Services Rendered	Hours
		document with identifying information and substitute redacted document in support of motion for summary judgment and order granting same.	1.4
10/26/20	JD	Dispositive Motions: Draft/Revise: Revised Centennial Hills Hospital's Motion for Summary Judgment by removing any/all privileged information of decedent.	.1
10/27/20	AG	Dispositive Motions: Communicate (Other Outside Counsel): Teleconference with co-defense counsel regarding strategy for postponed hearing on respective motions for summary judgment.	.3
10/27/20	AG	Dispositive Motions: Plan & Prepare For: Continue preparation of outline for oral argument and hearing on our motion for summary judgment on statute of limitations and co-defendant's motion for summary judgment on negligent infliction of emotional distress claims, and plaintiff's countermotion to amend or withdraw responses to requests for admissions.	2.6
10/27/20	AG	Dispositive Motions: Review/Analyze: Review and analyze court order continuing hearing on all pending motions for summary judgment for one week.	.1
10/28/20	AG	Other Written Motions & Submiss.: Review/Analyze: Review and analyze court order permitting substitution of conforming evidence pages in motion for summary judgment.	.1
10/28/20	AG	Other Written Motions & Submiss.: Draft/Revise: Prepare notice of entry of court order granting substitution of non-conforming exhibits.	.3
10/29/20	AG	Dispositive Motions: Review/Analyze: Review and analyze court's written decision on all pending motions for summary judgment and vacating hearing now scheduled for November 4 for purposes of determining outcome and devising future litigation strategy.	.3
10/29/20	AG	Dispositive Motions: Communicate (With Client): Email to R. Kim along with copy of decision on motions for summary judgment along with analysis thereof and request for authorization to pursue a writ with the Nevada Supreme Court.	.5
10/29/20	AG	Dispositive Motions: Communicate (Other Outside Counsel): Phone call from co-defense counsel to discuss further potential discovery strategy to obtain additional evidence to attach to potential renewal motion prior to filing for writ before Nevada Supreme Court.	1.4
10/29/20	AG	Dispositive Motions: Communicate (Other Outside Counsel): Telephone call with co-defense counsel to prepare strategy regarding appeal of motions for summary judgment	.4
10/29/20	SBV	Dispositive Motions: Review/Analyze: Analyze court's order denying our MSJ	.3

Date	Description of Disbursement	Units	Rate	Amount
10/15/20	Court filing fee Comerica Commercial Card Services Inv#:093020STMT-ANOUWELS Trans Date: 09/02/2020 Nvefile* 006565123-0, Filing fee for Valley Health System, LLC and Universal Health Services, Inc.'s motion for summary judgment based upon the expiration of the statute of limitations.			209.50

Recap of Services	Hours	Effective Rate	Fees
Arielle Atkinson	14.7	90.00	1,323.00
Adam Garth	40.8	225.00	9,180.00
Joshua Daor	.1	90.00	9.00
S. Brent Vogel	9.1	225.00	2,047.50
<b>Total</b>	<b>64.7</b>		<b>12,559.50</b>

# LEWIS BRISBOIS BISGAARD & SMITH LLP

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FEDERAL I.D. NO 95-3720522

File Number SBV1	28094-190	UHS of Delaware, Inc. Estate of Rebecca Powell v. Centennial Hills	11/13/20 2808914 5
			Page

Date	Description of Disbursement	Units	Rate	Amount
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Total Fees	12,559.50
Total Disbursements	209.50

Total Current Charges	\$ 12,769.00
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**Case # A-19-788787-C - Estate of Rebecca Powell, Plaintiff****Envelope Information**

**Envelope Id**  
6565123

**Submitted Date**  
9/2/2020 10:04 AM PST

**Submitted User Name**  
roya.rokni@lewisbrisbois.com

**Case Information**

**Location**  
Department 30

**Category**  
Civil

**Case Type**  
Malpractice - Medical/Dental

**Case Initiation Date**  
2/4/2019

**Case #**  
A-19-788787-C

**Assigned to Judge**  
Wiese, Jerry A.

**Filings**

**Filing Type**  
EFileAndServe

**Filing Code**  
Motion for Summary Judgment -  
MSJD (CIV)

**Filing Description**

Valley Health System, LLC And  
Universal Health Services, Inc.'s  
Motion For Summary Judgment  
Based Upon The Expiration Of The  
Statute Of Limitations

**Client Reference Number**  
28094-190

**Filing on Behalf of**  
Valley Health System, LLC

**Filing Status**  
Accepted

**Accepted Date**  
9/2/2020 10:07 AM PST

**Accept Comments**  
Auto Review Accepted

**Lead Document**

File Name	Security	Download
	Public Filed Document	Original File Court Copy

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Powell v Valley -CHH's Motion for  
Summary Judgment 4818-7403-  
4121 v.pdf

### eService Details

Status	Name	Firm	Served	Date Opened
Sent	Paul S. Padda	PAUL PADDA LAW, PLLC	Yes	9/2/2020 10:17 AM PS
Sent	Tony L. Abbatangelo	PAUL PADDA LAW, PLLC	Yes	Not Opened
Sent	James P. Kelly	PAUL PADDA LAW, PLLC	Yes	Not Opened
Sent	Paul Padda	Paul Padda Law, PLLC	Yes	Not Opened
Sent	Marlene Casillas	PAUL PADDA LAW, PLLC	Yes	9/2/2020 12:33 PM PS
Sent	Jennifer C. Greening	PAUL PADDA LAW, PLLC	Yes	9/15/2020 5:27 PM PS
Sent	S. Brent Vogel	Lewis Brisbois Bisgaard & Smith LLP	Yes	9/2/2020 10:08 AM PS
Sent	Johana Whitbeck	Lewis Brisbois Bisgaard & Smith LLP	Yes	Not Opened
Sent	Adam Garth	Lewis Brisbois Bisgaard & Smith LLP	Yes	9/2/2020 10:52 AM PS
Sent	Roya Rokni	Lewis Brisbois Bisgaard & Smith LLP	Yes	Not Opened
Sent	Arielle Atkinson	Lewis Brisbois Bisgaard & Smith LLP	Yes	Not Opened
Sent	Jody Foote	John H. Cotton & Associates, Ltd.	Yes	9/2/2020 4:40 PM PS
Sent	Jessica D. Pincombe	John H. Cotton & Associates, Ltd.	Yes	9/2/2020 10:22 AM PS
Sent	John H. Cotton	John H. Cotton & Associates, Ltd.	Yes	Not Opened
Sent	Brad Shipley	John H. Cotton & Associates, Ltd.	Yes	9/3/2020 12:09 PM PS

### Parties with No eService

**Name** **Address**  
Isaiah Khosrof

**Name** **Address**  
Lloyd Creecy

**Name** **Address**  
Taryn Creecy

**Name** **Address**  
Darci Creecy

**Name** **Address**  
Dionice S. Juliano MD

<https://nevada.tylerhost.net/OfsWeb/FileAndServeModule/Envelope/ViewPrintableEnVELO...> 9/17/2020

**Name** **Address**  
Vishal S. Shah MD

**Name** **Address**  
Brian Powell

## Fees

### Motion for Summary Judgment - MSJD (CIV)

Description	Amount
Filing Fee	\$200.00
<b>Filing Total:</b>	<b>\$200.00</b>

Total Filing Fee	\$200.00
Payment Service Fee	\$6.00
E-File Fee	\$3.50
<b>Envelope Total:</b>	<b>\$209.50</b>

<b>Party Responsible for Fees</b>	Valley Health Syst...	<b>Transaction Amount</b>	\$209.50
<b>Payment Account</b>	Autumn Nouwels	<b>Transaction Id</b>	7699473
<b>Order Id</b>	006565123-0		
<b>Transaction Response</b>	Payment Complete		

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UHS of Delaware, Inc.  
367 South Gulph Road  
King of Prussia, PA 19406

Attn: Richard Kim  
Manager- Claims

December 10, 2020  
Invoice No. 2836962

Re: Estate of Rebecca Powell v. Centennial Hills  
Our File No.: 28094-190

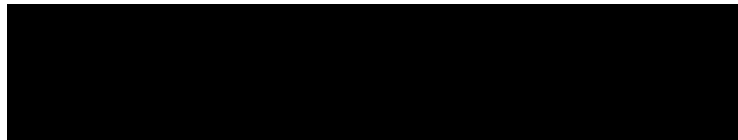
Court CLAR  
Court Case No. A-19-788787-C

Current Fees through 11/30/20	14,392.80
Current Disbursements through 11/30/20	14.00
Total Current Charges	\$ 14,406.80

\*\*\* Please return this page with your payment. \*\*\*

Retainer Balance 104.40

## Wire Instructions



All Charges in US Dollars

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FEDERAL I.D. NO 95-3720522

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367 South Gulph Road  
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Attn: Richard Kim  
Manager- Claims

December 10, 2020  
Invoice No. 2836962

Re: Estate of Rebecca Powell v. Centennial Hills  
Our File No.: 28094-190

Court CLAR  
Court Case No. A-19-788787-C

Current Fees through 11/30/20	14,392.80
Current Disbursements through 11/30/20	14.00
Total Current Charges	\$ 14,406.80

Retainer Balance 104.40

## Wire Instructions

Comerica Bank  
Account Name: Lewis, Brisbois, Bisgaard & Smith, LLP  
Account No.: 1891462440  
ABA Routing No.: 121137522  
SWIFT A/C No.: MNBDUS33

All Charges in US Dollars

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FEDERAL I.D. NO 95-3720522

<b>File Number SBV1</b>	<b>28094-190</b>	<b>UHS of Delaware, Inc. Estate of Rebecca Powell v. Centennial Hills</b>	<b>12/10/20 2836962 Page 1</b>
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Date	Atty	Description of Services Rendered	Hours
11/02/20	AG	Other Written Motions & Submiss.: Draft/Revise: Begin preparation of application for stay of proceedings to permit writ to Nevada Supreme Court regarding denial of our motion for summary judgment on expiration of the statute of limitations.	6.7
11/02/20	AG	Dispositive Motions: Communicate (Other Outside Counsel): Telephone call from co-defense counsel to discuss strategy regarding further discovery prior to petitioning for writ to Nevada Supreme Court regarding denial of our motion to summary judgment on statute of limitations and proceeding further therewith.	.9
11/02/20	AG	Other Written Motions & Submiss.: Research: Conduct legal research to obtain latest case law regarding obtaining a stay at the district court prior to seeking writ before Nevada Supreme Court as required by appellate rules.	1.3
11/02/20	AG	Other Written Motions & Submiss.: Draft/Revise: Prepare notice of entry of order denying motion for summary judgment.	.2
11/03/20	AG	Other Written Motions & Submiss.: Review/Analyze: Review and analyze email from plaintiff's counsel to court regarding need for time to oppose our motion for stay pending writ to appeal to Nevada Supreme Court.	.1
11/03/20	AG	Other Written Motions & Submiss.: Draft/Revise: Continue preparation of motion for stay pending writ to Nevada Supreme Court.	3.7
11/04/20	AG	Other Written Motions & Submiss.: Draft/Revise: Letter to plaintiff's counsel regarding hearing on our motion for stay application pertaining to writ to Nevada Supreme Court.	.2
11/04/20	AG	Appellate Motions & Submissions: Draft/Revise: Begin preparation of writ petition to Nevada Supreme Court regarding District Court's denial of motion for summary judgment on statute of limitations.	6.4
11/05/20	AG	Appellate Motions & Submissions: Draft/Revise: Continue preparation of extensive writ petition to Nevada Supreme Court regarding denial of our motion for summary judgment on statute of limitations.	5.6
11/06/20	AG	Appellate Motions & Submissions: Draft/Revise: Continue preparation of writ petition to Nevada Supreme Court.	5.3
11/09/20	AG	Other Written Motions & Submiss.: Draft/Revise: Continue preparation of writ application to Nevada Supreme Court based upon denial of motion for summary judgment.	1.6
11/12/20	AG	Appellate Motions & Submissions: Draft/Revise: Continue preparation of writ petition to Nevada Supreme Court regarding denial of motion for summary judgment on statute of limitations.	4.2
11/18/20	AG	Written Motions and Submissions: Plan & Prepare For: Begin preparing for hearing on our motion for stay application pertaining to denial of our motion for summary judgment on statute of limitations by beginning to prepare outline of said application (340 pages).	1.6
11/19/20	AG	Written Discovery: Communicate (With Client): Email to A. Nichols regarding needed responses to interrogatories and requests for production of documents as well a strategy pertaining thereto.	.3
11/19/20	HA	"No Charge": Appear For/Attend: Telephone meeting with Adam Garth to discuss strategy for providing responses to Plaintiff's written discovery requests.	.5
11/19/20	HA	Written Discovery: Review/Analyze: Review/analyze Plaintiff's interrogatories (40) and requests for production (81) to Centennial Hills Hospital in preparation to respond and interpose appropriate objections to same.	1.8
11/19/20	HA	Written Discovery: Research: Legal research on latest case law on interposing objections to written discovery requests.	1.5
11/19/20	SBV	Other Written Motions & Submiss.: Review/Analyze: Analyze plaintiff's opposition to motion to stay and cited cases	.8
11/19/20	SBV	Written Discovery: Review/Analyze: Analyze plaintiff's interrogatories to Valley Health	.4

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TELEPHONE (213) 250-1800

FEDERAL I.D. NO 95-3720522

<b>File Number</b> SBV1	<b>28094-190</b>	<b>UHS of Delaware, Inc. Estate of Rebecca Powell v. Centennial Hills</b>	<b>12/10/20</b> <b>2836962</b> <b>Page 2</b>
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Date	Atty	Description of Services Rendered	Hours
11/19/20	SBV	Written Discovery: Review/Analyze: Analyze plaintiff's requests for production to Valley Health	.4
11/20/20	AG	Other Written Motions & Submiss.: Research: Legal research to check all cases cited by plaintiff in opposition to our stay application for purposes of preparing reply thereto and to obtain contradictory authority in further support of our motion in light of said opposition.	1.1
11/20/20	AG	Other Written Motions & Submiss.: Draft/Revise: Prepare reply to plaintiffs' opposition to our motion for stay application pertaining to our motion for summary judgment and writ to the Supreme Court.	3.6
11/20/20	AG	Other Written Motions & Submiss.: Review/Analyze: Review and analyze plaintiff's opposition to our motion for stay for purposes of preparing reply thereto	.8
11/20/20	HA	Written Discovery: Draft/Revise: Commence drafting responses and objections to Plaintiffs' Interrogatories, including review of medical record to provide responses compliant with requirement to provide references to specific bates-stamped entries.	2.0
11/20/20	HA	Written Discovery: Review/Analyze: Review/analyze Plaintiff's NRCP 16.1 disclosures in preparation to respond to Plaintiff's written discovery requests, some of which concern matters discussed in Plaintiff's disclosed documents.	.8
11/20/20	HA	Written Discovery: Draft/Revise: Commence drafting responses and objections to Plaintiffs' requests for production of documents including review of medical record to provide responses compliant with requirement to provide references to specific bates-stamped entries..	2.8
11/20/20	HA	Written Discovery: Review/Analyze: Review/analyze Judge Weise's recent order denying Defendants' motion for summary judgment in preparation to respond to Plaintiff's written discovery requests, some of which concern matters resolved in the court's order.	.3
11/20/20	SBV	Other Written Motions & Submiss.: Draft/Revise: Edit and finalize Reply in Support of Motion for Stay	.6
11/23/20	AG	Other Written Motions & Submiss.: Draft/Revise: Prepare outline for hearing on our motion for stay of all proceedings pending writ to Nevada Supreme Court due to denial of our motion for summary judgment on statute of limitations.	1.3
11/23/20	AG	Other Written Motions & Submiss.: Plan & Prepare For: Continued review and analyze our motion for stay pending writ to Nevada Supreme Court (approximately 340 pages) in preparation for hearing on said motion and for purposes of creating outline therefrom.	1.8
11/23/20	AG	Other Written Motions & Submiss.: Communicate (Other Outside Counsel): Teleconference with codefense counsel regarding status of hearing on our stay application.	.1
11/23/20	AG	Other Written Motions & Submiss.: Plan & Prepare For: Review and analyze our reply to plaintiff's opposition to our motion for stay in preparation for hearing thereon.	.7
11/23/20	AG	Other Written Motions & Submiss.: Communicate (Other External): Communicate with and review response from court regarding hearing on stay application.	.2
11/23/20	AG	Other Written Motions & Submiss.: Plan & Prepare For: Continued review and analysis of plaintiffs' opposition to our motion for stay in preparation for hearing on same.	.4
11/23/20	HA	Written Discovery: Draft/Revise: Continue drafting responses and objections to Plaintiffs' Interrogatories and requests for production, including review of medical record to provide responses compliant with requirement to provide references to specific bates-stamped entries.	1.6
11/30/20	AG	Dispositive Motions: Review/Analyze: Review and analyze plaintiff's proposed order denying our stay pending writ to Nevada Supreme Court and comparing same to the court's minute order to determine accuracy thereof.	.7
11/30/20	AG	Other Written Motions & Submiss.: Draft/Revise: Prepare proposed counter order in compliance with court's decision denying our motion for stay due to inaccuracies with	

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FEDERAL I.D. NO 95-3720522

<b>File Number SBV1</b>	<b>28094-190</b>	<b>UHS of Delaware, Inc. Estate of Rebecca Powell v. Centennial Hills</b>	<b>12/10/20</b> <b>2836962</b> <b>Page 3</b>
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Date	Atty	Description of Services Rendered	Hours
		plaintiff's proposed order.	.6
11/30/20	AG	Other Written Motions & Submiss.: Communicate (Other External): Email to all counsel along with proposed counter order pertaining to hearing on our motion for stay.	.1
11/30/20	AG	Other Written Motions & Submiss.: Communicate (Other External): Review, analyze and respond to plaintiff's counsel's email regarding our proposed counter order and explanation of deficiencies of his proposed order.	.4
11/30/20	HA	Written Discovery: Communicate (With Client): Review and respond to Amanda Nichols's email containing her initial responses to Plaintiff's written discovery requests.	.1
11/30/20	HA	Written Discovery: Draft/Revise: Continue drafting responses and objections to Plaintiffs' Interrogatories, including review of medical record to provide responses compliant with requirement to provide references to specific bates-stamped entries and incorporating responses from Amanda Nichols.	2.5
11/30/20	HA	Written Discovery: Communicate (Other External): Prepare email correspondence with Paul Padda requesting extension of deadline to respond to written discovery.	.1
11/30/20	HA	Written Discovery: Review/Analyze: Review/analyze initial written discovery responses from Amanda Nichols to determine how appropriately to incorporate that information into client's objections/responses.	.3

Date	Description of Disbursement	Units	Rate	Amount
11/16/20	Court filing fee Comerica Commercial Card Services Inv#:103120STMT-ANOUWELS Trans Date: 10/21/2020 Nvefile* 006809393-0, Filing fee for reply to opposition.			3.50
11/16/20	Court filing fee Comerica Commercial Card Services Inv#:103120STMT-ANOUWELS Trans Date: 10/26/2020 Nvefile* 006836433-0, Filing fee for defendants Valley Health System, LLC and Universal Health Services, Inc.'s amended ex parte application to strike non- conforming document pursuant to EDCR 8. 03 and replace non-conforming pages.			3.50
11/16/20	Court filing fee Comerica Commercial Card Services Inv#:103120STMT-ANOUWELS Trans Date: 10/26/2020 Nvefile* 006834234-0, Filing fee for defendants' application to strike non-conforming document pursuant to EDCR 8.03 and replace non-conforming document on defendants' motion for summary judgment based upon expiration of statute of limitations.			3.50
11/16/20	Court filing fee Comerica Commercial Card Services Inv#:103120STMT-ANOUWELS Trans Date: 10/28/2020 Nvefile* 006850481-0, Filing fee for notice of entry of order.			3.50

Recap of Services	Hours	Effective Rate	Fees
Adam Garth	49.9	225.00	11,227.50
Heather Armantrout	.5		No Charge
	13.8	193.50	2,670.30
S. Brent Vogel	2.2	225.00	495.00
<b>Total</b>	<b>66.4</b>		<b>14,392.80</b>



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FEDERAL I.D. NO 95-3720522

File Number SBV1	28094-190	UHS of Delaware, Inc. Estate of Rebecca Powell v. Centennial Hills	12/10/20 2836962 Page 4
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Date	Description of Disbursement	Units	Rate	Amount
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Total Fees	14,392.80
Total Disbursements	14.00

Total Current Charges	\$ 14,406.80
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FEDERAL I.D. NO 95-3720522

UHS of Delaware, Inc.  
367 South Gulph Road  
King of Prussia, PA 19406

Attn: Richard Kim  
Manager- Claims

January 12, 2021  
Invoice No. 2853363

Re: Estate of Rebecca Powell v. Centennial Hills  
Our File No.: 28094-190

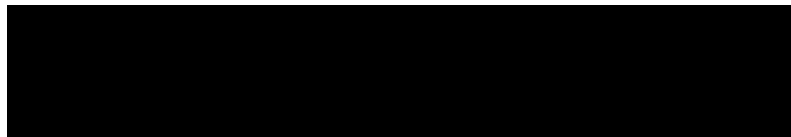
Court CLAR  
Court Case No. A-19-788787-C

Current Fees through 12/31/20	3,690.00
Current Disbursements through 12/31/20	7.00
Total Current Charges	\$ 3,697.00

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Retainer Balance 104.40

## Wire Instructions



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FEDERAL I.D. NO 95-3720522

UHS of Delaware, Inc.  
367 South Gulph Road  
King of Prussia, PA 19406

Attn: Richard Kim  
Manager- Claims

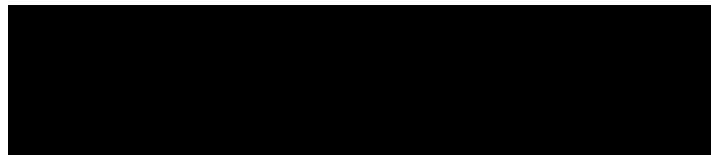
January 12, 2021  
Invoice No. 2853363

Re: Estate of Rebecca Powell v. Centennial Hills  
Our File No.: 28094-190

Court CLAR  
Court Case No. A-19-788787-C

Current Fees through 12/31/20	3,690.00
Current Disbursements through 12/31/20	7.00
Total Current Charges	\$ 3,697.00

Retainer Balance 104.40



All Charges in US Dollars

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FEDERAL I.D. NO 95-3720522

<b>File Number SBV1</b>	<b>28094-190</b>	<b>UHS of Delaware, Inc. Estate of Rebecca Powell v. Centennial Hills</b>	<b>1/12/21 2853363 Page 1</b>
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Date	Atty	Description of Services Rendered	Hours
12/01/20	AG	Appellate Motions & Submissions: Draft/Revise: Continue preparation of writ to Nevada Supreme Court regarding denial of our motion for summary judgment based upon statute of limitations including incorporation of results of hearing on our motion to stay pending decision on writ petition.	2.4
12/04/20	AG	Other Written Motions & Submiss.: Draft/Revise: Prepare letter to court with explanation of why we are submitting proposed order to court instead of plaintiff pertaining to stay application.	.4
12/09/20	AG	Appellate Motions & Submissions: Draft/Revise: Continue preparation of writ application to Nevada Supreme Court pertaining to denial of our motion for summary judgment on statute of limitations.	2.6
12/16/20	AG	Other Written Motions & Submiss.: Review/Analyze: Review and analyze email from the court regarding order submission pertaining to motion for summary judgment.	.2
12/17/20	AG	Other Written Motions & Submiss.: Draft/Revise: Prepare notice of entry of order denying stay.	.3
12/17/20	AG	Other Written Motions & Submiss.: Review/Analyze: Review and analyze court order denying stay application for purposes of incorporating same into writ petition	.2
12/17/20	AG	Appellate Motions & Submissions: Draft/Revise: Continue preparation of writ to Nevada Supreme Court regarding denial of motion for summary judgment on statute of limitations.	1.7
12/21/20	AG	Appellate Motions & Submissions: Draft/Revise: Continue preparation of writ petition to Nevada Supreme Court regarding denial of motion for summary judgment on statute of limitations including preparation of multiple required disclosure documents in accordance with Nevada Rules of Appellate Procedure along with continued supplementation of brief with latest case law and analysis applicable to issues raised.	6.3
12/22/20	AG	Appellate Motions & Submissions: Draft/Revise: Continued preparation of writ petition to Nevada Supreme Court for purposes of finalizing same and preparing necessary affidavit of verification as well as all required documents for submission of same to court.	2.3

Date	Description of Disbursement	Units	Rate	Amount
12/14/20	Court filing fee Comerica Commercial Card Services Inv#:113020STMT-ANOUWELS Trans Date: 11/02/2020 Nvefile* 006870224-0, Filing fee for notice of entry of order.			3.50
12/14/20	Court filing fee Comerica Commercial Card Services Inv#:113020STMT-ANOUWELS Trans Date: 11/20/2020 Nvefile* 006968470-0, Filing fee for defendant Valley Health System LLC's reply to plaintiff's opposition to motion for stay on order shortening time.			3.50

Recap of Services	Hours	Effective Rate	Fees
Adam Garth	16.4	225.00	3,690.00
<b>Total</b>	<b>16.4</b>		<b>3,690.00</b>

<b>Total Fees</b>	<b>3,690.00</b>
<b>Total Disbursements</b>	<b>7.00</b>

<b>Total Current Charges</b>	<b>\$ 3,697.00</b>
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FEDERAL I.D. NO 95-3720522

UHS of Delaware, Inc.  
367 South Gulph Road  
King of Prussia, PA 19406

Attn: Richard Kim  
Manager- Claims

February 10, 2021  
Invoice No. 2885307

Re: Estate of Rebecca Powell v. Centennial Hills  
Our File No.: 28094-190

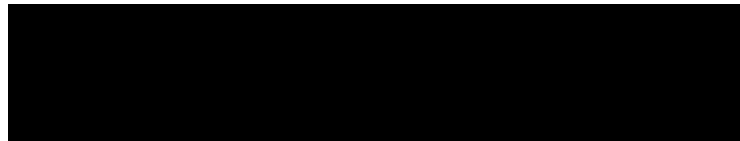
Court CLAR  
Court Case No. A-19-788787-C

Current Fees through 01/31/21	4,449.00
Current Disbursements through 01/31/21	253.50
Total Current Charges	\$ 4,702.50

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Retainer Balance 104.40

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FEDERAL I.D. NO 95-3720522

UHS of Delaware, Inc.  
367 South Gulph Road  
King of Prussia, PA 19406

Attn: Richard Kim  
Manager- Claims

February 10, 2021  
Invoice No. 2885307

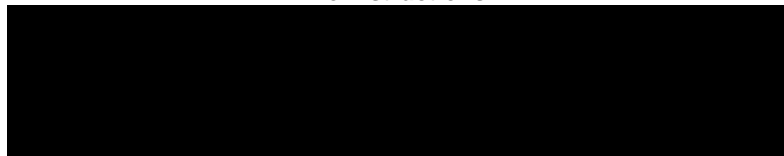
Re: Estate of Rebecca Powell v. Centennial Hills  
Our File No.: 28094-190

Court CLAR  
Court Case No. A-19-788787-C

Current Fees through 01/31/21	4,449.00
Current Disbursements through 01/31/21	253.50
Total Current Charges	\$ 4,702.50

Retainer Balance 104.40

## Wire Instructions



All Charges in US Dollars

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FEDERAL I.D. NO 95-3720522

**File Number SBV1**      **28094-190**

**UHS of Delaware, Inc.  
Estate of Rebecca Powell v. Centennial Hills**

**2/10/21**  
**2885307**  
**Page 1**

Date	Atty	Description of Services Rendered	Hours
1/05/21	HA	Other Written Motions & Submiss.: Review/Analyze: Review/analyze minute order denying Motion to Dismiss in preparation to determine whether Plaintiff's draft Order accurately reflects the Court's findings and conclusions of law.	.3
1/08/21	AG	Written Discovery: Draft/Revise: Continue preparation of plaintiff's interrogatories to Centennial Hills Hospital (40 interrogatories) including multiple legal objections thereto.	1.7
1/08/21	AG	Document Production: Draft/Revise: Continue preparation of responses to plaintiff's requests for production of documents (81 requests) to Centennial Hills Hospital including interposition of multiple legal objections thereto	2.6
1/08/21	HA	Written Discovery: Draft/Revise: Continue drafting responses to Plaintiff's requests for production of documents (81).	2.3
1/08/21	HA	Written Discovery: Draft/Revise: Continue drafting responses to Plaintiff's interrogatories (40).	1.4
1/09/21	HA	Written Discovery: Communicate (With Client): Prepare email correspondence with Amanda Nichols containing and explaining draft responses to Plaintiff's written discovery requesting review of same and providing documents for production with same.	.2
1/11/21	HA	Written Discovery: Communicate (With Client): Review and respond to email correspondence with Richard Kim re: approval to draft and serve protective order regarding confidential and proprietary documents likely to be produced in responses to Plaintiff's written discovery requests.	.1
1/11/21	HA	Written Discovery: Communicate (With Client): Prepare email correspondence with Richard Kim requesting authorization to draft and serve protective order regarding confidential and proprietary documents likely to be produced in responses to Plaintiff's written discovery requests. Approval granted.	.2
1/11/21	HA	Written Discovery: Communicate (With Client): Draft email correspondence with Amanda Nichols confirming and clarifying contents of telephone conference re providing documents for production in Plaintiff's written discovery requests.	.2
1/11/21	HA	Written Discovery: Draft/Revise: Revise responses to Plaintiff's written discovery requests in light of information and documents provided by Amanda Nichols.	1.1
1/11/21	HA	Written Discovery: Communicate (With Client): Telephone conference with Amanda Nichols re: providing documents for production in responses to Plaintiff's written discovery requests.	.2
1/11/21	HA	Written Discovery: Review/Analyze: Review/analyze documents provided by Amanda Nichols to determine whether to produce in responses to Plaintiff's written discovery requests including various policies and procedures, incident reports, and medical staff bylaws.	.9
1/12/21	AG	Written Discovery: Draft/Revise: Continue preparation of responses to plaintiff's interrogatories (40) including interposition of multiple legal objections.	.7
1/12/21	AG	Document Production: Draft/Revise: Continue preparation of stipulated confidentiality agreement and protective order.	.3
1/12/21	AG	Document Production: Draft/Revise: Continued preparation of and interposition of multiple legal objections to plaintiffs' requests for production of documents.	1.7
1/12/21	HA	Written Discovery: Draft/Revise: Draft privilege log for use with responses to Plaintiff's written discovery requests.	.2
1/12/21	HA	Written Discovery: Draft/Revise: Draft proposed protective order to serve concurrent with responses to Plaintiff's written discovery requests.	.5
1/12/21	HA	Written Discovery: Communicate (With Client): Review and respond to emails (x2) from Amanda Nichols containing documents for production in response to Plaintiff's written discovery requests.	.2
1/13/21	AG	Dispositive Motions: Communicate (Other External): Email to plaintiff's counsel outlining detailed objections to proposed order pertaining to motions to dismiss and requesting revised proposed order.	.4

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FEDERAL I.D. NO 95-3720522

<b>File Number SBV1</b>	<b>28094-190</b>	<b>UHS of Delaware, Inc. Estate of Rebecca Powell v. Centennial Hills</b>	<b>2/10/21</b> <b>2885307</b> <b>Page 2</b>
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Date	Atty	Description of Services Rendered	Hours
1/13/21	AG	Dispositive Motions: Communicate (Other Outside Counsel): Telephone call with co-defense counsel regarding consolidated position and strategy pertaining to plaintiff's proposed order regarding disposition of motions to dismiss.	.9
1/13/21	HA	Other Written Motions & Submiss.: Draft/Revise: Prepare brief memo to partner analyzing court's minute order denying motion to dismiss and comparing to Plaintiff's proposed order to the court to determine whether to approve same.	.3
1/15/21	AG	Document Production: Draft/Revise: Continue preparation of responses to plaintiff's requests for production of documents including interposition of additional legal objections to same.	.9
1/15/21	HA	Document Production: Review/Analyze: Review contents of imaging disc provided by Amanda Nichols to determine whether to produce same with responses to Plaintiff's written discovery requests.	.2
1/19/21	AG	Other Written Motions & Submiss.: Communicate (Other External): Email to all counsel regarding stipulation to continue status check hearing.	.1
1/19/21	AG	Court Mandated Conferences: Communicate (Other External): Email to all counsel regarding status check conference scheduled for January 27, 2021.	.1
1/19/21	AG	Other Written Motions & Submiss.: Draft/Revise: Prepare stipulation and order to continue status check hearing pertaining to order regarding prior motions to dismiss.	.3
1/19/21	HA	Written Discovery: Communicate (With Client): Prepare email correspondence with Amanda Nichols requesting final review and verification of answers to Plaintiff's interrogatories.	.1
1/19/21	SBV	Written Discovery: Draft/Revise: Finalize interrogatories to estate	.3
1/19/21	SBV	Written Discovery: Draft/Revise: Finalize requests for production to estate	.2
1/20/21	HA	Written Discovery: Communicate (With Client): Review and respond to email correspondence with Amanda Nichols re providing completed interrogatory verification sheet.	.1
1/20/21	HA	Written Discovery: Communicate (Other External): Prepare email correspondence with Plaintiff's counsel re providing interrogatory verification sheet.	.1
1/21/21	AG	Other Written Motions & Submiss.: Draft/Revise: Prepare notice of entry of order pertaining to continuance of status check hearing regarding previously filed motions to dismiss.	.2

Date	Description of Disbursement	Units	Rate	Amount
1/15/21	Court filing fee Comerica Commercial Card Services Inv#:123120STMT-ANOUWELS Trans Date: 12/17/2020 Nvfile* 007108178-0, Filing fee for notice of entry of order.			3.50
1/15/21	Court filing fee Comerica Commercial Card Services Inv#:123120STMT-ANOUWELS Trans Date: 12/23/2020 Nevada Supreme Court, Filing fee for petition for writ of mandamus.			250.00

Recap of Services	Hours	Effective Rate	Fees
Adam Garth	9.9	250.00	2,475.00
Heather Armantrout	8.6	215.00	1,849.00
S. Brent Vogel	.5	250.00	125.00
<b>Total</b>	<b>19.0</b>		<b>4,449.00</b>

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TELEPHONE (213) 250-1800

FEDERAL I.D. NO 95-3720522

File Number SBV1	28094-190	UHS of Delaware, Inc. Estate of Rebecca Powell v. Centennial Hills	2/10/21 2885307 3
			Page

Date	Description of Disbursement	Units	Rate	Amount
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Total Fees	4,449.00
Total Disbursements	253.50

Total Current Charges	\$ 4,702.50
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**Payment Date:** 12/22/2020

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Suite 4000  
Los Angeles, CA 90071  
(702) 693-1707

**E-Mail Address:** Autumn.Nouwels@lewsibrisbois.com

**Total Amount:** 250.00 USD

**Card Type:** MC

**Account #:** x7095

**Authorization Code:** 050959

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28094-190

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TELEPHONE (213) 250-1800

FEDERAL I.D. NO 95-3720522

UHS of Delaware, Inc.  
367 South Gulph Road  
King of Prussia, PA 19406

Attn: Richard Kim  
Manager- Claims

March 11, 2021  
Invoice No. 2915500

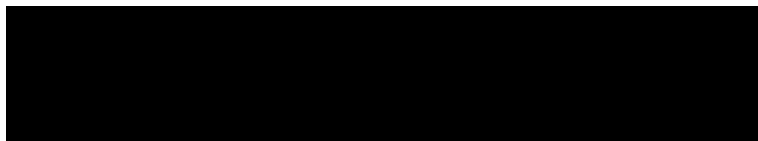
Re: Estate of Rebecca Powell v. Centennial Hills  
Our File No.: 28094-190

Court CLAR  
Court Case No. A-19-788787-C

Current Fees through 02/28/21	1,489.50
Current Disbursements through 02/28/21	3.50
Total Current Charges	\$ 1,493.00

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Attn: Richard Kim  
Manager- Claims

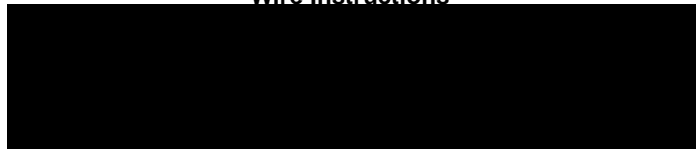
March 11, 2021  
Invoice No. 2915500

Re: Estate of Rebecca Powell v. Centennial Hills  
Our File No.: 28094-190

Court CLAR  
Court Case No. A-19-788787-C

Current Fees through 02/28/21	1,489.50
Current Disbursements through 02/28/21	3.50
Total Current Charges	\$ 1,493.00

## Wire Instructions



All Charges in US Dollars

# LEWIS BRISBOIS BISGAARD & SMITH LLP

LAWYERS  
SUITE 4000  
633 W. FIFTH STREET  
LOS ANGELES, CALIFORNIA 90071  
TELEPHONE (213) 250-1800

FEDERAL I.D. NO 95-3720522

<b>File Number SBV1</b>	<b>28094-190</b>	<b>UHS of Delaware, Inc. Estate of Rebecca Powell v. Centennial Hills</b>	<b>3/11/21 2915500 Page 1</b>
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Date	Atty	Description of Services Rendered	Hours
2/04/21	AG	Other Written Motions & Submiss.: Communicate (Other External): Review, analyze and respond to email from plaintiff's counsel regarding further proposed order pertaining to motions to dismiss from 2019.	.2
2/04/21	AG	Other Written Motions & Submiss.: Review/Analyze: Review and analyze transcript of proceedings pertaining to motions to dismiss decided in September 2019 for purposes of determining accuracy of plaintiff's proposed order denying said motion	.4
2/04/21	AG	Other Written Motions & Submiss.: Communicate (Other External): Email to plaintiff's counsel approving of proposed order regarding denial of September 2019 motion to dismiss.	.1
2/04/21	HA	Other Written Motions & Submiss.: Review/Analyze: Review and analyze Plaintiff's revised proposed order denying Motion to Dismiss, including review of transcript of hearing, to ascertain accuracy of Plaintiff's draft. Draft is accurate and can be filed.	.3
2/08/21	AG	Analysis/Strategy: Communicate (With Client): Email to R. Kim regarding strategy on proceeding with discovery.	.1
2/08/21	AG	Depositions: Communicate (Other External): Email to plaintiff's counsel regarding depositions of plaintiffs.	.1
2/08/21	AG	Depositions: Communicate (Other Outside Counsel): Teleconference with co-defense counsel regarding strategy regarding depositions of plaintiffs and other possible individuals including coroner.	.5
2/09/21	SBV	Dispositive Motions: Review/Analyze: Analyze order denying co-defendants' motion to dismiss	.2
2/16/21	AG	Depositions: Communicate (Other External): Email to plaintiff's counsel regarding depositions of plaintiffs.	.1
2/16/21	AG	Depositions: Review/Analyze: Review and analyze email from plaintiffs' counsel regarding depositions of plaintiffs.	.1
2/19/21	AG	Analysis/Strategy: Communicate (With Client): Telephone call with R. Kim to discuss case strategy and possible mediation.	.8
2/19/21	AG	Analysis/Strategy: Plan & Prepare For: Comprehensive case review of motion for summary judgment, expert reports, plaintiffs' discovery responses (interrogatories and requests for production of documents) for purposes of preparing for conference call with R. Kim to discuss case strategy.	2.3
2/19/21	AG	Depositions: Review/Analyze: Review and analyze email from plaintiff's counsel regarding plaintiff depositions.	.2
2/19/21	AG	Settlement/Non-Binding ADR: Communicate (Other Outside Counsel): Email to co-defense counsel regarding possible mediation and strategy attendant thereto.	.2
2/19/21	AG	Settlement/Non-Binding ADR: Communicate (Other Outside Counsel): Phone call from co-defense counsel regarding settlement/mediation strategy and discovery suspension issues.	.4

Date	Description of Disbursement	Units	Rate	Amount
2/12/21	Court filing fee Comerica Commercial Card Services Inv#:013121STMT-ANOUWELS Trans Date: 01/21/2021 Nvfile* 007268304-0, Filing fee for notice of entry of order.			3.50

Recap of Services	Hours	Effective Rate	Fees
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FEDERAL I.D. NO 95-3720522

File  
Number  
SBV1

28094-190

UHS of Delaware, Inc.  
Estate of Rebecca Powell v. Centennial Hills

3/11/21  
2915500  
Page 2

Recap of Services	Hours	Effective Rate	Fees
Adam Garth	5.5	250.00	1,375.00
Heather Armantrout	.3	215.00	64.50
S. Brent Vogel	.2	250.00	50.00
Total	6.0		1,489.50
Total Fees			1,489.50
Total Disbursements			3.50
Total Current Charges			\$ 1,493.00









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LOS ANGELES, CALIFORNIA 90071  
TELEPHONE (213) 250-1800

FEDERAL I.D. NO 95-3720522

UHS of Delaware, Inc.  
367 South Gulph Road  
King of Prussia, PA 19406

Attn: Richard Kim  
Manager- Claims

April 9, 2021  
Invoice No. 2936641

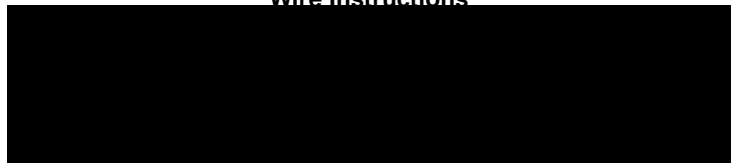
Re: Estate of Rebecca Powell v. Centennial Hills  
Our File No.: 28094-190

Court CLAR  
Court Case No. A-19-788787-C

Current Fees through 03/31/21	2,150.00
Total Current Charges	\$ 2,150.00

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## Wire Instructions



All Charges in US Dollars

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SUITE 4000  
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FEDERAL I.D. NO 95-3720522

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Attn: Richard Kim  
Manager- Claims

April 9, 2021  
Invoice No. 2936641

Re: Estate of Rebecca Powell v. Centennial Hills  
Our File No.: 28094-190

Court CLAR  
Court Case No. A-19-788787-C

Current Fees through 03/31/21	2,150.00
Total Current Charges	\$ 2,150.00

## Wire Instructions



All Charges in US Dollars

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LOS ANGELES, CALIFORNIA 90071  
TELEPHONE (213) 250-1800

FEDERAL I.D. NO 95-3720522

<b>File Number SBV1</b>	<b>28094-190</b>	<b>UHS of Delaware, Inc. Estate of Rebecca Powell v. Centennial Hills</b>	<b>4/09/21</b> <b>2936641</b> <b>Page 1</b>
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Date	Atty	Description of Services Rendered	Hours
3/04/21	AG	Analysis/Strategy: Draft/Revise: Begin preparation of summary report per request of R. Kim.	1.6
3/04/21	AG	Settlement/Non-Binding ADR: Communicate (Other Outside Counsel): Telephone call with co-defense counsel regarding mediation possibilities.	.1
3/04/21	AG	Analysis/Strategy: Review/Analyze: Review and analyze email from R. Kim requesting summary analysis of case.	.1
3/11/21	AG	Settlement/Non-Binding ADR: Communicate (Other Outside Counsel): Review, analyze and respond to co-defense counsel regarding possible mediation and strategy pertaining thereto in light of Supreme Court briefing schedule.	.1
3/11/21	AG	Appellate Motions & Submissions: Review/Analyze: Review and analyze Supreme Court order directing plaintiffs to file answer to our writ petition.	.1
3/11/21	AG	Appellate Motions & Submissions: Communicate (With Client): Email to R. Kim regarding status of Supreme Court decision to hear matter pertaining to denial of our motion for summary judgment.	.2
3/11/21	SBV	Other Written Motions & Submiss.: Review/Analyze: Analyze Notice of Appearance of appellate counsel for plaintiff	.1
3/26/21	AG	Analysis/Strategy: Draft/Revise: Complete preparation of comprehensive evaluation report requested by R. Kim.	3.7
3/26/21	SBV	Analysis/Strategy: Draft/Revise: Edit and finalize case assessment report to client	.8
3/30/21	SBV	Appellate Briefs: Review/Analyze: Analyze plaintiff's appellate brief in response and review of key cited cases	1.8

Recap of Services	Hours	Effective Rate	Fees
Adam Garth	5.9	250.00	1,475.00
S. Brent Vogel	2.7	250.00	675.00
<b>Total</b>	<b>8.6</b>		<b>2,150.00</b>

<b>Total Fees</b>	<b>2,150.00</b>
<b>Total Current Charges</b>	<b>\$ 2,150.00</b>

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FEDERAL I.D. NO 95-3720522

UHS of Delaware, Inc.  
367 South Gulph Road  
King of Prussia, PA 19406

Attn: Richard Kim  
Manager- Claims

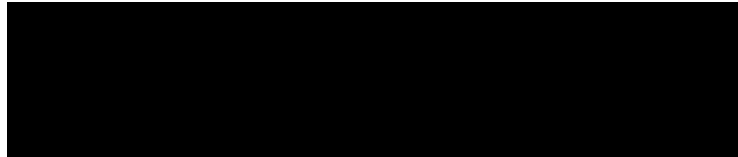
May 7, 2021  
Invoice No. 2961882

Re: Estate of Rebecca Powell v. Centennial Hills  
Our File No.: 28094-190

Court CLAR  
Court Case No. A-19-788787-C

Current Fees through 04/30/21	11,200.00
Total Current Charges	\$ 11,200.00

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All Charges in US Dollars

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TELEPHONE (213) 250-1800

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UHS of Delaware, Inc.  
367 South Gulph Road  
King of Prussia, PA 19406

Attn: Richard Kim  
Manager- Claims

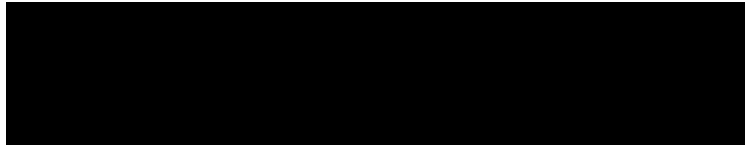
May 7, 2021  
Invoice No. 2961882

Re: Estate of Rebecca Powell v. Centennial Hills  
Our File No.: 28094-190

Court CLAR  
Court Case No. A-19-788787-C

Current Fees through 04/30/21	11,200.00
Total Current Charges	\$ 11,200.00

## Wire Instructions



All Charges in US Dollars

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SUITE 4000  
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LOS ANGELES, CALIFORNIA 90071  
TELEPHONE (213) 250-1800

FEDERAL I.D. NO 95-3720522

File Number SBV1	28094-190	UHS of Delaware, Inc. Estate of Rebecca Powell v. Centennial Hills	5/07/21 2961882 Page 1
Date	Atty	Description of Services Rendered	Hours
4/02/21	AG	Appellate Motions & Submissions: Research: Legal research on evidentiary obligations in opposition to motions for summary judgment for purposes of interposing same into reply brief in support of writ petition.	.6
4/02/21	AG	Appellate Motions & Submissions: Research: Legal research stemming from plaintiffs' opposition to writ petition for purposes of cite checking said opposition to develop countervailing authority in reply	1.8
4/02/21	AG	Appellate Motions & Submissions: Review/Analyze: Review and analyze plaintiffs' opposition to writ petition and appendices thereto (29 pages plus more than 300 pages of appendices) for purposes of preparing reply thereto	1.6
4/02/21	AG	Appellate Motions & Submissions: Draft/Revise: Begin drafting reply brief in further support of writ application on denial of motion for summary judgment and in reply to plaintiffs' opposition thereto.	2.8
4/02/21	SBV	Dispositive Motions: Review/Analyze: Analyze Order granting Khavkin Clinic's Motion to Dismiss	.2
4/05/21	AG	Other Written Motions & Submiss.: Draft/Revise: Prepare motion to reconsider motion for stay of proceedings pending decision on writ petition on order shortening time.	3.8
4/05/21	AG	Depositions: Review/Analyze: Review and analyze plaintiffs' counsel's refusal to stipulate to stay discovery pending appeal to Nevada Supreme Court.	.1
4/05/21	AG	Appellate Motions & Submissions: Draft/Revise: Continue preparation of reply brief responding to plaintiffs' opposition to our petition for writ of mandamus.	6.7
4/05/21	SBV	Appellate Briefs: Draft/Revise: Edit Reply Brief regarding Petition for Writ of Mandamus	.7
4/06/21	AG	Other Written Motions & Submiss.: Draft/Revise: Prepare application for order shortening time for motion for reconsideration of stay pending decision on writ petition.	1.2
4/13/21	AG	Appellate Motions & Submissions: Draft/Revise: Finalize reply in further support of writ petition to Nevada Supreme Court and in reply to plaintiffs' opposition.	2.4
4/15/21	SBV	Other Written Motions & Submiss.: Review/Analyze: Analyze Plaintiffs' Opposition to Defendant Valley Health System LLC's Motion to Reconsider Motion for Stay Pending Petition for Writ of Mandamus	.7
4/16/21	AG	Other Written Motions & Submiss.: Draft/Revise: Prepare reply in further support of motion to reconsider denial of stay pending decision on writ petition and in reply to plaintiff's opposition thereto.	5.8
4/16/21	AG	Other Written Motions & Submiss.: Research: Conduct legal research to cite check plaintiff's opposition to CHH's motion for reconsideration of stay pending decision on writ petition to Nevada Supreme Court pertaining to district court's denial of summary judgment and obtain countervailing authority to said opposition in preparation for reply.	1.8
4/20/21	AG	Other Written Motions & Submiss.: Review/Analyze: Review and analyze order from court denying reconsideration of motion for stay.	.1
4/21/21	AG	Appellate Motions & Submissions: Research: Obtain latest cases on stay applications to Supreme Court pending decision on writ petition.	1.3
4/21/21	AG	Appellate Motions & Submissions: Draft/Revise: Prepare motion for stay in Nevada Supreme Court due to denial thereof in district court.	5.4
4/21/21	SBV	Other Written Motions & Submiss.: Review/Analyze: Analyze minute order regarding denial of motion to stay pending writ	.2
4/21/21	SBV	Appellate Motions & Submissions: Draft/Revise: Edit and approve Motion for Stay to NV SCT	.4
4/22/21	AG	Appellate Motions & Submissions: Draft/Revise: Continue preparation and finalize motion for stay in Nevada Supreme Court.	.8
4/22/21	AG	Other Written Motions & Submiss.: Review/Analyze: Review and analyze proposed order pertaining to our motion for reconsideration of stay as proposed by plaintiff's counsel and	

# LEWIS BRISBOIS BISGAARD & SMITH LLP

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SUITE 4000  
633 W. FIFTH STREET  
LOS ANGELES, CALIFORNIA 90071  
TELEPHONE (213) 250-1800

FEDERAL I.D. NO 95-3720522

File Number  
SBV1

28094-190

UHS of Delaware, Inc.  
Estate of Rebecca Powell v. Centennial Hills

5/07/21  
2961882  
Page 2

Date	Atty	Description of Services Rendered	Hours
4/26/21	AG	comparing same to court's minute order for purposes of determining compliance therewith. Analysis/Strategy: Communicate (Other External): Review, analyze and respond to emails from R. Kim regarding pre-trial report and issues concerning motion for stay of proceedings pending determination of underlying writ in Nevada Supreme Court.	.4 .2
4/29/21	AG	Appellate Motions & Submissions: Review/Analyze: Review and analyze plaintiffs' opposition to motion for stay in Supreme Court for purposes of preparing substantive reply thereto.	.8
4/29/21	AG	Appellate Motions & Submissions: Draft/Revise: Prepare reply in further support of motion for stay in Supreme Court and in reply to plaintiffs' opposition.	2.3
4/30/21	AG	Other Written Motions & Submiss.: Draft/Revise: Continue preparation of motion to stay proceedings in district court pending writ petition to Nevada Supreme Court.	2.7

Recap of Services	Hours	Effective Rate	Fees
Adam Garth	42.6	250.00	10,650.00
S. Brent Vogel	2.2	250.00	550.00
<b>Total</b>	<b>44.8</b>		<b>11,200.00</b>

**Total Fees** 11,200.00  
**Total Current Charges** \$ 11,200.00

# LEWIS BRISBOIS BISGAARD & SMITH LLP

LAWYERS  
SUITE 4000  
633 W. FIFTH STREET  
LOS ANGELES, CALIFORNIA 90071  
TELEPHONE (213) 250-1800

FEDERAL I.D. NO 95-3720522

UHS of Delaware, Inc.  
367 South Gulph Road  
King of Prussia, PA 19406

Attn: Richard Kim  
Manager- Claims

May 25, 2021  
Invoice No. 2982480

Re: Estate of Rebecca Powell v. Centennial Hills  
Our File No.: 28094-190

Court CLAR  
Court Case No. A-19-788787-C

Current Disbursements through 05/25/21	6,187.50
Total Current Charges	\$ 6,187.50

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LAWYERS  
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FEDERAL I.D. NO 95-3720522

UHS of Delaware, Inc.  
367 South Gulph Road  
King of Prussia, PA 19406

Attn: Richard Kim  
Manager- Claims

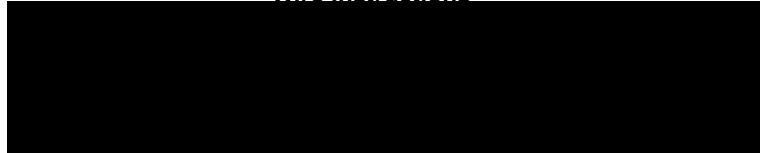
May 25, 2021  
Invoice No. 2982480

Re: Estate of Rebecca Powell v. Centennial Hills  
Our File No.: 28094-190

Court CLAR  
Court Case No. A-19-788787-C

Current Disbursements through 05/25/21	6,187.50
Total Current Charges	\$ 6,187.50

## Wire Instructions



All Charges in US Dollars

# LEWIS BRISBOIS BISGAARD & SMITH LLP

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FEDERAL I.D. NO 95-3720522

File Number SBV1 28094-190 UHS of Delaware, Inc.  
Estate of Rebecca Powell v. Centennial Hills  
Page 1 5/25/21 2982480

Date	Description of Disbursement	Units	Rate	Amount
5/19/21	Medical Expert Services Abraham Ishaaya Inv#:#3POWELL Expert medical services rendered on 05/14/21 - 05/18/21.			6,187.50
Total Disbursements				6,187.50
Total Current Charges				\$ 6,187.50

28094-190  
#lv. post  
Garth, #

Abraham Ishaaya, M.D., F.C.C.P.



RECEIVED

MAY 20 2021

May 19, 2021

#3POWELL

LEWIS BRISBOIS  
ATT: Adam Garth  
6385 South Rainbow Blvd., Suite 600  
Las Vegas, NV 89118

RE: CASE NAME: Estate of Rebecca Powell v Centennial Hills Hospital

Dear Adam:

Enclosed please find my charges to present for the above case.

Review of:

5-14	Preparation of declaration	3 hours
5-15	Preparation of declaration	4 hours
5-16	Preparation of declaration	3.5 hours
5-17	Review/edit declaration	.25 hours
5-18	Review/edit declaration	.5 hours
	Telephone call	

Total hours: 11.25 hours @ \$550

Total owed: \$6,187.50

If I can be of any further assistance, please do not hesitate to contact me.

Sincerely,

Avi Ishaaya, M.D.

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633 W. FIFTH STREET  
LOS ANGELES, CALIFORNIA 90071  
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FEDERAL I.D. NO 95-3720522

UHS of Delaware, Inc.  
367 South Gulph Road  
King of Prussia, PA 19406

Attn: Richard Kim  
Manager- Claims

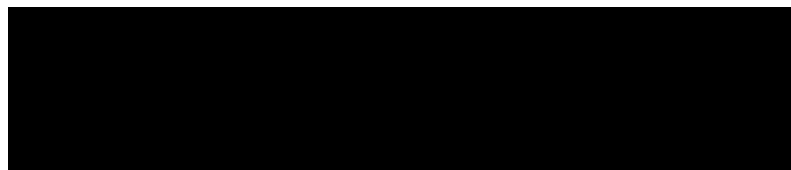
June 11, 2021  
Invoice No. 2994277

Re: Estate of Rebecca Powell v. Centennial Hills  
Our File No.: 28094-190

Court CLAR  
Court Case No. A-19-788787-C

Current Fees through 05/31/21	905.00
Current Disbursements through 05/31/21	14.00
Total Current Charges	\$ 919.00

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All Charges in US Dollars

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FEDERAL I.D. NO 95-3720522

UHS of Delaware, Inc.  
367 South Gulph Road  
King of Prussia, PA 19406

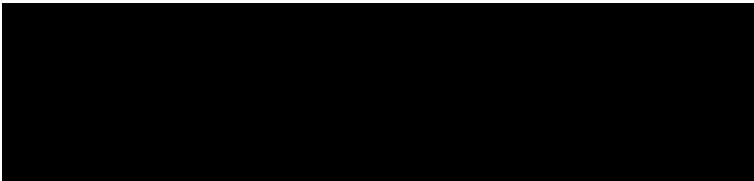
Attn: Richard Kim  
Manager- Claims

June 11, 2021  
Invoice No. 2994277

Re: Estate of Rebecca Powell v. Centennial Hills  
Our File No.: 28094-190

Court CLAR  
Court Case No. A-19-788787-C

Current Fees through 05/31/21	905.00
Current Disbursements through 05/31/21	14.00
Total Current Charges	\$ 919.00

  
All Charges in US Dollars

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LOS ANGELES, CALIFORNIA 90071  
TELEPHONE (213) 250-1800

FEDERAL I.D. NO 95-3720522

<b>File Number SBV1</b>	<b>28094-190</b>	<b>UHS of Delaware, Inc. Estate of Rebecca Powell v. Centennial Hills</b>	<b>6/11/21 2994277 Page 1</b>
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Date	Atty	Description of Services Rendered	Hours
5/05/21	AA	Experts/Consultants: Communicate (Other External): Correspondence with retained expert, Dr. Ishaaya, re expert report deadlines and preparation for materials discussed in report in order to build defense of case via email.	.2
5/05/21	AA	Experts/Consultants: Communicate (Other External): Correspondence with retained expert, Dr. Shah, re expert report deadlines and preparation for materials discussed in report in order to build defense of case via email.	.2
5/05/21	AA	Experts/Consultants: Communicate (Other External): Correspondence with retained expert, Dr. Ruffalo, re expert report deadlines and preparation for materials discussed in report in order to build defense of case via email.	.2
5/06/21	AG	Expert Discovery: Communicate (Other External): Telephone call with Dr. Ishaaya (critical care) regarding issues to be included in expert report to be exchanged.	.4
5/12/21	AA	Experts/Consultants: Communicate (Other External): Correspondence with retained expert, Dr. Ruffalo, re pharmacology review and records needed for his review and opinion to build defense in case via phone call and email.	.4
5/12/21	AA	Experts/Consultants: Review/Analyze: Detailed legal review of Centennial Hills Hospital records in order to pull Medication Administration Records for retained expert, Dr. Ruffalo, for his review and opinion.	.5
5/13/21	AG	Expert Discovery: Communicate (Other External): Telephone call with pharmacology expert, Dr. Ruffalo, to discuss contents of expert report.	.4
5/17/21	AG	Expert Discovery: Review/Analyze: Review, analyze and revise Dr. Ishaaya's proposed expert report to be exchanged.	1.3
5/18/21	AA	Experts/Consultants: Communicate (Other External): Correspondence with retained expert, Dr. Shah, re status of expert report for expert disclosure deadline via email.	.2
5/18/21	AG	Expert Discovery: Communicate (Other External): Telephone call with Dr. Ishaaya to discuss proposed changes to expert report.	.2
5/18/21	AG	Expert Discovery: Draft/Revise: Incorporate changes requested by Dr. Ishaaya to expert report.	.2
5/19/21	AA	Document Production: Draft/Revise: Drafted Defendant's initial expert disclosure in order to establish defense experts , qualifications, and reports in order to continue to build defense in case.	.6
5/21/21	AG	Appellate Motions & Submissions: Review/Analyze: Review and analyze Supreme Court's decision on our motion for stay.	.1
5/21/21	AG	Appellate Motions & Submissions: Communicate (With Client): Email to R. Kim reporting on results of motion to stay in Supreme Court.	.1

Date	Description of Disbursement	Units	Rate	Amount
5/14/21	Court filing fee Comerica Commercial Card Services Inv#:043021STMT-ANOUWELS Trans Date: 04/06/2021 Nvefile* 007678289-0, Filing fee for exhibits g- m to defendant Valley Health System LLC's motion to reconsider.			3.50
5/14/21	Court filing fee Comerica Commercial Card Services Inv#:043021STMT-ANOUWELS Trans Date: 04/06/2021 Nvefile* 007677918-0, Filing fee for defendant Valley Health System LLC's motion to reconsider motion for stay pending petition for writ of mandamus.			3.50
5/14/21	Court filing fee Comerica Commercial Card Services Inv#:043021STMT-ANOUWELS Trans Date: 04/09/2021 Nvefile*			

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TELEPHONE (213) 250-1800

FEDERAL I.D. NO 95-3720522

**File Number SBV1**      **28094-190**      **UHS of Delaware, Inc.  
Estate of Rebecca Powell v. Centennial Hills**

6/11/21  
2994277  
Page 2

Date	Description of Disbursement	Units	Rate	Amount
	007699690-0, Filing fee for notice of entry of order.			3.50
5/14/21	Court filing fee Comerica Commercial Card Services Inv#:043021STMT-ANOUWELS Trans Date: 04/16/2021 Nvefile*			
	007734419-0, Filing fee for defendant Valley Health System LLC's reply in further support of its motion to reconsider motion for stay pending petition for writ of mandamus and in reply to plaintiffs' opposition.			3.50

Recap of Services	Hours	Effective Rate	Fees
Arielle Atkinson	2.3	100.00	230.00
Adam Garth	2.7	250.00	675.00
<b>Total</b>	<b>5.0</b>		<b>905.00</b>

**Total Fees**      **905.00**  
**Total Disbursements**      **14.00**

**Total Current Charges**      **\$ 919.00**





## eService Details

Status	Name	Firm	Served	Date Opened
Sent	Paul S. Padda	PAUL PADDA LAW, PLLC	Yes	Not Opened
Sent	Tony L. Abbatangelo	PAUL PADDA LAW, PLLC	Yes	Not Opened
Sent	James P. Kelly	PAUL PADDA LAW, PLLC	Yes	Not Opened
Sent	Paul Padda	Paul Padda Law, PLLC	Yes	Not Opened
Sent	Jennifer C. Greening	PAUL PADDA LAW, PLLC	Yes	Not Opened
Sent	Diana Escobedo	PAUL PADDA LAW, PLLC	Yes	4/7/2021 8:59 AM PS
Sent	Srilata Shah	PAUL PADDA LAW, PLLC	Yes	Not Opened
Sent	S. Brent Vogel	Lewis Brisbois Bisgaard & Smith LLP	Yes	Not Opened
Sent	Adam Garth	Lewis Brisbois Bisgaard & Smith LLP	Yes	Not Opened
Sent	Roya Rokni	Lewis Brisbois Bisgaard & Smith LLP	Yes	4/6/2021 4:25 PM PS
Sent	Arielle Atkinson	Lewis Brisbois Bisgaard & Smith LLP	Yes	Not Opened
Sent	Jody Foote	John H. Cotton & Associates, Ltd.	Yes	Not Opened
Sent	Jessica D. Pincombe	John H. Cotton & Associates, Ltd.	Yes	4/6/2021 4:16 PM PS
Sent	John H. Cotton	John H. Cotton & Associates, Ltd.	Yes	Not Opened
Sent	Brad Shipley	John H. Cotton & Associates, Ltd.	Yes	Not Opened

## Parties with No eService

**Name**  
Isaiah Khosrof

**Address**

**Name**  
Lloyd Creecy

**Address**

**Name**  
Taryn Creecy

**Address**

**Name**  
Darci Creecy

**Address**

**Name**  
Vishal S. Shah MD

**Address**

**Name**  
Brian Powell

**Address**

# Fees

## Exhibits - EXHS (CIV)

Description	Amount
Filing Fee	\$0.00
Filing Total: \$0.00	

Total Filing Fee	\$0.00
E-File Fee	\$3.50
Envelope Total: \$3.50	

Transaction Amount	\$3.50
Transaction Id	8778489
Order Id	007678289-0
Transaction Response	Payment Complete

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Articles with the following keywords:

[illegible]

















# LEWIS BRISBOIS BISGAARD & SMITH LLP

LAWYERS  
SUITE 4000  
633 W. FIFTH STREET  
LOS ANGELES, CALIFORNIA 90071  
TELEPHONE (213) 250-1800

FEDERAL I.D. NO 95-3720522

UHS of Delaware, Inc.  
367 South Gulph Road  
King of Prussia, PA 19406

Attn: Richard Kim  
Manager- Claims

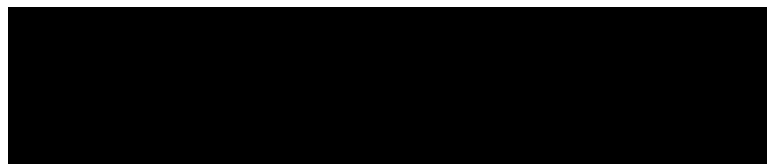
July 19, 2021  
Invoice No. 3026387

Re: Estate of Rebecca Powell v. Centennial Hills  
Our File No.: 28094-190

Court CLAR  
Court Case No. A-19-788787-C

Current Fees through 06/30/21	6,629.50
Current Disbursements through 06/30/21	10,350.00
Total Current Charges	<u>\$ 16,979.50</u>

\*\*\* Please return this page with your payment. \*\*\*



All Charges in US Dollars

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July 19, 2021  
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All Charges in US Dollars

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TELEPHONE (213) 250-1800

FEDERAL I.D. NO 95-3720522

File Number SBV1	28094-190	UHS of Delaware, Inc. Estate of Rebecca Powell v. Centennial Hills	7/19/21 3026387 Page 1
Date	Atty	Description of Services Rendered	Hours
6/04/21	AG	Document Production: Review/Analyze: Review and analyze email and attached letters regarding discovery issues raised by plaintiff concerning our discovery responses.	.3
6/04/21	HA	Written Discovery: Communicate (Other External): Review and analyze correspondence from Plaintiff's counsel outlining disputed responses to Plaintiff's requests for production of documents in preparation to respond to same; including review of responses in dispute.	.4
6/04/21	HA	Written Discovery: Review/Analyze: Review and analyze correspondence from Plaintiff's counsel providing signed Confidentiality Agreement and requesting supplemental responses to requests for production of documents in preparation to respond to same; including review of responses to request for production in dispute.	.3
6/04/21	HA	Written Discovery: Communicate (Other External): Prepare written correspondence with Plaintiff's counsel responding to Plaintiff's demand for supplemental responses to requests for production of documents.	.4
6/04/21	HA	Written Discovery: Review/Analyze: Review and analyze Confidentiality Agreement as signed by Plaintiff in preparation to submit same to court for approval and signature.	.1
6/08/21	HA	Court Mandated Conferences: Communicate (Other External): Review and respond to written correspondence with Plaintiff's counsel requesting EDCR 2.34 conference re: disputed discovery request.	.3
6/08/21	SBV	Experts/Consultants: Draft/Revise: Analyze and edit Dr. Ruffalo's draft expert report	.6
6/08/21	SBV	Experts/Consultants: Draft/Revise: Analyze and edit Dr. Ishaaya's draft expert report	.7
6/11/21	AG	Expert Discovery: Communicate (Other External): Email to Dr. Ruffalo along with revised report requesting review and signature.	.1
6/11/21	HA	Court Mandated Conferences: Plan & Prepare For: Plan and prepare for EDCR 2.34 conference with Paul Padda, including review of pleadings, discovery, and relevant records.	.9
6/11/21	HA	Court Mandated Conferences: Appear For/Attend: Attend EDCR 2.34 conference with Paul Padda re supplemental responses to requests for production of documents.	.5
6/14/21	AA	Experts/Consultants: Communicate (Other External): Correspondence with retained expert, Dr. Shah, in order to request expert's report for expert disclosure deadline via email.	.4
6/14/21	AA	Experts/Consultants: Communicate (Other External): Correspondence with retained expert, Dr. Ruffalo, in order to retrieve expert's report for initial expert disclosure via email.	.2
6/14/21	AG	Expert Discovery: Draft/Revise: Continue preparation of Centennial Hills Hospital's expert disclosure.	.3
6/14/21	AG	Expert Discovery: Review/Analyze: Review and analyze revised expert report from pharmacology expert Richard Ruffalo, MD For the purposes of exchanging same with plaintiff for initial expert exchange.	.4
6/14/21	AG	Expert Discovery: Communicate (Other External): Telephone call with Richard Ruffalo, MD to discuss initial expert report and proposed changes and edits thereto in preparation for expert disclosure.	.2
6/14/21	HA	Document Production: Review/Analyze: Review and analyze policies and procedures as identified by Amanda Nichols to determine which may be produced per Plaintiffs' requests for production of documents in light of protective order executed by the parties and signed by the court.	.8
6/14/21	HA	Document Production: Communicate (With Client): Prepare email correspondence with Amanda Nichols re obtaining policies and procedures to be produced subject to executed protective order.	.2
6/14/21	HA	Document Production: Communicate (With Client): Review and respond to email correspondence with Amanda Nichols re obtaining policies and procedures to be produced subject to executed protective order.	.1
6/14/21	HA	Document Production: Review/Analyze: Review and analyze additional policies and	

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FEDERAL I.D. NO 95-3720522

**File Number** 28094-190  
**SBV1**

**UHS of Delaware, Inc.  
Estate of Rebecca Powell v. Centennial Hills**

**7/19/21**  
**3026387**  
**Page 2**

Date	Atty	Description of Services Rendered	Hours
		procedures provided by Amanda Nichols to be produced subject to executed protective order.	.3
6/14/21	HA	Document Production: Review/Analyze: Review and analyze medical record to locate entries for inclusion in supplemental responses to Plaintiffs' requests for production of documents.	.6
6/14/21	HA	Document Production: Review/Analyze: Prepare supplemental responses to Plaintiffs' requests for production of documents.	1.2
6/15/21	AA	Document Production: Review/Analyze: Detailed legal analysis of exhibits produced as supplemental responses in order to ensure all documents are compliant with the Protective Order (30 pgs).	.5
6/15/21	AG	Document Production: Draft/Revise: Continue preparation of supplemental response to request for production of documents to include policies and procedures subject to protective order.	.4
6/16/21	AA	Experts/Consultants: Communicate (Other External): Correspondence with retained expert, Dr. Ruffalo, in order to ensure all policies and procedures were sent for his review for anticipated rebuttal expert disclosure via email.	.3
6/16/21	AA	Experts/Consultants: Communicate (Other External): Correspondence with retained expert, Dr. Shah, in order to ensure all policies and procedures were sent for his review for anticipated rebuttal expert disclosure via email.	.2
6/16/21	AA	Experts/Consultants: Communicate (Other External): Correspondence with retained expert, Dr. Ishaaya, in order to ensure all policies and procedures were sent for his review for anticipated rebuttal expert disclosure via email.	.2
6/16/21	SBV	Document Production: Review/Analyze: Analyze plaintiff's subpoena to the NV department of health and human services	.2
6/16/21	SBV	Depositions: Review/Analyze: Analyze notice of subpoena to Clark County Coroner	.1
6/17/21	AG	Analysis/Strategy: Communicate (Other Outside Counsel): Telephone call from co-defense counsel regarding strategy pertaining to expert exchanges, expert depositions, depositions of treating physicians and depositions of plaintiffs.	.8
6/17/21	AG	Expert Discovery: Communicate (Other External): Review, analyze and respond to multiple emails to hospitalist expert, Dr. Shah, regarding expert declaration.	.3
6/17/21	HA	Written Discovery: Review/Analyze: Review and analyze Plaintiff Brian Powell as Estate Special Administrator's Second Supplemental Answers to Interrogatories, including comparing to previous supplement, to evaluate any additional documents and witnesses produced.	.4
6/18/21	AG	Expert Discovery: Review/Analyze: Review and analyze draft report from hospitalist expert Dr. Shah for purposes of preparing expert disclosure and determining the extent to which all opinions of plaintiffs expert or appropriately addressed and refuted.	.6
6/18/21	HA	Experts/Consultants: Review/Analyze: Review and analyze expert report as prepared by Dr. Shah in preparation to revise and serve same, including review of record to ascertain report's accuracy.	1.2
6/18/21	HA	Experts/Consultants: Draft/Revise: Revise expert report as prepared by Dr. Shah in preparation to revise and serve same.	.9
6/18/21	HA	Experts/Consultants: Draft/Revise: Review and analyze initial expert disclosure as prepared by paralegal in preparation to serve same. Approved for service.	.3
6/18/21	HA	Experts/Consultants: Draft/Revise: Review and analyze third supplemental NRCP 16.1 disclosure, including initial expert disclosure, by Plaintiffs (268 pages) in preparation to send to our experts for rebuttal and to draft summary of same.	.9
6/18/21	HA	Experts/Consultants: Draft/Revise: Review and analyze initial expert disclosure by	

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FEDERAL I.D. NO 95-3720522

**File Number** 28094-190  
**SBV1**

**UHS of Delaware, Inc.**  
**Estate of Rebecca Powell v. Centennial Hills**

**7/19/21**  
**3026387**  
**Page 3**

Date	Atty	Description of Services Rendered	Hours
6/18/21	HA	co-defendants in preparation to send to our experts for rebuttal and to draft summary of same.	.4
6/18/21	HA	Experts/Consultants: Draft/Revise: Telephone conference with Dr. Shah re final revisions to his draft expert report in preparation to serve same.	.1
6/18/21	SBV	Written Discovery: Review/Analyze: Review correspondence from plaintiff's counsel regarding discovery issues	.1
6/18/21	SBV	Expert Discovery: Draft/Revise: Finalize and approve initial expert disclosure	.4
6/21/21	AA	Document Production: Review/Analyze: Detailed legal review of Plaintiffs' Third supplement of Expert disclosures and Defendants' Expert disclosure in order to determine necessary documents for our expert's reviews and opinions in order to build defense in case.	1.0
6/21/21	AA	Experts/Consultants: Communicate (Other External): Correspondence with retained expert, Dr. Shah, in order to send necessary expert documents for rebuttal report purposes to continue to build defense in case via email.	.4
6/21/21	AA	Experts/Consultants: Communicate (Other External): Correspondence with retained expert, Dr. Ruffalo, in order to send necessary expert documents for rebuttal report purposes to continue to build defense in case via email.	.2
6/21/21	AA	Experts/Consultants: Communicate (Other External): Correspondence with retained expert, Dr. Ishaaya, in order to send necessary expert documents for rebuttal report purposes to continue to build defense in case via email.	.2
6/21/21	AG	Expert Discovery: Review/Analyze: Review and analyze report of plaintiff's economist to determine need to engage rebuttal expert.	.2
6/21/21	AG	Expert Discovery: Communicate (With Client): Email to R. Kim requesting permission to engage economist as rebuttal expert.	.1
6/21/21	AG	Expert Discovery: Review/Analyze: Review and analyze plaintiff's medical expert witness disclosures for purposes of determining plaintiff's case theory and to forward same to our experts for rebuttal reporting.	1.3
6/21/21	AG	Expert Discovery: Review/Analyze: Review and analyze email from R. Kim regarding engagement of economic expert for rebuttal.	.1
6/21/21	AG	Expert Discovery: Communicate (Other External): Telephone call with possible economic expert, E. Volk regarding case and issues necessary for production of rebuttal report to plaintiff's expert.	.6
6/21/21	SBV	Written Discovery: Review/Analyze: Analyze plaintiff's supplemental responses to interrogatories	.4
6/22/21	AA	Experts/Consultants: Review/Analyze: Reviewed Plaintiffs' Third supplement to expert disclosure in order to establish vital documents for additional defense expert's review to build defense in case (268 pgs).	1.0
6/22/21	AA	Experts/Consultants: Communicate (Other External): Correspondence with retained expert, Erik Volk, in order to detail necessary documents for his review and opinion to continue to build defense in case via email.	.3
6/22/21	AG	Expert Discovery: Review/Analyze: Review and analyze plaintiff's economic expert report and compare findings therein to plaintiff's prior NRCP 16.1 disclosures, responses to interrogatories, responses to request for production of documents and all supplements thereto for purposes of ascertaining basis for economist's opinions concerning loss of income.	1.4
6/22/21	AG	Expert Discovery: Research: Legal research pertaining to sufficiency of evidence upon which expert relies in formulating opinions to provide in expert report in preparation for eventual motion to preclude plaintiff's economist from testifying due to lack of sufficient evidentiary basis for opinions.	2.3
6/22/21	AG	Depositions: Research: Legal research on viable plaintiffs for negligent infliction of emotional	



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FEDERAL I.D. NO 95-3720522

**File Number** 28094-190  
**SBV1**

**UHS of Delaware, Inc.  
Estate of Rebecca Powell v. Centennial Hills**

**7/19/21**  
**3026387**  
**Page 4**

Date	Atty	Description of Services Rendered	Hours
		distress claim in preparation for deposition of Lloyd Creecy and for possible motion to dismiss.	.4
6/22/21	AG	Expert Discovery: Communicate (Other External): Telephone call with economic expert E. Volk regarding insufficiency of plaintiff's expert report and materials connected therewith.	.3
6/22/21	AG	Expert Discovery: Draft/Revise: Continue preparation of letter to economic expert, E. Volk regarding rebuttal report.	.1
6/22/21	AG	Analysis/Strategy: Communicate (With Client): Email to R. Kim regarding strategy pertaining to future motion to preclude economic expert.	.3
6/23/21	SBV	Expert Discovery: Review/Analyze: Analyze Defendants Concio and Shah's Initial Disclosure of Expert Witnesses	.6
6/23/21	SBV	Expert Discovery: Review/Analyze: Analyze Plaintiffs' Third Supplement to Initial Designation of Experts and Pre-Trial List of Witnesses and Documents Pursuant to NRCP 16.1(a)(3)	1.5
6/24/21	AG	Depositions: Communicate (Other Outside Counsel): Email to co-defense counsel regarding deposition strategy pertaining to expert and plaintiff depositions.	.2
6/25/21	AG	Expert Discovery: Communicate (With Client): Telephone call with R. Kim regarding engagement of economist and strategy pertaining to moving to preclude plaintiff's economist after close of discovery.	.4

Date	Description of Disbursement	Units	Rate	Amount
6/15/21	Medical Expert Services Ruffalo & Associates, Inc. Inv#:2538 Expert medical services rendered on 06/14/21.			10,350.00

Recap of Services	Hours	Effective Rate	Fees
Arielle Atkinson	4.9	100.00	490.00
Adam Garth	11.1	250.00	2,775.00
Heather Armantrout	10.3	215.00	2,214.50
S. Brent Vogel	4.6	250.00	1,150.00
<b>Total</b>	<b>30.9</b>		<b>6,629.50</b>

**Total Fees 6,629.50**  
**Total Disbursements 10,350.00**

**Total Current Charges \$ 16,979.50**

28094-190

RUFFALO &amp; ASSOCIATES, INC

RECEIVED

JUN 21 2021

Invoice #: 2538  
 Invoice Date: 6/15/2021  
 Terms Net 30

RE: POWELL V. VALLEY HEALTH SYSTEM DBA CENTENNIAL  
 HILLS HOSPITAL

Rereview of the following in preparation for my declaration:

Decedents medical records from Centennial Hills Hospital, autopsy  
 and toxicology reports, Nevada State Nursing Board report, Affidavit  
 of Sami Hashim, MD

Medical and pharmacology literature review to support my opinions

Preparation of my report

Discussion of case with Mr. Garth 06/14/2021

Completion of my report 06/14/2021

TOTAL HOURS: 17.25

3.5	2,100.00
8.75	5,250.00
3.25	1,950.00
0.25	150.00
1.5	900.00

Total	\$10,350.00
Payments/Credits	\$0.00
Balance Due	\$10,350.00

# LEWIS BRISBOIS BISGAARD & SMITH LLP

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FEDERAL I.D. NO 95-3720522

UHS of Delaware, Inc.  
367 South Gulph Road  
King of Prussia, PA 19406

Attn: Richard Kim  
Manager- Claims

August 7, 2021  
Invoice No. 3043957

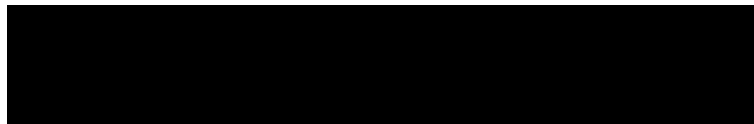
Re: Estate of Rebecca Powell v. Centennial Hills  
Our File No.: 28094-190

Court CLAR  
Court Case No. A-19-788787-C

Current Disbursements through 07/15/21	2,977.00
Total Current Charges	\$ 2,977.00

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## Wire Instructions



All Charges in US Dollars

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367 South Gulph Road  
King of Prussia, PA 19406

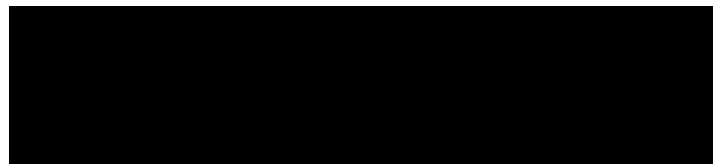
Attn: Richard Kim  
Manager- Claims

August 7, 2021  
Invoice No. 3043957

Re: Estate of Rebecca Powell v. Centennial Hills  
Our File No.: 28094-190

Court CLAR  
Court Case No. A-19-788787-C

Current Disbursements through 07/15/21	2,977.00
Total Current Charges	\$ 2,977.00



All Charges in US Dollars

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FEDERAL I.D. NO 95-3720522

File Number SBV1 28094-190 UHS of Delaware, Inc.  
Estate of Rebecca Powell v. Centennial Hills 8/07/21  
Page 3043957  
1

Date	Description of Disbursement	Units	Rate	Amount
7/15/21	Court filing fee Comerica Commercial Card Services Inv#:063021STMT-ANOUWELS Trans Date: 06/04/2021 Nvefile* 007997526-0, Filing fee for notice of entry of order.			3.50
7/15/21	Court filing fee Comerica Commercial Card Services Inv#:063021STMT-ANOUWELS Trans Date: 06/18/2021 Nvefile* 008073913-0, Filing fee for initial expert disclosure.			3.50
7/15/21	Medical Expert Services Abraham Ishaaya Inv#:POWELL,R-071521 Expert medical services rendered on 07/15/21.			2,970.00
Total Disbursements				2,977.00
Total Current Charges			\$	2,977.00















Abraham Ishaaya, M.D., F.C.C.P.

28094-190

July 15, 2021

#3POWELL

LEWIS BRISBOIS  
ATT: Adam Garth  
6385 South Rainbow Blvd., Suite 600  
Las Vegas, NV 89118

**RECEIVED**

By Michael Woodard at 10:45 am, Jul 19, 2021

RE: CASE NAME: Estate of Rebecca Powell v Centennial Hills Hospital

Dear Adam:

Enclosed please find my charges to present for the above case.

Review of:

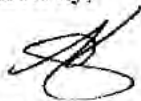
6-24	Expert report of James Leo MD	.7 hours
	Expert report of Dr. Cumbo	.2 hours
	Expert report of Dr. James Lineback	.9 hours
	Expert report of Dr. Kenneth Stein	1.1 hours
6-25	Expert report of RN Griffith	.3 hours
	Policy of RRT	2.1 hours
	Policy of Sentinel events	
	Policy of patient rights and responsibilities	
	Policy of involuntary detained status	
	Policy of event reporting and health care peer review	
7-7	Telephone call	.1 hours

Total hours: 5.4 hours @ \$550

Total owed: \$2,970

If I can be of any further assistance, please do not hesitate to contact me.

Sincerely,



Avi Ishaaya, M.D.

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FEDERAL I.D. NO 95-3720522

UHS of Delaware, Inc.  
367 South Gulph Road  
King of Prussia, PA 19406

Attn: Richard Kim  
Manager- Claims

August 9, 2021  
Invoice No. 3045385

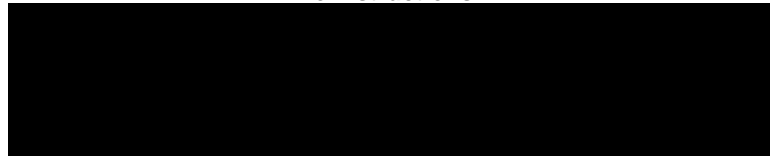
Re: Estate of Rebecca Powell v. Centennial Hills  
Our File No.: 28094-190

Court CLAR  
Court Case No. A-19-788787-C

Current Fees through 07/31/21	1,026.50
Total Current Charges	\$ 1,026.50

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All Charges in US Dollars

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367 South Gulph Road  
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Attn: Richard Kim  
Manager- Claims

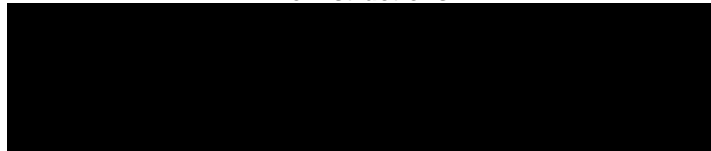
August 9, 2021  
Invoice No. 3045385

Re: Estate of Rebecca Powell v. Centennial Hills  
Our File No.: 28094-190

Court CLAR  
Court Case No. A-19-788787-C

Current Fees through 07/31/21	1,026.50
Total Current Charges	\$ 1,026.50

## Wire Instructions



All Charges in US Dollars

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LOS ANGELES, CALIFORNIA 90071  
TELEPHONE (213) 250-1800

FEDERAL I.D. NO 95-3720522

**File Number SBV1**      **28094-190**

**UHS of Delaware, Inc.  
Estate of Rebecca Powell v. Centennial Hills**

**8/09/21**  
**3045385**  
**Page 1**

Date	Atty	Description of Services Rendered	Hours
7/07/21	AG	Expert Discovery: Communicate (Other External): Telephone call from Dr. Ishaaya (critical care expert) regarding rebuttal arguments and report.	.3
7/13/21	HA	Depositions: Communicate (Other External): Review and respond to email correspondence with opposing counsel's office re need for Plaintiffs' depositions.	.1
7/20/21	AG	Expert Discovery: Communicate (Other Outside Counsel): Emails to co-defense counsel regarding deposition strategy pertaining to experts.	.2
7/21/21	AG	Settlement/Non-Binding ADR: Communicate (With Client): Telephone call with R. Kim regarding mandatory mediation and strategy pertaining thereto.	.3
7/21/21	AG	Settlement/Non-Binding ADR: Communicate (Other Outside Counsel): Telephone conference call with co-defense counsel regarding strategy pertaining to mediation, discovery extensions and trial extensions for purposes of awaiting decision of Nevada Supreme Court regarding writ petition.	.6
7/21/21	AG	Settlement/Non-Binding ADR: Communicate (Other External): Email to all counsel regarding mandatory mediation in preparation for status check hearing.	.2
7/23/21	AG	Settlement/Non-Binding ADR: Communicate (Other External): Review, analyze and respond to multiple emails from plaintiff's counsel regarding selection of mediator Stewart Bell and mediation parameters.	.3
7/26/21	AG	Settlement/Non-Binding ADR: Communicate (Other External): Multiple emails to/from plaintiff's counsel regarding mediation issues and selection of mediator.	.3
7/27/21	AG	Analysis/Strategy: Communicate (Other Outside Counsel): Email to co-defense counsel regarding deposition strategy and mediation issues.	.1
7/28/21	AA	Experts/Consultants: Communicate (Other External): Correspondence with retained expert, Dr. Shah, re status of expert report for attorney's, Adam Garth, review to continue to build defense in case via email.	.2
7/28/21	AA	Experts/Consultants: Communicate (Other External): Correspondence with retained expert, Dr. Ishaaya, re status of expert report for attorney's, Adam Garth, review to continue to build defense in case via email.	.2
7/28/21	AA	Experts/Consultants: Communicate (Other External): Correspondence with retained expert, Dr. Ruffalo, re status of expert report for attorney's, Adam Garth, review to continue to build defense in case via email.	.2
7/28/21	AA	Experts/Consultants: Communicate (Other External): Correspondence with retained expert, Erik Volk, re status of expert report for attorney's, Adam Garth, review to continue to build defense in case via email.	.2
7/28/21	AG	Settlement/Non-Binding ADR: Communicate (Other External): Review, analyze and respond to to multiple emails from plaintiff's counsel and co-defense counsel regarding mediation with Judge Bell.	.4
7/28/21	AG	Expert Discovery: Communicate (Other External): Emails to/from Dr. Ruffalo (pharmacology) regarding rebuttal report contents.	.3
7/29/21	AG	Expert Discovery: Draft/Revise: Prepare rebuttal report for Dr. Ruffalo (pharmacology expert).	.6
7/29/21	AG	Expert Discovery: Communicate (Other External): Email to pharmacology expert, Dr. Ruffalo, regarding rebuttal expert report.	.1

Recap of Services	Hours	Effective Rate	Fees
Arielle Atkinson	.8	100.00	80.00
Adam Garth	3.7	250.00	925.00

# LEWIS BRISBOIS BISGAARD & SMITH LLP

LAWYERS  
SUITE 4000  
633 W. FIFTH STREET  
LOS ANGELES, CALIFORNIA 90071  
TELEPHONE (213) 250-1800

FEDERAL I.D. NO 95-3720522

File  
Number  
SBV1

28094-190

UHS of Delaware, Inc.  
Estate of Rebecca Powell v. Centennial Hills

8/09/21  
3045385  
Page 2

Recap of Services		Hours	Effective Rate	Fees
Heather Armantrout		.1	215.00	21.50
Total		4.6		1,026.50
Total Fees				1,026.50
Total Current Charges				\$ 1,026.50



# LEWIS BRISBOIS BISGAARD & SMITH LLP

LAWYERS  
SUITE 4000  
633 W. FIFTH STREET  
LOS ANGELES, CALIFORNIA 90071  
TELEPHONE (213) 250-1800

FEDERAL I.D. NO 95-3720522

UHS of Delaware, Inc.  
367 South Gulph Road  
King of Prussia, PA 19406

Attn: Richard Kim  
Manager- Claims

August 31, 2021  
Invoice No. 3069107

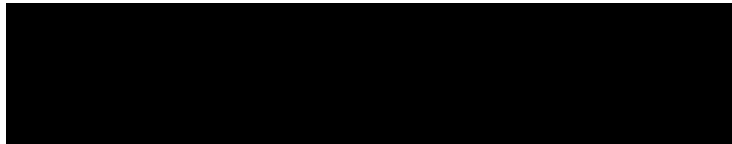
Re: Estate of Rebecca Powell v. Centennial Hills  
Our File No.: 28094-190

Court CLAR  
Court Case No. A-19-788787-C

Current Disbursements through 08/26/21	688.50
Total Current Charges	\$ 688.50

\*\*\* Please return this page with your payment. \*\*\*

## Wire Instructions



All Charges in US Dollars

# LEWIS BRISBOIS BISGAARD & SMITH LLP

LAWYERS  
SUITE 4000  
633 W. FIFTH STREET  
LOS ANGELES, CALIFORNIA 90071  
TELEPHONE (213) 250-1800

FEDERAL I.D. NO 95-3720522

UHS of Delaware, Inc.  
367 South Gulph Road  
King of Prussia, PA 19406

Attn: Richard Kim  
Manager- Claims

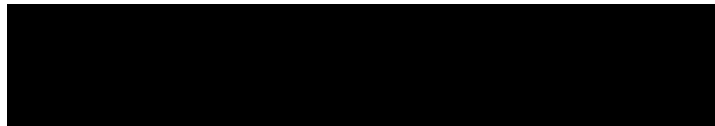
August 31, 2021  
Invoice No. 3069107

Re: Estate of Rebecca Powell v. Centennial Hills  
Our File No.: 28094-190

Court CLAR  
Court Case No. A-19-788787-C

Current Disbursements through 08/26/21	688.50
Total Current Charges	\$ 688.50

## Wire Instructions



All Charges in US Dollars

# LEWIS BRISBOIS BISGAARD & SMITH LLP


LAWYERS  
SUITE 4000  
633 W. FIFTH STREET  
LOS ANGELES, CALIFORNIA 90071  
TELEPHONE (213) 250-1800

FEDERAL I.D. NO 95-3720522

File Number SBV1	28094-190	UHS of Delaware, Inc. Estate of Rebecca Powell v. Centennial Hills	8/31/21 3069107 Page 1
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Date	Description of Disbursement	Units	Rate	Amount
8/26/21	E123-Consulting Services J.S. Held, LLC Inv#:1274938 Professional services rendered on 06/21/21 - 08/26/21.			688.50
Total Disbursements				688.50
Total Current Charges			\$	688.50

COHEN | VOLK  
ECONOMIC CONSULTING GROUP

A PART OF  J.S. HELD

J.S. Held LLC



Invoice #: 1274938  
Invoice Date: 2021-08-26  
Due Date: 2021-09-25  
Payment Terms: Net 30

Adam Garth  
Lewis Brisbois Bisgaard & Smith LLP  
6385 South Rainbow Blvd. Suite 600  
Las Vegas Nevada 89118  
United States

RECEIVED  
AUG 30 2021

### INVOICE

OUR PROJECT#	PROJECT NAME	COURT CASE #:	CLAIM#
21061550	Estate of Powell et al. v. Valley Health System LL	62121341	62121341

Professional Services Rendered:	\$675.00
Expenses:	\$13.50
<b>Total This Invoice:</b>	<b>\$688.50</b>

Rounding differences may exist compared to the detail pages.

TO ENSURE TIMELY PROCESSING PLEASE REMIT PAYMENT TO:

J.S. Held LLC



PLEASE REFERENCE THE J.S. HELD INVOICE NUMBER WHEN REMITTING PAYMENT.

Page 2

COHEN | VOLK  
ECONOMIC CONSULTING GROUP

A PART OF  J.S. HELD

J.S. Held LLC



Invoice #: 1274938  
Invoice Date: 2021-08-26  
Due Date: 2021-09-25  
Payment Terms: Net 30

Adam Garth  
Lewis Brisbois Bisgaard & Smith LLP  
6385 South Rainbow Blvd. Suite 600  
Las Vegas Nevada 89118  
United States

**RECEIVED**

AUG 30 2021

**INVOICE**

OUR PROJECT#	PROJECT NAME	COURT CASE #:	CLAIM#
21061550	Estate of Powell et al, v. Valley Health System LL	62121341	62121341

**Lewis Brisbois Bisgaard & Smith LLP**

**This Invoice Represents Your 100% Share**

PLEASE REFERENCE THE J.S. HELD INVOICE NUMBER WHEN REMITTING PAYMENT.

Page 1

Vendor: 87159 J.S. Held, LLC  
Voucher: 2797265 Dist: 6782990  
Approved by Stephen Vogel on 08/31/2021 11.13 AM

Doc ID: 0002Y39L-2  
Date: 8/26/21  
Check#: 341295

Page 2 of 5  
Amount: 147,688.50

COHEN | VOLK  
ECONOMIC CONSULTING GROUP

A PART OF JS|HELD

J.S. Held LLC



Invoice #: 1274938  
Invoice Date: 2021-08-26  
Due Date: 2021-09-25  
Payment Terms: Net 30

Adam Garth  
Lewis Brisbois Bisgaard & Smith LLP  
6385 South Rainbow Blvd. Suite 600  
Las Vegas Nevada 89118  
United States

### INVOICE

OUR PROJECT#	PROJECT NAME	COURT CASE #:	CLAIM#
21061550	Estate of Powell et al. v. Valley Health System LL	62121341	62121341

### SUMMARY BY DEPARTMENT:

DESCRIPTION	TIME	RATE	AMOUNT
Forensic Accounting & Economics:			
Correspondence	0.30	\$450.00	\$135.00
Document Review	1.10	\$450.00	\$495.00
Project Research	0.10	\$450.00	\$45.00
Forensic Accounting & Economics Total:	1.50		\$675.00
Total Professional Services Rendered:	1.50		\$675.00

PLEASE REFERENCE THE J.S. HELD INVOICE NUMBER WHEN REMITTING PAYMENT.

Page 3

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ECONOMIC CONSULTING GROUP

A PART OF JS|HELD

J.S. Held LLC



Invoice #: 1274938  
Invoice Date: 2021-08-26  
Due Date: 2021-09-25  
Payment Terms: Net 30

Adam Garth  
Lewis Brisbois Bisgaard & Smith LLP  
6385 South Rainbow Blvd. Suite 600  
Las Vegas Nevada 89118  
United States

## INVOICE

OUR PROJECT#	PROJECT NAME	COURT CASE #:	CLAIM#
21061550	Estate of Powell et al. v. Valley Health System LL	62121341	62121341

### DETAILS:

DATE	DURATION	NOTES
<b>Correspondence</b>		
6/21/2021	0.20	Correspondence with law office.
6/22/2021	0.10	Teleconference with law office.
<b>Document Review</b>		
6/22/2021	0.10	Review documents received.
6/23/2021	0.80	Review documents received.
7/28/2021	0.20	Review documents received.
<b>Project Research</b>		
7/29/2021	0.10	Research economic loss.
<b>TOTAL HOURS:</b>	<b>1.50</b>	

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Page 4



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ECONOMIC CONSULTING GROUP

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J.S. Held LLC



Invoice #: 1274938  
Invoice Date: 2021-08-26  
Due Date: 2021-09-25  
Payment Terms: Net 30

Adam Garth  
Lewis Brisbois Bisgaard & Smith LLP  
6385 South Rainbow Blvd. Suite 600  
Las Vegas Nevada 89118  
United States

## INVOICE

OUR PROJECT#	PROJECT NAME	COURT CASE #:	CLAIM#
21061550	Estate of Powell et al. v. Valley Health System LL	62121341	62121341

### EXPENSE SUMMARY:

DATE	AMOUNT
Other	
8/26/2021	\$13.50
Total Other	\$13.50
Total	\$13.50

### EXPENSE DETAILS:

DATE	DESCRIPTION	AMOUNT
8/26/2021	File Administration	\$13.50
TOTAL AMOUNT:		\$13.50

PLEASE REFERENCE THE J.S. HELD INVOICE NUMBER WHEN REMITTING PAYMENT.

Page 5



# LEWIS BRISBOIS BISGAARD & SMITH LLP

LAWYERS  
SUITE 4000  
633 W. FIFTH STREET  
LOS ANGELES, CALIFORNIA 90071  
TELEPHONE (213) 250-1800

FEDERAL I.D. NO 95-3720522

UHS of Delaware, Inc.  
367 South Gulph Road  
King of Prussia, PA 19406

Attn: Richard Kim  
Manager- Claims

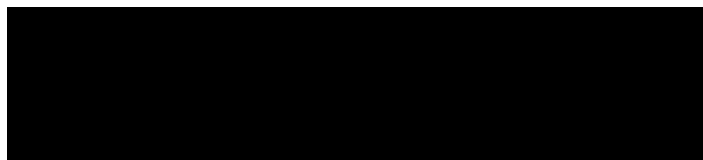
September 9, 2021  
Invoice No. 3072540

Re: Estate of Rebecca Powell v. Centennial Hills  
Our File No.: 28094-190

Court CLAR  
Court Case No. A-19-788787-C

Current Fees through 08/31/21	5,841.50
Current Disbursements through 08/31/21	3,000.00
Total Current Charges	<hr/> \$ 8,841.50

\*\*\* Please return this page with your payment. \*\*\*



All Charges in US Dollars

# LEWIS BRISBOIS BISGAARD & SMITH LLP

LAWYERS  
SUITE 4000  
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LOS ANGELES, CALIFORNIA 90071  
TELEPHONE (213) 250-1800

FEDERAL I.D. NO 95-3720522

UHS of Delaware, Inc.  
367 South Gulph Road  
King of Prussia, PA 19406

Attn: Richard Kim  
Manager- Claims

September 9, 2021  
Invoice No. 3072540

Re: Estate of Rebecca Powell v. Centennial Hills  
Our File No.: 28094-190

Court CLAR  
Court Case No. A-19-788787-C

Current Fees through 08/31/21	5,841.50
Current Disbursements through 08/31/21	3,000.00
Total Current Charges	<hr/> \$ 8,841.50

## Wire Instructions



All Charges in US Dollars

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LOS ANGELES, CALIFORNIA 90071  
TELEPHONE (213) 250-1800

FEDERAL I.D. NO 95-3720522

File Number SBV1	28094-190	UHS of Delaware, Inc. Estate of Rebecca Powell v. Centennial Hills	9/09/21 3072540 Page 1
Date	Atty	Description of Services Rendered	Hours
8/03/21	AG	Expert Discovery: Review/Analyze: Review and analyze Dr. Ishaaya's (critical care expert) rebuttal to plaintiff's expert reports for purposes of determining sufficiency thereof an in preparation for discussion with expert.	.6
8/03/21	AG	Settlement/Non-Binding ADR: Communicate (Other External): Telephone call with JAMS regarding forthcoming mediation issues.	.2
8/04/21	AG	Expert Discovery: Communicate (Other External): Email to Dr. Ishaaya regarding expert rebuttal report.	.1
8/04/21	AG	Expert Discovery: Communicate (Other External): Telephone call from Dr. Ishaaya (critical care) regarding rebuttal report.	.3
8/04/21	AG	Expert Discovery: Draft/Revise: Revise Dr. Ishaaya's rebuttal report.	1.4
8/04/21	AG	Court Mandated Conferences: Communicate (Other External): Email to plaintiff's counsel regarding joint case status report and status check hearing.	.1
8/05/21	AG	Appellate Motions & Submissions: Review/Analyze: Review and analyze today's decision from Nevada Court of Appeals defining the commencement of inquiry notice for purposes of the running of the statute of limitations for purposes of preparing notice of supplemental authorities to Nevada Supreme Court for consideration of writ petition.	.4
8/05/21	AG	Appellate Motions & Submissions: Draft/Revise: Prepare notice of supplemental authority advising Nevada Supreme Court of today's Court of Appeals decision defining commencement of inquiry notice for statute of limitations purposes for consideration on writ petition.	1.3
8/05/21	HA	Depositions: Review/Analyze: Review and analyze notices of Plaintiffs' depositions as prepared by assistant, in preparation for serving same.	.1
8/09/21	AA	Experts/Consultants: Communicate (Other External): Correspondence with retained expert, Mr. Volk, re his final opinions and review of additional records in order to supply rebuttal report via email.	.3
8/11/21	AG	Other Written Motions & Submiss.: Review/Analyze: Review and analyze plaintiffs' proposed joint case status report ordered to be prepared by the court for purposes of either approving of same or suggesting modifications thereto.	.3
8/11/21	AG	Analysis/Strategy: Communicate (Other Outside Counsel): Email to co-defense counsel regarding proposed joint case status report and extension of discovery deadline strategy pertaining thereto in anticipation of decision from Nevada Supreme Court regarding denial of motion for summary judgment.	.2
8/11/21	AG	Settlement/Non-Binding ADR: Communicate (With Client): Email to R. Kim regarding approval of mediation.	.1
8/12/21	AG	Other Written Motions & Submiss.: Communicate (Other External): Email to all counsel regarding proposed joint status report and suggestion of extension of all discovery and remaining deadlines to permit mediation to occur (but primarily for purposes of awaiting Supreme Court's decision pertaining to dismissal on grounds of statute of limitations).	.2
8/12/21	AG	Other Written Motions & Submiss.: Review/Analyze: Review and analyze email from co-defense counsel regarding proposal pertaining to extension of discovery deadlines as specified in proposed joint status report to court.	.1
8/12/21	AG	Depositions: Plan & Prepare For: Review and analyze NNMC medical records (776 pages) for purposes of ascertaining all patient encounters with L. Gardner, B. Slocum and W. Hodges in preparation for depositions of said individuals and to reconcile any inconsistencies in charting pertaining to plaintiff.	3.6
8/17/21	AG	Other Written Motions & Submiss.: Review/Analyze: Review and analyze plaintiffs revised draft of joint case status report as required by the court.	.3
8/17/21	AG	Other Written Motions & Submiss.: Communicate (Other External): Email to all counsel	

# LEWIS BRISBOIS BISGAARD & SMITH LLP

LAWYERS  
SUITE 4000  
633 W. FIFTH STREET  
LOS ANGELES, CALIFORNIA 90071  
TELEPHONE (213) 250-1800

FEDERAL I.D. NO 95-3720522

**File Number SBV1**      **28094-190**

**UHS of Delaware, Inc.  
Estate of Rebecca Powell v. Centennial Hills**

**9/09/21**  
**3072540**  
**Page 2**

Date	Atty	Description of Services Rendered	Hours
		regarding proposed joint case status report.	.1
8/18/21	AA	Experts/Consultants: Communicate (Other External): Correspondence with retained expert, Mr. Volk, re rebuttal expert report and opinions in order to continue to build defense of case via email.	.2
8/18/21	AA	Experts/Consultants: Communicate (Other External): Correspondence with retained expert, Dr. Shah, re rebuttal expert report and opinions in order to continue to build defense of case via email.	.3
8/18/21	AA	Experts/Consultants: Draft/Revise: Drafted Defendant's Rebuttal Expert Disclosure in order to re-introduce defense experts, and establish rebuttal reports from experts received thus far, to continue building defense in case.	1.1
8/18/21	AG	Other Written Motions & Submiss.: Communicate (Other External): Review, analyze and respond to emails regarding SAO to extend discovery deadlines.	.2
8/23/21	AG	Expert Discovery: Communicate (Other External): Review, analyze and respond to email from hospitalist expert Dr. Shah regarding data inclusion in rebuttal report.	.1
8/23/21	AG	Expert Discovery: Review/Analyze: Review, analyze and revise rebuttal report of our economic expert, E. Volk, in preparation for exchange.	.6
8/23/21	AG	Expert Discovery: Communicate (Other External): Email to economist E. Volk pertaining to expert rebuttal report.	.1
8/24/21	AA	Experts/Consultants: Communicate (Other External): Correspondence with retained expert, Dr. Shah, re final rebuttal report draft in order to establish additional comments made by attorney via email.	.4
8/24/21	AG	Expert Discovery: Review/Analyze: Review and analyze rebuttal report from hospitalist expert Dr. Shah and provide edits to same in preparation for rebuttal exchange.	.9
8/24/21	AG	Expert Discovery: Communicate (Other External): Email to/from Dr. Shah pertaining to required edits to rebuttal report.	.3
8/24/21	AG	Expert Discovery: Draft/Revise: Continue preparation of rebuttal expert disclosure.	.4
8/25/21	AG	Expert Discovery: Communicate (Other External): Telephone call from Dr. Shah regarding rebuttal report.	.3
8/25/21	AG	Analysis/Strategy: Draft/Revise: Begin preparation of comprehensive evaluation as requested by R. Kim for excess carrier.	1.2
8/26/21	AA	Document Production: Plan & Prepare For: Prepared all expert reports in order to ensure key facts are presented in Defendant's rebuttal expert disclosure to continue to continue to build defense in case.	.4
8/27/21	AG	Analysis/Strategy: Draft/Revise: Continue preparation of extensive comprehensive case analysis including expert opinions of both plaintiffs and defendants as well as state of case, discovery, settlement value and strategy.	5.2
8/30/21	AG	Analysis/Strategy: Draft/Revise: Continue preparation and finalize case evaluation report to R. Kim per his request for review by excess carrier including expert opinion summary, liability issues and settlement strategy.	2.2
8/31/21	AG	Depositions: Communicate (Other External): Review, analyze and respond to email from plaintiff's counsel regarding depositions of experts in light of mediation.	.2
8/31/21	AG	Depositions: Draft/Revise: Prepare 5 notices to vacate depositions.	.4
8/31/21	AG	Experts/Consultants: Communicate (Other External): Telephone call with Dr. Ruffalo regarding rebuttal reports of experts.	.8

Date	Description of Disbursement	Units	Rate	Amount
------	-----------------------------	-------	------	--------

# LEWIS BRISBOIS BISGAARD & SMITH LLP

LAWYERS  
SUITE 4000  
633 W. FIFTH STREET  
LOS ANGELES, CALIFORNIA 90071  
TELEPHONE (213) 250-1800

FEDERAL I.D. NO 95-3720522

File Number SBV1 28094-190 UHS of Delaware, Inc.  
Estate of Rebecca Powell v. Centennial Hills 9/09/21  
3072540  
Page 3

Date	Description of Disbursement	Units	Rate	Amount
8/12/21	E121-Arbitrators/Mediators Fees JAMS, INC. Inv#:5821548 Mediation/arbitration services rendered on 08/10/21. -Approved by Richard Kim from UHS of Delaware on 08/11/21.			3,000.00

Recap of Services	Hours	Effective Rate	Fees
Arielle Atkinson	2.7	100.00	270.00
Adam Garth	22.2	250.00	5,550.00
Heather Armantrout	.1	215.00	21.50
<b>Total</b>	<b>25.0</b>		<b>5,841.50</b>

**Total Fees** 5,841.50  
**Total Disbursements** 3,000.00

**Total Current Charges** \$ 8,841.50

# Lewis Brisbois Bisgaard & Smith LLP

## Cost Advance Request

<b># LV-10883</b>

1. **Check — Date Needed:** 8/12/2021

2. **Type of Expense:** 24500

<input type="checkbox"/>	Filing Fee	5	<input type="checkbox"/>	Court Reporter Fee	CR
<input type="checkbox"/>	Witness Fee	7	<input checked="" type="checkbox"/>	Mediation / Arbitration Fee**	AM
<input type="checkbox"/>	Prof. Consulting / Service Fee	S	<input type="checkbox"/>	COD Transcription (Invoice Needed)**	G
<input type="checkbox"/>	Expert Witness Fee**	J	<input type="checkbox"/>	Reproduction / Copies	R
<input type="checkbox"/>	Jury Fees	JF	<input type="checkbox"/>	Reproduction / Medical Records	RR
<input type="checkbox"/>	Deposition	H	<input type="checkbox"/>	International Vendor & Wires	

Any client-related requests over \$500.00 require LBBS Cost Advance Committee approval and should be sent to "LBBS Cost Advances" ([LBBSCostAdvances@lewisbrisbois.com](mailto:LBBSCostAdvances@lewisbrisbois.com))

All educational expenses/seminars require Karl Loureiro's approval.

3. **Client and File Name:** Powell v. Valley Health System \*
4. **Client and Matter No.:** 28094-190 \*
5. **Amount:** \$3,000.00
6. **Payee / Vendor:** \* JAMS
7. **Mailing Address:** PO Box 845402  
Los Angeles, CA 90084
8. **Payee's Telephone No.:** 949.224.4654
9. **Payee's Tax I.D. No.:** 68-0542699
10. **Explanation for billing purposes:** Mediation Deposit

**Attorney:** Adam Garth **Ext:** 4335  
**Secretary:** Roya Rokni **Ext:** 4318

Auth. by/ \_\_\_\_\_ / /s/ Adam Garth Date 8/11/2021  
 Signature

Return to: Roya  
 Floor: 5

AM

Approved by Richard Kim  
 from UHS of Delaware  
 on 08/11/21.

4821-8604-0822.1

**Remember to have Attorney Sign and Attach all Supporting Backup**

Vendor: 24500 JAMS, INC.  
 Voucher: 2790528 Dist: 6764378

Doc ID: 0002XMRX-1  
 Date: 8/12/21  
 Check#: 336584

Page 1 of 3  
 Amount: 3,000.00  
 156

# DEPOSIT REQUEST

**Invoice Date**

8/10/2021

**Invoice Number**

5821548

Bill To: Mr. S. Vogel Esq.  
Lewis Brisbois Bisgaard & Smith LLP  
6385 S. Rainbow Blvd.  
Suite 600  
Las Vegas, NV 89118  
US

Copy To: Adam Garth, Esq.  
Lewis Brisbois Bisgaard & Smith LLP  
6385 S. Rainbow Blvd.  
Suite 600  
Las Vegas, Nevada 89118

**Reference #:** 1260006442 - Rep# 4  
**Billing Specialist:** Mason, Glenn T  
**Email:** gmason@jamsadr.com  
**Telephone:** 949-224-4654  
**Employer ID:** 68-0542699

RE: Estate of Powell, Rebecca, et al. vs. Valley Health System, LLC dba  
Centennial Hills Hospital Medical Center

Neutral(s): Hon. Stewart Bell (Ret.)

Representing: Centennial Hills Hospital

Hearing Type: MEDIATION

SP

Date / Time	Description	Your Share
8/10/21	<b>Hon. Stewart L Bell (Ret.)</b> Deposit for services: To be applied to professional time (session time, pre and post session reading, research, preparation, conference calls, travel, etc.), expenses, and case management fees. Failure to pay the deposit by the due date may result in a delay in service or cancellation of the session. With the exception of non-refundable fees, (Please review the Neutral's fee schedule regarding case management fee and cancellation policies), any unused portion of this deposit will be refunded at the conclusion of the case.	\$ 3,000.00

**Total Billed:** \$ 3,000.00

**Total Payment:** \$ 0

**Balance:** \$ 3,000.00

Unused deposits will not be refunded until the conclusion of the case. If the case cancels or continues, fees are due per our cancellation and continuance policy. Please make checks payable to JAMS, Inc. For Arbitration Cases, please contact your case manager for due date, otherwise, payment is due upon receipt.

[Click here to pay](#)

Standard mail:  
P.O. Box 845402  
Los Angeles, CA 90084

Overnight mail:  
18881 Von Karman Ave. Suite 350  
Irvine, CA 92612

Printed on 8/11/2021 / 1260006442 - Rep# 4

1 of 1

Vendor: 24500 JAMS, INC.  
Voucher: 2790528 Dist: 6764378

Doc ID: 0002XMRX-2  
Date: 8/12/21  
Check#: 336584


Page 2 of 3  
Amount: 3,000.00

157

**From:** Kim, Richard <Richard.Kim@uhsinc.com>  
**Sent:** Wednesday, August 11, 2021 8:20 AM  
**To:** Garth, Adam <Adam.Garth@lewisbrisbois.com>  
**Subject:** FW: [EXT] Estate of Powell, Rebecca, et al. vs. Valley Health System, LLC dba Centennial Hills Hospital Medical Center - JAMS Ref No. 1260006442 - Deposit Request 5821548

Hi Adam, this is fine. Thanks, Richard.

Richard Kim  
Manager – Claims



**From:** Garth, Adam <Adam.Garth@lewisbrisbois.com>  
**Sent:** Wednesday, August 11, 2021 9:54 AM  
**To:** Kim, Richard <Richard.Kim@uhsinc.com>  
**Cc:** Vogel, Brent <Brent.Vogel@lewisbrisbois.com>; Rokni, Roya <Roya.Rokni@lewisbrisbois.com>; Atkinson, Arielle <Arielle.Atkinson@lewisbrisbois.com>; Sirsy, Shady <Shady.Sirsy@lewisbrisbois.com>; Armantrout, Heather <Heather.Armantrout@lewisbrisbois.com>  
**Subject:** [External] FW: [EXT] Estate of Powell, Rebecca, et al. vs. Valley Health System, LLC dba Centennial Hills Hospital Medical Center - JAMS Ref No. 1260006442 - Deposit Request 5821548

**WARNING:** This email is from an external source. DO NOT CLICK links or attachments unless you recognize the sender and know the content is safe. REPORT any suspicious emails by clicking the "REPORT SPAM" button in Outlook.

Richard,

Please see attached invoice. All we need is your written approval to pay. Many thanks.

Adam Garth



# LEWIS BRISBOIS BISGAARD & SMITH LLP

LAWYERS  
SUITE 4000  
633 W. FIFTH STREET  
LOS ANGELES, CALIFORNIA 90071  
TELEPHONE (213) 250-1800

FEDERAL I.D. NO 95-3720522

UHS of Delaware, Inc.  
367 South Gulph Road  
King of Prussia, PA 19406

Attn: Richard Kim  
Manager- Claims

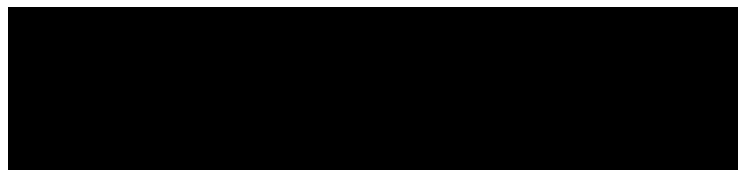
October 12, 2021  
Invoice No. 3102586

Re: Estate of Rebecca Powell v. Centennial Hills  
Our File No.: 28094-190

Court CLAR  
Court Case No. A-19-788787-C

Current Fees through 09/30/21	4,375.00
Current Disbursements through 09/30/21	3,855.60
Total Current Charges	\$ 8,230.60

\*\*\* Please return this page with your payment. \*\*\*



All Charges in US Dollars

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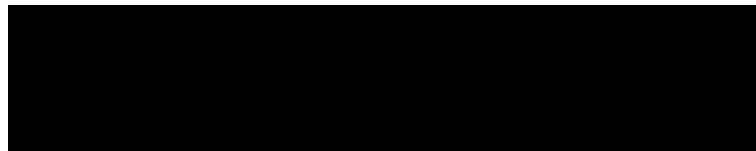
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All Charges in US Dollars

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633 W. FIFTH STREET  
LOS ANGELES, CALIFORNIA 90071  
TELEPHONE (213) 250-1800

FEDERAL I.D. NO 95-3720522

**File Number SBV1**      **28094-190**

**UHS of Delaware, Inc.  
Estate of Rebecca Powell v. Centennial Hills**

**10/12/21**  
**3102586**  
**Page 1**

Date	Atty	Description of Services Rendered	Hours
9/08/21	AG	Trial & Hearing Attendance: Review/Analyze: Review and analyze court minute order pertaining to status check and joint case status report.	.2
9/08/21	AG	Other Written Motions & Submiss.: Communicate (Other External): Email to plaintiff's counsel regarding court minute order and preparation of stipulation to extend discovery deadlines.	.1
9/08/21	AG	Depositions: Communicate (Other External): Review, analyze and respond to email from plaintiff's counsel regarding further deposition of NP Lambert pertaining to Alisa Borden.	.1
9/10/21	AG	Expert Discovery: Communicate (Other External): Telephone call with Dr. Shah to go over plaintiff's experts' rebuttal reports in preparation for mediation brief.	.7
9/20/21	AG	Expert Discovery: Communicate (Other External): Telephone call with Dr. Ishaaya regarding rebuttal reports of plaintiffs' experts for purposes of inclusion into mediation brief.	.4
9/28/21	AG	Settlement/Non-Binding ADR: Review/Analyze: Review and analyze Centennial Hills Hospital chart for decedent (1,166 pages) for purposes of incorporation of same into mediation brief.	3.8
9/28/21	AG	Settlement/Non-Binding ADR: Draft/Revise: Begin preparation of extensive mediation brief incorporating salient portions of more than 1,100 pages of medical records and significant motion practice resulting in additional appellate motion practice to be explained in detail to mediator for purposes of putting case in appropriate resolution posture.	4.1
9/29/21	AG	Settlement/Non-Binding ADR: Draft/Revise: Continued preparation of mediation brief.	1.8
9/30/21	AG	Settlement/Non-Binding ADR: Communicate (With Client): Email to R. Kim regarding mediation brief.	.1
9/30/21	AG	Settlement/Non-Binding ADR: Draft/Revise: Continue preparation of extensive mediation brief summarizing all medicine, findings of 3 medical experts and one economic expert, assessment of case strengths and weaknesses, and summary of legal issues surrounding writ petition to Nevada Supreme Court	6.2

Date	Description of Disbursement	Units	Rate	Amount
9/13/21	E123-Consulting Services J.S. Held, LLC Inv#:1278635 Professional services rendered on 08/09/21 - 08/24/21.			3,855.60

Recap of Services	Hours	Effective Rate	Fees
Adam Garth	17.5	250.00	4,375.00
<b>Total</b>	<b>17.5</b>		<b>4,375.00</b>

**Total Fees 4,375.00**  
**Total Disbursements 3,855.60**

**Total Current Charges \$ 8,230.60**

28094-190 ADV. post

COHEN | VOLK  
ECONOMIC CONSULTING GROUP

A PART OF JS|HELD

J.S. Held LLC



Invoice #: 1278835  
Invoice Date: 2021-09-13  
Due Date: 2021-10-13  
Payment Terms: Net 30

Adam Garth  
Lewis Brisbois Bisgaard & Smith LLP  
6385 South Rainbow Blvd. Suite 600  
Las Vegas Nevada 89118  
United States

RECEIVED  
SEP 14 2021

# INVOICE

OUR PROJECT#	PROJECT NAME	COURT CASE #:	CLAIM#
21061550	Estate of Powell et al. v. Valley Health System LL	62121341	62121341

## Lewis Brisbois Bisgaard & Smith LLP

### This Invoice Represents Your 100% Share

PLEASE REFERENCE THE J.S. HELD INVOICE NUMBER WHEN REMITTING PAYMENT.

Page 1

Vendor: 87159 J.S. Held, LLC  
Voucher: 2803713 Dist: 6797344  
Approved by Stephen Vogel on 09/16/2021 9.30 AM

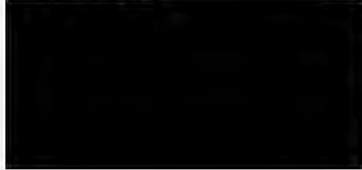
Doc ID: 0002YIMP-1  
Date: 9/13/21  
Check#: 345590

Page 1 of 5  
Amount: 13,855.60

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ECONOMIC CONSULTING GROUP

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J.S. Held LLC



Invoice #: 1278635  
Invoice Date: 2021-09-13  
Due Date: 2021-10-13  
Payment Terms: Net 30

Adam Garth  
Lewis Brisbois Bisgaard & Smith LLP  
6385 South Rainbow Blvd. Suite 600  
Las Vegas Nevada 89118  
United States

## INVOICE

OUR PROJECT#	PROJECT NAME	COURT CASE #:	CLAIM#
21061550	Estate of Powell et al. v. Valley Health System LL	62121341	62121341

Professional Services Rendered:	\$3,780.00
Expenses:	\$75.60
<b>Total This Invoice:</b>	<b>\$3,855.60</b>

Rounding differences may exist compared to the detail pages.

### TO ENSURE TIMELY PROCESSING PLEASE REMIT PAYMENT TO:

J.S. Held LLC



PLEASE REFERENCE THE J.S. HELD INVOICE NUMBER WHEN REMITTING PAYMENT.

Page 2

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ECONOMIC CONSULTING GROUP

A PART OF  J.S. HELD

J.S. Held LLC



Invoice #: 1278635  
Invoice Date: 2021-09-13  
Due Date: 2021-10-13  
Payment Terms: Net 30

Adam Garth  
Lewis Brisbois Bisgaard & Smith LLP  
6385 South Rainbow Blvd. Suite 600  
Las Vegas Nevada 89118  
United States

## INVOICE

OUR PROJECT#	PROJECT NAME	COURT CASE #:	CLAIM#
21061550	Estate of Powell et al. v. Valley Health System LL	62121341	62121341

### SUMMARY BY DEPARTMENT:

DESCRIPTION	TIME	RATE	AMOUNT
Forensic Accounting & Economics			
Correspondence	0.20	\$450.00	\$90.00
Project Research	1.60	\$450.00	\$720.00
Reports	6.60	\$450.00	\$2,970.00
Forensic Accounting & Economics Total:	8.40		\$3,780.00
Total Professional Services Rendered:	8.40		\$3,780.00

PLEASE REFERENCE THE J.S. HELD INVOICE NUMBER WHEN REMITTING PAYMENT.

Page 3

Vendor: 87159 J.S. Held, LLC  
Voucher: 2803713 Dist: 6797344  
Approved by Stephen Vogel on 09/16/2021 9.30 AM

Doc ID: 0002YIMP-3  
Date: 9/13/21  
Check#: 345590

Page 3 of 5  
Amount: 3,865.60  
164

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ECONOMIC CONSULTING GROUP

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J.S. Held LLC



Invoice #: 1278635  
Invoice Date: 2021-09-13  
Due Date: 2021-10-13  
Payment Terms: Net 30

Adam Garth  
Lewis Brisbois Bisgaard & Smith LLP  
6385 South Rainbow Blvd. Suite 600  
Las Vegas Nevada 89118  
United States

## INVOICE

OUR PROJECT#	PROJECT NAME	COURT CASE #:	CLAIM#
21061550	Estate of Powell et al. v. Valley Health System LL	62121341	62121341

### DETAILS:

DATE	DURATION	NOTES
<b>Correspondence</b>		
8/9/2021	0.10	Correspondence with law office.
8/23/2021	0.10	Correspondence with law office.
<b>Project Research</b>		
8/5/2021	0.80	Research economic loss.
8/10/2021	0.30	Research economic loss.
8/10/2021	0.40	Research economic loss.
8/11/2021	0.10	Research economic loss.
<b>Reports</b>		
8/11/2021	3.70	Prepare report.
8/12/2021	0.50	Prepare report.
8/20/2021	1.80	Prepare Rule 26 report.
8/24/2021	0.40	Prepare Rule 26 report.
8/24/2021	0.20	Prepare report.
<b>TOTAL HOURS:</b>	<b>8.40</b>	

PLEASE REFERENCE THE J.S. HELD INVOICE NUMBER WHEN REMITTING PAYMENT.

Page 4



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J.S. Held LLC



Invoice #: 1278635  
Invoice Date: 2021-09-13  
Due Date: 2021-10-13  
Payment Terms: Net 30

Adam Garth  
Lewis Brisbois Bisgaard & Smith LLP  
6385 South Rainbow Blvd. Suite 600  
Las Vegas Nevada 89118  
United States

## INVOICE

OUR PROJECT#	PROJECT NAME	COURT CASE #:	CLAIM#
21061550	Estate of Powell et al. v. Valley Health System LL	62121341	62121341

## EXPENSE SUMMARY:

DATE	AMOUNT
Other	
9/13/2021	\$75.60
Total: Other	\$75.60
Total	\$75.60

## EXPENSE DETAILS:

DATE	DESCRIPTION	AMOUNT
9/13/2021	File Administration	\$75.60
TOTAL AMOUNT:		\$75.60

PLEASE REFERENCE THE J.S. HELD INVOICE NUMBER WHEN REMITTING PAYMENT.

Page 5



# LEWIS BRISBOIS BISGAARD & SMITH LLP

LAWYERS  
SUITE 4000  
633 W. FIFTH STREET  
LOS ANGELES, CALIFORNIA 90071  
TELEPHONE (213) 250-1800

FEDERAL I.D. NO 95-3720522

UHS of Delaware, Inc.  
367 South Gulph Road  
King of Prussia, PA 19406

Attn: Richard Kim  
Manager- Claims

November 9, 2021  
Invoice No. 3129632

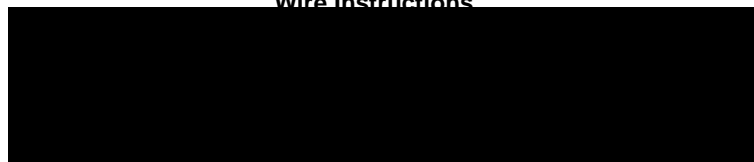
Re: Estate of Rebecca Powell v. Centennial Hills  
Our File No.: 28094-190

Court CLAR  
Court Case No. A-19-788787-C

Current Fees through 10/31/21	10,700.00
Current Disbursements through 10/31/21	3,437.50
Total Current Charges	\$ 14,137.50

\*\*\* Please return this page with your payment. \*\*\*

## Wire Instructions



All Charges in US Dollars

# LEWIS BRISBOIS BISGAARD & SMITH LLP

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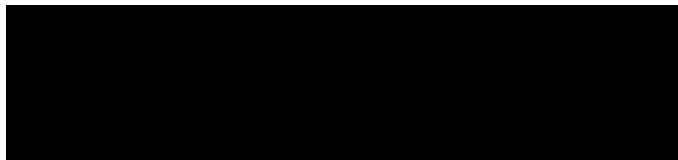
November 9, 2021  
Invoice No. 3129632

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Our File No.: 28094-190

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Court Case No. A-19-788787-C

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SUITE 4000  
633 W. FIFTH STREET  
LOS ANGELES, CALIFORNIA 90071  
TELEPHONE (213) 250-1800

FEDERAL I.D. NO 95-3720522

File Number SBV1	28094-190	UHS of Delaware, Inc. Estate of Rebecca Powell v. Centennial Hills	11/09/21 3129632 Page 1
Date	Atty	Description of Services Rendered	Hours
10/01/21	AG	Settlement/Non-Binding ADR: Draft/Revise: Continue preparation of mediation brief to incorporate all medical, legal and economic evidence.	3.9
10/05/21	AG	Other Written Motions & Submiss.: Draft/Revise: Prepare notice of trial conflict.	.3
10/07/21	AG	Settlement/Non-Binding ADR: Draft/Revise: Continue preparation of mediation brief including all expert opinions, evaluations, damage assessments, liability assessment and legal issues pertaining to statute of limitations.	3.6
10/08/21	AG	Settlement/Non-Binding ADR: Draft/Revise: Continue mediation brief preparation and submission of draft to R. Kim for review.	1.4
10/15/21	AG	Other Written Motions & Submiss.: Review/Analyze: Review and analyze plaintiff's proposed stipulation to extend discovery deadlines.	.2
10/15/21	AG	Other Written Motions & Submiss.: Communicate (Other External): Email to plaintiff's counsel regarding stipulation to extend discovery deadlines.	.1
10/18/21	AG	Appellate Motions & Submissions: Review/Analyze: Review and analyze decision from the Supreme Court granting our writ petition and ordering district court to enter an order granting our motion for summary judgment.	.3
10/18/21	AG	Appellate Motions & Submissions: Communicate (With Client): Email to R. Kim regarding decision from Supreme Court and providing various strategies to employ pertaining thereto in terms of costs and fee recovery.	.4
10/18/21	AG	Appellate Motions & Submissions: Communicate (Other Outside Counsel): Telephone call with co-defense counsel regarding strategy to pursue pertaining to future case handling, recovery of costs and potential issues for further appeal pertaining thereto.	.6
10/18/21	AG	Appellate Motions & Submissions: Communicate (With Client): Review, analyze and respond to email from R. Kim regarding motion to publish and motion for costs and fees.	.1
10/18/21	AG	Settlement/Non-Binding ADR: Communicate (Other External): Email to plaintiff's counsel regarding cancelation of mediation.	.1
10/18/21	AG	Settlement/Non-Binding ADR: Communicate (Other External): Email JAMS regarding cancelation of mediation.	.2
10/18/21	AG	Appellate Motions & Submissions: Research: Perform research to justify motion to publish per R. Kim authorization.	1.3
10/18/21	AG	Appellate Motions & Submissions: Draft/Revise: Prepare motion to publish per R. Kim pertaining to Supreme Court's decision granting writ on summary judgment motion.	4.6
10/18/21	SBV	Appellate Motions & Submissions: Review/Analyze: Analyze order granting petition for writ of mandamus and directing summary judgment be granted	.4
10/19/21	AG	Appellate Motions & Submissions: Draft/Revise: Continue preparation of motion to publish order regarding writ of mandamus.	1.6
10/19/21	AG	Post-Trial Motions & Submissions: Research: Legal research pertaining to costs and fees pursuant to multiple statutes and cases permitting recovery therefrom, as well as per NRCP Rule 68 for purposes of moving for same after granting of summary judgment per writ of mandamus from Nevada Supreme Court.	1.8
10/19/21	AG	Post-Trial Motions & Submissions: Draft/Revise: Begin preparation of motion for costs and fees pursuant to multiple statutes and cases permitting recovery therefrom, as well as per NRCP Rule 68 after granting of summary judgment per writ of mandamus from Nevada Supreme Court.	2.7
10/20/21	AG	Post-Trial Motions & Submissions: Draft/Revise: Continue preparation of motion for costs and fees.	3.8
10/21/21	AG	Other Written Motions & Submiss.: Research: Legal research on sanctions for improper maintenance of lawsuit to obtain fees and costs to include in motion for same.	1.4
10/21/21	AG	Other Written Motions & Submiss.: Draft/Revise: Continue preparation of motion for costs and	

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FEDERAL I.D. NO 95-3720522

File Number  
SBV1

28094-190

UHS of Delaware, Inc.  
Estate of Rebecca Powell v. Centennial Hills

11/09/21  
3129632  
Page 2

Date	Atty	Description of Services Rendered	Hours
		fees on multiple statutory grounds and per local rules stemming from Supreme Court decision dismissing plaintiff's case.	4.8
10/22/21	AG	Post-Trial Motions & Submissions: Draft/Revise: Continue preparation of motion for costs, fees and sanctions.	4.7
10/27/21	AG	Post-Trial Motions & Submissions: Draft/Revise: Conduct analysis and prepare memorandum of costs for reimbursement of statutory costs to a prevailing party.	1.7
10/27/21	AG	Post-Trial Motions & Submissions: Draft/Revise: Continue preparation of motion for attorneys' fees and costs as well as sanctions.	2.8

Date	Description of Disbursement	Units	Rate	Amount
10/09/21	Medical Expert Services Abraham Ishaaya Inv#:5POWELL Expert medical services rendered on 09/16/21 - 10/01/21.			3,437.50

Recap of Services	Hours	Effective Rate	Fees
Adam Garth	42.4	250.00	10,600.00
S. Brent Vogel	.4	250.00	100.00
<b>Total</b>	<b>42.8</b>		<b>10,700.00</b>

**Total Fees** 10,700.00  
**Total Disbursements** 3,437.50

**Total Current Charges** \$ 14,137.50

28094-190

**Abraham Ishaaya, M.D., F.C.C.P.**



October 9, 2021

#5POWELL

LEWIS BRISBOIS  
ATT: Adam Garth  
6385 South Rainbow Blvd., Suite 600  
Las Vegas, NV 89118

RE: CASE NAME: Estate of Rebecca Powell v Centennial Hills Hospital

Dear Adam:

Enclosed please find my charges to present for the above case.

Review of:

9-16	Plaintiffs' 4 <sup>th</sup> supplement to initial designation of experts and pre-trial list of Witnesses	2.5 hours
9-20	Telephone call	.5 hours
9-22	Literature review	1.5 hours
10-1	Literature review	1.75 hours

Total hours: 6.25 hours @ \$550

Total owed: \$3,437.50

If I can be of any further assistance, please do not hesitate to contact me.

Sincerely,

A handwritten signature in black ink, appearing to be 'A. Ishaaya'.

Avi Ishaaya, M.D.

# LEWIS BRISBOIS BISGAARD & SMITH LLP

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SUITE 4000  
633 W. FIFTH STREET  
LOS ANGELES, CALIFORNIA 90071  
TELEPHONE (213) 250-1800

FEDERAL I.D. NO 95-3720522

UHS of Delaware, Inc.  
367 South Gulph Road  
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Attn: Richard Kim  
Manager- Claims

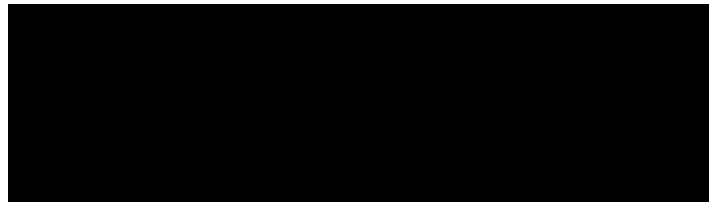
December 8, 2021  
Invoice No. 3154450

Re: Estate of Rebecca Powell v. Centennial Hills  
Our File No.: 28094-190

Court CLAR  
Court Case No. A-19-788787-C

Current Fees through 11/30/21	2,826.50
Current Disbursements through 11/30/21	3.50
Total Current Charges	\$ 2,830.00

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# LEWIS BRISBOIS BISGAARD & SMITH LLP

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LOS ANGELES, CALIFORNIA 90071  
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FEDERAL I.D. NO 95-3720522

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Attn: Richard Kim  
Manager- Claims

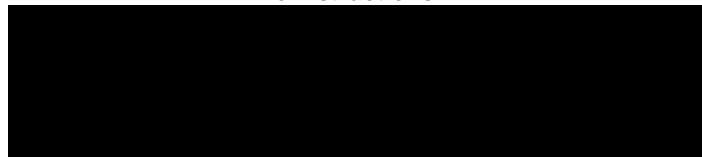
December 8, 2021  
Invoice No. 3154450

Re: Estate of Rebecca Powell v. Centennial Hills  
Our File No.: 28094-190

Court CLAR  
Court Case No. A-19-788787-C

Current Fees through 11/30/21	2,826.50
Current Disbursements through 11/30/21	3.50
Total Current Charges	\$ 2,830.00

## Wire Instructions



All Charges in US Dollars

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TELEPHONE (213) 250-1800

FEDERAL I.D. NO 95-3720522

<b>File Number SBV1</b>	<b>28094-190</b>	<b>UHS of Delaware, Inc. Estate of Rebecca Powell v. Centennial Hills</b>	<b>12/08/21</b> <b>3154450</b> <b>Page 1</b>
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Date	Atty	Description of Services Rendered	Hours
11/09/21	AG	Other Written Motions & Submiss.: Draft/Revise: Prepare draft proposed order in accordance with Nevada Supreme Court's order granting writ petition to submit to district court on final hearing vacating prior order denying summary judgment and now granting all motions for summary judgment.	1.7
11/09/21	AG	Written Motions and Submissions: Communicate (Other Outside Counsel): Email to co-defense counsel regarding proposed order vacating prior order denying summary judgment and issuing order granting summary judgment.	.2
11/09/21	AG	Other Written Motions & Submiss.: Communicate (Other Outside Counsel): Telephone call from co-defense counsel regarding strategy pertaining to order granting summary judgment and motions for costs and fees.	1.1
11/09/21	AG	Other Written Motions & Submiss.: Communicate (Other External): Email to all counsel with proposed order vacating prior denial of summary judgment and granting motions for summary judgment along with request for approval of same or we will submit to court without approval of respective counsel.	.2
11/09/21	AG	Appellate Motions & Submissions: Review/Analyze: Review and analyze plaintiff's motion in Nevada Supreme Court to reargue decision overturning denial of summary judgment.	.5
11/10/21	AG	Analysis/Strategy: Communicate (With Client): Review, analyze and respond to email from R. Kim regarding status of motion for costs as well as updates on motion for rehearing, submission of memo of costs, motion for sanctions and fees, and strategy pertaining to each.	.4
11/12/21	AG	Other Written Motions & Submiss.: Communicate (Other External): Email to all counsel requesting position on proposed order, and responses thereto including our refusal to agree to stay any enforcement of Supreme Court decision.	.2
11/12/21	AG	Other Written Motions & Submiss.: Draft/Revise: Letter to court regarding proposed order pertaining to summary judgment as determined by Supreme Court.	.1
11/15/21	AG	Appellate Motions & Submissions: Review/Analyze: Review and analyze order from the Nevada supreme court denying plaintiffs' motion for rehearing.	.1
11/17/21	SS	Analysis/Strategy: Plan & Prepare For: Analysis of Supreme Court decision, order, and Plaintiff's motion for rehearing in preparation for hearing in front of respondent Judge Weiss.	.9
11/18/21	SS	Trial & Hearing Attendance: Appear For/Attend: Attended hearing on Supreme Court's decision to vacate district court's order denying Motion for Summary Judgment.	1.2
11/19/21	AG	Dispositive Motions: Review/Analyze: Review and analyze court's order vacating prior denial of summary judgment and granting motion for summary judgment.	.1
11/19/21	AG	Dispositive Motions: Communicate (With Client): Email to R. Kim with order granting summary judgment and strategy for recoupment of costs and fees.	.1
11/19/21	AG	Post-Trial Motions & Submissions: Draft/Revise: Continue preparation of motion for costs and fees.	2.8
11/19/21	AG	Post-Trial Motions & Submissions: Draft/Revise: Continue preparation of memorandum of costs.	.7
11/19/21	AG	Written Motions and Submissions: Draft/Revise: Prepare notice of entry of order granting summary judgment.	.2
11/22/21	SBV	Other Written Motions & Submiss.: Draft/Revise: Finalize Motion for Attorney's Fees	.4
11/23/21	AG	Appellate Motions & Submissions: Review/Analyze: Review and analyze Supreme Court order granting extension for plaintiff to file for en banc reconsideration.	.1
11/23/21	AG	Appellate Motions & Submissions: Communicate (With Client): Email to R. Kim regarding implications of plaintiff's request for en banc reconsideration.	.2
11/23/21	AG	Post-Trial Motions & Submissions: Review/Analyze: Review and analyze codefendants memorandum of costs and fees (43 pages).	.4

Date	Description of Disbursement	Units	Rate	Amount
------	-----------------------------	-------	------	--------

DISBURSEMENTS MADE FOR YOUR ACCOUNT, FOR WHICH BILLS HAVE NOT YET BEEN RECEIVED,  
WILL APPEAR ON A LATER STATEMENT



# LEWIS BRISBOIS BISGAARD & SMITH LLP

LAWYERS  
SUITE 4000  
633 W. FIFTH STREET  
LOS ANGELES, CALIFORNIA 90071  
TELEPHONE (213) 250-1800

FEDERAL I.D. NO 95-3720522

File Number SBV1 28094-190 UHS of Delaware, Inc.  
Estate of Rebecca Powell v. Centennial Hills 12/08/21  
3154450  
Page 2

Date	Description of Disbursement	Units	Rate	Amount
11/15/21	Court filing fee Comerica Commercial Card Services Inv#:103121STMT-ANOUWELS Trans Date: 10/05/2021 Nvefile* 008666144-0, Filing fee for defendant Valley Health System, LLC dba Centennial Hills Hospital Medical Center's notice of trial conflict.			3.50

Recap of Services	Hours	Effective Rate	Fees
Adam Garth	9.1	250.00	2,275.00
S. Brent Vogel	.4	250.00	100.00
Shady Sirsy	2.1	215.00	451.50
<b>Total</b>	<b>11.6</b>		<b>2,826.50</b>

<b>Total Fees</b>	<b>2,826.50</b>
<b>Total Disbursements</b>	<b>3.50</b>

<b>Total Current Charges</b>	<b>\$ 2,830.00</b>
------------------------------	--------------------







# LEWIS BRISBOIS BISGAARD & SMITH LLP

LAWYERS  
SUITE 4000  
633 W. FIFTH STREET  
LOS ANGELES, CALIFORNIA 90071  
TELEPHONE (213) 250-1800

FEDERAL I.D. NO 95-3720522

UHS of Delaware, Inc.  
367 South Gulph Road  
King of Prussia, PA 19406

Attn: Richard Kim  
Manager- Claims

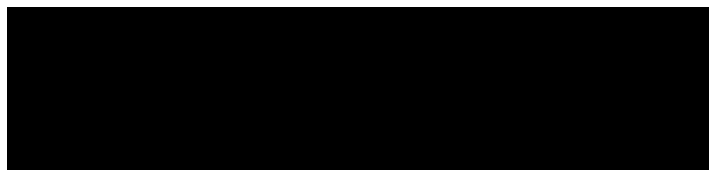
January 28, 2022  
Invoice No. 3201187

Re: Estate of Rebecca Powell v. Centennial Hills  
Our File No.: 28094-190

Court CLAR  
Court Case No. A-19-788787-C

Current Fees through 12/31/21	7,975.00
Current Disbursements through 12/31/21	10.50
Total Current Charges	\$ 7,985.50

\*\*\* Please return this page with your payment. \*\*\*



All Charges in US Dollars

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367 South Gulph Road  
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Attn: Richard Kim  
Manager- Claims

January 28, 2022  
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Our File No.: 28094-190

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Current Disbursements through 12/31/21	10.50
Total Current Charges	\$ 7,985.50

## Wire Instructions



All Charges in US Dollars

# LEWIS BRISBOIS BISGAARD & SMITH LLP

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LOS ANGELES, CALIFORNIA 90071  
TELEPHONE (213) 250-1800

FEDERAL I.D. NO 95-3720522

File Number SBV1	28094-190	UHS of Delaware, Inc. Estate of Rebecca Powell v. Centennial Hills	1/28/22 3201187 Page 1
Date	Atty	Description of Services Rendered	Hours
12/02/21	AG	Post-Trial Motions & Submissions: Communicate (Other External): Review, analyze and respond to email from plaintiff's counsel regarding motions for costs, fees and sanctions.	.2
12/02/21	AG	Post-Trial Motions & Submissions: Draft/Revise: Prepare judgment for costs based upon previously filed memorandum of costs.	.8
12/02/21	AG	Enforcement: Communicate (Other External): Review, analyze and respond to multiple emails with plaintiff's counsel regarding memorandum of costs and motion for costs, fees and sanctions.	.4
12/03/21	AG	Enforcement: Communicate (Other External): Email to all counsel regarding proposed judgment on memoranda of costs.	.2
12/03/21	AG	Enforcement: Communicate (Other Outside Counsel): Email to co-defense counsel and review and analyze response thereto pertaining to judgment on memos of costs.	.1
12/03/21	AG	Enforcement: Communicate (Other External): Review, analyze and respond to plaintiff's counsel's email refusing to consent to judgment.	.1
12/03/21	AG	Enforcement: Draft/Revise: Finalize judgment.	.2
12/07/21	AG	Post-Trial Motions & Submissions: Review/Analyze: Review and analyze plaintiffs' motion to extend time to retax costs for purposes of preparing opposition game plan.	1.1
12/07/21	AG	Post-Trial Motions & Submissions: Research: Legal research for purposes of cite checking plaintiffs' motion to extend time to retax costs and obtaining countervailing authority thereto.	1.4
12/08/21	AG	Post-Trial Motions & Submissions: Research: Continue legal research regarding opposition to motion to retax costs and our counter-motion for costs and fees.	1.7
12/08/21	AG	Post-Trial Motions & Submissions: Draft/Revise: Prepare extensive opposition to plaintiffs' motion to retax costs and our counter-motion for fees and costs.	6.8
12/09/21	AG	Post-Trial Motions & Submissions: Draft/Revise: Continue preparation of opposition to plaintiffs' motion to extend time to retax costs.	3.3
12/13/21	SBV	Court Mandated Conferences: Review/Analyze: Analyze order setting status check regarding trial scheduling	.1
12/15/21	AG	Appellate Motions & Submissions: Review/Analyze: Review and analyze plaintiffs' motion for further extension of time to move for en banc reconsideration for purposes of preparing opposition to same.	.4
12/15/21	AG	Appellate Motions & Submissions: Research: Legal research to oppose plaintiffs' motion to extend time to move for en banc reconsideration.	1.3
12/15/21	AG	Appellate Motions & Submissions: Draft/Revise: Prepare opposition to plaintiffs' motion for further extension of time to move for en banc reconsideration.	2.8
12/15/21	AG	Appellate Motions & Submissions: Communicate (Other Outside Counsel): Telephone call with co-defense counsel regarding strategy to join opposition to motion to extend time to file for en banc reconsideration.	.2
12/20/21	AG	Appellate Motions & Submissions: Review/Analyze: Review and analyze plaintiff's petition for en banc rehearing for purposes of determining issues raised potentially subject to reversal.	.8
12/20/21	AG	Appellate Motions & Submissions: Review/Analyze: Review and analyze plaintiff's reply to our opposition for extension to file petition for en banc reconsideration.	.2
12/21/21	AG	Other Written Motions & Submiss.: Review/Analyze: Review and analyze co-defendant's opposition to plaintiff's motion to extend time to retax costs.	.3
12/28/21	AG	Other Written Motions & Submiss.: Review/Analyze: Review and analyze plaintiffs' reply to our opposition to motion to extend time to retax costs in preparation for developing countervailing authority.	.7
12/28/21	AG	Other Written Motions & Submiss.: Research: Legal research to obtain countervailing authority and to cite check plaintiffs' reply in further support of their motion to extend time to	

# LEWIS BRISBOIS BISGAARD & SMITH LLP

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TELEPHONE (213) 250-1800

FEDERAL I.D. NO 95-3720522

<b>File Number SBV1</b>	<b>28094-190</b>	<b>UHS of Delaware, Inc. Estate of Rebecca Powell v. Centennial Hills</b>	<b>1/28/22</b> <b>3201187</b> <b>Page 2</b>
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Date	Atty	Description of Services Rendered	Hours
		retax costs	1.1
12/28/21	AG	Other Written Motions & Submiss.: Plan & Prepare For: Prepare outline and argument for hearing on plaintiffs' motion to extend time to retax costs.	1.6
12/28/21	AG	Other Written Motions & Submiss.: Review/Analyze: Review and analyze plaintiffs' opposition to our motion to attorneys' fees and costs in preparation for reply thereto.	1.4
12/29/21	AG	Post-Trial Motions & Submissions: Communicate (Other Outside Counsel): Telephone call with co-defense counsel regarding strategy pertaining to our replies on respective motions for attorneys' fees and costs.	.8
12/29/21	AG	Post-Trial Motions & Submissions: Research: Legal research to obtain countervailing authority to plaintiffs' opposition to our motion for costs and fees to utilize on reply.	1.7
12/29/21	AG	Post-Trial Motions & Submissions: Draft/Revise: Begin preparation of reply in further support of motion for costs and fees.	2.2

Date	Description of Disbursement	Units	Rate	Amount
12/14/21	Court filing fee Comerica Commercial Card Services Inv#:113021STMT-ANOUWELS Trans Date: 11/19/2021 Nvefile* 008913881-0, Filing fee for notice of entry of order.			3.50
12/14/21	Court filing fee Comerica Commercial Card Services Inv#:113021STMT-ANOUWELS Trans Date: 11/22/2021 Nvefile* 008918162-0, Filing fee for motion for attorney fees.			3.50
12/14/21	Court filing fee Comerica Commercial Card Services Inv#:113021STMT-ANOUWELS Trans Date: 11/22/2021 Nvefile* 008916433-0, Filing fee for memorandum of costs and disbursements.			3.50

Recap of Services	Hours	Effective Rate	Fees
Adam Garth	31.8	250.00	7,950.00
S. Brent Vogel	.1	250.00	25.00
<b>Total</b>	<b>31.9</b>		<b>7,975.00</b>

<b>Total Fees</b>	<b>7,975.00</b>
<b>Total Disbursements</b>	<b>10.50</b>

<b>Total Current Charges</b>	<b>\$ 7,985.50</b>
------------------------------	--------------------























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FEDERAL I.D. NO 95-3720522

UHS of Delaware, Inc.  
367 South Gulph Road  
King of Prussia, PA 19406

Attn: Richard Kim  
Manager- Claims

February 15, 2022  
Invoice No. 3217535

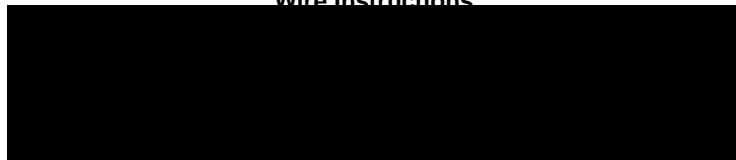
Re: Estate of Rebecca Powell v. Centennial Hills  
Our File No.: 28094-190

Court CLAR  
Court Case No. A-19-788787-C

Current Fees through 01/31/22	4,925.00
Current Disbursements through 01/31/22	4,678.50
Total Current Charges	\$ 9,603.50

\*\*\* Please return this page with your payment. \*\*\*

Wire Instructions



All Charges in US Dollars

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367 South Gulph Road  
King of Prussia, PA 19406

Attn: Richard Kim  
Manager- Claims

February 15, 2022  
Invoice No. 3217535

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Our File No.: 28094-190

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## Wire Instructions



All Charges in US Dollars

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TELEPHONE (213) 250-1800

FEDERAL I.D. NO 95-3720522

<b>File Number SBV1</b>	<b>28094-190</b>	<b>UHS of Delaware, Inc. Estate of Rebecca Powell v. Centennial Hills</b>	<b>2/15/22 3217535 Page 1</b>
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Date	Atty	Description of Services Rendered	Hours
1/03/22	AG	Post-Trial Motions & Submissions: Research: Continue extensive legal research regarding supporting authority for sanctions, costs and fees pursuant to multiple statutes and court rules to incorporate into reply on motion for same.	1.2
1/03/22	AG	Post-Trial Motions & Submissions: Draft/Revise: Continued preparation of extensive reply in further support of motion for costs, fees, and sanctions against plaintiffs and counsel.	8.8
1/04/22	AG	Post-Trial Motions & Submissions: Draft/Revise: Continue preparation of reply in further support of motion for costs, fees and sanctions in response to plaintiff's opposition thereto.	5.3
1/18/22	AG	Post-Trial Motions & Submissions: Plan & Prepare For: Review and analyze plaintiffs' motion to extend time to retax costs, our opposition and plaintiffs' reply (approximately 200 pages) in preparation for oral argument and hearing on said motion.	2.3
1/24/22	AG	Post-Trial Motions & Submissions: Review/Analyze: Review and analyze court's decision on plaintiff's motion to extend time to move to retax costs for purposes of reporting on same and determining the strategy to pursue judgment.	.4
1/24/22	AG	Analysis/Strategy: Communicate (With Client): Email to R. Kim along with decision on court's denial of plaintiff's motion to extend time to move to retax costs and implications thereof.	.3
1/25/22	AG	Post-Trial Motions & Submissions: Draft/Revise: Prepare final order and notice of entry thereof denying plaintiff's motion to extend time to retax costs.	.8
1/25/22	AG	Enforcement: Draft/Revise: Finalize judgment for Rule 68 costs per statute.	.4
1/25/22	AG	Enforcement: Communicate (Other Outside Counsel): Review, analyze and respond to co-defense counsel regarding submission of judgment.	.2

Date	Description of Disbursement	Units	Rate	Amount
8/06/21	Medical Expert Services Abraham Ishaaya Inv#:4POWELL Expert medical services rendered on 07/29/21 - 08/04/21.			4,675.00
1/14/22	Court filing fee Comerica Commercial Card Services Inv#:123121STMT-ANOUWELS Trans Date: 12/20/2021 Nvefile* 009060440-0, Filing fee for opposition and countermotion.			3.50

Recap of Services	Hours	Effective Rate	Fees
Adam Garth	19.7	250.00	4,925.00
<b>Total</b>	<b>19.7</b>		<b>4,925.00</b>

<b>Total Fees</b>	<b>4,925.00</b>
<b>Total Disbursements</b>	<b>4,678.50</b>

<b>Total Current Charges</b>	<b>\$ 9,603.50</b>
------------------------------	--------------------

28094-190

Abraham Ishaaya, M.D., F.C.C.P.



August 6, 2021

#4POWELL

LEWIS BRISBOIS

ATT: Adam Garth

6385 South Rainbow Blvd., Suite 600

Las Vegas, NV 89118

RE: CASE NAME: Estate of Rebecca Powell v Centennial Hills Hospital

Dear Adam:

Enclosed please find my charges to present for the above case.

7-29	Preparation of responses to allegations	3 hours
7-31	Preparation of responses to allegations	3 hours
8-1	Preparation of responses to allegations	2 hours
8-4	Review/edit document	.5 hours
	Telephone call	

Total hours: 8.5 hours @ \$550

Total owed: \$4,675

If I can be of any further assistance, please do not hesitate to contact me.

Sincerely,

A handwritten signature in black ink, appearing to be 'A. Ishaaya'.

Avi Ishaaya, M.D.

# EXHIBIT F

1 **JUDG**

2 S. BRENT VOGEL

3 Nevada Bar No. 6858

4 Brent.Vogel@lewisbrisbois.com

5 ADAM GARTH

6 Nevada Bar No. 15045

7 Adam.Garth@lewisbrisbois.com

8 LEWIS BRISBOIS BISGAARD & SMITH LLP

9 6385 S. Rainbow Boulevard, Suite 600

10 Las Vegas, Nevada 89118

11 Telephone: 702.893.3383

12 Facsimile: 702.893.3789

13 *Attorneys for Defendant Valley Health System,*

14 *LLC dba Centennial Hills Hospital Medical*

15 *Center*

16 DISTRICT COURT

17 CLARK COUNTY, NEVADA

18 ESTATE OF REBECCA POWELL, through  
19 BRIAN POWELL, as Special Administrator;  
20 DARCI CREECY, individually and as Heir;  
21 TARYN CREECY, individually and as an  
22 Heir; ISIAH KHOSROF, individually and as  
23 an Heir; LLOYD CREECY, individually;

24 Plaintiffs,

25 vs.

26 VALLEY HEALTH SYSTEM, LLC (doing  
27 business as "Centennial Hills Hospital Medical  
28 Center"), a foreign limited liability company;  
UNIVERSAL HEALTH SERVICES, INC., a  
foreign corporation; DR. DIONICE S.  
JULIANO, M.D., an individual; DR.  
CONRADO C.D. CONCIO, M.D., an  
individual; DR. VISHAL S. SHAH, M.D., an  
individual; DOES 1-10; and ROES A-Z;

29 Defendants.

Case No. A-19-788787-C

Dept. No.: 30

**DEFENDANTS' JUDGMENT OF COSTS  
PER NRS 18.020, 18.005, 18.110, 17.117,  
and N.R.C.P. 68(f) AS AGAINST  
PLAINTIFFS**

30 Pursuant to the Order granting Defendant Valley Health System, LLC's motion for summary  
31 judgment and co-defendants' joinder thereto dated and entered on November 19, 2021,

32 IT IS HEREBY ORDERED, ADJUDGED AND DECREED:

33 That the Plaintiffs, take nothing, and that the action be dismissed on the merits.

1 Defendants Valley Health System, LLC shall be awarded their reasonable Costs pursuant to  
2 NRS 18.020, 18.005, 18.110, 17.117, and N.R.C.P. 68(f) in the amount of **\$42,492.03** in accordance  
3 with the Verified Memorandum of Costs attached hereto as **Exhibit A**. Valley Health Systems,  
4 LLC submitted a motion currently pending for additional costs and attorneys fees, the results of  
5 which may result in an additional Judgment for such costs and fees should it be granted in whole or  
6 part.

7 Defendants Conrado C.D. Concio, M.D. and Vishal S. Shah, M.D. shall separately be  
8 awarded their reasonable Costs pursuant to NRS 18.020, 18.005, 18.110, 17.117, and N.R.C.P. 68(f)  
9 in the amount of **\$9,149.76** in accordance with the Verified Memorandum of Costs attached hereto  
10 as **Exhibit B**. Conrado C.D. Concio, M.D. and Vishal S. Shah, M.D. will be submitting a motion  
11 for additional costs and attorneys fees, the results of which may result in an additional Judgment for  
12 such costs and fees should it be granted in whole or part.

13 DATED this 3<sup>rd</sup> day of December, 2021.

14  
15  
16 

---

DISTRICT COURT JUDGE

17 Respectfully Submitted By:  
18 LEWIS BRISBOIS BISGAARD & SMITH LLP

19  
20 By /s/ Adam Garth  
21 S. BRENT VOGEL  
22 Nevada Bar No. 6858  
23 ADAM GARTH  
24 Nevada Bar No. 15045  
25 6385 S. Rainbow Boulevard, Suite 600  
26 Las Vegas, Nevada 89118  
27 Tel. 702.893.3383  
28 *Attorneys for Attorneys for Defendant Valley  
Health System, LLC dba Centennial Hills Hospital  
Medical Center*

///

///



1 Agreed as to form and substance by:

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**Refused to sign**

*/s/ Brad Shipley*

Paul S. Padda, Esq.  
Srilata Shah, Esq.  
PAUL PADDA LAW, PLLC  
4560 S. Decatur Blvd., Suite 300  
Las Vegas, NV 89103  
Tel: 702.366.1888  
Fax: 702.366.1940  
[psp@paulpaddalaw.com](mailto:psp@paulpaddalaw.com)  
*Attorneys for Plaintiffs*

John H. Cotton, Esq.  
Brad Shipley, Esq.  
JOHN. H. COTTON &  
ASSOCIATES  
7900 W. Sahara Ave., Suite 200  
Las Vegas, NV 89117  
Tel: 702.832.5909  
Fax: 702.832.5910  
[jhcotton@jhcottonlaw.com](mailto:jhcotton@jhcottonlaw.com)  
[bshipleyr@jhcottonlaw.com](mailto:bshipleyr@jhcottonlaw.com)  
*Attorneys for Defendants Dionice S.  
Juliano, M.D., Conrado Concio,  
M.D And Vishal S. Shah, M.D.*

1 **CERTIFICATE OF SERVICE**

2 I hereby certify that on this 3<sup>rd</sup> day of December, 2021, a true and correct copy  
3 of **DEFENDANT VALLEY HEALTH SYSTEM LLC'S VERIFIED MEMORANDUM OF**  
4 **COSTS** was served by electronically filing with the Clerk of the Court using the Odyssey E-File &  
5 Serve system and serving all parties with an email-address on record, who have agreed to receive  
6 electronic service in this action.

7 Paul S. Padda, Esq.  
8 PAUL PADDALAW, PLLC  
9 4560 S. Decatur Blvd., Suite 300  
10 Las Vegas, NV 89103  
11 Tel: 702.366.1888  
12 Fax: 702.366.1940  
13 [psp@paulpaddalaw.com](mailto:psp@paulpaddalaw.com)  
14 *Attorneys for Plaintiffs*

John H. Cotton, Esq.  
Brad Shipley, Esq.  
JOHN. H. COTTON & ASSOCIATES  
7900 W. Sahara Ave., Suite 200  
Las Vegas, NV 89117  
Tel: 702.832.5909  
Fax: 702.832.5910  
[jhcotton@jhcottonlaw.com](mailto:jhcotton@jhcottonlaw.com)  
[bshipleyr@jhcottonlaw.com](mailto:bshipleyr@jhcottonlaw.com)  
*Attorneys for Defendants Dionice S. Juliano,*  
*M.D., Conrado Concio, M.D And Vishal S.*  
*Shah, M.D.*

15  
16  
17 By /s/ Tiffany Dube  
18 An Employee of  
19 LEWIS BRISBOIS BISGAARD & SMITH LLP  
20  
21  
22  
23  
24  
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26  
27  
28

## Gonzales, Emma

---

**From:** Dube, Tiffany  
**Sent:** Friday, December 3, 2021 1:06 PM  
**To:** Gonzales, Emma  
**Subject:** FW: Powell v. Centennial Hills - Proposed Judgment

---

**From:** Paul Padda <psp@paulpaddalaw.com>  
**Sent:** Friday, December 3, 2021 9:15 AM  
**To:** Garth, Adam <Adam.Garth@lewisbrisbois.com>; Srilata Shah <sri@paulpaddalaw.com>; Brad Shipley <bshipley@jhcottonlaw.com>  
**Cc:** Vogel, Brent <Brent.Vogel@lewisbrisbois.com>; Sirsy, Shady <Shady.Sirsy@lewisbrisbois.com>; Dube, Tiffany <Tiffany.Dube@lewisbrisbois.com>; San Juan, Maria <Maria.SanJuan@lewisbrisbois.com>  
**Subject:** RE: Powell v. Centennial Hills - Proposed Judgment

You do not have our consent. Thanks.

**Paul S. Padda, Esq.**  
**PAUL PADDA LAW, PLLC**  
**Websites:** paulpaddalaw.com

**Nevada Office:**  
4560 South Decatur Blvd., Suite 300  
Las Vegas, Nevada 89103  
Tele: (702) 366-1888

**California Office:**  
One California Plaza  
300 South Grand Avenue, Suite 3840  
Los Angeles, California 90071  
Tele: (213) 423-7788



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---

**From:** Garth, Adam <[Adam.Garth@lewisbrisbois.com](mailto:Adam.Garth@lewisbrisbois.com)>

**Sent:** Friday, December 3, 2021 9:11 AM

**To:** Srilata Shah <[sri@paulpaddalaw.com](mailto:sri@paulpaddalaw.com)>; Brad Shipley <[bshipley@jhcottonlaw.com](mailto:bshipley@jhcottonlaw.com)>

**Cc:** Vogel, Brent <[Brent.Vogel@lewisbrisbois.com](mailto:Brent.Vogel@lewisbrisbois.com)>; Sirsy, Shady <[Shady.Sirsy@lewisbrisbois.com](mailto:Shady.Sirsy@lewisbrisbois.com)>; Dube, Tiffany <[Tiffany.Dube@lewisbrisbois.com](mailto:Tiffany.Dube@lewisbrisbois.com)>; San Juan, Maria <[Maria.SanJuan@lewisbrisbois.com](mailto:Maria.SanJuan@lewisbrisbois.com)>; Paul Padda <[psp@paulpaddalaw.com](mailto:psp@paulpaddalaw.com)>

**Subject:** Powell v. Centennial Hills - Proposed Judgment

**Importance:** High

Counsel,

Attached is a proposed judgment which we intend to submit to Judge Wiese for signature on Monday, December 6, 2021. We have also attached the respective memos of costs for your quick reference as well. This will not be the final amount of any judgment, only those statutory costs to which we are entitled based upon the memorandum of costs served by the respective defendants. Should our future motion for additional costs, fees and sanctions be granted, now scheduled to be heard on January 19, an additional judgment for amounts not covered hereunder will be filed at that time.

Please indicate whether we have your consent to use your e-signature on this judgment. If we do not receive an email regarding your position on the proposed judgment by 5:00 p.m. today, we will submit it for signature as indicated above, noting counsel's refusal to sign.

Adam Garth



**Adam Garth**

**Partner**

[Adam.Garth@lewisbrisbois.com](mailto:Adam.Garth@lewisbrisbois.com)

**T: 702.693.4335 F: 702.366.9563**

6385 South Rainbow Blvd., Suite 600, Las Vegas, NV 89118 | [LewisBrisbois.com](http://LewisBrisbois.com)

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## Gonzales, Emma

---

**From:** Dube, Tiffany  
**Sent:** Friday, December 3, 2021 1:06 PM  
**To:** Gonzales, Emma  
**Subject:** FW: Powell v. Centennial Hills - Proposed Judgment

---

**From:** Brad Shipley <[bshipley@jhcottonlaw.com](mailto:bshipley@jhcottonlaw.com)>  
**Sent:** Friday, December 3, 2021 9:13 AM  
**To:** Garth, Adam <[Adam.Garth@lewisbrisbois.com](mailto:Adam.Garth@lewisbrisbois.com)>; Srilata Shah <[sri@paulpaddalaw.com](mailto:sri@paulpaddalaw.com)>  
**Cc:** Vogel, Brent <[Brent.Vogel@lewisbrisbois.com](mailto:Brent.Vogel@lewisbrisbois.com)>; Sirsy, Shady <[Shady.Sirsy@lewisbrisbois.com](mailto:Shady.Sirsy@lewisbrisbois.com)>; Jody Foote <[jfoote@jhcottonlaw.com](mailto:jfoote@jhcottonlaw.com)>; Dube, Tiffany <[Tiffany.Dube@lewisbrisbois.com](mailto:Tiffany.Dube@lewisbrisbois.com)>; San Juan, Maria <[Maria.SanJuan@lewisbrisbois.com](mailto:Maria.SanJuan@lewisbrisbois.com)>; Paul Padda <[psp@paulpaddalaw.com](mailto:psp@paulpaddalaw.com)>  
**Subject:** RE: Powell v. Centennial Hills - Proposed Judgment

We agree as to content and form. Thank you for drafting. Please use my e-signature for the submission.

Brad Shipley, Esq.  
John H. Cotton & Associates, Ltd.  
7900 W. Sahara ave. #200  
Las Vegas, NV 89117  
[bshipley@jhcottonlaw.com](mailto:bshipley@jhcottonlaw.com)  
702 832 5909

---

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**To:** Srilata Shah <[sri@paulpaddalaw.com](mailto:sri@paulpaddalaw.com)>; Brad Shipley <[bshipley@jhcottonlaw.com](mailto:bshipley@jhcottonlaw.com)>  
**Cc:** Vogel, Brent <[Brent.Vogel@lewisbrisbois.com](mailto:Brent.Vogel@lewisbrisbois.com)>; Sirsy, Shady <[Shady.Sirsy@lewisbrisbois.com](mailto:Shady.Sirsy@lewisbrisbois.com)>; Dube, Tiffany <[Tiffany.Dube@lewisbrisbois.com](mailto:Tiffany.Dube@lewisbrisbois.com)>; San Juan, Maria <[Maria.SanJuan@lewisbrisbois.com](mailto:Maria.SanJuan@lewisbrisbois.com)>; Paul Padda <[psp@paulpaddalaw.com](mailto:psp@paulpaddalaw.com)>  
**Subject:** Powell v. Centennial Hills - Proposed Judgment  
**Importance:** High

Counsel,

Attached is a proposed judgment which we intend to submit to Judge Wiese for signature on Monday, December 6, 2021. We have also attached the respective memos of costs for your quick reference as well. This will not be the final amount of any judgment, only those statutory costs to which we are entitled based upon the memorandum of costs served by the respective defendants. Should our future motion for additional costs, fees and sanctions be granted, now scheduled to be heard on January 19, an additional judgment for amounts not covered hereunder will be filed at that time.

Please indicate whether we have your consent to use your e-signature on this judgment. If we do not receive an email regarding your position on the proposed judgment by 5:00 p.m. today, we will submit it for signature as indicated above, noting counsel's refusal to sign.

Adam Garth



**Adam Garth**

**Partner**

[Adam.Garth@lewisbrisbois.com](mailto:Adam.Garth@lewisbrisbois.com)

**T: 702.693.4335 F: 702.366.9563**

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# EXHIBIT G

**From:** [Dube, Tiffany](#)  
**To:** [dc30inbox@clarkcountycourts.us](mailto:dc30inbox@clarkcountycourts.us)  
**Cc:** [Garth, Adam](#); [psp@paulpaddalaw.com](mailto:psp@paulpaddalaw.com); [jhctton@jhcottonlaw.com](mailto:jhctton@jhcottonlaw.com); [bshipleyr@jhcottonlaw.com](mailto:bshipleyr@jhcottonlaw.com)  
**Subject:** Defendants' Judgment of Costs per NRS 18.020 18.005 18.110 17.117 and N.R.C.P 68(f) as Against Plaintiffs  
**Date:** Friday, December 3, 2021 2:20:01 PM  
**Attachments:** [image001.png](#)  
[Defendants' Judgment of Costs per NRS 18.020 18.005 18.110 17.117 and N.R.C.P. 68\(f\) as Against Plaintiffs.pdf](#)

---

Please see attached Defendants' Judgment of Costs per NRS 18.020 18.005 18.110 17.117 and N.R.C.P 68(f) as Against Plaintiffs for Judge's review and signature.

**Tiffany Dube**

**Legal Secretary to Adam Garth and Shady Sirsy**

[Tiffany.Dube@lewisbrisbois.com](mailto:Tiffany.Dube@lewisbrisbois.com)

Tel: (702) 693-4353 Fax: (702) 893-3789

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1 **JUDG**

2 S. BRENT VOGEL

3 Nevada Bar No. 6858

4 Brent.Vogel@lewisbrisbois.com

5 ADAM GARTH

6 Nevada Bar No. 15045

7 Adam.Garth@lewisbrisbois.com

8 LEWIS BRISBOIS BISGAARD & SMITH LLP

9 6385 S. Rainbow Boulevard, Suite 600

10 Las Vegas, Nevada 89118

11 Telephone: 702.893.3383

12 Facsimile: 702.893.3789

13 *Attorneys for Defendant Valley Health System,*

14 *LLC dba Centennial Hills Hospital Medical*

15 *Center*

16 DISTRICT COURT

17 CLARK COUNTY, NEVADA

18 ESTATE OF REBECCA POWELL, through  
19 BRIAN POWELL, as Special Administrator;  
20 DARCI CREECY, individually and as Heir;  
21 TARYN CREECY, individually and as an  
22 Heir; ISIAH KHOSROF, individually and as  
23 an Heir; LLOYD CREECY, individually;

24 Plaintiffs,

25 vs.

26 VALLEY HEALTH SYSTEM, LLC (doing  
27 business as "Centennial Hills Hospital Medical  
28 Center"), a foreign limited liability company;  
UNIVERSAL HEALTH SERVICES, INC., a  
foreign corporation; DR. DIONICE S.  
JULIANO, M.D., an individual; DR.  
CONRADO C.D. CONCIO, M.D., an  
individual; DR. VISHAL S. SHAH, M.D., an  
individual; DOES 1-10; and ROES A-Z;

Defendants.

Case No. A-19-788787-C

Dept. No.: 30

**DEFENDANTS' JUDGMENT OF COSTS  
PER NRS 18.020, 18.005, 18.110, 17.117,  
and N.R.C.P. 68(f) AS AGAINST  
PLAINTIFFS**

Pursuant to the Order granting Defendant Valley Health System, LLC's motion for summary judgment and co-defendants' joinder thereto dated and entered on November 19, 2021,

IT IS HEREBY ORDERED, ADJUDGED AND DECREED:

That the Plaintiffs, take nothing, and that the action be dismissed on the merits.

1 Defendants Valley Health System, LLC shall be awarded their reasonable Costs pursuant to  
2 NRS 18.020, 18.005, 18.110, 17.117, and N.R.C.P. 68(f) in the amount of **\$42,492.03** in accordance  
3 with the Verified Memorandum of Costs attached hereto as **Exhibit A**. Valley Health Systems,  
4 LLC submitted a motion currently pending for additional costs and attorneys fees, the results of  
5 which may result in an additional Judgment for such costs and fees should it be granted in whole or  
6 part.

7 Defendants Conrado C.D. Concio, M.D. and Vishal S. Shah, M.D. shall separately be  
8 awarded their reasonable Costs pursuant to NRS 18.020, 18.005, 18.110, 17.117, and N.R.C.P. 68(f)  
9 in the amount of **\$9,149.76** in accordance with the Verified Memorandum of Costs attached hereto  
10 as **Exhibit B**. Conrado C.D. Concio, M.D. and Vishal S. Shah, M.D. will be submitting a motion  
11 for additional costs and attorneys fees, the results of which may result in an additional Judgment for  
12 such costs and fees should it be granted in whole or part.

13 DATED this 3<sup>rd</sup> day of December, 2021.

14  
15 \_\_\_\_\_  
16 DISTRICT COURT JUDGE

17 Respectfully Submitted By:  
18 LEWIS BRISBOIS BISGAARD & SMITH LLP

19  
20 By /s/ Adam Garth  
21 S. BRENT VOGEL  
22 Nevada Bar No. 6858  
23 ADAM GARTH  
24 Nevada Bar No. 15045  
25 6385 S. Rainbow Boulevard, Suite 600  
26 Las Vegas, Nevada 89118  
27 Tel. 702.893.3383  
28 *Attorneys for Attorneys for Defendant Valley  
Health System, LLC dba Centennial Hills Hospital  
Medical Center*

///

///

1 Agreed as to form and substance by:

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**Refused to sign**

*/s/ Brad Shipley*

Paul S. Padda, Esq.  
Srilata Shah, Esq.  
PAUL PADDA LAW, PLLC  
4560 S. Decatur Blvd., Suite 300  
Las Vegas, NV 89103  
Tel: 702.366.1888  
Fax: 702.366.1940  
[psp@paulpaddalaw.com](mailto:psp@paulpaddalaw.com)  
*Attorneys for Plaintiffs*

John H. Cotton, Esq.  
Brad Shipley, Esq.  
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ASSOCIATES  
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Las Vegas, NV 89117  
Tel: 702.832.5909  
Fax: 702.832.5910  
[jhcotton@jhcottonlaw.com](mailto:jhcotton@jhcottonlaw.com)  
[bshipleyr@jhcottonlaw.com](mailto:bshipleyr@jhcottonlaw.com)  
*Attorneys for Defendants Dionice S.  
Juliano, M.D., Conrado Concio,  
M.D And Vishal S. Shah, M.D.*

1 **CERTIFICATE OF SERVICE**

2 I hereby certify that on this 3<sup>rd</sup> day of December, 2021, a true and correct copy  
3 of **DEFENDANT VALLEY HEALTH SYSTEM LLC'S VERIFIED MEMORANDUM OF**  
4 **COSTS** was served by electronically filing with the Clerk of the Court using the Odyssey E-File &  
5 Serve system and serving all parties with an email-address on record, who have agreed to receive  
6 electronic service in this action.

7 Paul S. Padda, Esq.  
8 PAUL PADDALAW, PLLC  
9 4560 S. Decatur Blvd., Suite 300  
10 Las Vegas, NV 89103  
11 Tel: 702.366.1888  
12 Fax: 702.366.1940  
13 [psp@paulpaddalaw.com](mailto:psp@paulpaddalaw.com)  
14 *Attorneys for Plaintiffs*

John H. Cotton, Esq.  
Brad Shipley, Esq.  
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Las Vegas, NV 89117  
Tel: 702.832.5909  
Fax: 702.832.5910  
[jhcotton@jhcottonlaw.com](mailto:jhcotton@jhcottonlaw.com)  
[bshipleyr@jhcottonlaw.com](mailto:bshipleyr@jhcottonlaw.com)  
*Attorneys for Defendants Dionice S. Juliano,*  
*M.D., Conrado Concio, M.D And Vishal S.*  
*Shah, M.D.*

15  
16  
17 By /s/ Tiffany Dube  
18 An Employee of  
19 LEWIS BRISBOIS BISGAARD & SMITH LLP  
20  
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27  
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## Gonzales, Emma

---

**From:** Dube, Tiffany  
**Sent:** Friday, December 3, 2021 1:06 PM  
**To:** Gonzales, Emma  
**Subject:** FW: Powell v. Centennial Hills - Proposed Judgment

---

**From:** Paul Padda <psp@paulpaddalaw.com>  
**Sent:** Friday, December 3, 2021 9:15 AM  
**To:** Garth, Adam <Adam.Garth@lewisbrisbois.com>; Srilata Shah <sri@paulpaddalaw.com>; Brad Shipley <bshipley@jhcottonlaw.com>  
**Cc:** Vogel, Brent <Brent.Vogel@lewisbrisbois.com>; Sirsy, Shady <Shady.Sirsy@lewisbrisbois.com>; Dube, Tiffany <Tiffany.Dube@lewisbrisbois.com>; San Juan, Maria <Maria.SanJuan@lewisbrisbois.com>  
**Subject:** RE: Powell v. Centennial Hills - Proposed Judgment

You do not have our consent. Thanks.

**Paul S. Padda, Esq.**  
**PAUL PADDA LAW, PLLC**  
**Websites:** paulpaddalaw.com

**Nevada Office:**  
4560 South Decatur Blvd., Suite 300  
Las Vegas, Nevada 89103  
Tele: (702) 366-1888

**California Office:**  
One California Plaza  
300 South Grand Avenue, Suite 3840  
Los Angeles, California 90071  
Tele: (213) 423-7788



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---

**From:** Garth, Adam <[Adam.Garth@lewisbrisbois.com](mailto:Adam.Garth@lewisbrisbois.com)>

**Sent:** Friday, December 3, 2021 9:11 AM

**To:** Srilata Shah <[sri@paulpaddalaw.com](mailto:sri@paulpaddalaw.com)>; Brad Shipley <[bshipley@jhcottonlaw.com](mailto:bshipley@jhcottonlaw.com)>

**Cc:** Vogel, Brent <[Brent.Vogel@lewisbrisbois.com](mailto:Brent.Vogel@lewisbrisbois.com)>; Sirsy, Shady <[Shady.Sirsy@lewisbrisbois.com](mailto:Shady.Sirsy@lewisbrisbois.com)>; Dube, Tiffany <[Tiffany.Dube@lewisbrisbois.com](mailto:Tiffany.Dube@lewisbrisbois.com)>; San Juan, Maria <[Maria.SanJuan@lewisbrisbois.com](mailto:Maria.SanJuan@lewisbrisbois.com)>; Paul Padda <[psp@paulpaddalaw.com](mailto:psp@paulpaddalaw.com)>

**Subject:** Powell v. Centennial Hills - Proposed Judgment

**Importance:** High

Counsel,

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Adam Garth



**Adam Garth**

**Partner**

[Adam.Garth@lewisbrisbois.com](mailto:Adam.Garth@lewisbrisbois.com)

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**Cc:** Vogel, Brent <[Brent.Vogel@lewisbrisbois.com](mailto:Brent.Vogel@lewisbrisbois.com)>; Sirsy, Shady <[Shady.Sirsy@lewisbrisbois.com](mailto:Shady.Sirsy@lewisbrisbois.com)>; Dube, Tiffany <[Tiffany.Dube@lewisbrisbois.com](mailto:Tiffany.Dube@lewisbrisbois.com)>; San Juan, Maria <[Maria.SanJuan@lewisbrisbois.com](mailto:Maria.SanJuan@lewisbrisbois.com)>; Paul Padda <[psp@paulpaddalaw.com](mailto:psp@paulpaddalaw.com)>  
**Subject:** Powell v. Centennial Hills - Proposed Judgment  
**Importance:** High

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Please indicate whether we have your consent to use your e-signature on this judgment. If we do not receive an email regarding your position on the proposed judgment by 5:00 p.m. today, we will submit it for signature as indicated above, noting counsel's refusal to sign.

Adam Garth



**Adam Garth**

**Partner**

[Adam.Garth@lewisbrisbois.com](mailto:Adam.Garth@lewisbrisbois.com)

**T: 702.693.4335 F: 702.366.9563**

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**From:** [Garth, Adam](#)  
**To:** [McBride, Angela](#); [Israelitt, Megan](#); [Vogel, Brent](#); [Brad Shipley \(bshipley@jhcottonlaw.com\)](#); [San Juan, Maria](#); [Sirsy, Shady](#); ["Diana Escobedo"](#); ["Cormier"](#); [DeSario, Kimberly](#); ["psp@paulpaddalaw.com"](#); [Brown, Heidi](#)  
**Cc:** [Israelitt, Megan](#)  
**Subject:** RE: Estate of Rebecca Powell v. Valley Health Systems et al.; 2/9/22 HEARING RESET TO 2/18/22 CHAMBERS  
**Date:** Tuesday, February 8, 2022 2:26:45 PM  
**Attachments:** [The Estate of Powell v. Centennial Hills - Case No. A-19-788787-C.msg](#)

---

Confirmed. We are also checking on the judgment we submitted to Judge Wiese on January 26, 2022 which has not been signed. Attached is the email sent that day along with the proposed joint judgment of the defendants. Kindly advise when we can expect to hear from the Court concerning same, given that plaintiff's motion to retax was denied by the Court, thereby clearing the way for the judgment.

Adam Garth

**Adam Garth**  
**Partner**  
Las Vegas Rainbow  
702.693.4335 or x7024335

---

**From:** McBride, Angela <McBrideA@clarkcountycourts.us>  
**Sent:** Tuesday, February 8, 2022 2:17 PM  
**To:** Israelitt, Megan <Dept30LC@clarkcountycourts.us>; Vogel, Brent <Brent.Vogel@lewisbrisbois.com>; Brad Shipley (bshipley@jhcottonlaw.com) <bshipley@jhcottonlaw.com>; 'Roya.Rokni@lewisbrisbois.com' <Roya.Rokni@lewisbrisbois.com>; San Juan, Maria <Maria.SanJuan@lewisbrisbois.com>; Sirsy, Shady <Shady.Sirsy@lewisbrisbois.com>; 'Diana Escobedo' <diana@paulpaddalaw.com>; 'Cormier' <karen@paulpaddalaw.com>; Dube, Tiffany <Tiffany.Dube@lewisbrisbois.com>; DeSario, Kimberly <Kimberly.DeSario@lewisbrisbois.com>; Garth, Adam <Adam.Garth@lewisbrisbois.com>; 'psp@paulpaddalaw.com' <psp@paulpaddalaw.com>  
**Cc:** McBride, Angela <McBrideA@clarkcountycourts.us>; Israelitt, Megan <Dept30LC@clarkcountycourts.us>  
**Subject:** [EXT] RE: Estate of Rebecca Powell v. Valley Health Systems et al.; 2/9/22 HEARING RESET TO 2/18/22 CHAMBERS

Counsel,

Please be advised that, for the purpose of judicial economy, Defendant Valley Health System, LLC DBA Centennial Hills Hospital Medical Center's Motion for Attorneys' Fees Pursuant to N.R.C.P. 68, N.R.S. 17.117, 7.085, 18.010(2), and EDCR 7.60 and Defendants Conrado Concio, MD and Vishal Shah, MD's Motion for Attorneys' Fees and Costs, currently set for hearing on 2/9/22 at 9AM have **been RESET to be decided IN CHAMBERS on 2/18/22.**

This email shall serve as your notice of the same.

*Angela McBride*

Judicial Executive Assistant

To the Honorable Jerry A. Wiese II

[mcbridea@clarkcountycourts.us](mailto:mcbridea@clarkcountycourts.us)

**(702) 671-3633**

Department XXX

**From:** [Brown, Heidi](#)  
**To:** [dc30inbox@clarkcountycourts.us](mailto:dc30inbox@clarkcountycourts.us)  
**Cc:** [psp@paulpaddalaw.com](mailto:psp@paulpaddalaw.com); [tony@thevegslawyers.com](mailto:tony@thevegslawyers.com); [civil@paulpaddalaw.com](mailto:civil@paulpaddalaw.com); [shelbi@paulpaddalaw.com](mailto:shelbi@paulpaddalaw.com); [diana@paulpaddalaw.com](mailto:diana@paulpaddalaw.com); [sri@paulpaddalaw.com](mailto:sri@paulpaddalaw.com); [karen@paulpaddalaw.com](mailto:karen@paulpaddalaw.com); [San Juan, Maria](#); [Garth, Adam](#); [San Juan, Maria](#); [DeSario, Kimberly](#); [Dube, Tiffany](#); [Vogel, Brent](#); [jfoote@jhcottonlaw.com](mailto:jfoote@jhcottonlaw.com); [jpincombe@jhcottonlaw.com](mailto:jpincombe@jhcottonlaw.com); [jhcotton@jhcottonlaw.com](mailto:jhcotton@jhcottonlaw.com); [bshipley@jhcottonlaw.com](mailto:bshipley@jhcottonlaw.com)  
**Subject:** The Estate of Powell v. Centennial Hills - Case No. A-19-788787-C  
**Date:** Wednesday, January 26, 2022 12:36:17 PM  
**Attachments:** [image001.png](#)  
[Defendants' Judgment of Costs per NRS 18.020 18.005 18.110 17.117 and N.R.C.P. 68\(f\) as Against Plaintiffs.pdf](#)  
[Powell v Valley - CHH's Judgment for Costs.docx](#)

---

Dear Judge Weiss,

Attached please find the Defendants' Judgment of Costs per NRS 18.020, 18.005, 18.110, 17.117, and NRCP 68(f) as Against Plaintiff's for your review and consideration. Thank you.

**Heidi Brown**  
**Legal Secretary to**  
**Nausheen Peters**  
**Lawrence Balanovsky**  
[heidi.brown@lewisbrisbois.com](mailto:heidi.brown@lewisbrisbois.com)  
T: 702.693.1716 F: 702.893.3789  
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1 **JUDG**

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3 Nevada Bar No. 6858

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5 ADAM GARTH

6 Nevada Bar No. 15045

7 Adam.Garth@lewisbrisbois.com

8 LEWIS BRISBOIS BISGAARD & SMITH LLP

9 6385 S. Rainbow Boulevard, Suite 600

10 Las Vegas, Nevada 89118

11 Telephone: 702.893.3383

12 Facsimile: 702.893.3789

13 *Attorneys for Defendant Valley Health System,*

14 *LLC dba Centennial Hills Hospital Medical*

15 *Center*

16 DISTRICT COURT

17 CLARK COUNTY, NEVADA

18 ESTATE OF REBECCA POWELL, through  
19 BRIAN POWELL, as Special Administrator;  
20 DARCI CREECY, individually and as Heir;  
21 TARYN CREECY, individually and as an  
22 Heir; ISALIAH KHOSROF, individually and as  
23 an Heir; LLOYD CREECY, individually;

24 Plaintiffs,

25 vs.

26 VALLEY HEALTH SYSTEM, LLC (doing  
27 business as "Centennial Hills Hospital Medical  
28 Center"), a foreign limited liability company;  
UNIVERSAL HEALTH SERVICES, INC., a  
foreign corporation; DR. DIONICE S.  
JULIANO, M.D., an individual; DR.  
CONRADO C.D. CONCIO, M.D., an  
individual; DR. VISHAL S. SHAH, M.D., an  
individual; DOES 1-10; and ROES A-Z;

Defendants.

Case No. A-19-788787-C

Dept. No.: 30

**DEFENDANTS' JUDGMENT OF COSTS  
PER NRS 18.020, 18.005, 18.110, 17.117,  
and N.R.C.P. 68(f) AS AGAINST  
PLAINTIFFS**

Pursuant to the Order granting Defendant Valley Health System, LLC's motion for summary judgment and co-defendants' joinder thereto dated and entered on November 19, 2021,

IT IS HEREBY ORDERED, ADJUDGED AND DECREED:

That the Plaintiffs, take nothing, and that the action be dismissed on the merits.

1 Defendants Valley Health System, LLC shall be awarded their reasonable Costs pursuant to  
2 NRS 18.020, 18.005, 18.110, 17.117, and N.R.C.P. 68(f) in the amount of **\$42,492.03** in accordance  
3 with the Verified Memorandum of Costs attached hereto as **Exhibit A**. Valley Health Systems,  
4 LLC submitted a motion currently pending for additional costs and attorneys fees, the results of  
5 which may result in an additional Judgment for such costs and fees should it be granted in whole or  
6 part.

7 Defendants Conrado C.D. Concio, M.D. and Vishal S. Shah, M.D. shall separately be  
8 awarded their reasonable Costs pursuant to NRS 18.020, 18.005, 18.110, 17.117, and N.R.C.P. 68(f)  
9 in the amount of **\$9,149.76** in accordance with the Verified Memorandum of Costs attached hereto  
10 as **Exhibit B**. Conrado C.D. Concio, M.D. and Vishal S. Shah, M.D. will be submitting a motion  
11 for additional costs and attorneys fees, the results of which may result in an additional Judgment for  
12 such costs and fees should it be granted in whole or part.

13 DATED this 3<sup>rd</sup> day of December, 2021.

14  
15  
16 

---

DISTRICT COURT JUDGE

17 Respectfully Submitted By:  
18 LEWIS BRISBOIS BISGAARD & SMITH LLP

19  
20 By /s/ Adam Garth  
21 S. BRENT VOGEL  
22 Nevada Bar No. 6858  
23 ADAM GARTH  
24 Nevada Bar No. 15045  
25 6385 S. Rainbow Boulevard, Suite 600  
26 Las Vegas, Nevada 89118  
27 Tel. 702.893.3383  
28 *Attorneys for Attorneys for Defendant Valley  
Health System, LLC dba Centennial Hills Hospital  
Medical Center*

///

///

1 Agreed as to form and substance by:

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**Refused to sign**

*/s/ Brad Shipley*

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Srilata Shah, Esq.  
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Las Vegas, NV 89103  
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*Attorneys for Plaintiffs*

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[bshipleyr@jhcottonlaw.com](mailto:bshipleyr@jhcottonlaw.com)  
*Attorneys for Defendants Dionice S.  
Juliano, M.D., Conrado Concio,  
M.D And Vishal S. Shah, M.D.*

1 **CERTIFICATE OF SERVICE**

2 I hereby certify that on this 3<sup>rd</sup> day of December, 2021, a true and correct copy  
3 of **DEFENDANT VALLEY HEALTH SYSTEM LLC'S VERIFIED MEMORANDUM OF**  
4 **COSTS** was served by electronically filing with the Clerk of the Court using the Odyssey E-File &  
5 Serve system and serving all parties with an email-address on record, who have agreed to receive  
6 electronic service in this action.

7 Paul S. Padda, Esq.  
8 PAUL PADDALAW, PLLC  
9 4560 S. Decatur Blvd., Suite 300  
10 Las Vegas, NV 89103  
11 Tel: 702.366.1888  
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14 *Attorneys for Plaintiffs*

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[bshipleyr@jhcottonlaw.com](mailto:bshipleyr@jhcottonlaw.com)  
*Attorneys for Defendants Dionice S. Juliano,*  
*M.D., Conrado Concio, M.D And Vishal S.*  
*Shah, M.D.*

15  
16  
17 By /s/ Tiffany Dube  
18 An Employee of  
19 LEWIS BRISBOIS BISGAARD & SMITH LLP  
20  
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## Gonzales, Emma

---

**From:** Dube, Tiffany  
**Sent:** Friday, December 3, 2021 1:06 PM  
**To:** Gonzales, Emma  
**Subject:** FW: Powell v. Centennial Hills - Proposed Judgment

---

**From:** Paul Padda <psp@paulpaddalaw.com>  
**Sent:** Friday, December 3, 2021 9:15 AM  
**To:** Garth, Adam <Adam.Garth@lewisbrisbois.com>; Srilata Shah <sri@paulpaddalaw.com>; Brad Shipley <bshipley@jhcottonlaw.com>  
**Cc:** Vogel, Brent <Brent.Vogel@lewisbrisbois.com>; Sirsy, Shady <Shady.Sirsy@lewisbrisbois.com>; Dube, Tiffany <Tiffany.Dube@lewisbrisbois.com>; San Juan, Maria <Maria.SanJuan@lewisbrisbois.com>  
**Subject:** RE: Powell v. Centennial Hills - Proposed Judgment

You do not have our consent. Thanks.

**Paul S. Padda, Esq.**  
**PAUL PADDA LAW, PLLC**  
**Websites:** paulpaddalaw.com

**Nevada Office:**  
4560 South Decatur Blvd., Suite 300  
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---

**From:** Garth, Adam <[Adam.Garth@lewisbrisbois.com](mailto:Adam.Garth@lewisbrisbois.com)>

**Sent:** Friday, December 3, 2021 9:11 AM

**To:** Srilata Shah <[sri@paulpaddalaw.com](mailto:sri@paulpaddalaw.com)>; Brad Shipley <[bshipley@jhcottonlaw.com](mailto:bshipley@jhcottonlaw.com)>

**Cc:** Vogel, Brent <[Brent.Vogel@lewisbrisbois.com](mailto:Brent.Vogel@lewisbrisbois.com)>; Sirsy, Shady <[Shady.Sirsy@lewisbrisbois.com](mailto:Shady.Sirsy@lewisbrisbois.com)>; Dube, Tiffany <[Tiffany.Dube@lewisbrisbois.com](mailto:Tiffany.Dube@lewisbrisbois.com)>; San Juan, Maria <[Maria.SanJuan@lewisbrisbois.com](mailto:Maria.SanJuan@lewisbrisbois.com)>; Paul Padda <[psp@paulpaddalaw.com](mailto:psp@paulpaddalaw.com)>

**Subject:** Powell v. Centennial Hills - Proposed Judgment

**Importance:** High

Counsel,

Attached is a proposed judgment which we intend to submit to Judge Wiese for signature on Monday, December 6, 2021. We have also attached the respective memos of costs for your quick reference as well. This will not be the final amount of any judgment, only those statutory costs to which we are entitled based upon the memorandum of costs served by the respective defendants. Should our future motion for additional costs, fees and sanctions be granted, now scheduled to be heard on January 19, an additional judgment for amounts not covered hereunder will be filed at that time.

Please indicate whether we have your consent to use your e-signature on this judgment. If we do not receive an email regarding your position on the proposed judgment by 5:00 p.m. today, we will submit it for signature as indicated above, noting counsel's refusal to sign.

Adam Garth



**Adam Garth**

**Partner**

[Adam.Garth@lewisbrisbois.com](mailto:Adam.Garth@lewisbrisbois.com)

**T: 702.693.4335 F: 702.366.9563**

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**Sent:** Friday, December 3, 2021 9:13 AM  
**To:** Garth, Adam <[Adam.Garth@lewisbrisbois.com](mailto:Adam.Garth@lewisbrisbois.com)>; Srilata Shah <[sri@paulpaddalaw.com](mailto:sri@paulpaddalaw.com)>  
**Cc:** Vogel, Brent <[Brent.Vogel@lewisbrisbois.com](mailto:Brent.Vogel@lewisbrisbois.com)>; Sirsy, Shady <[Shady.Sirsy@lewisbrisbois.com](mailto:Shady.Sirsy@lewisbrisbois.com)>; Jody Foote <[jfoote@jhcottonlaw.com](mailto:jfoote@jhcottonlaw.com)>; Dube, Tiffany <[Tiffany.Dube@lewisbrisbois.com](mailto:Tiffany.Dube@lewisbrisbois.com)>; San Juan, Maria <[Maria.SanJuan@lewisbrisbois.com](mailto:Maria.SanJuan@lewisbrisbois.com)>; Paul Padda <[psp@paulpaddalaw.com](mailto:psp@paulpaddalaw.com)>  
**Subject:** RE: Powell v. Centennial Hills - Proposed Judgment

We agree as to content and form. Thank you for drafting. Please use my e-signature for the submission.

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John H. Cotton & Associates, Ltd.  
7900 W. Sahara ave. #200  
Las Vegas, NV 89117  
[bshipley@jhcottonlaw.com](mailto:bshipley@jhcottonlaw.com)  
702 832 5909

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**Cc:** Vogel, Brent <[Brent.Vogel@lewisbrisbois.com](mailto:Brent.Vogel@lewisbrisbois.com)>; Sirsy, Shady <[Shady.Sirsy@lewisbrisbois.com](mailto:Shady.Sirsy@lewisbrisbois.com)>; Dube, Tiffany <[Tiffany.Dube@lewisbrisbois.com](mailto:Tiffany.Dube@lewisbrisbois.com)>; San Juan, Maria <[Maria.SanJuan@lewisbrisbois.com](mailto:Maria.SanJuan@lewisbrisbois.com)>; Paul Padda <[psp@paulpaddalaw.com](mailto:psp@paulpaddalaw.com)>  
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Adam Garth



**Adam Garth**

**Partner**

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1 **JUDG**

2 S. BRENT VOGEL

3 Nevada Bar No. 6858

4 Brent.Vogel@lewisbrisbois.com

5 ADAM GARTH

6 Nevada Bar No. 15045

7 Adam.Garth@lewisbrisbois.com

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11 Telephone: 702.893.3383

12 Facsimile: 702.893.3789

13 *Attorneys for Defendant Valley Health System,*

14 *LLC dba Centennial Hills Hospital Medical*

15 *Center*

16 DISTRICT COURT

17 CLARK COUNTY, NEVADA

18 ESTATE OF REBECCA POWELL, through  
19 BRIAN POWELL, as Special Administrator;  
20 DARCI CREECY, individually and as Heir;  
21 TARYN CREECY, individually and as an  
22 Heir; ISALAH KHOSROF, individually and as  
23 an Heir; LLOYD CREECY, individually;

24 Plaintiffs,

25 vs.

26 VALLEY HEALTH SYSTEM, LLC (doing  
27 business as "Centennial Hills Hospital Medical  
28 Center"), a foreign limited liability company;  
UNIVERSAL HEALTH SERVICES, INC., a  
foreign corporation; DR. DIONICE S.  
JULIANO, M.D., an individual; DR.  
CONRADO C.D. CONCIO, M.D., an  
individual; DR. VISHAL S. SHAH, M.D., an  
individual; DOES 1-10; and ROES A-Z;

Defendants.

Case No. A-19-788787-C

Dept. No.: 30

**DEFENDANTS' JUDGMENT OF COSTS  
PER NRS 18.020, 18.005, 18.110, 17.117,  
and N.R.C.P. 68(f) AS AGAINST  
PLAINTIFFS**

Pursuant to the Order granting Defendant Valley Health System, LLC's motion for summary judgment and co-defendants' joinder thereto dated and entered on November 19, 2021,

IT IS HEREBY ORDERED, ADJUDGED AND DECREED:

That the Plaintiffs, take nothing, and that the action be dismissed on the merits.

1 Defendants Valley Health System, LLC shall be awarded their reasonable Costs pursuant to  
2 NRS 18.020, 18.005, 18.110, 17.117, and N.R.C.P. 68(f) in the amount of **\$42,492.03** in accordance  
3 with the Verified Memorandum of Costs attached hereto as **Exhibit A**. Valley Health Systems,  
4 LLC submitted a motion currently pending for additional costs and attorneys fees, the results of  
5 which may result in an additional Judgment for such costs and fees should it be granted in whole or  
6 part.

7 Defendants Conrado C.D. Concio, M.D. and Vishal S. Shah, M.D. shall separately be  
8 awarded their reasonable Costs pursuant to NRS 18.020, 18.005, 18.110, 17.117, and N.R.C.P. 68(f)  
9 in the amount of **\$9,149.76** in accordance with the Verified Memorandum of Costs attached hereto  
10 as **Exhibit B**. Conrado C.D. Concio, M.D. and Vishal S. Shah, M.D. will be submitting a motion  
11 for additional costs and attorneys fees, the results of which may result in an additional Judgment for  
12 such costs and fees should it be granted in whole or part.

13 DATED this 3<sup>rd</sup> day of December, 2021.

14  
15 \_\_\_\_\_  
16 DISTRICT COURT JUDGE

17 Respectfully Submitted By:  
18 LEWIS BRISBOIS BISGAARD & SMITH LLP

19  
20 By /s/ Adam Garth  
21 S. BRENT VOGEL  
22 Nevada Bar No. 6858  
23 ADAM GARTH  
24 Nevada Bar No. 15045  
25 6385 S. Rainbow Boulevard, Suite 600  
26 Las Vegas, Nevada 89118  
27 Tel. 702.893.3383  
28 *Attorneys for Attorneys for Defendant Valley  
Health System, LLC dba Centennial Hills Hospital  
Medical Center*

///

///

1 Agreed as to form and substance by:

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**Refused to sign**

*/s/ Brad Shipley*

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Srilata Shah, Esq.  
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*Attorneys for Defendants Dionice S.  
Juliano, M.D., Conrado Concio,  
M.D And Vishal S. Shah, M.D.*

1 **CERTIFICATE OF SERVICE**

2 I hereby certify that on this 3<sup>rd</sup> day of December, 2021, a true and correct copy  
3 of **DEFENDANT VALLEY HEALTH SYSTEM LLC'S VERIFIED MEMORANDUM OF**  
4 **COSTS** was served by electronically filing with the Clerk of the Court using the Odyssey E-File &  
5 Serve system and serving all parties with an email-address on record, who have agreed to receive  
6 electronic service in this action.

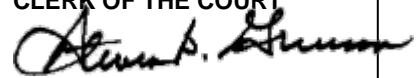
7 Paul S. Padda, Esq.  
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[bshipleyr@jhcottonlaw.com](mailto:bshipleyr@jhcottonlaw.com)  
*Attorneys for Defendants Dionice S. Juliano,*  
*M.D., Conrado Concio, M.D And Vishal S.*  
*Shah, M.D.*

15  
16  
17 By /s/ Tiffany Dube  
18 An Employee of  
19 LEWIS BRISBOIS BISGAARD & SMITH LLP  
20  
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# EXHIBIT H





1 S. BRENT VOGEL  
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2 Brent.Vogel@lewisbrisbois.com  
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Adam.Garth@lewisbrisbois.com  
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Telephone: 702.893.3383  
6 Facsimile: 702.893.3789  
*Attorneys for Defendant Valley Health System,  
7 LLC dba Centennial Hills Hospital Medical  
Center*

8  
9 DISTRICT COURT

10 CLARK COUNTY, NEVADA  
11

12 ESTATE OF REBECCA POWELL, through  
BRIAN POWELL, as Special Administrator;  
13 DARCI CREECY, individually and as Heir;  
TARYN CREECY, individually and as an  
14 Heir; ISALAH KHOSROF, individually and as  
an Heir; LLOYD CREECY, individually,

15 Plaintiffs,

16 vs.

17 VALLEY HEALTH SYSTEM, LLC (doing  
business as "Centennial Hills Hospital Medical  
18 Center"), a foreign limited liability company;  
UNIVERSAL HEALTH SERVICES, INC., a  
19 foreign corporation; DR. DIONICE S.  
JULIANO, M.D., an individual; DR.  
20 CONRADO C.D. CONCIO, M.D., an  
individual; DR. VISHAL S. SHAH, M.D., an  
21 individual; DOES 1-10; and ROES A-Z;,  
22

23 Defendants.

Case No. A-19-788787-C

Dept. No.: 30

**NOTICE OF ENTRY OF ORDER**

24 PLEASE TAKE NOTICE that the Order Regarding Plaintiffs' Motion to Extend Time to  
25 Respond to Defendants' Valley Health Systems, Dr. Dionice S. Juliano, Dr. Conrado Concio, and  
26 Dr. Fishal S. Shah's Memorandum of Costs was entered on January 24, 2022, a true and correct  
27 copy of which is attached hereto.  
28

1 DATED this 25<sup>th</sup> day of January, 2022

2  
3 LEWIS BRISBOIS BISGAARD & SMITH LLP

4  
5 By /s/ Adam Garth

6 S. BRENT VOGEL

7 Nevada Bar No. 6858

8 ADAM GARTH

9 Nevada Bar No. 15045

10 6385 S. Rainbow Boulevard, Suite 600

11 Las Vegas, Nevada 89118

12 Tel. 702.893.3383

13 *Attorneys for Attorneys for Defendant Valley*

14 *Health System, LLC dba Centennial Hills Hospital*

15 *Medical Center*

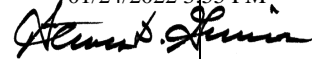
1 **CERTIFICATE OF SERVICE**

2 I hereby certify that on this 25<sup>th</sup> day of January, 2022, a true and correct copy of **NOTICE OF**  
3 **ENTRY OF ORDER** was served by electronically filing with the Clerk of the Court using the  
4 Odyssey E-File & Serve system and serving all parties with an email-address on record, who have  
5 agreed to receive electronic service in this action.

6 Paul S. Padda, Esq.  
7 PAUL PADDALAW, PLLC  
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13 *Attorneys for Plaintiffs*

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*Attorneys for Defendants Dionice S. Juliano,*  
*M.D., Conrado Concio, M.D And Vishal S.*  
*Shah, M.D.*

14  
15  
16 By /s/ Heidi Brown  
17 an Employee of  
18 LEWIS BRISBOIS BISGAARD & SMITH LLP  
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CLERK OF THE COURT

**DISTRICT COURT  
CLARK COUNTY, NEVADA  
-oOo-**

ESTATE OF REBECCA POWELL, )  
Through BRIAN POWELL, as Special )  
Administrator; DARCI CREECY, )  
Individually and as an Heir; TARYN )  
CREECY, individually and as an Heir; )  
ISAIAH KHOSROF, individually and as )  
An Heir; LLOYD CREECY, individually, )

Plaintiffs, )

vs. )

VALLEY HEALTH SYSTEM, LLC )  
(doing business as "Centennial Hills )  
Hospital Medical Center"), a Foreign )  
Limited Liability Company; )  
UNIVERSAL HEALTH SERVICES, )  
INC., a Foreign Corporation; DR. )  
DIONICE S. JULIANO, M.D., an )  
Individual; DR. CONRADO C.D. )  
CONCIO, M.D., an individual; DR. )  
VISHAL S. SHAW, M.D., an individual; )  
DOES 1-10; and ROES A-Z; )

Defendants. )

CASE NO.: A-19-788787-C  
DEPT. NO.: XXX

**ORDER RE: PLAINTIFFS'  
MOTION TO EXTEND TIME  
TO RESPOND TO DEFENDANTS'  
VALLEY HEALTH SYSTEMS,  
DR. DIONICE S. JULIANO,  
DR. CONRADO CONCIO, AND  
DR. FISHAL S. SHAH'S  
MEMORANDA OF COSTS**

**INTRODUCTION**

The above-referenced matter is scheduled for a hearing on January 26, 2022, with regard to the Plaintiffs' Motion to Extend Time to Respond to Defendants' Valley Health Systems, Dr. Dionice S. Juliano, Dr. Conrado Concio, and Dr. Fishal S. Shah's Memoranda of Costs. Pursuant to the Administrative Orders, this matter may be decided with or without oral argument. This Court has determined that it would be appropriate to decide this matter on the pleadings, and consequently, this Order issues.

**FACTUAL AND PROCEDURAL HISTORY**

On 11/19/21, the Court entered an Order Vacating Prior Order Denying Defendant Valley Health System, LLC DBA Centennial Hills Hospital Medical Center's Motion for Summary Judgment and Granting Said Defendant's Motion for Summary

Judgment Per Writ of Mandamus of Nevada Supreme Court. A Notice of Entry of Order was entered that same day. On 11/22/21, Defendant Valley Health Systems filed a Motion for Attorneys Fee and a Verified Memorandum of Costs. Defendants Conrado Concio, MD and Vishal Shah, MD filed a Verified Memorandum of Costs and Disbursements on 11/23/21, and a Motion for Attorney's Fees and Costs on 12/10/21.

On 12/3/21, Plaintiffs filed the present Motion to Extend Time to Respond to Defendants' Valley Health Systems, Dr. Dionice S. Juliano, Dr. Conrado Concio, and Dr. Vishal Shah's Memorandums of Costs. Plaintiffs received an Order Shortening Time on 12/10/21. The Court notes that as of the date that the Court is preparing this Order, Plaintiffs have still not filed a Motion to Retax.

### **SUMMARY OF LEGAL AND FACTUAL ARGUMENTS**

Pursuant to NRCP 6(b)(1)(B)(ii) and EDCR 2.35(a), Plaintiffs request additional time to respond to the Defendants' Memorandums of Costs. Plaintiffs' counsel states that it received Defendants' Memorandums on 11/22/21 and 11/23/21, but the office was closed and consequently Plaintiffs were unable to timely respond. Further, Plaintiffs' counsel states they contacted Defendants' counsel to request an extension, but Defendants' counsel declined. Given the Thanksgiving holiday, Plaintiffs argue that good cause exists to extend the deadline for their responsive briefing. Finally, Plaintiffs contend that they meet the four requirements for a determination of excusable neglect, as set forth in the case of *Moseley v. Eighth Judicial District Court*, 124 Nev. 654, 668 n.66 (2008), and that Defendants will not suffer significant prejudice as an extended deadline will be slight and no additional costs will accrue.

Defendant Valley Health System, LLC, filed an Opposition and Countermotion on 12/20/21. Defendant Valley Health System, LLC DBA Centennial Hills Hospital Medical Center (CHH) argues that Plaintiffs' requested relief falsely relies on NRCP 6(b)(1)(B)(ii), to request additional time to respond to the Memorandums of Costs. Summary judgment in favor of Defendants entitles Defendants to an award of attorneys' fees pursuant to NRCP 68. However, Plaintiff's Motion to Extend Time to Retax is predicated on a memorandums of costs, which are subject to NRS 17.117, NRS 18.005, NRS 18.020, and NRS 18.110, not the NRCP.

Further, CHH timely served its Memorandum of Costs on 11/22/21, within five days of the Notice of Entry of Order on 11/19/21, as required by NRS 18.110(1).

1 Cotemporaneous with the filing of CHH's memorandum of costs, CHH separately  
2 moved for attorneys' fees pursuant to N.R.C.P. 68, N.R.S. §§ 17.117, 7.085, 18.010(2),  
3 and EDCR 7.60, on 11/22/21. Pursuant to EDCR 2.20(e), Plaintiffs had until 12/6/21 to  
4 oppose CHH's Motion for Fees. Plaintiffs did nothing to retax costs within the 3 days  
5 provided by NRS 18.110(4). Rather, Plaintiffs failed to act until 12/3/21 at which time,  
6 they requested an extension of time to oppose CHH's separate motion for attorneys'  
7 fees pursuant to N.R.C.P. 68, N.R.S. §§ 17.117, 7.085, 18.010(2), and EDCR 7.60. CHH  
8 provided the Court with an email chain as an exhibit, which evidences CHH's  
9 agreement to extend a professional courtesy to oppose the one opposable document-  
10 the Motion for Attorney's Fees. CHH excluded any implication that Plaintiffs could  
11 attempt to retax costs, a wholly separate statutory device. CHH states this is another  
12 example of Plaintiffs counsel's failure to follow the law and statutory deadlines.

13 NRS 18.110(1) requires that a party in whose favor judgment is rendered, and  
14 who claims costs, must file with the clerk, and serve a copy upon the adverse party,  
15 within 5 days after the entry of judgment, a verified memorandum of costs. See NRS  
16 18.110(1). Once notice of entry was served, Plaintiffs were on notice that the  
17 memorandum of costs was coming, since they knowingly rejected CHH's Rule 68 Offer  
18 of Judgment for a waiver of costs. While Plaintiffs normally would have had only until  
19 11/25/21 to retax costs, the Thanksgiving holiday extended their deadline. Even  
20 assuming the deadline was extended until 11/29/21 (Monday); Plaintiffs offer no excuse  
21 for why they failed to act until 12/3/21 (Friday).

22 Moreover, CHH argues that NRS 18.110's lack of provision for judicial extension  
23 under subsection (4) clearly indicates that there is no judicial discretion when a party  
24 fails to timely retax costs. As expressed in *Moseley v. Eighth Judicial Dist. Court of*  
25 *Nev.*, 124 Nev. 654, 662, 188 P.3d 1136, 1142 (2008), cited by Plaintiffs in support of  
26 their motion, "NRCP 6(b)(2) applies to most acts required by the rules of civil  
27 procedure unless they are specifically excluded." The retaxing of costs is an act required  
28 by NRS 18.110(4), not the NRCP. As such, NRCP 6 does not apply and it is unavailing to  
Plaintiffs. NRS 18.110 must be strictly construed, and in so doing, the absence of any  
discretion as it pertains to NRS 18.110(4) versus the specific discretion granted  
pursuant to NRS 18.110(1) requires that Plaintiffs' motion be summarily denied. There  
is no statutory allowance for any judicial discretion with respect to retaxing costs.

1 Pursuant to *Moseley*, Plaintiffs were required to demonstrate (1) good faith, (2)  
2 they exercised due diligence, (3) had a reasonable basis for not complying within the  
3 time allotted, and (4) the absence of prejudice to CHH. They failed in all four respects,  
4 especially the key factor that *Moseley* stated the courts must look to before finding  
5 excusable neglect, namely the reasonable basis for noncompliance. Similarly, EDCR  
6 2.35 is unavailing, as it relates to discovery issues.

7 Finally, CHH argues that it is entitled to attorneys' fees and costs under EDCR  
8 7.60(b)(1) and NRS 18.010(b) because Plaintiffs' Motion is frivolous and brought  
9 without any statutory or case law authority.

10 Defendants Concio and Shah filed an Opposition on 12/21/21. They oppose  
11 Plaintiffs' Motion on essentially the same grounds as CHH. These Defendants note that  
12 at the time of filing their Opposition, Plaintiffs still did not file a Motion to Retax.

13 Plaintiffs filed a Reply to the Valley Health Opposition, on 12/27/21. Plaintiffs  
14 argue that the Court does have discretion to allow Plaintiffs additional time to respond  
15 to Defendants' Memoranda of Costs. Plaintiffs argue that Defendants seek to take  
16 advantage of a deadline to prevent Plaintiffs from responding, despite AO-21-04  
17 (issued 6/4/21), which admonishes attorneys not to "press for unwarranted tactical  
18 deadlines..."

19 Plaintiffs argue that because the time limits in NRS 18.110(1) permit the Court to  
20 accept untimely memorandum of costs by a prevailing party, it would only be just that  
21 the same discretion apply to NRS 18.119(4). *Eberle v. State ex. Rel. Nell J. Redfield*  
22 *Trust*, 108 Nev. 587, 590, 836 P.2d 67, 69 (1992); *Valladares v. DMJ, Inc.*, 110 Nev.  
23 1291, 885 P.2d 589 (1994) (considering a party's "due diligence" or lack thereof in  
24 deciding whether to accept an untimely memorandum of costs). Further, Plaintiffs  
25 argue that the language in NRS 18.110(4) is permissive not mandatory. Subsection (4)  
26 provides:

27 Within 3 days after service of a copy of the memorandum, the adverse party  
28 **may** move the court, upon 2 days' notice, to retax and settle the costs, notice of  
which motion shall be filed and served on the prevailing party claiming costs.  
Upon hearing of the motion the court shall settle the costs

See NRS 18.110(4) (emphasis added).

Plaintiffs contend that the presence of the word "may" in subsection (4) of NRS  
18.110 substantially refutes Defendants' contention that there is no "judicial discretion"

1 in subsection (4). As a permissive mandate, the exercise of judicial discretion is  
2 appropriate and Plaintiffs should be allowed an extension to file their motion to retax  
3 and settle beyond the permissive period established in NRS § 18.110(4). There is no  
4 language in subsection (4) or any case law interpreting NRS §18.110(4), which  
5 indicates that subsection (4)'s "3 day after service" is as a de facto "statute of  
6 limitations" deadline, such that any filing beyond the 3 days would be an absolute  
7 jurisdictional bar. Such an interpretation leaves no leeway for motions for an extension  
8 of time, or to file a motion to retax and settle costs filed after the three days. Instead,  
9 NRS 18.110(4) uses "may."

10 The issue before the Court is not the absence or failure of Plaintiffs to file a  
11 motion to retax and settle costs. Instead, the issue is whether under the factual  
12 circumstances in which the memorandum of costs were served, may the Court consider  
13 (1) a motion for extension of permissive time frame set forth in subsection (4); and/or  
14 (2) a motion to retax and settle costs filed more than the time period suggested in NRS  
15 18.110(4), with a showing of excusable neglect.

16 Plaintiffs filed a Reply to the Opposition filed by Concio and Shah, on 12/27/21  
17 This Reply contains the same arguments as Plaintiffs' Reply to CHH. However, in this  
18 Reply, Plaintiffs argue that they are under no obligation to file a Motion to Retax or  
19 objection to the Defendants' Memorandums pending the Court's ruling on this Motion.

#### 20 **FINDINGS OF FACT AND CONCLUSIONS OF LAW**

21 NRS 18.110 provides the following:

##### 22 **NRS 18.110 Verified memorandum of costs: Filing and 23 service; witness' and clerk's fee; retaxing and settling costs.**

24 1. The party in whose favor judgment is rendered, and who claims  
25 costs, **must file** with the clerk, **and serve** a copy upon the adverse party,  
26 **within 5 days after the entry of judgment, or such further time**  
27 **as the court or judge may grant,** a memorandum of the items of the  
28 costs in the action or proceeding, which memorandum must be verified  
by the oath of the party, or the party's attorney or agent, or by the clerk of  
the party's attorney, stating that to the best of his or her knowledge and  
belief the items are correct, and that the costs have been necessarily  
incurred in the action or proceeding.

2. The party in whose favor judgment is rendered shall be entitled to  
recover the witness fees, although at the time the party may not actually  
have paid them. Issuance or service of subpoena shall not be necessary to  
entitle a prevailing party to tax, as costs, witness fees and mileage,  
provided that such witnesses be sworn and testify in the cause.



1           3. It shall not be necessary to embody in the memorandum the fees  
2 of the clerk, but the clerk shall add the same according to the fees of the  
3 clerk fixed by statute.

4           4. **Within 3 days after service of a copy of the**  
5 **memorandum, the adverse party may move the court, upon 2**  
6 **days' notice, to retax and settle the costs**, notice of which motion  
7 shall be filed and served on the prevailing party claiming costs. Upon the  
8 hearing of the motion the court or judge shall settle the costs.

9 NRS 18.110 (emphasis added).

10           The Court acknowledges that the plain language of NRS 18.110 does provide that  
11 if a party claims costs, the party “must file . . . and serve” a Memorandum of Costs,  
12 “within 5 days after the entry of judgment.” The statute does specifically give the Court  
13 discretion to extend the time, as the statute indicates, “or such further time as the court  
14 or judge may grant. . . .” With regard to a Motion to Retax Costs, NRS 18.110 indicates  
15 that “within 3 days after service of a copy of the memorandum, the adverse party ‘may’”  
16 move the Court to retax such costs. Although Plaintiffs argue that the permissive “may”  
17 language, means that the 3-day time period is somehow discretionary with the Court,  
18 this Court finds and concludes that the permissive “may” language in NRS 18.110(4),  
19 simply applies to the party’s ability to file a Motion to Retax “if they find such a motion  
20 necessary.” On the other hand, however, the Court acknowledges the argument that if  
21 the Legislature intended to allow the Court discretion to extend the time for filing the  
22 Memorandum of Costs, why would the Legislature not have intended to provide the  
23 same discretion to the Court as it relates to a Motion to Retax costs.

24           In *Valladares v. DMJ, Inc.*, 110 Nev. 1291, 885 P.2d 580 (1994), the Nevada  
25 Supreme Court held that the Court had discretion to extend the time for filing the  
26 memorandum of costs under NRS 18.110(1). The Court upheld the District Court’s  
27 decision not to allow a late amendment, due to a lack of diligence, when Valladares  
28 received a bill from his expert on 4/8/93, but did not file an amended memo of costs  
until 4/21/93, and did not file a motion to amend until 5/7/93. *Id.*, at 1294. Similarly,  
in *Eberle v. State ex rel. Nell J. Redfield Trust*, 108 Nev. 587, 836 P.2d 67 (1992), the  
Court held that the statutory period set forth in NRS 18.110(1) was not a jurisdictional  
requirement, and that the Court has discretion to reach the merits of the motion. Also,  
in *Gonzalez v. LVMPD*, 129 Nev. 1118 (Unpublished 2013), the Nevada Supreme Court  
confirmed that NRS 18.110 is not jurisdictional, and the Court specifically indicated

1 that “The plain language of NRS 18.110(1) grants the district court discretion to  
2 consider a memorandum of costs filed outside the statutory time frame.” *Id.*, at \*2.

3 Although the Court has specifically indicated that the District Courts have  
4 discretion as it relates to NRS 18.110(1), there are no Nevada cases specifically  
5 indicating that the Court has such discretion when dealing with NRS 18.110(4). In  
6 *Randono v. Turk*, 86 Nev. 123, 466 P.2d 218 (1970), the Supreme Court indicated that  
7 the trial court did not err when it denied a Motion to Retax, when it was not timely  
8 filed. The Court simply cited to the language of the statute, which reads, “The Motion  
9 to Retax must be filed ‘within 3 days after service of a copy of the memorandum . . .’”  
10 *Id.*, at 132, citing NRS 18.110(4).

11 The Nevada Court of Appeals issued an unpublished opinion in 2017, citing to  
12 *Sheehan & Sheehan v. Nelson Malley & Co.*, 121 Nev. 481, 117 P.3d 219 (2005), and  
13 stating that “In order to preserve an issue regarding costs, a party must file a motion to  
14 retax and settle the costs within three days of service of the memorandum of costs.”  
15 *Rosaschi v. Carter*, 133 Nev. 1068 (Unpublished 2017), referencing NRS 18.110(4).

16 Similarly, in *Terry v. Cruea*, 133 Nev. 1082 (Unpublished, 2017), the Nevada  
17 Supreme Court indicated, “by failing to file a motion to retax costs, Cruea waived any  
18 appellate review of that issue.” *Id.*, citing *Sheehan* at 493. The Court recognized that  
19 Cruea had filed an opposition to the untimely motion for attorney fees, which included  
20 a copy of the previously filed memorandum of costs, but it “fail[ed] to satisfy NRS  
21 18.110(4)’s requirement that a motion to retax costs be filed within 3 days of service of  
22 the memorandum.” *Id.*, at fn 2.

23 This Court finds and concludes that NRS 18.110 is not jurisdictional. Although  
24 neither the case law nor the statute itself indicates that the Court has discretion to allow  
25 a late filed Motion to Retax under NRS 18.110(4), this Court finds that if it has  
26 discretion to allow a late filed Memorandum of Costs, equity would require that the  
27 Court also have discretion to allow a late filed Motion to Retax Costs. Additionally,  
28 NRCP 6(b) provides authority for the Court to extend time if it finds excusable neglect.  
See NRCP 6(b)(1)(ii)(the exceptions contained in sub (2) do not preclude application of  
that rule to the instant case).

Both sides have cited to *Moseley v. Eighth Judicial Dist. Court, ex rel. County of Clark*, 124 Nev. 654, 188 P.3d 1136 (2008), for the factors which the Court is to

1 consider in determining whether excusable neglect has been established. In that case,  
2 the Supreme Court indicated the following:

3 a party seeking relief from NRCP 25(a)(1) under NRCP 6(b)(2) is required  
4 to demonstrate that (1) it acted in good faith, (2) it exercised due  
5 diligence, (3) there is a reasonable basis for not complying within the  
6 specified time, and (4) the nonmoving party will not suffer prejudice.

7 *Id.*, at 668.

8 In considering the Moseley factors, this Court finds that there is no evidence that  
9 the Plaintiff failed to act in good faith, and the Court finds that the non-moving party  
10 would probably suffer no prejudice, but the Court finds that Plaintiff failed to exercise  
11 due diligence, and there is really no reasonable basis for not complying within the  
12 specified time. Because of the Thanksgiving holiday, it is understandable that a Motion  
13 to Retax was not filed on the 25<sup>th</sup> or 26<sup>th</sup> (holidays), or the 27<sup>th</sup> or 28<sup>th</sup> (weekend), but  
14 there seems to be no good cause for not filing the Motion to Retax on Monday,  
15 November 29, or thereafter. The Memoranda of Costs were filed on November 22, and  
16 23, 2021. If we did not count Court Holidays or weekend days, the Motions to Retax  
17 would have been due on November 30, and December 1, 2021, respectively. Plaintiffs'  
18 counsel apparently did not even seek an extension from opposing counsel until  
19 December 3, 2021. This Court finds and concludes that the lack of diligence on the part  
20 of Plaintiffs, prevents this Court from granting the Plaintiffs' Motion to Extend time.  
21 The Court further notes that the Plaintiff still has not filed a Motion to Retax.

22 Defendants have sought fees, pursuant to EDCR 7.60(b)(1), based on the  
23 argument that Plaintiffs have filed a frivolous, unnecessary, or unwarranted Motion.  
24 The Court cannot so find, and consequently, no fees are appropriate.

## 25 **CONCLUSION/ORDER**

26 Based upon the foregoing, and good cause appearing,


27 **IT IS HEREBY ORDERED** that Plaintiffs' Motion to Extend Time to Respond  
28 to Defendants' Valley Health Systems, Dr. Dionice S. Juliano, Dr. Conrado Concio, and  
Dr. Fishal S. Shah's Memoranda of Costs, is hereby **DENIED**.

**IT IS FURTHER ORDERED** that Defendant, Valley Health's Countermotion  
for Costs and Fees Pursuant to EDCR 7.60 is also **DENIED**.

The Court requests that counsel for Defendant, Valley Health/CHH, prepare and  
process the Notice of Entry relating to this Order.

Because this matter has been decided on the pleadings, the hearing scheduled for 1/26/22 will be taken off calendar, and consequently, there is no need for any parties or attorneys to appear.

**Dated this 24th day of January, 2022**



**778 D93 C440 21D3**  
**Jerry A. Wiese**  
**District Court Judge**

1 **CSERV**

2  
3 DISTRICT COURT  
4 CLARK COUNTY, NEVADA

5  
6 Estate of Rebecca Powell,  
7 Plaintiff(s)

CASE NO: A-19-788787-C

8 vs.

DEPT. NO. Department 30

9 Valley Health System, LLC,  
10 Defendant(s)

11 **AUTOMATED CERTIFICATE OF SERVICE**

12  
13 This automated certificate of service was generated by the Eighth Judicial District  
14 Court. The foregoing 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:

15 Service Date: 1/24/2022

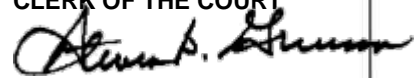
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**Plaintiffs' Opposition to  
Defendant Valley Health  
System LLC's Motion for  
Reconsideration of the  
Court's Denial of its  
Application for Fees and  
Costs**



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13 **DISTRICT COURT**  
14 **CLARK COUNTY, NEVADA**

15 ESTATE OF REBECCA POWELL, through  
16 Brian Powell as Special Administrator; DARCI  
17 CREECY, individually; TARYN CREECY,  
18 individually; ISAIAH KHOSROF,  
19 individually; LLOYD CREECY, individually;

20 Plaintiffs,

21 vs.

22 VALLEY HEALTH SYSTEM, LLC (doing  
23 business as "Centennial Hills Hospital Medical  
24 Center"), a foreign limited liability company;  
25 UNIVERSAL HEALTH SERVICES, INC., a  
26 foreign corporation; DR. DIONICE S.  
27 JULIANO, M.D., an individual; DR.  
28 CONRADO C.D. CONCIO, M.D., an  
individual; DR. VISHAL S. SHAH, M.D., an  
individual; DOES 1-10; ROES A-Z;

Defendants.

CASE NO. A-19-788787-C

DEPT. 30

**PLAINTIFFS' OPPOSITION TO  
DEFENDANT VALLEY HEALTH  
SYSTEM LLC'S MOTION FOR  
RECONSIDERATION OF THE  
COURT'S DENIAL OF ITS  
APPLICATION FOR FEES AND COSTS**

By Order issued February 15, 2022, the Court decided that "Defendant's [Valley Health Systems, Inc. or "VHS"] Motion for Fees and Costs is DENIED." Notice of that Order was

Estate of Rebecca Powell, et al. v. Valley Health System, LLC, et al.  
District Court Case No. A-19-788787-C, Dept. 30  
*Plaintiffs' Opposition to Defendant Valley Health System LLC's Motion For Reconsideration*  
PPL #201297-15-04



1 filed by Plaintiffs the next day on February 16, 2022. In response, Defendant VHS, citing Eighth  
2 Judicial Court Rule (“EDCR”) 2.24,<sup>1</sup> now seeks reconsideration of the Court’s denial of fees  
3 and costs. VHS’s motion must be denied as it fails to meet the exacting and narrow standard  
4 for reconsideration established under EDCR 2.24.<sup>2</sup>

5 The Nevada Supreme Court has noted, “[a] district court may reconsider a previously  
6 decided issue [only] if substantially different evidence is subsequently introduced or the decision  
7 is clearly erroneous.” Masonry & Tile Contractors Association of Southern Nevada v. Jolley,  
8 Urga & Wirth, Ltd., 113 Nev. 737, 741 (1997). Because VHS has not presented any new or  
9 substantially different evidence than what it had the opportunity to present when it filed its  
10 Verified Memorandum of Costs and separate Motion for Attorney’s Fees on November 22,  
11 2021, the Court should summarily deny the motion for reconsideration without addressing the  
12 merits of the motion. In fact, the motion for reconsideration is clearly a transparent attempt to  
13 bolster a potential appeal by inviting the Court to engage with the merits of VHS’s motion.  
14 Defendant VHS is presumably aware that the denial of a motion for reconsideration is not  
15 independently appealable. AA Primo Builders, LLC v. Washington, 126 Nev. 578, 589 (2010).  
16 But the denial of a motion for reconsideration, however, can become reviewable before the  
17 Nevada Supreme Court for abuse of discretion if the district court considers the merits of the  
18 motion. Id. Thus, recognizing the deficiencies in its Verified Memorandum of Costs and  
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25 <sup>1</sup> See Motion for Reconsideration, p. 11-12.

26 <sup>2</sup> “No motions once heard and disposed of may be renewed in the same cause, ***nor may the***  
27 ***same matters therein embraced be reheard,*** unless by leave of court granted upon motion  
therefor, after notice of such motion to the adverse parties. EDCR 2.24 (emphasis supplied).

1 Motion for Attorneys Fees filed on November 22, 2021, VHS seeks to fix its prior failure to  
2 provide the Court with evidence that the costs and fees were reasonable, necessary and actually  
3 incurred<sup>3</sup> by now presenting the Court with nearly 600 pages of documents, many of which were  
4 not previously presented to the Court.

5 The Court should summarily deny VHS's motion for reconsideration as the motion  
6 presents no substantially new facts or shows clear legal error that would warrant reconsideration.  
7 In support of this Opposition, Plaintiffs rely upon the memorandum of points and authorities  
8 below, the papers on file in this action<sup>4</sup> and any other arguments the Court may permit.  
9

## 10 MEMORANDUM OF POINTS AND AUTHORITIES

### 11 I.

#### 12 BACKGROUND AND PROCEDURAL HISTORY

13 The Nevada Supreme Court issued an Order on October 18, 2021 granting VHS's  
14 petition for a writ of mandamus challenging this Court's denial of a motion for summary  
15 judgment. Exhibit 1. The Supreme Court's Order did not award any fees or costs. Instead, the  
16 Order simply instructed "the district court to vacate its order denying petitioner's motion for  
17 summary judgment and enter summary judgment in favor of petitioners." Id.  
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23 <sup>3</sup> A party may not simply estimate costs. Without evidence to determine whether a cost was  
24 reasonable and necessary, a district court may not award costs. Cadle Company v. Woods &  
25 Erickson, LLP, 131 Nev. 114, 121 (2015) (*citing* Bobby Berosini, Ltd. v. PETA, 114 Nev.  
1348, 1353 (1998)).

26 <sup>4</sup> All of which are incorporated by reference and made part of this Opposition. Instead of  
27 attaching all of these documents, reference is made throughout this Opposition to the filing date  
28 of the documents which are part of the official Court record.

1 This Court entered an Order on November 19, 2021 consistent with the Supreme Court's  
2 instructions. Notice of the Order was filed by VHS that same day, on November 19, 2021.

3 On November 22, 2022, VHS filed a "Verified Memorandum of Costs." The  
4 memorandum, alleging \$42,492.03 in purported costs, was unsupported by any evidence other  
5 than a "Disbursement Diary." The diary was simply a computer printout of VHS's purported  
6 costs incurred in the case generated by its own law firm. Apart from the diary, no invoices from  
7 any experts or any other documentation evidencing the costs was attached to the Memorandum.  
8 Counsel for VHS submitted a declaration in which he stated that "to the best of my belief" the  
9 purported costs were "necessarily incurred and paid in this action." Since there were no invoices  
10 or other original documents attached supporting the "Verified Memorandum of Costs," VHS's  
11 counsel was only attesting to this own law firm's Disbursement Diary.

12 The same day, VHS filed a separate Motion for Attorney's Fees seeking an award of  
13 \$110,930.85. In that motion, VHS, despite acknowledging that Plaintiffs rejected the previously  
14 served Offer of Judgment well before the Nevada Supreme Court determined that the statute of  
15 limitations barred the prosecution of Plaintiffs' wrongful death case, claimed that the rejection  
16 was in fact in bad faith and grossly unreasonable. Apart from simply making this claim, no facts  
17 were provided to support this assertion and VHS's counsel's supporting declaration provided  
18 no facts corroborating the claim that Plaintiffs' rejection of the Offer of Judgment (which offered  
19 no money) was in bad faith or grossly unreasonable.

20 On December 3, 2021, Plaintiffs, by and through their counsel, moved to extend the time  
21 to respond to VHS's memorandum of costs. While awaiting a decision on that  
22 motion, Plaintiffs filed their opposition to VHS' motion for attorney's fees on December 16,  
23 2021 noting, among other things, that whether inquiry notice triggered the statute of limitations

24 Estate of Rebecca Powell, et al. v. Valley Health System, LLC, et al.

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1 was a legal question that the Nevada Supreme Court decided to answer. Accordingly, Plaintiffs  
2 (lay persons grieving the death of their mother) could not have possibly acted in bad faith or in  
3 a grossly unreasonable manner when the disposition of the case ultimately turned on a question  
4 of law.

5 On December 20, 2021, VHS opposed Plaintiffs' motion for additional time to respond  
6 to the memorandum of costs and asserted a countermotion for costs and fees as a sanction citing  
7 EDCR 7.60.

8 On January 24, 2022, the Court issued an Order denying Plaintiffs' December 3, 2021  
9 motion to extend the time to file a response to VHS memorandum of costs. The Court made no  
10 finding that the costs sought by VHS were unopposed. Rather, the Court simply determined  
11 Plaintiffs failed to act with diligence in timely filing a response. The Court also denied VHS'  
12 motion for sanctions brought under EDCR 7.60.

13 On February 15, 2022 (with Notice of Entry filed the next day), the Court issued an Order  
14 denying VHS's motion for attorney's fees of \$110,930.85 (roughly twice the fees incurred by  
15 co-Defendants) by finding, among other things, that "Plaintiffs' decision to reject the offer and  
16 proceed to trial was not grossly unreasonable or in bad faith." Exhibit 2. In rejecting VHS's  
17 motion for attorney's fees, the Court also found that VHS's counsel failed to provide the Court  
18 with proper documentation that would have allowed the Court to decide the reasonableness of  
19 fees sought. *Id.* To this point, the Court further noted "[a]lthough the Defendant [VHS] has  
20 offered to submit a billing ledger to the Court in camera, it would have been necessary for the  
21 Defendant to have submitted such ledger, and disclosed it to the Plaintiffs so that the  
22 reasonableness could have been addressed by all parties, and by the Court." *Id.* As for VHS'  
23 request for \$42,492.03 in purported costs, the Court, citing several Nevada Supreme Court  
24 *Estate of Rebecca Powell, et al. v. Valley Health System, LLC, et al.*  
25 District Court Case No. A-19-788787-C, Dept. 30  
26 Plaintiffs' Opposition to Defendant Valley Health System LLC's Motion For Reconsideration  
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28

1 authorities, also rejected that request upon finding that VHS' sole reliance on a "Disbursement  
2 Diary" from its own legal counsel was "insufficient to support the requested costs." For these  
3 reasons, the Court ordered that "Defendant's [VHS] Motion for Fees and Costs is DENIED." *Id.*

4 On February 23, 2022, VHS filed a motion for reconsideration of the Court's February  
5 15, 2022 decision denying fees and costs.

## 6 II.

### 7 ARGUMENT

#### 8 **A. THE STANDARD OF REVIEW APPLICABLE TO A MOTION FOR RECONSIDERATION**

9 This Court's EDCR 2.24 specifically provides that "no motions once heard and disposed  
10 of may be renewed in the same cause, *nor may the same matters therein embraced be reheard*,  
11 unless by leave of court granted upon motion therefor, after notice of such motion to the adverse  
12 parties." The Nevada Supreme Court has held that "[a] district court may reconsider a  
13 previously decided issue [only] if substantially different evidence is subsequently introduced or  
14 the decision is clearly erroneous." Masonry & Tile Contractors Association of Southern Nevada  
15 v. Jolley, Urga & Wirth, Ltd., 113 Nev. 737, 741 (1997); Moore v. City of Las Vegas, 92 Nev.  
16 402, 404 (1976) ("Only in very rare instances in which new issues of fact or law are raised  
17 supporting a ruling contrary to the ruling already reached should a motion for rehearing be  
18 granted"). A motion for reconsideration "should not be granted absent highly unusual  
19 circumstances" and "may not be used to raise arguments or present evidence for the first time  
20 when they could reasonably have been raised earlier in the litigation." United States v. Bundy,  
21 406 F.Supp.3d 932, 935 (D. Nev. 2018).

1 The denial of a motion for reconsideration is not independently appealable unless the  
2 district court considers the merits of the motion. See AA Primo Builders, LLC v. Washington,  
3 126 Nev. 578, 589 (2010); Arnold v. Kip, 123 Nev. 410 (2007) (the Supreme Court of Nevada  
4 may consider arguments asserted in a motion for reconsideration on appeal but only if the district  
5 court elected to entertain the reconsideration motion on its merits).

6  
7 The decision to deny costs or fees is reviewed under an abuse of discretion standard.  
8 Cadle Company v. Woods & Erickson, LLP, 131 Nev. 114, 121 (2015); Gunderson v. D.R.  
9 Horton, Inc., 130 Nev. 67, 80 (2014). “An abuse of discretion occurs only when ‘no reasonable  
10 judge could reach a similar conclusion under the same circumstances.’” JP Morgan Chase Bank  
11 National Association v. SFR Investments Pool, LLC, 136 Nev. 596, 602 (2020) (quoting Leavitt  
12 v. Siems, 130 Nev. 503, 509 (2014)).

13  
14 **B. VHS HAS FAILED TO DEMONSTRATE THAT THE COURT’S ORDER**  
15 **DENYING VHS COSTS WAS CLEARLY ERRONEOUS OR THAT THERE**  
16 **IS SUBSTANTIAL NEW EVIDENCE, WHICH WAS PREVIOUSLY**  
17 **UNAVAILABLE TO VHS, THAT SUPPORTS THE AWARD**

18 Nevada law gives a district court wide, but not unlimited, discretion to award costs to a  
19 prevailing party. Cadle Company v. Woods & Erickson, LLP, 131 Nev. 114, 120 (2015). “Costs  
20 awarded must be reasonable.” Id. Equally important, costs must be justified and properly  
21 documented with reliable evidence. Bobby Berosini, Ltd. v. PETA, 114 Nev. 1348, 1353  
22 (1998)). In Bobby Berosini, the Nevada Supreme Court found that “justifying documentation”  
23 that will support an award of costs “must mean something more than a memorandum of costs.”  
24 Id.

25 In seeking reconsideration, VHS now presents the Court with nearly 600 pages of  
26 documents, the most salient of which were never previously presented to the Court. But as the  
27

1 Court properly noted in its February 15, 2022 Order, VHS's sole reliance on a Disbursement  
2 Diary is exactly the type of evidence the Nevada Supreme Court has rejected to support a cost  
3 award. Bobby Berosini, Ltd. v. PETA, 114 Nev. At 1353. And to that end, it is just as notable  
4 that VHS submits a declaration from its counsel, Adam Garth, Esq., which is conspicuously  
5 silent in explaining why the nearly 600 pages of documents now being provided to the Court  
6 (including purported expert invoices) were previously withheld from the Court. It is  
7 indisputable that most of the evidence relied on by VHS for seeking to have this Court reconsider  
8 its decision on costs was never included with its Memorandum of Costs. Accordingly, VHS's  
9 claim that evidence attached to its motion for reconsideration "was originally submitted to this  
10 Court" in support of VHS's Memorandum of Costs is demonstrably false. *See* VHS' Motion  
11 for Reconsideration, p. 12 (line 13). The only thing that was attached to the Memorandum of  
12 Costs filed with the Court on November 22, 2021 by VHS was a Disbursement Diary and a  
13 collection of irrelevant emails. None of this constitutes the type of reliable evidence a district  
14 court may rely upon in awarding costs.  
15

16  
17 VHS's motion for reconsideration fails to cite a single authority showing that the Court's  
18 denial of costs was clearly erroneous. In fact, the motion does not even engage with the  
19 authorities cited on pages 7 through 9 of the Court's February 15, 2022 Order. *See* Exhibit 2.  
20 Nor is there any new and substantial evidence presented to the Court by VHS that was not  
21 otherwise available to VHS when it filed its Verified Memorandum of Costs. Plaintiffs should  
22 not be liable for VHS' negligence in failing to follow both the statutory and common law  
23 requirements for establishing entitlement to costs. The Court was thus correct in denying VHS  
24 costs in their entirety for lack of proper documentation and reliable evidence. Similarly, this  
25 motion for reconsideration should also be rejected and denied as VHS cannot meet the threshold  
26  
27

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burden of showing the Court's denial of costs was clearly erroneous or that substantial new evidence not otherwise available mandates reconsideration. Nor does VHS even come close to trying to meet its burden.

**C. VHS HAS FAILED TO DEMONSTRATE THAT THE COURT'S ORDER DENYING VHS ATTORNEY'S FEES WAS CLEARLY ERRONEOUS OR THAT THERE IS SUBSTANTIAL NEW EVIDENCE, WHICH WAS PREVIOUSLY UNAVAILABLE TO VHS, THAT SUPPORTS THE AWARD**

The Nevada Supreme Court reviews an award of attorney fees for an abuse of discretion. Logan v. Abe, 131 Nev. 260, 266 (2015). One of the factors a court must consider when awarding attorney fees is whether a party's decision to reject an offer of judgment and proceed to trial was grossly unreasonable or in bad faith. See Beattie v. Thomas, 99 Nev. 579, 588-89 (1983). Once a district court evaluates the *Beattie* factors, it then must determine whether the amount of fees being sought are justifiable and reasonable. See Brunzell v. Golden Gate National Bank, 85 Nev. 345, 349 (1969). Ultimately, the decision to award attorney's fees rests within the discretion of the trial court and the Nevada appellate courts will only review such a decision for an abuse of discretion. See Frazier v. Drake, 131 Nev. 632, 641-42 (Ct. App. 2015).

Here, the Court denied VHS's request for attorneys fees based upon its finding that (1) Plaintiffs did not act in bad faith or in a grossly unreasonable manner when they rejected VHS zero dollar Offer of Judgment and (2) the documentation in support of the request for attorney's fees was lacking. While the first finding by itself ends the inquiry into whether fees can be awarded, in this case the Court also found that "[a]lthough the Defendant [VHS] has offered to submit a billing ledger to the Court in camera, it would have been necessary for the Defendant to have submitted such ledger, and disclosed it to the Plaintiffs so that the reasonableness could have been addressed by all parties, and by the Court." See Exhibit 2, p. 11. Given that this



1 never happened, there was no reasonable basis for this Court to assess the reasonableness of fees  
2 being claimed by VHS.

3 In seeking reconsideration, VHS merely rehashes the same arguments presented in its  
4 original November 22, 2021 motion for fees. The Court's decision to deny fees, however, was  
5 not clearly erroneous because the disposition of this case turned on a legal question which the  
6 Nevada Supreme Court decided, well after the time Plaintiffs rejected the Offer of Judgment. It  
7 would be ridiculous to expect Plaintiffs, grieving the death of their mother, to anticipate the legal  
8 issue and foresee its resolution by the Nevada Supreme Court when they rejected the Offer of  
9 Judgment. VHS itself acknowledges this fact when it admits that "[m]edical malpractice cases  
10 are complex and require an in-depth understanding of both unique legal issues as well as the  
11 medical care and course that is at issue." VHS' Motion for Reconsideration, p. 21 (lines 1-2).  
12 Yet, despite this acknowledgment, VHS continues to argue, without properly addressing any of  
13 the legal authorities cited in the Court's February 15, 2022 Order, that Plaintiffs acted in bad  
14 faith and grossly unreasonable. This argument is tired and with no support whatsoever.

15 Finally, VHS completely fails to discuss, let alone even address, the deficiency of  
16 withholding a billing ledger when it made its fee request and instead asking the Court to rely  
17 only upon the declaration of its counsel. The self-serving declaration of Adam Garth, Esq. was  
18 insufficient evidence for this Court to award fees, although the Court's analysis properly ended  
19 once it concluded the rejection of the Offer of Judgment was not made in bad faith or was grossly  
20 unreasonable.

21 The motion for reconsideration should be rejected and denied as VHS cannot meet the  
22 threshold burden of showing the Court's denial of attorney fees was clearly erroneous or that  
23 substantial new evidence not otherwise available mandates reconsideration. In fact, the opposite  
24

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1 is true, as noted by the Court in its Order, VHS, by and through its counsel, made the voluntary  
2 and deliberate choice to withhold documentation from the Court that would have potentially  
3 supported its fee request. That was a choice VHS made and a risk it assumed. Once again,  
4 Plaintiffs should not be monetarily liable for VHS's negligence.

5  
6 **III.**

7 **CONCLUSION**

8 The Court should reject VHS's motion for reconsideration. The motion is merely an  
9 attempt to bolster an appeal that would otherwise be dead on arrival. The Court should decline  
10 to entertain the merits of VHS's motion.

11  
12 PAUL PADDA LAW, PLLC

13 /s/ Paul S. Padda

14 /s/ Srilata R. Shah

15 Paul S. Padda, Esq.

16 Nevada Bar No. 10417

17 Srilata R. Shah, Esq.

18 Nevada Bar No. 6820

19 4560 South Decatur Boulevard, Suite 300

20 Las Vegas, Nevada 89103

21 *Attorneys for Plaintiffs*

22 Dated: March 9, 2022

**CERTIFICATE OF SERVICE**

Pursuant to Rule 5(b) of the Nevada Rules of Civil Procedure, I certify that I am an employee of Paul Padda Law, PLLC and that on this 9th day of March 2022, I served a true and correct copy of the above and foregoing document on all parties/counsel of record in the above entitled matter through hand service and/or efileNV eservice.

/s/ Karen Cormier

An Employee of Paul Padda Law, PLLC

Estate of Rebecca Powell, et al. v. Valley Health System, LLC, et al.

District Court Case No. A-19-788787-C, Dept. 30

*Plaintiffs' Opposition to Defendant Valley Health System LLC's Motion For Reconsideration*

PPL #201297-15-04

**EXHIBIT 1**

**EXHIBIT 1**

IN THE SUPREME COURT OF THE STATE OF NEVADA

VALLEY HEALTH SYSTEM, LLC,  
D/B/A CENTENNIAL HILLS HOSPITAL  
MEDICAL CENTER, A FOREIGN  
LIMITED LIABILITY COMPANY; DR.  
DIONICE S. JULIANO, M.D., AN  
INDIVIDUAL; DR. CONRADO C.D.  
CONCIO, M.D., AN INDIVIDUAL; AND  
DR. VISHAL S. SHAH, M.D., AN  
INDIVIDUAL,

Petitioners,

vs.

THE EIGHTH JUDICIAL DISTRICT  
COURT OF THE STATE OF NEVADA,  
IN AND FOR THE COUNTY OF  
CLARK; AND THE HONORABLE  
JERRY A. WIESE, DISTRICT JUDGE,  
Respondents,

and

ESTATE OF REBECCA POWELL  
THROUGH BRIAN POWELL, AS  
SPECIAL ADMINISTRATOR; DARCI  
CREECY, INDIVIDUALLY AND AS  
HEIR; TARYN CREECY,  
INDIVIDUALLY AND AS AN HEIR;  
ISAIAH KHOSROF, INDIVIDUALLY  
AND AS AN HEIR; LLOYD CREECY,  
INDIVIDUALLY,

Real Parties in Interest.

No. 82250

FILED

OCT 18 2021

ELIZABETH A. BROWN  
CLERK OF SUPREME COURT  
BY   
DEPUTY CLERK

*ORDER GRANTING PETITION*

This is a petition for a writ of mandamus challenging a district court order denying a motion for summary judgment in a professional negligence matter on statute of limitations grounds.

Reviewing the summary judgment de novo, *Wood v. Safeway, Inc.*, 121 Nev. 724, 729, 121 P.3d 1026, 1029 (2005), we elect to entertain the petition and grant the requested relief as we conclude the district court manifestly abused its discretion when it denied summary judgment. *All Star Bail Bonds, Inc. v. Eighth Judicial Dist. Court*, 130 Nev. 419, 422, 326 P.3d 1107, 1109 (2014) (“A writ of mandamus is available to compel the performance of an act that the law requires or to control a manifest abuse of discretion.” (internal quotation and citation omitted)); *Ash Springs Dev. Corp. v. O'Donnell*, 95 Nev. 846, 847, 603 P.2d 698, 699 (1979) (“Where an action is barred by the statute of limitations no issue of material fact exists and mandamus is a proper remedy to compel entry of summary judgment.”). While we generally disfavor petitions for mandamus relief challenging a district court’s summary judgment denial, *State ex rel. Dep’t of Transp. v. Thompson*, 99 Nev. 358, 361-62, 662 P.2d 1338, 1340 (1983), we nonetheless may consider such petitions “where no disputed factual issues exist and, pursuant to clear authority under a statute or rule, the district court [was] obligated to dismiss [the] action.” *Smith v. Eighth Judicial Dist. Court*, 113 Nev. 1343, 1345, 950 P.2d 280, 281 (1997).

Petitioners argue that undisputed evidence demonstrates the real parties in interest were on inquiry notice of their professional negligence, wrongful death, and negligent infliction of emotional distress claims by June 11, 2017, at the latest.<sup>1</sup> Thus, petitioners contend that the

---

<sup>1</sup>Petitioner Valley Health System filed the instant petition. We permitted Drs. Dionice Juliano, M.D., Conrado Concio, M.D., and Vishal Shah, M.D., to join the petition. However, the district court granted summary judgment in favor of Dr. Juliano. Thus, Dr. Juliano is not a proper

real parties in interest's February 4, 2019, complaint was time-barred under NRS 41A.097(2) (providing that plaintiffs must bring an action for injury or death based on the negligence of a health care provider within three years of the date of injury and within one year of discovering the injury, whichever occurs first).<sup>2</sup> We agree.

The term injury in NRS 41A.097 means "legal injury." *Massey v. Litton*, 99 Nev. 723, 726, 669 P.2d 248, 251 (1983). A plaintiff "discovers his legal injury when he knows or, through the use of reasonable diligence, should have known of facts that would put a reasonable person on inquiry notice of his cause of action." *Id.* at 728, 669 P.2d at 252. A plaintiff "is put on 'inquiry notice' when he or she should have known of facts that 'would lead an ordinarily prudent person to investigate the matter further.'" *Winn v. Sunrise Hosp. & Med. Ctr.*, 128 Nev. 246, 252, 277 P.3d 458, 462 (2012) (quoting *Inquiry Notice*, *Black's Law Dictionary* (9th ed. 2009)). While the accrual date for NRS 41A.097(2)'s one-year period is generally a question for the trier of fact, the district court may decide the accrual date as a matter of law when the evidence is irrefutable. *Winn*, 128 Nev. at 251, 277 P.3d at 462.

Here, irrefutable evidence demonstrates that the real parties in interest were on inquiry notice by June 11, 2017 at the latest, when real

---

party to the instant petition and we direct the clerk of this court to remove his name from the case caption.

<sup>2</sup>Petitioners argue, and the real parties in interest do not contest, that the at-issue claims all sound in professional negligence and are thus subject to the limitation period under NRS 41A.097(2). *See Szyborski v. Spring Mountain Treatment Ctr.*, 133 Nev. 638, 642, 403 P.3d 1280, 1284 (2017) ("Allegations of breach of duty involving medical judgment, diagnosis, or treatment indicate that a claim is for medical malpractice.").

party in interest Brian Powell, special administrator for the estate, filed a complaint with the State Board of Nursing. There, Brian alleged that the decedent, Rebecca Powell, “went into respiratory distress” and her health care providers did not appropriately monitor her, abandoning her care and causing her death. Thus, Brian’s own allegations in this Board complaint demonstrate that he had enough information to allege a prima facie claim for professional negligence—that in treating Rebecca, her health care providers failed “to use the reasonable care, skill or knowledge ordinarily used under similar circumstances by similarly trained and experienced providers of health care.” NRS 41A.015 (defining professional negligence); *Winn*, 128 Nev. at 252-53; 277 P.3d at 462 (explaining that a “plaintiff’s general belief that someone’s negligence may have caused his or her injury” triggers inquiry notice).<sup>3</sup> That the real parties in interest received Rebecca’s death certificate 17 days later, erroneously listing her cause of death as suicide, does not change this conclusion.<sup>4</sup> Thus, the real parties in interest

---

<sup>3</sup>The evidence shows that Brian was likely on inquiry notice even earlier. For example, real parties in interest had observed in real time, following a short period of recovery, the rapid deterioration of Powell’s health while in petitioners’ care. Additionally, Brian had filed a complaint with the Nevada Department of Health and Human Services (NDHHS) on or before May 23, 2017. Similar to the Nursing Board complaint, this complaint alleged facts, such as the petitioners’ failure to upgrade care, sterilize sutures properly, and monitor Powell, that suggest he already believed, and knew of facts to support his belief, that negligent treatment caused Powell’s death by the time he made these complaints to NDHHS and the Nursing Board.

<sup>4</sup>The real parties in interest do not adequately address why tolling should apply under NRS 41A.097(3) (providing that the limitation period for a professional negligence claim “is tolled for any period during which the provider of health care has concealed any act, error or omission upon which the action is based”). Even if they did, such an argument would be



had until June 11, 2018, at the latest, to file their professional negligence claim. Therefore, their February 4, 2019 complaint was untimely.

Given that uncontroverted evidence demonstrates that the petitioners are entitled to judgment as a matter of law because the complaint is time-barred under NRS 41A.097(2), *see* NRCP 56(a); *Wood*, 121 Nev. at 729, 121 P.3d at 1029 (recognizing that courts must grant summary judgment when the pleadings and all other evidence on file, viewed in a light most favorable to the nonmoving party, “demonstrate that no genuine issue as to any material fact [remains] and that the moving party is entitled to a judgment as a matter of law” (internal quotations omitted)), we hereby

ORDER the petition GRANTED AND DIRECT THE CLERK OF THIS COURT TO ISSUE A WRIT OF MANDAMUS instructing the district court to vacate its order denying petitioners’ motion for summary judgment and enter summary judgment in favor of petitioners.

  
\_\_\_\_\_, J.  
Cadish

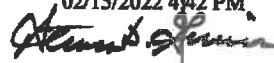
  
\_\_\_\_\_, J.  
Pickering

  
\_\_\_\_\_, J.  
Herndon

unavailing, as the medical records provided were sufficient for their expert witness to conclude that petitioners were negligent in Powell’s care. *See Winn*, 128 Nev. at 255, 277 P.3d at 464 (holding that tolling under NRS 41A.097(3) is only appropriate where the intentionally concealed medical records were “material” to the professional negligence claims). Finally, we have not extended the doctrine of equitable tolling to NRS 41A.097(2), and the real parties in interest do not adequately address whether such an application is appropriate under these facts. *See Edwards v. Emperor’s Garden Rest.*, 122 Nev. 317, 330 n.38, 130 P.3d 1280, 1288 n.38 (2006) (refusing to consider arguments that a party did not cogently argue or support with relevant authority).

# EXHIBIT 2

# EXHIBIT 2

  
CLERK OF THE COURT**DISTRICT COURT  
CLARK COUNTY, NEVADA****-oOo-**

ESTATE OF REBECCA POWELL, through )  
 BRIAN POWELL, as Special Administrator; )  
 DARCI CREECY, individually and as an Heir; )  
 TARYN CREECY, individually and as an Heir; )  
 ISAIAH KHOSROF, individually and as an )  
 Heir; LLOYD CREECY, individually, )

CASE NO.: A-19-788787-C  
 DEPT. NO.: XXX

Plaintiffs,

vs.

VALLEY HEALTH SYSTEM, LLC (doing )  
 Business as "Centennial Hills Hospital )  
 Medical Center"), a foreign limited liability )  
 Company; UNIVERSAL HEALTH SERVICES, )  
 INC., a foreign corporation; DR. DIONICE )  
 S. JULIANO, M.D., an individual; DR. )  
 CONRADO C.D. CONCIO, M.D., an individual; )  
 DR. VISHAL S. SHAH, M.D., an individual; )  
 DOES 1-10; and ROES A-Z, )

**ORDER RE: VALLEY  
 HEALTH SYSTEM'S  
 MOTION FOR FEES  
 AND COUNTERMOTION  
 FOR FEES AND COSTS**

Defendants.

**INTRODUCTION**

The above-referenced matter is scheduled for a hearing on 2/18/22, with regard to Defendant, Valley Health System (Centennial Hospital's) Motion for Attorneys' Fees and Countermotion for Fees and Costs. Pursuant to the Administrative Orders of the Court, as well as EDCR 2.23, these matters may be decided with or without oral argument. This Court has determined that it would be appropriate to decide these matters on the pleadings, and consequently, this Order issues.

**FACTUAL AND PROCEDURAL HISTORY**

On May 3, 2017, Rebecca Powell ("Plaintiff") was taken to Centennial Hills Hospital, a hospital owned and operated by Valley Health System, LLC ("Defendant") by EMS services after she was discovered with labored breathing and vomit on her face. Plaintiff remained in Defendant's care for a week, and her condition improved.

1 However, on May 10, 2017, her condition began to deteriorate and on May 11, 2017, she  
2 suffered an acute respiratory failure, resulting in her death.

3 Plaintiffs brought suit on February 4, 2019 alleging negligence/medical  
4 malpractice, wrongful death pursuant to NRS 41.085, and negligent infliction of  
5 emotional distress. Defendants filed Motions to Dismiss and for Summary Judgment,  
6 which this Court denied. After a recent remand from the Nevada Supreme Court, on  
7 11/19/21, the Court entered an Order Vacating Prior Order Denying Defendant Valley  
8 Health System, LLC DBA Centennial Hills Hospital Medical Center's Motion for  
9 Summary Judgment and Granting Said Defendant's Motion for Summary Judgment  
10 Per Mandamus of Nevada Supreme Court. A Notice of Entry of Order was entered that  
11 same day. On 11/22/21, Defendant Valley Health Systems filed a Motion for Attorneys  
12 Fee and Verified Memorandum of Costs. On 12/3/21, Plaintiffs filed a Motion to  
13 Extend Time to Respond to Defendants' Valley Health Systems, Dr. Dionice S. Juliano,  
14 Dr. Conrado Concio, and Dr. Vishal Shah's Memorandums of Costs. Plaintiffs received  
15 an Order Shortening Time on 12/10/21. Following briefing, the Court entered an Order  
16 denying Plaintiffs' Motion to Extend Time to Respond, because of a lack of diligence on  
17 part of the Plaintiffs. On 12/20/21, Valley filed an Opposition to Plaintiff's Motion to  
18 Extend Time to Retax Costs, and Countermotion for Fees and Costs.

### 19 **SUMMARY OF LEGAL AND FACTUAL ARGUMENTS**

20 Defendant Valley Health System, LLC d/b/a Centennial Hills Hospital Medical  
21 Center (CHH) seeks attorneys' fees pursuant to NRCP 68(f) and NRS 17.117(10). CHH  
22 argues that it is entitled to an award of attorneys' fees because Plaintiffs rejected CHH's  
23 Offer of Judgment and then failed to obtain a more favorable judgment. See *Albios v.*  
24 *Horizon Cmtys., Inc.*, 122 Nev. 409, 417, 132 P.3d 1022 (2006); *Logan v. Abe*, 131 Nev.  
25 260, 268, 350 P.3d 1139 (2015).

26 CHH states that it served an Offer of Judgment on Plaintiffs for a waiver of any  
27 presently or potentially recoverable costs, in full and final settlement of the Plaintiff's  
28 claims. Plaintiffs rejected this Offer of Judgment by failing to accept it within 14 days.  
N.R.C.P. 68(e) and N.R.S. 17.117(6). As this Court was directed by the Supreme Court to  
vacate its order denying summary judgment to CHH and instead issue an order  
granting CHH's summary judgment motion, Plaintiffs failed to obtain more a favorable  
judgment than the one offered to them in CHH's Offer of Judgment. Thus, pursuant to

1 N.R.C.P. 68 and N.R.S. 17.117, this Court has discretion to award CHH its attorneys'  
2 fees.

3 CHH cites to *Schouweiler v. Yancey Co.*, for the proposition that a Court must  
4 consider the following factors in exercising its discretion to award fees: (1) whether  
5 the offeree brought his claims in good faith; (2) whether the offeror's offer of judgment  
6 was also brought in good faith in both timing and amount; (3) whether the offeree's  
7 decision to reject the offer of judgment was in bad faith or grossly unreasonable; and  
8 (4) whether the amount of offeror's requested fees is reasonable and justified.

9 *Schouweiler*, 101 Nev. 827, 833, 917 P.2d 786 (1985). CHH argues that all of the  
10 *Schouweiler* factors weigh in favor of CHH.

11 As to the first factor, CHH notes that the Supreme Court determined Plaintiffs  
12 were on notice of any alleged malpractice in this case, in possession of records long  
13 before the statute of limitations expired, and knowingly initiated complaints to State  
14 agencies manifesting definitive knowledge and belief of malpractice. Nevertheless,  
15 CHH argues, Plaintiffs chose to initiate a lawsuit "which was dead on arrival,  
16 continued to maintain it even after irrefutable evidence demonstrated its untenability,  
17 and then used every opportunity to prevent the expenditure of additional resources in  
18 order to prove the impropriety of the lawsuit." Accordingly, Plaintiffs' claims were not  
19 brought in good faith.

20 With regard to the second factor, CHH argues that its Offer of Judgment was  
21 brought in good faith in both timing and amount. At the time of the Offer, CHH had  
22 incurred over \$58,000.00 in costs defending Plaintiffs' claims. The Offer was served  
23 several days prior to CHH's Motion for Summary Judgment and about one and a half  
24 years after the lawsuit's commencement. Before the Motion for Summary Judgment  
25 was filed, Plaintiffs were in possession of documents that demonstrated irrefutable  
26 evidence of inquiry notice. Plaintiffs were on notice of the statute of limitations issues  
27 as early as July 2019 when CHH's prior counsel filed a Motion to Dismiss. Therefore,  
28 given Plaintiffs' likelihood of losing on merits, the offered waiver of the right to seek  
reimbursement of costs was reasonable in both timing and amount.

For similar reasons, CHH argues that Plaintiffs' decision to reject the offer of  
judgment was in bad faith and grossly unreasonable. Instead of abandoning their

1 untimely filed action, Plaintiffs' decision to pursue an untenable case caused CHH to  
2 incur substantial legal costs and expenses to seek dismissal.

3 CHH argues that the fourth factor regarding the reasonableness of CHH's  
4 requested attorneys' fees also weighs in favor of CHH. Pursuant to NRCP 68, CHH may  
5 recover their attorneys' fees from the date of service of the Offer of Judgment to the end  
6 of the matter. In this case, CHH served an Offer of Judgment on 8/28/20 that expired  
7 on 9/11/20. CHH states it incurred a total of \$110,930.85 in attorneys' fees alone (not  
8 inclusive of expenses) from 8/28/20 to the present billing cycle (which does not  
9 include all fees incurred in October 2021). Additionally, CHH incurred \$31,401.10 in  
10 disbursements including expert fees and other expenses since 8/28/20.

11 CHH argues that the amount of its bills is reasonable, given the amount of time  
12 and energy needed to defend this case, engage in extensive written discovery, extensive  
13 motions and appeals practice, and, expert time and expenses, due to Plaintiffs' refusal  
14 to stipulate to stay the litigation while the summary judgment issue made its way  
15 through the court system. Additionally, medical malpractice cases are complex, involve  
16 substantial amounts of expert testimony, and require a great deal of preparation. CHH  
17 states that documents are available for in camera review by this Court, but were not  
18 attached to the Motion in order to preserve attorney-client privilege and protect  
19 information contained within the descriptions of the attorney billing.

20 With regard to the *Brunzell vs. Golden Gate* analysis, CHH indicates that  
21 attorneys Mr. Garth and Mr. Vogel are experienced litigators that focus exclusively on  
22 medical malpractice. Both have practiced many years and are partners at Lewis  
23 Brisbois. They both billed \$225/hour on this matter. Where appropriate, work was also  
24 assigned to associate attorneys (\$193.50/hour) and paralegals (\$90/hour).

25 CHH notes that medical malpractice cases are complex and require an in-depth  
26 understanding of both unique legal issues as well as the medical care and course that is  
27 at issue. Plaintiffs claimed that they were entitled to \$105,000,000.00 in damages  
28 including \$172,728.04 billed by CHH as a recoverable expense, plus a loss of earning  
capacity of \$1,348,596.

There were multiple highly skilled expert witnesses presented by both parties.  
Further, nearly 14 months have passed since CHH's Offer of Judgment expired,  
including the participation in motion practice regarding a motion for summary

1 judgment, two motions to stay proceedings (one in this Court and one in Supreme  
2 Court), a writ petition to the Nevada Supreme Court, as well as extensive written  
3 discovery. CHH argues that its requested attorneys' fees are well below the amounts  
4 Nevada courts have found reasonable. Defendants are only requesting attorneys' fees at  
5 a rate of \$225 and \$193.50 per hour, and a paralegal rate of \$90 per hour. CHH argues  
6 that a consideration of the *Brunzell* factors shows that the recovery of the entire billed  
7 amount of fees from August 28, 2020 to present is entirely appropriate. *Brunzell*, 85  
8 Nev. 345, 455 P.2d 31 (1969).

9 In addition to all NRCP Rule 68 post offer fees and costs, CHH requests that  
10 sanctions be imposed against Plaintiffs' counsel for all pre-NRCP Rule 68 costs and fees  
11 totaling \$58,514.36 in accordance with NRS 7.085. CHH cites to EDCR 7.60, which  
12 provides a further avenue of deterrence to attorneys, like Plaintiffs' counsel who engage  
13 in these unnecessary and flagrantly frivolous lawsuits, which are dead before they are  
14 even filed. Accordingly, CHH argues that an award of \$110,930.85 in attorneys' fees per  
15 N.R.C.P. 68 and N.R.S. §§ 17.117, plus \$58,514.36 in pre-NRCP 68 offer fees and  
16 expenses pursuant to N.R.S. §§ 7.085, 18.010(2) and EDCR 7.60, is justified. CHH  
17 argues that it is entitled to an award of his attorney's fees and costs under NRS  
18 §18.010(2)(b), as Plaintiffs maintained the lawsuit without reasonable grounds or to  
19 harass the Defendants.

20 CHH's separately filed a Verified Memorandum of Costs indicates that it seeks  
21 costs, pursuant to NRS 18.005 and 18.020, as well as NRCP 68 and NRS 17.117, in the  
22 amount of \$42,492.03. A majority of the costs requested (\$41,724.10) are for expert  
23 fees. CHH argues that the experts all meet the factors set forth in *Frazier v. Drake*.

24 In Opposition, Plaintiffs argue that the medical malpractice, wrongful death, and  
25 negligent infliction of emotional distress claims on behalf of the estate and surviving  
26 children of Rebecca Powell were not frivolous, and the claims for wrongful  
27 death/medical malpractice and negligent infliction of emotional distress were brought  
28 in good faith. Because this Court denied several dispositive motions before the Nevada  
Supreme Court ultimately directed this Court to vacate its Order denying CHH's  
Motion for Summary Judgment and enter judgment in favor of all the Defendants,  
CHH did not "win" this matter on the merits.

1 Plaintiffs argue that the dismissal of the case on an incorrect interpretation of  
2 the facts and application of inquiry notice to all the named Plaintiffs by the Supreme  
3 Court does not make the claims of Plaintiffs any less meritorious. Further, pursuant to  
4 NRCP 68, and NRS 17.117(10), a party is not entitled to attorney's fees simply because it  
5 served an offer of judgment on the opposing party and that party failed to achieve a  
6 more favorable verdict. The purpose of NRCP 68 is to encourage settlement; it is not to  
7 force Plaintiffs' unfairly to forego legitimate claims. See *Beattie v. Thomas*, 99 Nev.  
8 579, 668 P.2d 268 (1983).

9 Plaintiffs argue that their claims were brought in good faith, as HHS determined  
10 that there were deficiencies in Ms. Powell's care and the death certificate was  
11 inaccurate. Additionally, this Court repeatedly found merit in Plaintiffs' Complaint and  
12 their causes of action for wrongful death, medical malpractice, and negligent infliction  
13 of emotional harm.

14 Plaintiffs argue that Defendant's Offer of Judgment, to waive costs and fees, of  
15 \$58,514.36 was not reasonable and nor was it in good faith considering Plaintiffs'  
16 causes of action for medical malpractice, wrongful death, and negligent infliction of  
17 emotional harm. Plaintiffs lost their mother, who was only 41 years old at the time of  
18 her death. It was reasonable for Plaintiffs to reject Defendants' Offer of Judgment, as  
19 the terms of the Offer of Judgment did not provide for any monetary recovery to  
20 Plaintiffs to compensate them for the loss of their mother. CHH indicated at the time it  
21 had incurred \$53,389.90 in fees and \$5,124.46 in costs, but no supporting documents  
22 were provided. Moreover, this Court denied the Motion for Summary Judgment.  
23 Therefore, CHH incorrectly states that given the likelihood of losing on this issue, the  
24 offered waiver of right to seek reimbursement of costs was reasonable in both timing  
25 and amount. Further, Plaintiffs contend that their decision to reject the Offer of  
26 Judgment was not grossly unreasonable nor in bad faith because no amount was being  
27 offered in damages to the Plaintiffs.

28 With regard to the fees sought, Plaintiffs argue that CHH won on a technicality  
at the Supreme Court, and not on the merits or by way of a jury verdict in favor of  
Defendants. Plaintiffs argue that CHH incurred so much in fees because it continued  
filing motions based on the same statute of limitations theory. Thus, CHH's fees are  
unreasonable and unjustified. Plaintiffs also claim they are unable to properly evaluate



1 the reasonableness of CHH's attorney's fees because Defendant only presented a  
2 summary of the fees that were incurred.

3 Plaintiffs argue that it is absurd for CHH to suggest that the provisions of NRS  
4 7.085 even apply to the facts of this case, and that Plaintiffs' attorneys violated NRS  
5 18.010(2), NRCP 11 or EDCR 7.60. Plaintiffs further argue that CHH has not provided  
6 factual support to support the request for pre-NRCP 68 costs and fees pursuant to NRS  
7 7.085. Plaintiffs ask that this Court deny the application for fees and costs as the  
8 Plaintiffs did not submit frivolous or vexatious claims and did not over burden the  
9 limited judicial resources nor did it hinder the timely resolution of meritorious claims.  
10 Similarly, Plaintiffs contend that CHH has not provided any factual support for its  
11 request for attorneys' fees pursuant to EDCR 7.60 or 18.010(2).

12 In Reply, CHH argues that Plaintiffs' entire opposition is predicated on the false  
13 assertion that they possessed a viable case in the first instance. CHH argues that,  
14 "Plaintiffs' entire argument is that because this Court repeatedly denied dismissal  
15 attempts by the respective defendants despite clear, convincing, and irrefutable  
16 evidence of inquiry notice which each and every plaintiff possessed, they are somehow  
17 absolved from either their malpractice or unethical practice of pursuing a case which  
18 was dead on arrival when filed."

19 CHH argues that the Nevada Supreme Court held that the "district court  
20 manifestly abused its discretion when it denied summary judgment." CHH argues that  
21 this matter should have been dismissed a year ago at the latest.

#### 22 **FINDINGS OF FACT AND CONCLUSIONS OF LAW**

23 With regard to the requested costs, in *Frazier v. Drake*, 131 Nev. 632, 357 P.3d  
24 365 (NV.Ct.of App., 2015), the Court noted that NRS 18.005(5) provides for the  
25 recovery of "reasonable fees of not more than five expert witnesses in an amount of not  
26 more than \$1,500 for each witness unless the court allows a larger fee after  
27 determining that the circumstances surrounding the expert's testimony were of such  
28 necessity as to require the larger fee." *Id.*, at 644. The Court went on to state the  
following:

... we conclude that any award of expert witness fees in excess of \$1,500  
per expert under NRS 18.005(5) must be supported by an express,  
careful, and preferably written explanation of the court's analysis of  
factors pertinent to determining the reasonableness of the requested fees  
and whether "the circumstances surrounding the expert's testimony were

1 of such necessity as to require the larger fee." See NRS 18.005(5); cf.  
2 *Young v. Johnny Ribeiro Bldg., Inc.*, 106 Nev. 88, 93, 787 P.2d 777, 780  
3 (1990) (requiring an "express, careful and preferably written explanation"  
4 of the district court's analysis of factors pertinent to determining whether  
5 a dismissal with prejudice is an appropriate discovery sanction). ***In***  
6 ***evaluating requests for such awards, district courts should***  
7 ***consider the importance of the expert's testimony to the***  
8 ***party's case; the degree to which the expert's opinion aided***  
9 ***the trier of fact in deciding the case; whether the expert's***  
10 ***reports or testimony were repetitive of other expert witnesses;***  
11 ***the extent and nature of the work performed by the expert;***  
12 ***whether the expert had to conduct independent investigations***  
13 ***or testing; the amount of time the expert spent in court,***  
14 ***preparing a report, and preparing for trial; the expert's area***  
15 ***of expertise; the expert's education and training; the fee***  
16 ***actually charged to the party who retained the expert; the fees***  
17 ***traditionally charged by the expert on related matters;***  
18 ***comparable experts' fees charged in similar cases; and, if an***  
19 ***expert is retained from outside the area where the trial is held,***  
20 ***the fees and costs that would have been incurred to hire a***  
21 ***comparable expert where the trial was held.***

22 *Id.*, at 650-651.

23 The Defendant, CHH, argues the importance of the testimony of each of the  
24 witnesses, and how their respective opinions were necessary for the Defendant's case.  
25 CHH argues that the medical experts expended "many hours," and "prepared two  
26 written reports." There was no discussion in the briefing about repetitiveness, whether  
27 they had to conduct independent investigations or testing, the amount of time spent in  
28 court, preparing reports, or preparing for trial, the fees charged to the Defendant, and  
the fees traditionally charged, and what they charge compared to other experts, etc.  
Consequently, the Court could allow the expert fee of \$1,500.00, for up to 5 expert  
witnesses, if the Court were able to find that the experts were relevant and the fees  
incurred, but the Court cannot allow expert fees in excess of \$1,500.00 without a  
*Frazier* analysis.

Additionally, the Court notes that any costs awarded need to be itemized and  
documented. The Nevada Supreme Court has stated that without "itemization or  
justifying documentation," the Court is "unable to ascertain whether such costs were  
accurately assessed." *Bobby Berosini, Ltd. V. People for the Ethical Treatment of*  
*Animals*, 114 Nev. 1348, 1353, 971 P.2d 383 (1998). Further, when the "memorandum

1 of costs is completely void of any specific itemization,” and a “lack of supporting  
2 documentation,” it is an abuse of discretion on the part of the Court if it awards the  
3 requested costs. *Id.* The Supreme Court has further indicated that “‘justifying  
4 documentation’ must mean something more than a memorandum of costs.” *Cadle Co.*  
5 *v. Woods & Erickson, LLP*, 131 Nev. 114, 121, 345 P.3d 1049 (2015). The Court has  
6 further indicated that “Without evidence to determine whether a cost was reasonable  
7 and necessary, a district court may not award costs.” *Id.*, citing *Peta*, 114 Nev. at 1353,  
8 971 P.2d at 386. In this case, Defendant produced a “Disbursement Diary,” but based  
9 on the above-referenced cases, this is insufficient to support the requested costs. There  
10 is insufficient evidence submitted for the Court to determine whether the requested  
11 costs were reasonable and necessary, there was no specific itemization, other than the  
12 Disbursement Diary, and there were no supporting documents.

13 Based upon the foregoing, the Court cannot award costs.

14 NRCP 68 provides in pertinent part as follows:

15 **Rule 68. Offers of Judgment**

16 (a) The Offer. At any time more than 21 days before trial, any party  
17 may serve an offer in writing to allow judgment to be taken in accordance  
18 with its terms and conditions. Unless otherwise specified, an offer made  
19 under this rule is an offer to resolve all claims in the action between the  
20 parties to the date of the offer, including costs, expenses, interest, and if  
21 attorney fees are permitted by law or contract, attorney fees.

22 . . . .

23 (d) Acceptance of the Offer and Dismissal or Entry of Judgment.

24 (1) Within 14 days after service of the offer, the offeree may accept  
25 the offer by serving written notice that the offer is accepted.

26 (2) Within 21 days after service of written notice that the offer is  
27 accepted, the obligated party may pay the amount of the offer and obtain  
28 dismissal of the claims, rather than entry of a judgment.

(3) If the claims are not dismissed, at any time after 21 days after  
service of written notice that the offer is accepted, either party may file  
the offer and notice of acceptance together with proof of service. The clerk  
must then enter judgment accordingly. The court must allow costs in  
accordance with NRS 18.110 unless the terms of the offer preclude a  
separate award of costs. Any judgment entered under this section must be  
expressly designated a compromise settlement.

(e) Failure to Accept Offer. If the offer is not accepted within 14  
days after service, it will be considered rejected by the offeree and deemed  
withdrawn by the offeror. . . . Any offeree who fails to accept the offer  
may be subject to the penalties of this rule.

(f) Penalties for Rejection of Offer.

(1) In General. If the offeree rejects an offer and fails to obtain a more favorable judgment:

(A) the offeree cannot recover any costs, expenses, or attorney fees and may not recover interest for the period after the service of the offer and before the judgment; and

(B) the offeree must pay the offeror's post-offer costs and expenses, including a reasonable sum to cover any expenses incurred by the offeror for each expert witness whose services were reasonably necessary to prepare for and conduct the trial of the case, applicable interest on the judgment from the time of the offer to the time of entry of the judgment and reasonable attorney fees, if any be allowed, actually incurred by the offeror from the time of the offer. If the offeror's attorney is collecting a contingent fee, the amount of any attorney fees awarded to the party for whom the offer is made must be deducted from that contingent fee.

....

#### NRCP 68.

NRCP 68 provides that the Defendant would be entitled to "reasonable attorney fees, if any be allowed." The language of the Rule specifically provides that Court with "discretion," as it relates to attorney's fees, and the Court's discretion will not be disturbed absent a clear abuse of such discretion. *Armstrong v. Riggi*, 92 Nev. 280, 549 P.2d 753 (1976); *Schouweiler v. Yancey Co.*, 101 Nev. 827, 712 P.2d 786 (1985); *Bidart v. American Title Ins. Co.*, 103 Nev. 175, 734 P.3d 732 (1987).

In evaluating whether to grant an award of attorney's fees, pursuant to *Schouweiler v. Yancey Co.*, 101 Nev. 827, 712 P.2d 786 (1985), the Court must consider: "(1) whether plaintiff's claim was brought in good faith; (2) whether defendant's offer of judgment was brought in good faith in both its timing and amount; (3) whether plaintiff's decision to reject the offer and proceed to trial was grossly unreasonable or in bad faith; and (4) whether fees sought by the offeror are reasonable and justified in amount." *Schouweiler* at 833, citing *Beattie v. Thomas*, 99 Nev. 579, 588, 668 P.2d 268 (1983)(the "Beattie Factors").

In analyzing whether to award attorneys' fees, the factors which need to be considered pursuant to *Brunzell*, include the following: (1) the qualities of the advocate: his ability, training, education, experience, professional standing and skill; (2) the character of the work to be done: its difficulty, intricacy, importance, the time and skill required, the responsibility imposed and the prominence and character of the parties when they affect the importance of the litigation; (3) the work actually performed by the lawyer: the skill, time and attention given to the work; and (4) the result: whether

1 the attorney was successful and what benefits were derived. *Schouweiler* at 833-834,  
2 citing to *Brunzell v. Golden Gate Nat'l Bank*, 85 Nev. 345, 349, 455 P.2d 31 (1969)  
3 (quoting *Schwartz v. Schwerin*, 85 Ariz. 242, 336 P.2d 144, 146 (1959)).

4 With regard to the attorney's fees requested, this Motion is different from the  
5 Motion for Fees filed by Drs. Concio and Shaw, in that CHH contends that it incurred  
6 \$110,930.85 in attorney's fees since 8/28/20 (roughly twice the fees incurred by Drs.  
7 Concio and Shaw). In considering the *Beattie* factors, the Court finds and concludes  
8 that the plaintiff's claim was brought in good faith. The Court finds and concludes that  
9 Defendant's offer of judgment, in the amount of \$0.00, (offering to waive  
10 approximately \$58,500.00 in fees and costs), was brought in good faith in both its  
11 timing and amount. The Court acknowledges that the parties disagree about this issue,  
12 but as much as the Plaintiffs believed they had a valid case, the Defendants disputed  
13 any liability. The Court further finds and concludes that Plaintiff's decision to reject the  
14 offer and proceed to trial was not grossly unreasonable or in bad faith. Plaintiffs  
15 believed they had a valid claim, and the Court cannot find that wanting some recovery,  
16 as opposed to \$0.00, to be "grossly unreasonable" or in "bad faith. With regard to a  
17 determination of whether the fees sought by the Defendants are reasonable and  
18 justified in amount, a *Brunzell* analysis is required. *Beattie v. Thomas*, 99 Nev. 579,  
19 588, 668 P.2d 268 (1983).

20 In determining the reasonableness of the fees requested, the Court has analyzed  
21 the *Brunzell* factors, as follows: The Court finds that the qualities of defense counsel,  
22 his ability, training, education, experience, professional standing and skill, favor an  
23 award of fees. When considering the character of the work to be done - its difficulty,  
24 intricacy, importance, the time and skill required, (when dealing with a professional  
25 negligence/medical malpractice case), and finding that the character or prominence of  
26 the parties was unremarkable, the complexity of the case warrants an award of fees.  
27 The Court cannot evaluate the work actually performed by the lawyers, in this case, and  
28 the skill, time and attention given to the work, without a detailed billing statement.  
Although the Defendant has offered to submit a billing ledger to the Court in camera, it  
would have been necessary for the Defendant to have submitted such ledger, and  
disclosed it to the Plaintiff so that the reasonableness could have been addressed by all  
parties, and by the Court. Finally, in considering the result, the Court notes that

1 although the Court found insufficient evidence to establish irrefutably that the statute  
2 of limitations had expired, Defense counsel was successful in convincing the Supreme  
3 Court of that, and consequently, Defendants prevailed. *Brunzell v. Golden Gate Nat'l*  
4 *Bank*, 85 Nev. 345, 349, 455 P.2d 31 (1969). Based upon this NRCP 68 analysis, with  
5 the exception of being able to analyze the reasonableness of the fees allegedly incurred,  
6 the Court would likely have awarded at least some fees to the Defendant, at least for the  
7 period of time after rejection of the Offer of Judgment. Without any evidence of the  
8 fees actually accrued, and based on the amount requested, the Court cannot make a  
9 finding as to the reasonableness of such fees, and consequently, the Court has no choice  
10 under *Brunzell* and *Beattie*, to deny the request for Fees.

11 **CONCLUSION/ORDER**

12 Based upon the foregoing, and good cause appearing,

13 **IT IS HEREBY ORDERED** that the Defendants' Motion for Fees and Costs is  
14 **DENIED.**

15 The Court requests that Plaintiff's counsel prepare and process a Notice of Entry  
16 with regard to this Order.

17 Because this matter has been decided on the pleadings, the hearing scheduled  
18 for 2/18/22 will be taken off calendar, and consequently, there is no need for any  
19 parties or attorneys to appear.

20 Dated this 15th day of February, 2022

21 

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23 **99B B52 25DC 68DD**  
24 **Jerry A. Wiese**  
25 **District Court Judge**  
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1 **CSERV**

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3 **DISTRICT COURT**  
4 **CLARK COUNTY, NEVADA**

5  
6 **Estate of Rebecca Powell,**  
7 **Plaintiff(s)**

**CASE NO: A-19-788787-C**

8 **vs.**

**DEPT. NO. Department 30**

9 **Valley Health System, LLC,**  
10 **Defendant(s)**

11  
12 **AUTOMATED CERTIFICATE OF SERVICE**

13 This automated certificate of service was generated by the Eighth Judicial District  
14 Court. The foregoing 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:

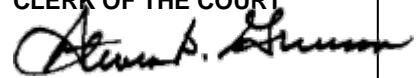
15 **Service Date: 2/15/2022**

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**Defendant Valley Health  
System, LLC d/b/a Centennial  
Hills Hospital Medical  
Center's Reply In Further  
Support of Motion for  
Reconsideration Regarding its  
Motion for Attorneys' Fees  
Pursuant to N.R.C.P. 68,  
N.R.S. §§ 17.117, 7.085,  
18.010(2), and E.C.R. 7.60**



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Center*

DISTRICT COURT

CLARK COUNTY, NEVADA

ESTATE OF REBECCA POWELL, through  
BRIAN POWELL, as Special Administrator;  
DARCI CREECY, individually and as Heir;  
TARYN CREECY, individually and as an  
Heir; ISAAH KHOSROF, individually and as  
an Heir; LLOYD CREECY, individually;

Plaintiffs,

vs.

VALLEY HEALTH SYSTEM, LLC (doing  
business as "Centennial Hills Hospital Medical  
Center"), a foreign limited liability company;  
UNIVERSAL HEALTH SERVICES, INC., a  
foreign corporation; DR. DIONICE S.  
JULIANO, M.D., an individual; DR.  
CONRADO C.D. CONCIO, M.D., an  
individual; DR. VISHAL S. SHAH, M.D., an  
individual; DOES 1-10; and ROES A-Z;

Defendants.

Case No. A-19-788787-C

Dept. No.: 30

**DEFENDANT VALLEY HEALTH  
SYSTEM, LLC DBA CENTENNIAL  
HILLS HOSPITAL MEDICAL CENTER'S  
REPLY IN FURTHER SUPPORT OF  
MOTION FOR RECONSIDERATION  
REGARDING ITS MOTION FOR  
ATTORNEYS' FEES PURSUANT TO  
N.R.C.P. 68, N.R.S. §§ 17.117, 7.085,  
18.010(2), AND EDCR 7.60**

**Hearing Date: March 30, 2022  
Hearing Time: 9:00 a.m.**

Defendant VALLEY HEALTH SYSTEM, LLC ("CHH") by and through its counsel of  
record, S. Brent Vogel and Adam Garth of the Law Firm LEWIS BRISBOIS BISGAARD & SMITH  
LLP, hereby files its Reply in Further Support of Its Motion for Reconsideration of Its Motion for  
Attorneys' Fees Pursuant to N.R.C.P. 68 and N.R.S. §§ 17.117, 7.085, 18.010(2) and EDCR 7.60.

This Motion is based upon the Motion in Chief, the Memorandum of Points and Authorities  
below, the pleadings and papers on file herein, any oral argument which may be entertained by the

1 Court at the hearing of this matter.

2 DATED this 23<sup>rd</sup> day of March, 2022

3

4

LEWIS BRISBOIS BISGAARD & SMITH LLP

5

By /s/ Adam Garth

6

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*Health System, LLC dba Centennial Hills Hospital*

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*Medical Center*

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1 **MEMORANDUM OF POINTS AND AUTHORITIES**

2 **I. INTRODUCTION**

3 Plaintiff's entire opposition is predicated on their assertion that CHH "has not presented any  
4 new or substantially different evidence than what it had the opportunity to present when it filed its  
5 original Verified Memorandum of Costs and separate Motion for Attorneys' Fees on November 22,  
6 2021. . ."<sup>1</sup> Not only is that statement patently false, but it fails to take into account that CHH's instant  
7 motion is predicated on this Court's clearly erroneous decision to: (1) refuse to sign a judgment for  
8 an undisputed amount of legally awardable costs to which CHH is entitled, and (2) to deny additional  
9 costs and attorneys' fees stemming from Plaintiff's commencement and maintenance of an action  
10 that the Supreme Court found was not only untimely, but that this Court's decision to deny summary  
11 judgment in light of the evidence was a manifest abuse of discretion.

12 "A district court may reconsider a previously decided issue if substantially different evidence  
13 is subsequently introduced or the decision is clearly erroneous." *Masonry & Tile Contractors v.*  
14 *Jolley, Urga & Wirth Ass'n*, 113 Nev. 737, 741, 941 P.2d 486, 489 (1997). Thus, this Court is  
15 permitted to reconsider its decision on at least two bases: (1) substantially different evidence which  
16 is introduced, or (2) the underlying decision is clearly erroneous. CHH fulfilled both of these bases  
17 in their motion.

18 In derogation of EDCR 2.20, Plaintiffs failed to oppose CHH's motion on the "clearly  
19 erroneous" basis, which " . . . may be construed as an admission that the motion and/or joinder is  
20 meritorious and a consent to granting the same." On this basis alone, CHH's motion should be  
21 granted in its entirety.

22 Moreover, CHH presented evidence on its original motion in the form of a declaration and  
23 copies of the firm disbursement log. Both the declaration and the disbursement log documented the  
24 timekeepers, number of hours and rates expended by each and the expenses incurred for which  
25 reimbursement was sought. In response thereto, Plaintiffs interposed NOTHING, not one shred of  
26 evidence contradicting the expenses incurred or the time and fees expended by CHH and its counsel.

27 \_\_\_\_\_  
28 <sup>1</sup> Plaintiffs' Opposition, p. 2, lines 9-13

1 Further detailed documentation was offered to the Court on an *in camera* basis. Instead of  
2 conducting a hearing on the underlying motion, this Court summarily issued a written decision  
3 which ignored the request for *in camera* review of any evidence it required, with Plaintiffs'  
4 opportunity to review same as well, and denied any request for statutorily permitted costs and fees  
5 which was never opposed by Plaintiffs, and also denied the discretionary motion for attorneys' fees  
6 and costs predicated on other legal and statutory bases. These denials were based upon this Court's  
7 abuse of its discretion and refusal to accept the underlying findings of the Supreme Court pertaining  
8 to the evidence Plaintiffs knowingly possessed which demonstrated clear inquiry notice within one  
9 month of the decedent's death. The ruling by the Supreme Court, and the findings which formed  
10 the basis of it, demonstrated Plaintiffs' complete lack of good faith in not only bringing the  
11 underlying case when they did, but maintaining it after the overwhelming evidence required  
12 discontinuance of the action. This was especially true due to the Plaintiffs' exclusive possession of  
13 the very evidence of inquiry notice which defeated their case. Therefore, for this Court to not grant  
14 CHH's motion for costs and fees, and simultaneously refuse to sign a judgment for statutory costs  
15 which was uncontested by Plaintiffs, was clearly erroneous.

## 16 **II. LEGAL ARGUMENT**

### 17 **A. Plaintiffs Failed to Oppose or Address CHH's Motion for Reconsideration** 18 **Predicated on the Clearly Erroneous Standard**

19 EDCR 2.20 states in pertinent part that a party's failure oppose a written motion "... may  
20 be construed as an admission that the motion and/or joinder is meritorious and a consent to granting  
21 the same." "A district court may reconsider a previously decided issue if substantially different  
22 evidence is subsequently introduced or the decision is clearly erroneous." *Masonry & Tile*  
23 *Contractors v. Jolley, Urga & Wirth Ass'n*, 113 Nev. 737, 741, 941 P.2d 486, 489 (1997). *Masonry*  
24 *Tile* articulates two bases for reconsideration: (1) substantially different evidence which is  
25 introduced, or (2) the underlying decision is clearly erroneous. CHH based its motion on both  
26 standards. In opposition, Plaintiffs never even addressed the clearly erroneous standard, thus  
27 admitting the meritoriousness of CHH's position on that issue, and an effective consent to the  
28 granting of CHH's instant motion on this basis alone. Therefore, CHH's motion for reconsideration

1 based upon the Court's clearly erroneous decision standard should be granted in its entirety as  
2 unopposed.

3 **B. Plaintiffs' Failure to Either Address or Oppose CHH's Costs, Disbursements or**  
4 **Attorneys' Fees Effectively Acts as Consent to the Meritoriousness Thereof**

5 EDCR 2.21 requires that affidavits or declarations be submitted either in support or  
6 opposition to a motion along with factual and evidentiary matter to be considered. CHH submitted  
7 the declaration of Adam Garth, Esq. in conjunction with a disbursement log containing the  
8 statutorily sought costs and disbursements. Moreover, the declaration specifically outlined all of  
9 the time expended by all timekeepers in this matter, the billable hourly rates and the experience of  
10 the respective billing individuals. In opposition to that submission, Plaintiffs submitted nothing,  
11 instead choosing to reargue their position that Ms. Powell died at CHH and that somehow they  
12 should be compensated for that loss. As expressed in *Peccole v. Peccole Nev.*, 2017 Nev. Dist.  
13 LEXIS 1635, \*43, Case No A-16-739654-C, decided January 31, 2017, the Court noted that the  
14 Plaintiff failed to attach any affidavit as required by EDCR 2.21 to attack the reasonableness or  
15 the attorneys' fees and costs incurred, the necessity of the attorneys' fees and costs, or the accuracy  
16 of the attorneys' fees and costs incurred and that failure can be construed as an admission that the  
17 Motion was meritorious and should be granted.

18 In this case, like in *Peccole*, Plaintiffs failed to interpose any substantive opposition or any  
19 evidence to address the attorneys' fees and costs issues on the underlying motion, but still this Court  
20 refused to grant the motion or order a hearing to obtain further evidence. That decision was an abuse  
21 of discretion and erroneous in light of admissible evidence submitted by CHH. As if that evidence  
22 was insufficient, on this motion, CHH submitted 195 pages of bills and invoices substantiating the  
23 very time contained in Mr. Garth's declaration. As on the underlying motion, Plaintiffs do not  
24 dispute the reasonableness or the attorneys' fees and costs incurred, the necessity of  
25 the attorneys' fees and costs, or the accuracy of the attorneys' fees and costs incurred. Their failure  
26 to even address these issues is tantamount to an admission that they are undisputed and meritorious,  
27 requiring the granting of the instant motion.

1           C.     **The Court's Interpretation of Case and Statutory Authority Was Clearly**  
2                   **Erroneous in Light of the Evidence Submitted by CHH On the Underlying**  
3                   **Motion and the Absence of Any Opposition to the Memorandum of Costs and**  
4                   **Fees**

5           It is uncontroverted that Plaintiffs failed to timely move to retax costs. As previously noted  
6           in its Motion in Chief, this Court properly denied Plaintiffs' motion to extend time to move to retax  
7           costs, having abjectly failed to timely move for that relief, and in the absence of any statutory or  
8           legal authority offered by Plaintiffs for such relief.

9           In *Terry v. Cruea*, 133 Nev. 1082, 404 P.3d 396 (2017), the Nevada Supreme Court stated:

10                   Turning to Terry's arguments on appeal, she asserts that she was the  
11                   prevailing party below and, because the memorandum of costs was  
12                   timely and Cruea did not move to retax those costs, she is entitled to  
13                   an award of all the costs sought in the memorandum. We agree;  
14                   by failing to file a motion to retax costs, Cruea waived any appellate  
15                   review of that issue, *Sheehan & Sheehan v. Nelson Malley & Co.*, 121  
16                   Nev. 481, 493, 117 P.3d 219, 227 (2005) (concluding that a party  
17                   waived any appellate review of the award of costs by not filing a  
18                   timely motion to retax and settle the costs), and we therefore will not  
19                   consider it. And, because Terry sought to recover more than \$2500  
20                   and prevailed, "[c]osts must be allowed." NRS 18.020(3). Based on  
21                   the foregoing, we reverse and remand this case to the district court for  
22                   it to enter an order awarding Terry her costs as requested in her  
23                   memorandum of costs.

24           Similarly, in *Williams v. Doutel*, 2017 Nev. App. Unpub. LEXIS 603, \*9, 133 Nev. 1094,  
25           the Court of Appeals held in an unpublished opinion<sup>2</sup>:

26                   appellant has waived any contest to the award of costs because  
27                   he failed to file a motion to retax costs and, even if this court were  
28                   inclined to liberally construe his opposition as a motion to retax, he  
29                   included no substantive argument regarding the reasonableness of the  
30                   costs and expert witness fees requested, and thus provided the district  
31                   court no objection to respondents' request for fees in excess of the  
32                   \$1,500 presumptive limit. *See Sheehan & Sheehan v. Nelson Malley*  
33                   *& Co.*, 121 Nev. 481, 493, 117 P.3d 219, 227 (2005) (holding a party  
34                   waived the right to contest costs on appeal by failing to move the  
35                   district court to retax costs); *Old Aztec Mine, Inc.*, 97 Nev. at 52, 623  
36                   P.2d at 983 ("A point not urged in the trial court, unless it goes to the  
37                   jurisdiction of that court, is deemed to have been waived and will not  
38                   be considered on appeal.").

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39           <sup>2</sup> Per N.R.A.P. 36(c)(2), on or after January 1, 2016, an unpublished decision may be cited for its  
40           persuasive value, if any. Supreme Court Rule 123 prohibiting citation to unpublished decisions was  
41           repealed on November 12, 2015.

1 As the Court stated in *Peccole, supra*, “Such a Motion [to retax costs] should have been filed  
2 on or before December 15, 2016 . . . Plaintiffs failed to file any Motion to Retax Costs, or any  
3 objection to the costs whatsoever. Plaintiffs have therefore waived any objection to the  
4 Memorandum of Costs, and the same is now final. *Peccole, supra*, 2017 Nev. Dist. LEXIS 1635,  
5 \*55.

6 Likewise, in the instant case, Plaintiffs failed to move to retax costs. This failure not only  
7 precludes appellate review of costs contained in the memorandum of costs, it constitutes a waiver  
8 of any objection to said costs and operates as a finalization of those very costs. Effectively, this  
9 Court stepped into the role of advocate, interposing its own opposition which Plaintiffs were  
10 foreclosed from interposing. That is wholly improper. Therefore, this Court’s refusal to sign a  
11 judgment with respect to those costs and disbursements incurred was clearly erroneous requiring  
12 the granting of the instant motion with respect to the Memorandum of Costs and the associated  
13 judgment.

14 With respect to the justification and evidentiary submissions both on the underlying motion  
15 and the instant motion, this Court failed to properly apply to standards imposed by *Cadle Co. v.*  
16 *Woods & Erickson, Ltd. Liab. P’ship*, 131 Nev. 114, 345 P.3d 1049 (2015) and *Bobby Berosini, Ltd.*  
17 *v. PETA*, 114 Nev. 1348, 971 P.2d 383 (1998).

18 NRS 18.020 and NRS 18.050 give district courts wide, but not  
19 unlimited, discretion to award costs to prevailing parties. Costs  
20 awarded must be reasonable, NRS 18.005; *Bobby Berosini, Ltd. v.*  
21 *PETA*, 114 Nev. 1348, 1352, 971 P.2d 383, 385 (1998), but parties  
22 may not simply estimate a reasonable amount of costs. *See Gibellini*  
23 *v. Klindt*, 110 Nev. 1201, 1205-06, 885 P.2d 540, 543 (1994) (holding  
24 that a party may not estimate costs based on hours billed). Rather,  
25 NRS 18.110(1) requires a party to file and serve "a memorandum [of  
costs] . . . verified by the oath of the party . . . stating that to the best  
of his or her knowledge and belief the items are correct, and that the  
costs have been necessarily incurred in the action or proceeding."  
Thus, costs must be reasonable, necessary, and actually incurred. We  
will reverse a district court decision awarding costs if the district court  
has abused its discretion in so determining. *Vill. Builders 96, L.P. v.*  
*U.S. Labs., Inc.*, 121 Nev. 261, 276, 112 P.3d 1082, 1092 (2005).

26 In *Bobby Berosini, Ltd.*, we explained that a party must "demonstrate  
27 how such [claimed costs] were necessary to and incurred in the  
28 present action." 114 Nev. at 1352-53, 971 P.2d at 386. Although cost  
memoranda were filed in that case, we were unsatisfied with the  
itemized memorandum and demanded further justifying



1 documentation. *Id.* It is clear, then, that "justifying documentation"  
2 must mean something more than a memorandum of costs. In order to  
3 retax and settle costs upon motion of the parties pursuant to NRS  
4 18.110, a district court must have before it evidence that the costs  
5 were reasonable, necessary, and actually incurred. *See Gibellini*, 110  
6 Nev. at 1206, 885 P.2d at 543 (reversing award of costs and  
7 remanding for determination of actual reasonable costs incurred).

8 Without evidence to determine whether a cost was reasonable and  
9 necessary, a district court may not award costs. *PETA*, 114 Nev. at  
10 1353, 971 P.2d at 386. Here, the district court lacked sufficient  
11 justifying documentation to support the award of costs for  
12 photocopies, runner service, and deposition transcripts. Woods &  
13 Erickson did not present the district court with evidence enabling the  
14 court to determine that those costs were reasonable and necessary.

15 *Cadle Co.*, *supra*, 131 Nev. at 120-21, 345 P.3d at 1054 (2015).

16 This Court erroneously concluded that CHH submitted no documentary evidence or  
17 explanation of costs attendant to the verified memorandum of costs. In fact, the verified  
18 memorandum of costs<sup>3</sup> contained not only a complete listing of disbursements which are allowable  
19 under the law for these purposes, but the declaration explained that the expenses were accurate and  
20 were incurred and were reasonable. Moreover, the memorandum explained and justified each of  
21 the costs, supported by case authority and an application of the respective factors considered to the  
22 specific facts and circumstances of this case. There was more than ample evidentiary justification  
23 for the costs claimed including court filing fees and the expert fees which were justified by the  
24 explanations contained in the verified memorandum.

25 For this Court to somehow assert complete ignorance of the legal and appellate history of  
26 this case was clearly erroneous. Additionally, Plaintiffs never disputed, nor to this day dispute, the  
27 veracity and accuracy of the costs contained in the verified memorandum of costs. There was no  
28 absence of evidence justifying the costs. The Court just chose to ignore it and improperly declared  
they were insufficient, citing to the aforementioned authority. However, that authority does stand for the  
proposition for which they are cited or was misapplied by the Court. The authority cited involved  
no evidence or documentation. CHH not only provided evidence, it justified the costs, especially  
of the voluminous number of experts needed for retention due to the blunderbuss of allegations

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<sup>3</sup> Exhibit "I" hereto

1 asserted by Plaintiffs which needed to be addressed by multiple specialists.

2 Contained in the instant motion is an even more expanded listing of every charge, bill,  
3 invoice and time entry for every action taken on this case by any timekeeper or expert on this case  
4 as well as an even further explanation of the time required to defend against the ridiculous set of  
5 allegations which Plaintiffs initially leveled in their Complaint. Then, after having used their “go  
6 to” expert for purposes of fulfilling NRS 41A.071, Plaintiffs interposed medical expert reports from  
7 multiple providers who had to agree with CHH’s experts that Plaintiffs’ Ativan theory was bogus,  
8 and further having to acknowledge that Ms. Powell died from an acute mucous plug event which  
9 could not have been prevented or predicted. All of CHH’s experts debunked Plaintiffs’ experts’  
10 theories in detailed reports requiring exhaustive review of medical records and a review of the latest  
11 medical literature attendant to the Plaintiffs’ allegations. CHH’s costs which it incurred were not  
12 only necessary but entirely reasonable under the circumstances since Plaintiffs leveled a blunderbuss  
13 of allegations against CHH and other co-defendants for whom CHH would be vicariously liable  
14 under an ostensible agency theory, and required multiple experts in the implicated medical  
15 specialties to defend against them. Unlike Plaintiffs, CHH obtained admissible evidence supporting  
16 its defense, as opposed to Plaintiffs’ counsel’s manufactured allegation of “confusion” to cover up  
17 for his late filing of Plaintiffs’ action.

18 **D. Dismissal By the Supreme Court, and Eventually By This Court, Was Definitive**  
19 **Evidence of Plaintiffs’ Bad Faith Implicating the Imposition of Attorneys’ Fees**  
20 **and Costs**

21 In reaching its decision on the underlying motion for costs and attorneys’ fees, this Court  
22 concluded that the Plaintiffs’ action was brought and maintained in good faith. Given the Supreme  
23 Court’s decision and findings in this matter, this Court’s finding of good faith was clearly erroneous.  
24 As demonstrated in CHH’s Motion in Chief for reconsideration, the Supreme Court held that this  
25 Court “manifestly abused its discretion when it denied summary judgment.”

26 A manifest abuse of discretion is “[a] clearly erroneous interpretation  
27 of the law or a clearly erroneous application of a law or rule.” Steward  
28 v. McDonald, 330 Ark. 837, 958 S.W.2d 297, 300 (Ark.  
1997); see Jones Rigging and Heavy Hauling v. Parker, 347 Ark. 628,  
66 S.W.3d 599, 602 (Ark. 2002) (stating that a manifest abuse of  
discretion “is one exercised improvidently or thoughtlessly and  
without due consideration”); Blair v. Zoning Hearing Hd. of Tp. of

1           Pike, 676 A.2d 760, 761 (Pa. Commw. Ct. 1996) ("[M]anifest abuse  
2           of discretion does not result from a mere error in judgment, but occurs  
3           when the law is overridden or misapplied, or when the judgment  
          exercised is manifestly unreasonable or the result of partiality,  
          prejudice, bias or ill will.").

4   *State v. Eighth Judicial Dist. Court of Nev.*, 127 Nev. 927, 932, 267 P.3d 777, 780 (2011). Under  
5   the Supreme Court's own definition, a manifest abuse of discretion is one where a court so  
6   erroneously interprets the law or rule, or where the result is so unreasonable that it demonstrates  
7   prejudice, partiality or bias that it must be corrected. Such is the case here. In light of the Supreme  
8   Court's finding in this regard, it remains abundantly clear that this matter was frivolously brought  
9   and frivolously maintained. Under those circumstances, the law provides for and even requires the  
10   recovery of costs, disbursements and attorneys' fees. To deny same disregards the Supreme Court's  
11   conclusion as well as the laws and cases interpreting them requiring the impositions of costs and  
12   attorneys' fees on the counsel who perpetrated the frivolous action.

13           In *Centennial Gateway v. Home Consignment Ctr.*, 465 P.3d 218 (Nev. 2020), the Supreme  
14   Court addressed the issue of when to award attorneys' fees and costs after the dismissal of an action.

15           Centennial next challenges the district court's award of attorney fees  
16           as a sanction. We review for an abuse of discretion, *see Edwards v.*  
17           *Emperor's Garden Rest.*, 122 Nev. 317, 330, 130 P.3d 1280, 1288  
18           (2006) (explaining that this court will not overturn an award of  
19           attorney fees as a sanction absent a manifest abuse of discretion), and  
20           disagree. **The record supports that Centennial knew of and**  
21           **concealed information** showing its lack of standing to enforce the  
22           lease and guarantees until trial began. *See* NRS 18.010(2)(b)  
23           **(providing that a court may award attorney fees upon finding that**  
24           **a claim "was brought or maintained without reasonable**  
25           **ground")**; *Baldonado v. Wynn Las Vegas, LLC*, 124 Nev. 951, 967-  
26           68, 194 P.3d 96, 106 (2008) **(requiring the district court to "inquire**  
27           **into the actual circumstances of the case" when considering**  
28           **whether to award attorney fees pursuant to NRS**  
          **18.010(2)(b))**; *see also Rosenberg Living Tr. v. MacDonald*  
          *Highlands Realty, LLC*, 134 Nev. 570, 580-81, 427 P.3d 104, 113  
          (2018) **(reviewing a district court's finding that a claim was**  
          **unreasonably brought or maintained for credible**  
          **evidence)**. Because the district court did not abuse its discretion in  
          awarding the fees, it similarly did not abuse its discretion in denying  
          Centennial's motion to reconsider that order. *See AA Primo Builders*,  
          126 Nev. at 589, 245 P.3d at 1197; *see also Masonry & Tile*  
          *Contractors Ass'n of S. Nev. v. Jolley, Urga & Wirth, Ltd.*, 113 Nev.  
          737, 741, 941 P.2d 486, 489 (1997) ("A district court may reconsider  
          a previously decided issue if substantially different evidence is  
          introduced or the decision is clearly erroneous.").

1 Centennial's jurisdictional challenge to the award also fails. **NRS**  
2 **18.010(2)(b) allows district courts to award attorney fees to a**  
3 **defendant based on a complaint's dismissal.** *See Logan v. Abe*, 131  
4 Nev. 260, 264, 350 P.3d 1139, 1141 (2015) (reviewing de novo a  
5 party's eligibility for a fee award pursuant to statute); *see also MB*  
*Am., Inc. v. Alaska Pac. Leasing*, 132 Nev. 78, 88-89, 367 P.3d 1286,  
1292-93 (2016) (**recognizing that dismissal of a plaintiff's**  
**complaint is "sufficient to find [a defendant is] a prevailing party**  
**... entitled to an award of attorney fees under NRS 18.010"**).

6 *Centennial Gateway v. Home Consignment Ctr.*, 465 P.3d 218 (Nev. 2020) (emphasis supplied).

7 As previously noted in the Motion in Chief, Plaintiffs initiated this lawsuit 8 months beyond the  
8 expiration of the statute of limitations. They went to the trouble of getting a special administrator  
9 appointed for Ms. Powell's estate for the express purpose of obtaining Ms. Powell's medical records  
10 from CHH. Plaintiffs obtained all records from CHH within one month of Ms. Powell's death,  
11 giving them inquiry notice as of that date, as the Supreme Court so noted. Plaintiffs submitted those  
12 very records to their medical expert who prepared a declaration they used to file their Complaint.  
13 Plaintiffs further made complaints to two State agencies alleging medical malpractice by CHH.  
14 However, for the purposes of summary judgment, they feigned ignorance of their actions and their  
15 lawyer, not even Plaintiffs themselves, posited some half-baked theory of "confusion" which this  
16 Court used to justify its initial decision to deny summary judgment.

17 It took a determination by the Supreme Court that the overwhelming evidence of inquiry  
18 notice, supplied by Plaintiffs themselves, to right the wrong initiated by Plaintiffs which was  
19 perpetuated with this Court's blessing. Rather than accepting the Supreme Court's decision and  
20 rationale, this Court's denial of CHH's motion and the rationale behind that decision continues to  
21 perpetuate the false notion that the action was either brought or maintained in good faith, a fact  
22 completely dispelled by the Supreme Court's decision. Thus, denying costs and attorneys' fees in  
23 light of the Supreme Court's decision is not only clearly erroneous, it is also a manifest abuse of  
24 discretion which the instant motion seeks to redress.

25 Again, this Court possessed admissible evidence of the work, time and expenses on the  
26 original motion. This Court wanted more than that. This motion gives the Court everything it could  
27 possibly need. Moreover, all of this could have been obviated by a hearing with an opportunity for  
28 all parties to participate to consider the totality of the evidence which has now been submitted, and

1 would have been submitted had the *in camera* inspection thereof been considered. What is even  
2 more telling is that throughout the entirety of the post-appeal process, Plaintiffs have not yet to come  
3 forward with any contradictory evidence or substantive opposition to the costs and fees CHH  
4 incurred. They failed to timely move to retax costs. They failed to come forth with any evidence  
5 in opposition to the instant motion, just as they failed to oppose the motion for summary judgment  
6 which brought about all of this. However, CHH is somehow being punished for its defense of  
7 litigation against it which was improperly brought, improperly maintained, and for which no proper  
8 opposition on any post-judgment motion was ever interposed.

9 In light of all of the overwhelming and unopposed evidence CHH submitted both on the  
10 original motion and now, this Court's refusal to (1) sign a judgment for unopposed costs and (2) to  
11 grant CHH's separate motion for costs and attorneys' fees is clearly erroneous.

### 12 **III. CONCLUSION**

13 Based upon the legal authority and reasons stated above and in CHH's Motion in Chief,  
14 CHH respectfully requests the Court grant their Motion for Reconsideration and award it  
15 **\$110,930.85** in attorneys' fees per N.R.C.P. 68 and N.R.S. §§ 17.117, plus **\$58,514.36** in pre-NRCP  
16 68 offer fees and expenses pursuant to N.R.S. §§ 7.085, 18.010(2) and EDCR 7.60. Moreover, this  
17 Court must sign the judgment already submitted to it for the undisputed **\$42,492.03** in costs to which  
18 CHH is already entitled by law.

19 DATED this 23<sup>rd</sup> day of March, 2022.

20 LEWIS BRISBOIS BISGAARD & SMITH LLP

21 By /s/ Adam Garth

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*Medical Center*

1 **CERTIFICATE OF SERVICE**

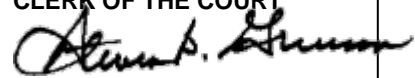
2 I hereby certify that on this 23<sup>rd</sup> day of March, 2022, a true and correct copy  
3 of **DEFENDANT VALLEY HEALTH SYSTEM, LLC DBA CENTENNIAL HILLS**  
4 **HOSPITAL MEDICAL CENTER'S REPLY IN FURTHER SUPPORT OF MOTION FOR**  
5 **RECONSIDERATION REGARDING ITS MOTION FOR ATTORNEYS' FEES**  
6 **PURSUANT TO N.R.C.P. 68, N.R.S. §§ 17.117, 7.085, 18.010(2), AND EDCR 7.60** was served  
7 by electronically filing with the Clerk of the Court using the Odyssey E-File & Serve system and  
8 serving all parties with an email-address on record, who have agreed to receive electronic service in  
9 this action.

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19 An Employee of  
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# EXHIBIT I



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Center*

8  
9 DISTRICT COURT

10 CLARK COUNTY, NEVADA  
11

12 ESTATE OF REBECCA POWELL, through  
BRIAN POWELL, as Special Administrator;  
13 DARCI CREECY, individually and as Heir;  
TARYN CREECY, individually and as an  
14 Heir; ISAAH KHOSROF, individually and as  
an Heir; LLOYD CREECY, individually,;

15 Plaintiffs,  
16

17 vs.

18 VALLEY HEALTH SYSTEM, LLC (doing  
business as "Centennial Hills Hospital Medical  
Center"), a foreign limited liability company;  
19 UNIVERSAL HEALTH SERVICES, INC., a  
foreign corporation; DR. DIONICE S.  
20 JULIANO, M.D., an individual; DR.  
CONRADO C.D. CONCIO, M.D., an  
21 individual; DR. VISHAL S. SHAH, M.D., an  
individual; DOES 1-10; and ROES A-Z,;

22 Defendants.  
23

Case No. A-19-788787-C

Dept. No.: 30

**DEFENDANT VALLEY HEALTH  
SYSTEM LLC'S VERIFIED  
MEMORANDUM OF COSTS**

24  
25 Defendant VALLEY HEALTH SYSTEM, LLC (doing business as "Centennial Hills  
26 Hospital Medical Center", hereinafter "CHH") as the prevailing party, by and through their  
27 attorneys, the law firm of Lewis Brisbois Bisgaard & Smith LLP, hereby submit the following  
28 Verified Memorandum of Costs to be recovered against Plaintiffs pursuant N.R.S. 18.005, 18.020,



1 18.110, 17.117, and N.R.C.P. 68(f):

2	Clerk's fees	Allowed by NRS 18.005(1)	\$515.50
3	Expert fees	Allowed by NRS 18.005(5)	\$41,724.10
4	Process Server fees	Allowed by NRS 18.005(7)	\$27.43
5	Other	Allowed by NRS 18.005(17)	\$225.00

6  
7 **TOTAL** **\$42,492.03**

8 Supporting documentation for the items set forth above is attached hereto as Exhibit "A" in  
9 the form of a disbursement log. According to the log, a total of \$45,267.03 was incurred as  
10 recoverable disbursements. However, the \$3,000 arbitration fee is being refunded except for a \$225  
11 administrative fee. The amount contained in this memorandum reflects the yet to be refunded  
12 arbitration fees less the administrative fee. In accordance with NRS 18.005 and NRS 18.020,  
13 Defendants are entitled to a cost award of **\$42,492.03**. Further, Plaintiff rejected an Offer of  
14 Judgment by Defendants dated August 28, 2020 and failed to obtain a more favorable judgment.<sup>1</sup>  
15 Therefore, the costs set forth above are recoverable by Defendants pursuant to N.R.C.P. 68(f) and  
16 N.R.S. 17.117(10).

17 The expert costs incurred in this case were reasonable, necessarily incurred and are  
18 recoverable pursuant to NRS 18.005. Pursuant to NRS 41A.100, professional negligence claims  
19 require expert medical testimony be given on standard of care and causation. *See also, Williams v.*  
20 *Dist. Ct.*, 262 P. 3d 360, 127 Nev. 518 (2011). The amount of "reasonable costs" for experts is  
21 limited to the three distinct expert witnesses at \$1,500 per expert, "unless the court allows a larger  
22 fee after determining that the circumstances surrounding the expert's testimony were of such  
23 necessity as to require the larger fee." NRS 18.005(5). For complicated professional negligence  
24 cases as this one, courts can and often do permit expert fees in excess of \$1,500.

25 The experts retained by CHH all meet the factors set out in *Frazier v. Drake*, 357 P.3d 365, 377  
26

27 <sup>1</sup> See Offer of Judgment, attached hereto as Exhibit "A", and Notice of Entry of Summary  
28 Judgment, attached hereto as Exhibit "B".

1 (Nev.App. 2015) for granting expert fees in excess of \$1,500. CHH needed to dispel the medically  
2 incorrect assertion by Plaintiffs that the administration of Ativan to Ms. Powell caused suppressed  
3 breathing. Richard Ruffalo, M.D., a pharmacologist was required to analyze Ms. Powell's medical  
4 records of more than 1,600 pages and formulate opinions and rebuttals of Plaintiffs' experts in this  
5 case who advanced medically impossible theories. Furthermore, Hiren Shah, M.D., a hospitalist,  
6 and Abraham Ishaaya, M.D., a critical care specialist, were retained to rebut the allegations that both  
7 a critical care expert was needed to attend to Ms. Powell, and that the care she received while  
8 hospitalized in a non-ICU setting was entirely appropriate under the circumstances. All three of  
9 these experts opined on causation, and Drs. Shah and Ishaaya commented on standard of care as  
10 well. Moreover, Plaintiffs' submitted a wholly unsubstantiated economist's report based upon not  
11 one shred of evidence as to lost earning capacity of Ms. Powell. CHH retained an economist to  
12 completely discredit Plaintiffs' report due to the absence of any proof whatsoever of any economic  
13 losses.

14 The three medical experts expended many hours reviewing the voluminous medical records in  
15 this case and prepared two written reports including initial and rebuttal reports. Drs. Shah, Ishaaya,  
16 and Ruffalo each independently meet the *Frazier* factors for a fee in excess of \$1,500 for each of  
17 their respective services.

18 Eric Volk, a forensic economist rebutted the report of Plaintiffs' economist and needed to  
19 research the theory upon which Plaintiffs' expert predicated his completely unsubstantiated opinion.  
20 Mr. Volk spent numerous hours reviewing Plaintiffs' expert report and researching the lack of basis  
21 for Plaintiffs' expert's opinions based upon no evidence whatsoever. He prepared a rebuttal report.  
22 Mr. Volk meets the *Frazier* factors for a fee in excess of \$1,500.

23 CHH respectfully requests this Court exercise its discretion and allow the recovery of all  
24 expert costs incurred by CHH secondary to the complex nature of Plaintiffs' alleged medical  
25 injuries, the causation of those injuries, and Plaintiff's complicated claims of economic injury.

26 ///

27 ///

28 ///



1 **CERTIFICATE OF SERVICE**

2 I hereby certify that on this 22<sup>nd</sup> day of November, 2021, a true and correct copy  
3 of **DEFENDANT VALLEY HEALTH SYSTEM LLC'S VERIFIED MEMORANDUM OF**  
4 **COSTS** was served by electronically filing with the Clerk of the Court using the Odyssey E-File &  
5 Serve system and serving all parties with an email-address on record, who have agreed to receive  
6 electronic service in this action.

7 Paul S. Padda, Esq.  
8 PAUL PADDALAW, PLLC  
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11 Tel: 702.366.1888  
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13 [psp@paulpaddalaw.com](mailto:psp@paulpaddalaw.com)  
14 *Attorneys for Plaintiffs*

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*Attorneys for Defendants Dionice S. Juliano,*  
*M.D., Conrado Concio, M.D And Vishal S.*  
*Shah, M.D.*

15  
16  
17 By /s/ Roya Rokni  
18 An Employee of  
19 LEWIS BRISBOIS BISGAARD & SMITH LLP  
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EXHIBIT ‘A’

EXHIBIT ‘A’

DBDRYP02

**Disbursement Diary**

10/26/2021 10:47:02 patricia.jose

Page 1

28094

UHS of Delaware, Inc.

From 0/00/00 Through 10/31/21

AM

\*Public/ladc-sqln01#acct/LDBData

190

Estate of Rebecca Powell v. Centennial Hills

**Selections: Client-Matter: 28094-190 to 28094-190 WIP Only \*Include Write-Offs\* \*Include A/P Invoices Sent to Client for Direct Payment\***

Date	DsbCd	Description	Check No.	Units	Rate	Amount	Stat/Source	Invoice No.
8/18/21	EXPM	Medical Expert Services: Ruffalo & Associates, Inc. Expert medical services rendered on 06/14/21.	337132			10,350.00-	W	A/P-P
8/18/21	EXPM	Medical Expert Services: Ruffalo & Associates, Inc. Inv#:2538 Expert medical services rendered on 06/14/21.	337211			10,350.00	W	A/P-P
10/09/21	EXPM	Medical Expert Services: Abraham Ishaaya Inv#:5POWELL Expert medical services rendered on 09/16/21 - 10/01/21.				3,437.50	A/P	
<b><u>Disbursements by Type:</u></b>								
EXPM		Medical Expert Services				3,437.50		
<b>Matter Total</b>						<b>3,437.50</b>		

DBDRYP02

**Disbursement Diary**

10/26/2021 10:34:12 patricia.jose

Page 1

28094 UHS of Delaware, Inc.  
190 Estate of Rebecca Powell v. Centennial Hills

From 0/00/00 Through 10/31/21

AM

\*Public/ladc-sqln01#acct/LDBData

**Selections: Client-Matter: 28094-190 to 28094-190 \*Include Write-Offs\* \*Include A/P Invoices Sent to Client for Direct Payment\***

Date	DsbCd	Description	Check No.	Units	Rate	Amount	Stat/Source	Invoice No.
6/15/20	Q	Filing Services: American Legal Investigation Services Nevada, Inc. Inv#:37 06/03/20 McBride Hall 5150163	304417			27.43	P A/P-P	2701173
7/14/20	5	Court filing fee: Comerica Commercial Card Services Inv#:063020STMT- ANOUWELS Trans Date: 06/08/2020 Nvefile* 006153274-0, Filing fee for substitution of attorney for defendant Valley Health System, LLC dba Centen Hills Hospital Medical Center.				3.50	P A/P-P	2723465
7/22/20	CS	E123-Consulting Services: Ruffalo & Associates, Inc. Inv#:2441 Professional services rendered on 06/24/20 - 07/22/20.	305674			4,350.00	P A/P-P	2723465
8/26/20	EXPM	Medical Expert Services: Abraham Ishaaya Inv#:POWELL,R-080220 Expert medical services rendered on 08/02/20 - 08/10/20.	309051			6,710.00	P A/P-P	2756453
9/15/20	5	Court filing fee: Comerica Commercial Card Services Inv#:083120STMT- ANOUWELS Trans Date: 08/10/2020 Nvefile* 006448171-0, Filing fee for non opposition.				3.50	P A/P-P	2777320
9/15/20	CS	E123-Consulting Services: Ruffalo & Associates, Inc. Inv#:2449 Professional services rendered on 09/10/20.	310480			1,800.00	P A/P-P	2777320
9/17/20	EXPM	Medical Expert Services: Abraham Ishaaya Inv#:#2POWELL Expert medical services rendered on 09/13/20 - 09/15/20.	310408			1,375.00	P A/P-P	2777320
10/15/20	5	Court filing fee: Comerica Commercial Card Services Inv#:093020STMT- ANOUWELS Trans Date: 09/02/2020 Nvefile* 006565123-0, Filing fee for Valley Health System, LLC and Universal Health Services, Inc.'s motion for summary judgment based upon the expiration of the statute of limitations.				209.50	P A/P-P	2808914
11/16/20	5	Court filing fee: Comerica Commercial Card Services Inv#:103120STMT- ANOUWELS Trans Date: 10/21/2020 Nvefile* 006809393-0, Filing fee for reply opposition.				3.50	P A/P-P	2836962
11/16/20	5	Court filing fee: Comerica Commercial Card Services Inv#:103120STMT- ANOUWELS Trans Date: 10/26/2020 Nvefile* 006836433-0, Filing fee for defendants Valley Health System, LLC and Universal Health Services, Inc.'s amended ex parte application to strike non- conforming document pursuant to EDCR 8. 03 and replace non-conforming pages.				3.50	P A/P-P	2836962
11/16/20	5	Court filing fee: Comerica Commercial Card Services Inv#:103120STMT- ANOUWELS Trans Date: 10/26/2020 Nvefile* 006834234-0, Filing fee for defendants' application to strike non-conforming document pursuant to EDCR and replace non-conforming document on defendants' motion for summary judgment based upon expiration of statute of limitations.				3.50	P A/P-P	2836962
11/16/20	5	Court filing fee: Comerica Commercial Card Services Inv#:103120STMT- ANOUWELS Trans Date: 10/28/2020 Nvefile* 006850481-0, Filing fee for notice entry of order.				3.50	P A/P-P	2836962
12/14/20	5	Court filing fee: Comerica Commercial Card Services Inv#:113020STMT- ANOUWELS Trans Date: 11/02/2020 Nvefile* 006870224-0, Filing fee for notice entry of order.				3.50	P A/P-P	2853363
12/14/20	5	Court filing fee: Comerica Commercial Card Services Inv#:113020STMT-						

**Stat:** blank-WIP Open; W-WIP Written-off; B-Billed & Unpaid; P-Paid; SN-Sent to client for direct payment; PW-partially paid/partially written-off.

**Source:** A/P-Accounts Payable Vendor Not Paid; A/P-P-Accounts Payable-Vendor Paid; DSB-Disb entry; APWFL-A/P Workflow

DBDRYP02

**Disbursement Diary**

10/26/2021 10:34:13 patricia.jose

Page 2

28094  
190UHS of Delaware, Inc.  
Estate of Rebecca Powell v. Centennial Hills

From 0/00/00 Through 10/31/21

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\*Public/ladc-sqln01#acct/LDBData

Selections: Client-Matter: 28094-190 to 28094-190 \*Include Write-Offs\* \*Include A/P Invoices Sent to Client for Direct Payment\*

Date	DsbCd	Description	Check No.	Units	Rate	Amount	Stat/Source	Invoice No.
1/15/21	5	ANOUWELS Trans Date: 11/20/2020 Nvfile* 006968470-0, Filing fee for defend Valley Health System LLC's reply to plaintiff's opposition to motion for st shortening time.				3.50	P A/P-P	2853363
1/15/21	5	Court filing fee: Comerica Commercial Card Services Inv#:123120STMT-ANOUWELS Trans Date: 12/17/2020 Nvfile* 007108178-0, Filing fee for notice entry of order.				3.50	P A/P-P	2885307
2/12/21	5	Court filing fee: Comerica Commercial Card Services Inv#:123120STMT-ANOUWELS Trans Date: 12/23/2020 Nevada Supreme Court, Filing fee for petiti for writ of mandamus.				250.00	P A/P-P	2885307
5/14/21	5	Court filing fee: Comerica Commercial Card Services Inv#:013121STMT-ANOUWELS Trans Date: 01/21/2021 Nvfile* 007268304-0, Filing fee for notice entry of order.				3.50	P A/P-P	2915500
5/14/21	5	Court filing fee: Comerica Commercial Card Services Inv#:043021STMT-ANOUWELS Trans Date: 04/06/2021 Nvfile* 007678289-0, Filing fee for exhibi m to defendant Valley Health System LLC's motion to reconsider.				3.50	P A/P-P	2994277
5/14/21	5	Court filing fee: Comerica Commercial Card Services Inv#:043021STMT-ANOUWELS Trans Date: 04/06/2021 Nvfile* 007677918-0, Filing fee for defend Valley Health System LLC's motion to reconsider motion for stay pending pet for writ of mandamus.				3.50	P A/P-P	2994277
5/14/21	5	Court filing fee: Comerica Commercial Card Services Inv#:043021STMT-ANOUWELS Trans Date: 04/09/2021 Nvfile* 007699690-0, Filing fee for notice entry of order.				3.50	P A/P-P	2994277
5/19/21	EXPM	Court filing fee: Comerica Commercial Card Services Inv#:043021STMT-ANOUWELS Trans Date: 04/16/2021 Nvfile* 007734419-0, Filing fee for defend Valley Health System LLC's reply in further support of its motion to recons motion for stay pending petition for writ of mandamus and in reply to plain opposition.	331469			3.50	P A/P-P	2994277
6/15/21	EXPM	Medical Expert Services: Abraham Ishaaya Inv#:3POWELL Expert medical services rendered on 05/14/21 - 05/18/21.	337132			6,187.50	P A/P-P	2982480
7/15/21	5	Medical Expert Services: Ruffalo & Associates, Inc. Inv#:2538 Expert medica services rendered on 06/14/21.				10,350.00	P A/P-P	3026387
7/15/21	5	Court filing fee: Comerica Commercial Card Services Inv#:063021STMT-ANOUWELS Trans Date: 06/04/2021 Nvfile* 007997526-0, Filing fee for notice entry of order.				3.50	B A/P-P	3043957
7/15/21	5	Court filing fee: Comerica Commercial Card Services Inv#:063021STMT-ANOUWELS Trans Date: 06/18/2021 Nvfile* 008073913-0, Filing fee for initia expert disclosure.				3.50	B A/P-P	3043957
8/12/21	AM	Medical Expert Services: Abraham Ishaaya Inv#:POWELL,R-071521 Expert medical services rendered on 07/15/21.	336584			2,970.00	B A/P	3043957
		E121-Arbitrators/Mediators Fees: JAMS, INC. Inv#:5821548 Mediation/arbitrat services rendered on 08/10/21. -Approved by Richard Kim from UHS of Delawar						

Stat: blank-WIP Open; W-WIP Written-off; B-Billed &amp; Unpaid; P-Paid; SN-Sent to client for direct payment; PW-partially paid/partially written-off.

Source: A/P-Accounts Payable Vendor Not Paid; A/P-P-Accounts Payable-Vendor Paid; DSB-Disb entry; APWFL-A/P Workflow



DBDRYP02

**Disbursement Diary**

10/26/2021 10:34:14 patricia.jose

Page 3

28094  
190UHS of Delaware, Inc.  
Estate of Rebecca Powell v. Centennial Hills

From 0/00/00 Through 10/31/21

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\*Public/ladc-sqln01#acct/LDBData

Selections: Client-Matter: 28094-190 to 28094-190 \*Include Write-Offs\* \*Include A/P Invoices Sent to Client for Direct Payment\*

Date	DsbCd	Description	Check No.	Units	Rate	Amount	Stat/Source	Invoice No.
		on 08/11/21.				3,000.00	P A/P-P	3072540
8/18/21	EXPM	Medical Expert Services: Ruffalo & Associates, Inc. Expert medical services rendered on 06/14/21.	337132			10,350.00-	W A/P-P	
8/18/21	EXPM	Medical Expert Services: Ruffalo & Associates, Inc. Inv#:2538 Expert medical services rendered on 06/14/21.	337211			10,350.00	W A/P-P	
8/26/21	CS	E123-Consulting Services: J.S. Held, LLC Inv#:1274938 Professional services rendered on 06/21/21 - 08/26/21.	341295			688.50	P A/P-P	3069107
9/13/21	CS	E123-Consulting Services: J.S. Held, LLC Inv#:1278635 Professional services rendered on 08/09/21 - 08/24/21.				3,855.60	B A/P	3102586
10/09/21	EXPM	Medical Expert Services: Abraham Ishaaya Inv#:5POWELL Expert medical services rendered on 09/16/21 - 10/01/21.				3,437.50	A/P	

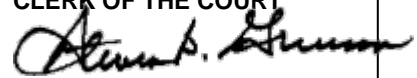
**Disbursements by Type:**

5	Court filing fee	515.50
AM	E121-Arbitrators/Mediators Fees	3,000.00
CS	E123-Consulting Services	10,694.10
EXPM	Medical Expert Services	31,030.00
Q	Filing Services	27.43

**Matter Total****45,267.03**

EXHIBIT ‘B’

EXHIBIT ‘B’



1 **NEOJ**  
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2 Nevada Bar No. 06858  
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3 ADAM GARTH  
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4 [Adam.Garth@lewisbrisbois.com](mailto:Adam.Garth@lewisbrisbois.com)  
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6 T: 702.893.3383  
F: 702.893.3789  
7 *Attorneys for Defendant Valley Health System,*  
*LLC dba Centennial Hills Hospital Medical*  
8 *Center*

9  
10 DISTRICT COURT

11 CLARK COUNTY, NEVADA

12 ESTATE OF REBECCA POWELL, through  
BRIAN POWELL, as Special Administrator;  
13 DARCI CREECY, individually and as Heir;  
TARYN CREECY, individually and as an  
Heir; ISAIAH KHOSROF, individually and as  
14 an Heir; LLOYD CREECY, individually;,,

15 Plaintiffs,

16 vs.

17 VALLEY HEALTH SYSTEM, LLC (doing  
business as "Centennial Hills Hospital Medical  
18 Center"), a foreign limited liability company;  
UNIVERSAL HEALTH SERVICES, INC., a  
19 foreign corporation; DR. DIONICE S.  
JULIANO, M.D., an individual; DR.  
20 CONRADO C.D. CONCIO, M.D., an  
individual; DR. VISHAL S. SHAH, M.D., an  
21 individual; DOES 1-10; and ROES A-Z;,,

22 Defendants.

Case No. A-19-788787-C

Dept. No. 30

**NOTICE OF ENTRY OF ORDER**

23  
24 PLEASE TAKE NOTICE that an ORDER was entered with the Court in the above-  
25 captioned matter on the 19<sup>th</sup> day of November 2021, a copy of which is attached hereto.

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DATED this 19<sup>th</sup> day of November, 2021.

LEWIS BRISBOIS BISGAARD & SMITH LLP

By       /s/ Adam Garth        
S. BRENT VOGEL  
Nevada Bar No. 06858  
ADAM GARTH  
Nevada Bar No. 15045  
6385 S. Rainbow Boulevard, Suite 600  
Las Vegas, Nevada 89118  
702.893.3383  
*Attorneys for Attorneys for Defendant Valley  
Health System, LLC dba Centennial Hills Hospital  
Medical Center*

1 **CERTIFICATE OF SERVICE**

2 I hereby certify that on this 19<sup>th</sup> day of November, 2021, a true and correct copy of  
3 **NOTICE OF ENTRY OF ORDER** was served by electronically filing with the Clerk of the  
4 Court using the Odyssey E-File & Serve system and serving all parties with an email-address on  
5 record, who have agreed to receive electronic service in this action.

6 Paul S. Padda, Esq.  
7 PAUL PADDA LAW, PLLC  
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13 *Attorneys for Plaintiffs*

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*Attorneys for Defendants Dionice S. Juliano,  
M.D., Conrado Concio, M.D And Vishal S.  
Shah, M.D.*

14  
15 By /s/ Roya Rokni  
16 An Employee of  
17 LEWIS BRISBOIS BISGAARD & SMITH LLP  
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**ORDR**

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Las Vegas, Nevada 89118

Telephone: 702.893.3383

Facsimile: 702.893.3789

*Attorneys for Defendant Valley Health System,  
LLC dba Centennial Hills Hospital Medical  
Center*

DISTRICT COURT

CLARK COUNTY, NEVADA

ESTATE OF REBECCA POWELL, through  
BRIAN POWELL, as Special Administrator;  
DARCI CREECY, individually and as Heir;  
TARYN CREECY, individually and as an  
Heir; ISALAH KHOSROF, individually and as  
an Heir; LLOYD CREECY, individually,;

Plaintiffs,

vs.

VALLEY HEALTH SYSTEM, LLC (doing  
business as "Centennial Hills Hospital Medical  
Center"), a foreign limited liability company;  
UNIVERSAL HEALTH SERVICES, INC., a  
foreign corporation; DR. DIONICE S.  
JULIANO, M.D., an individual; DR.  
CONRADO C.D. CONCIO, M.D., an  
individual; DR. VISHAL S. SHAH, M.D., an  
individual; DOES 1-10; and ROES A-Z,;

Defendants.

Case No. A-19-788787-C

Dept. No.: 30

**ORDER VACATING PRIOR ORDER  
DENYING DEFENDANT VALLEY  
HEALTH SYSTEM, LLC DBA  
CENTENNIAL HILLS HOSPITAL  
MEDICAL CENTER'S MOTION FOR  
SUMMARY JUDGMENT AND  
GRANTING SAID DEFENDANT'S  
MOTION FOR SUMMARY JUDGMENT  
PER MANDAMUS OF NEVADA  
SUPREME COURT**

This matter, coming before this Honorable Court on November 18, 2021 at 10:30 a.m. in  
accordance with the order granting the petition for a writ of mandamus issued by the Nevada  
Supreme Court dated October 18, 2021, directing that this Court vacate its order of October 29,  
2020, which previously denied Defendant VALLEY HEALTH SYSTEM, LLC's motion for

1 summary judgment and co-defendants Concio and Shah's joinder thereto (collectively  
2 "Defendants"), and ordering this Court to issue an order entering summary judgment in favor of  
3 said Defendants due to the expiration of the statute of limitations, with Paul S. Padda, Esq. and  
4 Srilata Shah, Esq. of PAUL PADDA LAW, PLLC, appearing on behalf of Plaintiffs, Adam Garth,  
5 Esq., S. Brent Vogel, Esq. and Shady Sirsy, Esq., of the Law Offices of LEWIS BRISBOIS  
6 BISGAARD & SMITH LLP, appearing on behalf of the Defendant VALLEY HEALTH SYSTEM,  
7 LLC and John H. Cotton, Esq. and Brad Shipley, Esq. of JOHN H. COTTON AND ASSOCIATES,  
8 appearing on behalf of DR. CONRADO C.D. CONCIO, M.D. and DR. VISHAL S. SHAH, M.D.,  
9 with the Honorable Court having reviewed the order of the Nevada Supreme Court, finds and orders  
10 as follows:

11 THE COURT FINDS that Defendants argued that undisputed evidence demonstrated  
12 Plaintiffs were on inquiry notice of their alleged professional negligence, wrongful death, and  
13 negligent infliction of emotional distress claims by June 11, 2017, at the latest, and

14 THE COURT FURTHER FINDS that Defendants contended that Plaintiffs' February 4,  
15 2019 complaint was time-barred under NRS 41A.097(2) (providing that plaintiffs must bring an  
16 action for injury or death based on the negligence of a health care provider within three years of the  
17 date of injury and within one year of discovering the injury, whichever occurs first), and

18 THE COURT FURTHER FINDS that the term injury in NRS 41A.097 means "legal injury."  
19 *Massey v. Litton*, 99 Nev. 723, 726, 669 P.2d 248, 251 (1983). A plaintiff "discovers his legal injury  
20 when he knows or, through the use of reasonable diligence, should have known of facts that would  
21 put a reasonable person on inquiry notice of his cause of action." *Id.* at 728, 669 P.2d at 252. A  
22 plaintiff "is put on 'inquiry notice' when he or she should have known of facts that 'would lead an  
23 ordinarily prudent person to investigate the matter further.'" *Winn v. Sunrise Hosp. & Med. Ctr.*,  
24 128 Nev. 246, 252, 277 P.3d 458, 462 (2012) (quoting *Inquiry Notice*, *Black's Law Dictionary* (9th  
25 ed. 2009)), and

26 THE COURT FURTHER FINDS that while the accrual date for NRS 41A.097(2)'s one-  
27 year period is generally a question for the trier of fact, this Court may decide the accrual date as a  
28 matter of law when the evidence is irrefutable. *Winn*, 128 Nev. at 251, 277 P.3d at 462, and

1        THIS COURT FURTHER FINDS that here, irrefutable evidence demonstrated that  
2 Plaintiffs were on inquiry notice by June 11, 2017, at the latest, when Plaintiff Brian Powell, special  
3 administrator for the estate, filed a complaint with the State Board of Nursing. There, Brian alleged  
4 that the decedent, Rebecca Powell, “went into respiratory distress” and her health care providers did  
5 not appropriately monitor her, abandoning her care and causing her death, and

6        THIS COURT FURTHER FINDS that Brian Powell’s own allegations in the aforesaid  
7 Board complaint demonstrate that he had enough information to allege a prima facie claim for  
8 professional negligence-that in treating Rebecca Powell, her health care providers failed “to use the  
9 reasonable care, skill or knowledge ordinarily used under similar circumstances by similarly trained  
10 and experienced providers of health care.” NRS 41A.015 (defining professional negligence); *Winn*,  
11 128 Nev. at 252-53; 277 P.3d at 462 (explaining that a “plaintiffs general belief that someone’s  
12 negligence may have caused his or her injury” triggers inquiry notice), and

13        THIS COURT FURTHER FINDS that the evidence shows that Plaintiff Brian Powell was  
14 likely on inquiry notice even earlier than the aforesaid Board complaint, wherein Plaintiffs alleged  
15 they had observed in real time, following a short period of recovery, the rapid deterioration of  
16 Rebecca Powell’s health while in Defendants’ care, and

17        THIS COURT FURTHER FINDS that Plaintiff Brian Powell filed a complaint with the  
18 Nevada Department of Health and Human Services (NDHHS) on or before May 23, 2017. Similar  
19 to the Nursing Board complaint, this complaint alleged facts, such as the Defendants’ failure to  
20 upgrade care, sterilize sutures properly, and monitor Rebecca Powell, all of which suggest he already  
21 believed, and knew of facts to support his belief, that negligent treatment caused Rebecca Powell’s  
22 death by the time he made these complaints to NDHHS and the Nursing Board, and

23        THIS COURT FURTHER FINDS that even though Plaintiffs received Rebecca Powell’s  
24 death certificate 17 days later, erroneously listing her cause of death as suicide, that fact did not  
25 change the conclusion that Plaintiffs received inquiry notice prior to that date, and

26        THE COURT FURTHER FINDS that Plaintiffs did not adequately address why tolling  
27 should apply under NRS 41A.097(3) (providing that the limitation period for a professional  
28 negligence claim “is tolled for any period during which the provider of health care has concealed



1 any act, error or omission upon which the action is based”), and

2 THIS COURT FURTHER FINDS that even if Plaintiffs did adequately address the tolling  
3 issue, such an argument would be unavailing, as the medical records provided were sufficient for  
4 their expert witness to conclude that petitioners were negligent in Rebecca Powell’s care. *See Winn*,  
5 128 Nev. at 255, 277 P.3d at 464 (holding that tolling under NRS 41A.097(3) is only appropriate  
6 where the intentionally concealed medical records were “material” to the professional negligence  
7 claims), and

8 THE COURT FURTHER FINDS that the doctrine of equitable tolling has not been extended  
9 to NRS 41A.097(2), and

10 THIS COURT FURTHER FINDS that Plaintiffs did not adequately address whether such  
11 an application of equitable tolling is appropriate under these facts. *See Edwards v. Emperor's*  
12 *Garden Rest.*, 122 Nev. 317, 330 n.38, 130 P.3d 1280, 1288 n.38 (2006) (refusing to consider  
13 arguments that a party did not cogently argue or support with relevant authority), and

14 THE COURT FURTHER FINDS that Plaintiffs had until June 11, 2018, at the latest, to file  
15 their professional negligence claim, making Plaintiffs’ February 4, 2019 complaint untimely, and

16 THE COURT FURTHER FINDS that given the uncontroverted evidence demonstrating that  
17 Defendants were entitled to judgment as a matter of law because the complaint was time-barred  
18 under NRS 41A.097(2), *see* NRCP 56(a); *Wood*, 121 Nev. at 729, 121 P.3d at 1029 (recognizing  
19 that courts must grant summary judgment when the pleadings and all other evidence on file, viewed  
20 in a light most favorable to the nonmoving party, "demonstrate that no genuine issue as to any  
21 material fact [remains] and that the moving party is entitled to a judgment as a matter of law"  
22 (internal quotations omitted));

23 IT IS HEREBY ORDERED, ADJUDGED, AND DECREED that this Court’s prior order  
24 of October 29, 2020 denying VALLEY HEALTH SYSTEM, LLC’s motion for summary judgment  
25 and co-defendants’ joinder thereto is vacated in its entirety, and

26 ///

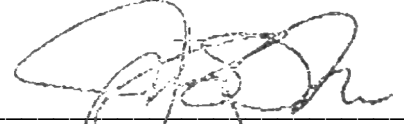
27 ///

28 ///

1 IT IS HEREBY FURTHER ORDERED, ADJUDGED, AND DECREED that Defendant  
2 VALLEY HEALTH SYSTEM, LLC's motion for summary judgment and co-defendants' joinders  
3 thereto are granted in their entirety due to the untimely filing of this action by Plaintiffs.

4  
5 Dated: \_\_\_\_\_.

Dated this 19th day of November, 2021



DISTRICT COURT JUDGE

8 DATED this \_\_\_\_ day of November, 2021.

DATED this 18th day of November, 2021

Jerry A. Wiese  
District Court Judge

9  
10 \*UNSIGNED\*

11 Paul S. Padda, Esq.  
12 Srilata Shah, Esq.,  
13 PAUL PADDALAW, PLLC  
14 4560 S. Decatur Blvd., Suite 300  
15 Las Vegas, NV 89103  
16 Tel: 702.366.1888  
17 Fax: 702.366.1940  
18 [psp@paulpaddalaw.com](mailto:psp@paulpaddalaw.com)  
19 Attorneys for Plaintiffs

DATED this 18<sup>th</sup> day of November, 2021

\_\_\_\_\_  
/s/ Brad Shipley

19 John H. Cotton, Esq.  
20 Brad Shipley, Esq.  
21 JOHN H. COTTON & ASSOCIATES  
22 7900 W. Sahara Ave., Suite 200  
23 Las Vegas, NV 89117  
24 Tel: 702.832.5909  
25 Fax: 702.832.5910  
26 [jhcotton@jhcottonlaw.com](mailto:jhcotton@jhcottonlaw.com)  
27 [bshipley@jhcottonlaw.com](mailto:bshipley@jhcottonlaw.com)  
28 Attorneys for Defendants Dionice S. Juliano,  
M.D., Conrado Concio, M.D And Vishal S.  
Shah, M.D.

\_\_\_\_\_  
/s/ Adam Garth

S. BRENT VOGEL, ESQ.  
Nevada Bar No. 6858  
ADAM GARTH, ESQ.  
Nevada Bar No. 15045  
SHADY SIRSY, ESQ.  
Nevada Bar No. 15818  
LEWIS BRISBOIS BISGAARD & SMITH  
LLP  
6385 S. Rainbow Boulevard, Suite 600  
Las Vegas, Nevada 89118  
Attorneys for Defendant Valley Health  
System, LLC dba Centennial Hills Hospital  
Medical Center

**From:** [Brad Shipley](#)  
**To:** [Garth, Adam](#); [Srilata Shah](#); [Paul Padda](#)  
**Cc:** [Vogel, Brent](#); [Rokni, Roya](#); [Sirsy, Shady](#); [San Juan, Maria](#)  
**Subject:** [EXT] RE: Adam Garth sent you "Powell v Valley - Proposed Order Vacating Prior MSJ and Ordering SJ on SOL"  
**Date:** Friday, November 12, 2021 10:00:14 AM  
**Attachments:** [image001.png](#)

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Adam,

I believe the bracketed word [proposed] in the title caption should be removed before submission to the court, but please use my e-signature with or without making that change. Thank you for taking the time to draft the order.

Brad Shipley, Esq.  
John H. Cotton & Associates, Ltd.  
7900 W. Sahara ave. #200  
Las Vegas, NV 89117  
[bshipley@jhcottonlaw.com](mailto:bshipley@jhcottonlaw.com)  
702 832 5909

---

**From:** Garth, Adam <Adam.Garth@lewisbrisbois.com>  
**Sent:** Friday, November 12, 2021 8:50 AM  
**To:** Srilata Shah <sri@paulpaddalaw.com>; Paul Padda <psp@paulpaddalaw.com>; Brad Shipley <bshipley@jhcottonlaw.com>  
**Cc:** Vogel, Brent <Brent.Vogel@lewisbrisbois.com>; Rokni, Roya <Roya.Rokni@lewisbrisbois.com>; Sirsy, Shady <Shady.Sirsy@lewisbrisbois.com>; San Juan, Maria <Maria.SanJuan@lewisbrisbois.com>; John Cotton <jhcotton@jhcottonlaw.com>  
**Subject:** FW: Adam Garth sent you "Powell v Valley - Proposed Order Vacating Prior MSJ and Ordering SJ on SOL"  
**Importance:** High

Counsel,

As a reminder, we have not heard from any party with respect to an agreement on submitting the proposed order to the Court. Given that the hearing is scheduled for 11/18, we previously indicated that if we did not hear from all parties by 12:00 noon today, we would proceed to submit this order to the court indicating no agreement between the parties. Please advise your position on this proposed order. Many thanks.

Adam Garth



**Adam Garth**  
**Partner**  
[Adam.Garth@lewisbrisbois.com](mailto:Adam.Garth@lewisbrisbois.com)  
**T: 702.693.4335 F: 702.366.9563**

6385 South Rainbow Blvd., Suite 600, Las Vegas, NV 89118 | [LewisBrisbois.com](http://LewisBrisbois.com)

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---

**From:** Garth, Adam <[Adam.Garth@lewisbrisbois.com](mailto:Adam.Garth@lewisbrisbois.com)>

**Sent:** Tuesday, November 9, 2021 10:33 AM

**To:** Srilata Shah <[sri@paulpaddalaw.com](mailto:sri@paulpaddalaw.com)>; Paul Padda <[psp@paulpaddalaw.com](mailto:psp@paulpaddalaw.com)>; Brad Shipley <[bshipley@jhcottonlaw.com](mailto:bshipley@jhcottonlaw.com)>

**Cc:** Vogel, Brent <[Brent.Vogel@lewisbrisbois.com](mailto:Brent.Vogel@lewisbrisbois.com)>; Rokni, Roya <[Roya.Rokni@lewisbrisbois.com](mailto:Roya.Rokni@lewisbrisbois.com)>; San Juan, Maria <[Maria.SanJuan@lewisbrisbois.com](mailto:Maria.SanJuan@lewisbrisbois.com)>; Sirsy, Shady <[Shady.Sirsy@lewisbrisbois.com](mailto:Shady.Sirsy@lewisbrisbois.com)>; [jhcotton@jhcottonlaw.com](mailto:jhcotton@jhcottonlaw.com)

**Subject:** Adam Garth sent you "Powell v Valley - Proposed Order Vacating Prior MSJ and Ordering SJ on SOL"

**Importance:** High

Counsel:

Attached is a proposed order reflecting the Supreme Court's ruling on the writ petition for Judge Wiese's consideration and signature. In accordance with the Supreme Court's order, Judge Wiese was directed to vacate his order denying the respective summary judgment motions and issuing a new order granting said motions. This proposed order does exactly that and reflects the rationale utilized by the Supreme Court in its decision. It is our intention to submit this proposed order to Judge Wiese in advance of the hearing he scheduled for November 18, 2021. Please respond whether we have your consent to use your e-signature on the proposed order prior to submission. If you have proposed changes, please advise accordingly and we can see whether they can be incorporated. We would like to submit the order on or before Friday, November 12, 2021, so please indicate your agreement to the order or if you have an objection. If we do not hear from you by before 11/12 by 12:00 noon, we will submit the order with a letter of explanation as to those parties unwilling to sign and they will have an opportunity to submit any competing order to the Court. Many thanks for your attention to this matter.

Adam Garth

**Adam Garth**

**Partner**

Las Vegas Rainbow

702.693.4335 or x7024335

**From:** [Garth, Adam](#)  
**To:** [Paul Padda](#); [Srilata Shah](#); [Brad Shipley](#)  
**Cc:** [Vogel, Brent](#); [Rokni, Roya](#); [Sirsy, Shady](#); [San Juan, Maria](#); [jhcotton@jhcottonlaw.com](mailto:jhcotton@jhcottonlaw.com)  
**Subject:** RE: Adam Garth sent you "Powell v Valley - Proposed Order Vacating Prior MSJ and Ordering SJ on SOL"  
**Date:** Friday, November 12, 2021 9:59:40 AM  
**Attachments:** [image001.png](#)  
[image002.png](#)

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We are not willing to do that. As you were unwilling to stay anything at our request, we will return the courtesy.

---

**From:** Paul Padda <psp@paulpaddalaw.com>  
**Sent:** Friday, November 12, 2021 9:56 AM  
**To:** Garth, Adam <Adam.Garth@lewisbrisbois.com>; Srilata Shah <sri@paulpaddalaw.com>; Brad Shipley <bshipley@jhcottonlaw.com>  
**Cc:** Vogel, Brent <Brent.Vogel@lewisbrisbois.com>; Rokni, Roya <Roya.Rokni@lewisbrisbois.com>; Sirsy, Shady <Shady.Sirsy@lewisbrisbois.com>; San Juan, Maria <Maria.SanJuan@lewisbrisbois.com>; [jhcotton@jhcottonlaw.com](mailto:jhcotton@jhcottonlaw.com)  
**Subject:** [EXT] RE: Adam Garth sent you "Powell v Valley - Proposed Order Vacating Prior MSJ and Ordering SJ on SOL"

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As you know, there is a motion for rehearing pending in the Supreme Court. Given that fact, and the lack of prejudice to Defendants, please advise if Defendants are willing to stay enforcement of the Supreme Court's decision which is the subject of a motion for rehearing? Thanks.

**Paul S. Padda, Esq.**  
**PAUL PADDA LAW, PLLC**  
**Websites:** [paulpaddalaw.com](http://paulpaddalaw.com)

**Nevada Office:**  
4560 South Decatur Blvd., Suite 300  
Las Vegas, Nevada 89103  
Tele: (702) 366-1888

**California Office:**  
One California Plaza  
300 South Grand Avenue, Suite 3840  
Los Angeles, California 90071  
Tele: (213) 423-7788



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---

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**Sent:** Friday, November 12, 2021 8:50 AM

**To:** Srilata Shah <[sri@paulpaddalaw.com](mailto:sri@paulpaddalaw.com)>; Paul Padda <[psp@paulpaddalaw.com](mailto:psp@paulpaddalaw.com)>; Brad Shipley <[bshipley@jhcottonlaw.com](mailto:bshipley@jhcottonlaw.com)>

**Cc:** Vogel, Brent <[Brent.Vogel@lewisbrisbois.com](mailto:Brent.Vogel@lewisbrisbois.com)>; Rokni, Roya <[Roya.Rokni@lewisbrisbois.com](mailto:Roya.Rokni@lewisbrisbois.com)>; Sirsy, Shady <[Shady.Sirsy@lewisbrisbois.com](mailto:Shady.Sirsy@lewisbrisbois.com)>; San Juan, Maria <[Maria.SanJuan@lewisbrisbois.com](mailto:Maria.SanJuan@lewisbrisbois.com)>; [jhcotton@jhcottonlaw.com](mailto:jhcotton@jhcottonlaw.com)

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Adam Garth



**Adam Garth**

**Partner**

[Adam.Garth@lewisbrisbois.com](mailto:Adam.Garth@lewisbrisbois.com)

**T: 702.693.4335 F: 702.366.9563**

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---

**From:** Garth, Adam <[Adam.Garth@lewisbrisbois.com](mailto:Adam.Garth@lewisbrisbois.com)>

**Sent:** Tuesday, November 9, 2021 10:33 AM

**To:** Srilata Shah <[sri@paulpaddalaw.com](mailto:sri@paulpaddalaw.com)>; Paul Padda <[psp@paulpaddalaw.com](mailto:psp@paulpaddalaw.com)>; Brad Shipley <[bshipley@jhcottonlaw.com](mailto:bshipley@jhcottonlaw.com)>

**Cc:** Vogel, Brent <[Brent.Vogel@lewisbrisbois.com](mailto:Brent.Vogel@lewisbrisbois.com)>; Rokni, Roya <[Roya.Rokni@lewisbrisbois.com](mailto:Roya.Rokni@lewisbrisbois.com)>; San Juan, Maria <[Maria.SanJuan@lewisbrisbois.com](mailto:Maria.SanJuan@lewisbrisbois.com)>; Sirsy, Shady <[Shady.Sirsy@lewisbrisbois.com](mailto:Shady.Sirsy@lewisbrisbois.com)>; [jhcotton@jhcottonlaw.com](mailto:jhcotton@jhcottonlaw.com)

**Subject:** Adam Garth sent you "Powell v Valley - Proposed Order Vacating Prior MSJ and Ordering SJ on SOL"

**Importance:** High

Counsel:

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Adam Garth

**Adam Garth**

**Partner**

Las Vegas Rainbow

702.693.4335 or x7024335

1 **CSERV**

2  
3 DISTRICT COURT  
CLARK COUNTY, NEVADA

4  
5  
6 Estate of Rebecca Powell,  
Plaintiff(s)

CASE NO: A-19-788787-C

7 vs.

DEPT. NO. Department 30

8  
9 Valley Health System, LLC,  
Defendant(s)

10  
11 **AUTOMATED CERTIFICATE OF SERVICE**

12  
13 This automated certificate of service was generated by the Eighth Judicial District  
14 Court. The foregoing 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:

15 Service Date: 11/19/2021

16 Paul Padda	psp@paulpaddalaw.com
17 S. Vogel	brent.vogel@lewisbrisbois.com
18 Jody Foote	jfoote@jhcottonlaw.com
19 Jessica Pincombe	jpinnacle@jhcottonlaw.com
20 John Cotton	jhcotton@jhcottonlaw.com
21 Paul Padda	civil@paulpaddalaw.com
22 Brad Shipley	bshipley@jhcottonlaw.com
23 Tony Abbatangelo	Tony@thevegaslawyers.com
24 Adam Garth	Adam.Garth@lewisbrisbois.com
25 Royak Rokni	roya.rokni@lewisbrisbois.com

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Diana Escobedo	diana@paulpaddalaw.com
Srilata Shah	sri@paulpaddalaw.com
Shady Sirsy	Shady.Sirsy@lewisbrisbois.com
Maria San Juan	maria.sanjuan@lewisbrisbois.com
Karen Cormier	karen@paulpaddalaw.com

# **Email Regarding the Hearing Being Moved from 3/30/22 to 4/1/22 in Chambers**

## Brown, Heidi

---

**From:** Israelitt, Megan <Dept30LC@clarkcountycourts.us>  
**Sent:** Tuesday, March 29, 2022 3:43 PM  
**To:** adam.garth@lewisbrisbois.com; 'psp@paulpaddalaw.com'; brent.vogel@lewisbrisbois.com; Brad Shipley (bshipley@jhcottonlaw.com); San Juan, Maria; Dube, Tiffany; DeSario, Kimberly; 'Diana Escobedo'; 'Roya.Rokni@lewisbrisbois.com'  
**Cc:** McBride, Angela  
**Subject:** [EXT] Estate of Rebecca Powell v. Valley Health Systems et al.; A-19-788787-C

Counsel,

Please be advised that, for the purpose of judicial economy, Defendant's Motion for Reconsideration, currently set for hearing on 3/30/22 at 9AM has been RESET to 4/1/22 for a determination in Chambers.

This email shall serve as your notice of the same.

Best,



**Megan M. Israelitt**  
**Law Clerk**

District Court, Department 30  
to the Honorable Judge Jerry A. Wiese II  
Eighth Judicial District Court  
Regional Justice Center  
200 Lewis Avenue  
Courtroom 14A  
Las Vegas, NV 89155  
(702) 671-0893  
[Dept30LC@clarkcountycourts.us](mailto:Dept30LC@clarkcountycourts.us)