

Electronically Filed
Mar 23 2022 11:26 a.m.
Elizabeth A. Brown
Clerk of Supreme Court

NOAS
PAUL S. PADDA, ESQ.
Nevada Bar No. 10417
Email: psp@paulpaddalaw.com
SRILATA R. SHAH, ESQ.
Nevada Bar No. 6820
Email: sri@paulpaddalaw.com
PAUL PADDA LAW, PLLC
4560 South Decatur Boulevard, Suite 300
Las Vegas, Nevada 89103
Tele: (702) 366-1888

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' NOTICE OF APPEAL

Plaintiffs hereby appeal to the Nevada Supreme Court from the "Order Re: Concio's And
Shah's Motion For Fees And Costs" filed on February 15, 2022. Notice of that Order was filed
and served on February 16, 2022. See Exhibit A.

Estate of Rebecca Powell, et al. v. Valley Health System, LLC, et al.
District Court Case No. A-19-788787-C, Dept. 30
Plaintiffs' Notice Of Appeal
PPL #201297

PAUL PADDA LAW, PLLC

/s/ Paul S. Padda

/s/ Srilata R. Shah

Paul S. Padda, Esq.

Nevada Bar No. 10417

Srilata R. Shah, Esq.

Nevada Bar No. 6820

4560 South Decatur Blvd., Suite 300

Las Vegas, Nevada 89103

Attorneys for Plaintiffs

Dated: March 9, 2022

CERTIFICATE OF SERVICE

Pursuant to Nevada Rule of Civil Procedure 5, I certify that I am an employee of Paul Padda Law and that on this 17th day of March 2022, I filed and served a true and correct copy of **PLAINTIFFS' NOTICE OF** on all parties/counsel of record in the above entitled matter through the Court's electronic filing system - 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' Notice Of Appeal

PPL #201297

EXHIBIT A

EXHIBIT A



1 **NEO**
2 JOHN H. COTTON, ESQ.
3 Nevada Bar Number 5268
4 JHCotton@jhcottonlaw.com
5 BRAD SHIPLEY, ESQ.
6 Nevada Bar Number 12639
7 BShipley@jhcottonlaw.com
8 **JOHN H. COTTON & ASSOCIATES, LTD.**
9 7900 West Sahara Avenue, Suite 200
10 Las Vegas, Nevada 89117
11 Telephone: (702) 832-5909
12 Facsimile: (702) 832-5910
13 *Attorneys for Defendants Conrado Concio, M.D.*
14 *and Vishal S. Shah, M.D.*

9 **DISTRICT COURT**
10 * * *
11 **CLARK COUNTY, NEVADA**

11 ESTATE OF REBECCA POWELL, through
12 BRIAN POWELL, as Special Administrator;
13 DARCI CREECY, individually and as an Heir;
14 TARYN CREECY, individually and as an
15 Heir; ISAIAH 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
23 foreign corporation; DR. DIONICE S.
24 JULIANO, M.D., an individual; Dr.
25 CONRADO C.D. CONCIO, M.D., an
26 individual; DR. VISHAL S. SHAH, M.D., an
27 individual; DOES 1-10; and ROES A-Z;

28 Defendants.

CASE NO.: A-19-788787-C
DEPT. NO.: XXX

NOTICE OF ENTRY OF ORDER RE:
CONCIO'S AND SHAH'S MOTION
FOR FEES AND COSTS

PLEASE TAKE NOTICE that an Order was entered on the 15th day of February 2022 in
the above-captioned matter, a copy of which is attached.

//

//

//

1 Dated this 16th day of February 2022.

2 **JOHN H. COTTON & ASSOCIATES, LTD.**
3 7900 West Sahara Avenue, Suite 200
4 Las Vegas, Nevada 89117

5 */s/ Brad Shipley*

6 **JOHN H. COTTON, ESQ.**
7 **BRAD SHIPLEY, ESQ.**

8 *Attorneys for Defendants Conrado Concio, M.D. and*
9 *Vishal S. Shah, M.D*

10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28

CERTIFICATE OF ELECTRONIC SERVICE

I hereby certify that on the 16th day of February 2022, I served a true and correct copy of the foregoing ***NOTICE OF ENTRY OF ORDER RE: CONCIO'S AND SHAH'S MOTION FOR FEES AND COSTS*** by electronic means was submitted electronically for filing and/or service with the Eighth Judicial District Court, made in accordance with the E-Service List, to the following individuals:

Paul S. Padda, Esq.
Suneel J. Nelson, Esq.,
PAUL PADDA LAW, PLLC
4560 South Decatur Boulevard, Ste. 300
Las Vegas, NV 89103
Attorneys for Plaintiffs

S. Brent Vogel
Adam Garth
LEWIS BRISBOIS BISGAARD & SMITH LLP
6385 S. Rainbow Blvd., Ste. 600
Las Vegas, NV 89118
*Attorneys for Defendant Valley Health System, LLC dba
Centennial Hills Hospital Medical Center*

/s/ Jody Foote

An Employee of John H. Cotton & Associates

Atkinson
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. SHAH, M.D., an individual;)
DOES 1-10; and ROES A-Z,)

Defendants.

CASE NO.: A-19-788787-C
DEPT. NO.: XXX

**ORDER RE: CONCIO'S
AND SHAH'S MOTION
FOR FEES AND COSTS**

INTRODUCTION

The above-referenced matter is scheduled for a hearing on 2/18/22, with regard to Defendants, Conrado Concio, M.D., and Vishal Shah, M.D.'s Motion for Attorneys' Fees and Costs. Pursuant to the Administrative Orders of the Court, as well as EDCR 2.23, 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 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. However, on May 10, 2017, Plaintiff complained of shortness of breath, weakness, and

1 a drowning feeling. In response to these complaints, Defendant Doctor Vishal Shah
2 ordered Ativan to be administered via IV push. Plaintiff's condition did not improve.
3 Defendant, Doctor Conrado Concio twice more ordered Ativan to be administered via
4 IV push, and Plaintiff was put in a room with a camera in order to better monitor her
5 condition. At 3:27 AM on May 11, 2017, another dose of Ativan was ordered. Plaintiff
6 then entered into acute respiratory failure, resulting in her death.

7 Plaintiffs brought suit on February 4, 2019 alleging negligence/medical
8 malpractice, wrongful death pursuant to NRS 41.085, and negligent infliction of
9 emotional distress. Defendants filed Motions to Dismiss and for Summary Judgment,
10 which this Court denied. After a recent remand from the Nevada Supreme Court, on
11 11/19/21, the Court entered an Order Vacating Prior Order Denying Defendant Valley
12 Health System, LLC DBA Centennial Hills Hospital Medical Center's Motion for
13 Summary Judgment and Granting Said Defendant's Motion for Summary Judgment
14 Per Mandamus of Nevada Supreme Court. A Notice of Entry of Order was entered that
15 same day. On 11/22/21, Defendant Valley Health Systems filed a Motion for Attorneys
16 Fee and Verified Memorandum of Costs. Defendants Conrado Concio, MD and Vishal
17 Shah, MD filed a Verified Memorandum of Costs and Disbursements on 11/23/21, and
18 a Motion for Attorney's Fees and Costs on 12/10/21.

19 On 12/3/21, Plaintiffs filed a Motion to Extend Time to Respond to Defendants'
20 Valley Health Systems, Dr. Dionice S. Juliano, Dr. Conrado Concio, and Dr. Vishal
21 Shah's Memorandums of Costs. Plaintiffs received an Order Shortening Time on
22 12/10/21. Following briefing, the Court entered an Order denying Plaintiffs' Motion to
23 Extend Time to Respond, because of a lack of diligence on part of the Plaintiffs.

24 **SUMMARY OF LEGAL AND FACTUAL ARGUMENTS**

25 Defendants Conrado Concio, MD and Vishal Shah, MD (the "Doctors" or "Doctor
26 Defendants") seek an award of fees and costs pursuant to NRCP 68, NRS 17.117, NRS
27 18.010(2)(b), and NRS 7.085. The Doctors state they have incurred \$53,099.00 in
28 attorneys' fees in successfully defending this action, and \$18,399.00 after the rejection
of their offers of judgment to Plaintiffs. The Doctors claim they incurred \$9,149.76 in
costs, and an additional \$3,049.10 since Plaintiffs rejected their offers.

1 The Doctors state that on 9/22/20, as Plaintiffs disclosed clear and irrefutable
2 evidence that the claims were barred by the statute of limitations, the Doctors each
3 individually served offers of judgment on Plaintiffs, "generously agreeing to waive any
4 fees and costs to which they would be entitled as a prevailing party, which was now a
5 foregone conclusion." Plaintiffs did not respond to the offers of judgment and instead
6 allowed them to expire.

7 Thereafter, on 6/18/21, the parties exchanged initial expert disclosures. The
8 Doctors disclosed James Leo, MD, who opined that each of the Doctor Defendants met
9 the standard of care. Dr. Leo further opined that while Plaintiffs' expert Dr. Hashim
10 was critical of the lack of a differential diagnosis and the administration of Ativan, Dr.
11 Hashim apparently did not sufficiently review the records, as he failed to notice that the
12 Doctor Defendants sought the intervention of specialized consulting for that purpose.
13 The Doctor Defendants sought consulting from Dr. Skankey, an infectious disease
14 specialist, and Dr. Breeden, a pulmonologist. The records are clear that these two
15 physicians developed a differential diagnosis on May 10, and the records furthermore
16 demonstrate that Dr. Breeden, the pulmonologist, was aware of and ratified the
17 administration of Ativan to the decedent.

18 Plaintiffs did not disclose Dr. Hashim as an expert, but disclosed expert reports
19 from James Lineback, MD, Thomas Cumbo, MD, Kenny Stein, MD, Michael Griffith,
20 RN, and Terence Clauretie. Only Dr. Stein acknowledged Dr. Skankey and Dr. Breeden,
21 and his opinions of these two physicians do not appear to be favorable. Dr. Stein
22 offered no criticisms of Dr. Shah, and only a single criticism of Dr. Concio. However,
23 Dr. Stein spent the bulk of his report discussing the alleged errors and omissions of the
24 consulting specialists, Dr. Breeden and Dr. Skankey. In that respect, while he disagreed
25 with Dr. Leo's assessment regarding the appropriateness and effect of Ativan in this
26 case, he clearly agreed that Dr. Breeden is the one who bore responsibility for the
27 administration of Ativan as the consulting pulmonologist who ratified the decision. The
28 Defendant Doctors further note that Plaintiffs never served any written discovery on
the Moving Defendants and never sought to take their depositions.

The Doctors cite to *Schouweiler v. Yancey Co.*, for the proposition that a Court
must consider the following factors in exercising its discretion to award fees: (1)
whether the offeree brought his claims in good faith; (2) whether the offeror's offer of

1 judgment was also brought in good faith in both timing and amount; (3) whether the
2 offeree's decision to reject the offer of judgment was in bad faith or grossly
3 unreasonable; and (4) whether the amount of offeror's requested fees is reasonable and
4 justified. *Schouweiler*, 101 Nev. 827, 833, 917 P.2d 786 (1985).

5 Additionally, NRS 18.010(2)(b) provides that "the court may make an allowance
6 of attorney's fees to a prevailing party ... when the court finds that the claim ... was ...
7 maintained without reasonable ground to harass the prevailing party. The court shall
8 liberally construe the provisions of this paragraph in favor of awarding attorney's fees
in all appropriate situations."

9 EDCR 7.60(b) provides that the "court may ... impose upon an attorney or a
10 party any and all sanctions which may, under the facts of the case, be reasonable,
11 including ... costs or attorney's fees when an attorney or a party without 'just cause ... so
12 multiplies the proceedings in a case as to increase costs unreasonably and vexatiously."

13 The Doctors argue they are entitled to an award of attorneys' fees and costs for
14 the entirety of this action. Although the Doctors served an offer of judgment for a
15 waiver of their fees and costs after Plaintiffs disclosed documents, which unequivocally
16 proved that the Doctors were entitled to summary judgment, Plaintiffs and their
17 counsel were clearly in possession of these documents before then. Thus, while the
18 timing and amount of offer is clearly reasonable, and the rejection of the offer was
19 grossly unreasonable and in bad faith, it is likewise clear that Plaintiffs and their
20 counsel knew or should have known from the very outset of the litigation that the
claims were time-barred. Despite, this knowledge, Plaintiffs chose to persist.

21 Moreover, Plaintiffs' reviewing experts either overlooked or purposely ignored
22 the important role played by specialist Dr. Breeden, both to the extent that it
23 exonerates the Doctor Defendants and to the extent that it possibly implicates Dr.
24 Breeden. To the extent that this case was brought against the Doctors, it was not done
25 so in good faith. Additionally, the Doctors contend that Plaintiffs' refusal to stay the
26 case during the pendency of the petition for writ of mandamus was manifestly
27 unreasonable, especially when viewed in light of the aforementioned failures. The
28 decision to refuse a stay, even after the Supreme Court ordered Plaintiffs to answer the
petition for writ, was calculated to leverage the costs of defense against Defendants in

1 order to salvage some settlement value from a case that was headed for almost certain
2 dismissal.

3 Finally, the Doctors filed an attached affidavit of counsel, which addresses the
4 *Brunzell* factors. Counsel indicates that the billing records are available for in camera
5 review should the Court find it necessary to examine them. Such fees are comprised of
6 services billed by attorneys John H. Cotton, Esq., Brad J. Shipley Esq., and paralegal
7 Jody Foote. Mr. Cotton billed a total of 17 hours at a rate of \$250.00 per hour. Ms.
8 Foote billed a total of 9.2 hours at a rate of \$90 per hour. Mr. Shipley was responsible
9 for the remaining 252.7 hours at a rate of \$190 per hour.

10 With regard to the qualities and skills of the advocate, Mr. Cotton has practiced
11 law in the State of Nevada since 1976, while maintaining an AV rating with Martindale
12 Hubble since 1981. Mr. Shipley has practiced as an attorney for over three years, and
13 spent several years as a law clerk to both Judge Joanna S. Kishner and Justice (then
14 Judge) Abbi Silver. Counsel states that character of the work done was complex, as this
15 was a professional negligence/wrongful death claim, involving multiple defendants. As
16 to the work actually performed, counsel suggests that the court can take judicial notice
17 of the extensive motion practice involved in this case. The result obtained in this matter
18 was judgment in favor of the defendants on all causes of action.

19 In Opposition, Plaintiffs argue that the medical malpractice, wrongful death, and
20 negligent infliction of emotional distress complaint on behalf of the estate and
21 surviving children of Rebecca Powell was not frivolous, and the claims for wrongful
22 death/medical malpractice and negligent infliction of emotional distress were brought
23 in good faith. Because this Court denied several dispositive motions before the Nevada
24 Supreme Court ultimately directed this Court to vacate its Order denying CHH's
25 Motion for Summary Judgment and enter judgment in favor of all the Defendants,
26 Defendants did not "win" this matter on the merits.

27 Plaintiffs argue that the dismissal of the case on an incorrect interpretation of
28 the facts and application of inquiry notice to all the named Plaintiffs by the Supreme
Court does not make the claims of Plaintiffs any less meritorious. Further, pursuant to
NRCPP 68, and NRS 17.117(10), a party is not entitled to attorney's fees simply because it
served an offer of judgment on the opposing party and that party failed to achieve a
more favorable verdict. The purpose of NRCPP 68 is to encourage settlement; it is not to

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

3 Plaintiffs argue that their claims were brought in good faith, as HHS determined
4 that there were deficiencies in Ms. Powell's care and the death certificate was
5 inaccurate. Plaintiffs argue that the Doctors incorrectly dissect a few statements made
6 by the Plaintiffs' experts to argue that the Complaint was not brought in good faith.
7 Plaintiffs' expert reports were disclosed in June of 2021. Plaintiffs' expert rebuttal
8 reports were disclosed in August of 2021. No depositions have been conducted nor any
9 motions filed contesting Plaintiffs' expert reports. Additionally, this Court repeatedly
10 found merit in Plaintiffs' Complaint and their causes of action for wrongful death,
11 medical malpractice, and negligent infliction of emotional harm.

12 Further, Plaintiffs argue that Doctors' Offer of Judgment of \$0.00 was not
13 reasonable and nor was it in good faith considering Plaintiffs' causes of action for
14 medical malpractice, wrongful death, and negligent infliction of emotional harm.
15 Plaintiffs lost their mother, who was only 41 years old at the time of her death. It was
16 reasonable for Plaintiffs to reject Defendants' Offer of Judgment, as the terms of the
17 Offer of Judgment did not provide for any monetary recovery to Plaintiffs to
18 compensate them for the loss of their mother. Moreover, this Court denied the Motion
19 for Summary Judgment. Therefore, the Doctors incorrectly state that given the
20 likelihood of losing on this issue, the offered waiver of the right to seek reimbursement
21 of costs was reasonable in both timing and amount.

22 Plaintiffs contend that their decision to reject the Offer of Judgment was not
23 grossly unreasonable nor in bad faith because no amount was being offered in damages
24 to the Plaintiffs. The Doctors merely agreed to waive their fees and costs to which they
25 would be entitled to by statute or rule. Plaintiffs were not even in a position to verify
26 the accuracy of the alleged fees and costs since the Doctors did not provide
27 documentation in support of their Offer.

28 With regard to the fees sought, Plaintiffs notes that a jury did not render a
verdict in favor of Defendants. Plaintiffs argue that the Doctors incurred so many fees
because it continued filing of motions based on the same statute of limitations theory.
Thus, the Doctors' fees are unreasonable and unjustified. Plaintiffs argue that the

Doctors did not provide an itemization of fees requested. Further, Plaintiffs argue that sanctions under NRS 7.085 and/or NRS 18.010 (2) are unwarranted and unsupported.

FINDINGS OF FACT AND CONCLUSIONS OF LAW

NRCP 68 provides in pertinent part as follows:

Rule 68. Offers of Judgment

(a) The Offer. At any time more than 21 days before trial, any party may serve an offer in writing to allow judgment to be taken in accordance with its terms and conditions. Unless otherwise specified, an offer made under this rule is an offer to resolve all claims in the action between the parties to the date of the offer, including costs, expenses, interest, and if attorney fees are permitted by law or contract, attorney fees.

.... (d) Acceptance of the Offer and Dismissal or Entry of Judgment.

(1) Within 14 days after service of the offer, the offeree may accept the offer by serving written notice that the offer is accepted.

(2) Within 21 days after service of written notice that the offer is accepted, the obligated party may pay the amount of the offer and obtain 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.

....

1 NRCP 68.

2 NRCP 68 provides that the Defendant would be entitled to “reasonable attorney
3 fees, if any be allowed.” The language of the Rule specifically provides that Court with
4 “discretion,” as it relates to attorney’s fees, and the Court’s discretion will not be
5 disturbed absent a clear abuse of such discretion. *Armstrong v. Riggi*, 92 Nev. 280,
6 549 P.2d 753 (1976); *Schouweiler v. Yancey Co.*, 101 Nev. 827, 712 P.2d 786 (1985);
7 *Bidart v. American Title Ins. Co.*, 103 Nev. 175, 734 P.3d 732 (1987).

8 In evaluating whether to grant an award of attorney’s fees, pursuant to
9 *Schouweiler v. Yancey Co.*, 101 Nev. 827, 712 P.2d 786 (1985), the Court must
10 consider: “(1) whether plaintiff’s claim was brought in good faith; (2) whether
11 defendant’s offer of judgment was brought in good faith in both its timing and amount;
12 (3) whether plaintiff’s decision to reject the offer and proceed to trial was grossly
13 unreasonable or in bad faith; and (4) whether fees sought by the offeror are reasonable
14 and justified in amount.” *Schouweiler* at 833, citing *Beattie v. Thomas*, 99 Nev. 579,
15 588, 668 P.2d 268 (1983)(the “Beattie Factors”).

16 Any costs awarded need to be itemized and documented. The Nevada Supreme
17 Court has stated that without “itemization or justifying documentation,” the Court is
18 “unable to ascertain whether such costs were accurately assessed.” *Bobby Berosini,*
19 *Ltd. V. People for the Ethical Treatment of Animals*, 114 Nev. 1348, 1353, 971 P.2d 383
20 (1998). Further, when the “memorandum of costs is completely void of any specific
21 itemization,” and a “lack of supporting documentation,” it is an abuse of discretion on
22 the part of the Court if it awards the requested costs. *Id.* The Supreme Court has
23 further indicated that “‘justifying documentation’ must mean something more than a
24 memorandum of costs.” *Cadle Co. v. Woods & Erickson, LLP*, 131 Nev. 114, 121, 345
25 P.3d 1049 (2015). The Court has further indicated that “Without evidence to determine
26 whether a cost was reasonable and necessary, a district court may not award costs.”
27 *Id.*, citing *Peta*, 114 Nev. at 1353, 97 1 P.2d at 386.

28 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

1 when they affect the importance of the litigation; (3) the work actually performed by
2 the lawyer: the skill, time and attention given to the work; and (4) the result: whether
3 the attorney was successful and what benefits were derived. *Schouweiler* at 833-834,
4 citing to *Brunzell v. Golden Gate Nat'l Bank*, 85 Nev. 345, 349, 455 P.2d 31 (1969)
5 (quoting *Schwartz v. Schwerin*, 85 Ariz. 242, 336 P.2d 144, 146 (1959)).

6 In considering the costs submitted by Defendants, the Court finds pursuant to
7 the Cadle case, that sufficient documentation was provided for the Court to determine
8 that the following costs were reasonably and necessarily incurred in the case:

Clerks Fees	\$ 933.28
Expert Witness Fees	\$1,500.00
Mediation Fees	<u>\$ 225.00</u>
Total:	\$2,658.28

11 The Court finds insufficient documentation regarding the postage and
12 photocopies requested.

13 In *Frazier v. Drake*, 131 Nev. 632, 357 P.3d 365 (NV.Ct.of App., 2015), the Court
14 noted that NRS 18.005(5) provides for the recovery of "reasonable fees of not more
15 than five expert witnesses in an amount of not more than \$1,500 for each witness
16 unless the court allows a larger fee after determining that the circumstances
17 surrounding the expert's testimony were of such necessity as to require the larger fee."
18 *Id.*, at 644. The Court went on to state the following:

19 we conclude that any award of expert witness fees in excess of \$1,500
20 per expert under NRS 18.005(5) must be supported by an express,
21 careful, and preferably written explanation of the court's analysis of
22 factors pertinent to determining the reasonableness of the requested fees
23 and whether "the circumstances surrounding the expert's testimony were
24 of such necessity as to require the larger fee." See NRS 18.005(5); cf.
25 *Young v. Johnny Ribeiro Bldg., Inc.*, 106 Nev. 88, 93, 787 P.2d 777, 780
26 (1990) (requiring an "express, careful and preferably written explanation"
27 of the district court's analysis of factors pertinent to determining whether
28 a dismissal with prejudice is an appropriate discovery sanction). ***In
evaluating requests for such awards, district courts should
consider the importance of the expert's testimony to the
party's case; the degree to which the expert's opinion aided
the trier of fact in deciding the case; whether the expert's
reports or testimony were repetitive of other expert witnesses;
the extent and nature of the work performed by the expert;
whether the expert had to conduct independent investigations
or testing; the amount of time the expert spent in court,
preparing a report, and preparing for trial; the expert's area***

1 **of expertise; the expert's education and training; the fee**
2 **actually charged to the party who retained the expert; the fees**
3 **traditionally charged by the expert on related matters;**
4 **comparable experts' fees charged in similar cases; and, if an**
5 **expert is retained from outside the area where the trial is held,**
6 **the fees and costs that would have been incurred to hire a**
7 **comparable expert where the trial was held.**

8 *Id.*, at 650-651.

9 The Defendant provided evidence through Dr. Leo's CV of his area of expertise
10 and of his education and training, as well as evidence of the fee he actually charged.
11 None of the other factors set forth in *Frazier*, however, were addressed. Consequently,
12 the Court can allow the expert fee of \$1,500.00, as the Court finds that Dr. Leo's
13 testimony was relevant and the fees incurred were reasonable, but the Court cannot
14 allow expert fees in excess of \$1,500.00 without a *Frazier* analysis.

15 In considering the attorneys' fees requested by Defendants, the Court notes that
16 Defendants incurred a total of \$53,099 in attorneys' fees, with \$18,399 being incurred
17 after rejection of their Offer of Judgment. In considering the Beattie factors, the Court
18 finds and concludes that the plaintiff's claim was brought in good faith. The Court
19 finds and concludes that Defendant's offer of judgment, in the amount of \$0.00, was
20 brought in good faith in both its timing and amount. The Court acknowledges that the
21 parties disagree about this issue, but as much as the Plaintiffs believed they had a valid
22 case, the Defendants disputed any liability. The Court further finds and concludes that
23 Plaintiff's decision to reject the offer and proceed to trial was not grossly unreasonable
24 or in bad faith. Plaintiffs believed they had a valid claim, and the Court cannot find
25 that wanting some recovery, as opposed to \$0.00, to be "grossly unreasonable" or in
26 "bad faith. Finally, the Court finds and concludes that the fees sought by the
27 Defendants, at least subsequent to the Offer of Judgment, appear to be reasonable and
28 justified in amount. *Beattie v. Thomas*, 99 Nev. 579, 588, 668 P.2d 268 (1983).

 In determining the reasonableness of the fees requested, the Court has analyzed
the *Brunzell* factors, as follows: The Court finds that the qualities of defense counsel,
his ability, training, education, experience, professional standing and skill, favor an
award of fees. When considering the character of the work to be done - its difficulty,
intricacy, importance, the time and skill required, (when dealing with a professional
negligence/medical malpractice case), and finding that the character or prominence of

1 the parties was unremarkable, the complexity of the case warrants an award of fees.
2 When considering the work actually performed by the lawyer, and the skill, time and
3 attention given to the work, even without a detailed billing statement, the Court can
4 take judicial notice of the amount of time reasonably spent in preparation and litigation
5 of the various motions and appeal in this matter, and finds that the fees requested
6 appear to be reasonable for such work. Finally, in considering the result, the Court
7 notes that although the Court found insufficient evidence to establish irrefutably that
8 the statute of limitations had expired, Defense counsel was successful in convincing the
9 Supreme Court of that, and consequently, Defendants prevailed. *Brunzell v. Golden*
10 *Gate Nat'l Bank*, 85 Nev. 345, 349, 455 P.2d 31 (1969). Based upon this NRCP 68
11 analysis, the Court finds that the fees requested by Defendants, in the amount of
12 \$18,399.00 after rejection of the Offer of Judgment, were reasonably and necessarily
13 incurred, and are justified in this case.

14 **CONCLUSION/ORDER**

15 Based upon the foregoing, and good cause appearing,

16 **IT IS HEREBY ORDERED** that the Defendants' Motion for Fees and Costs is
17 **GRANTED IN PART and DENIED IN PART**, consistent with the foregoing.
18 Defendants are awarded **\$2,658.28** of the \$9,149.76 requested costs, and
19 **\$18,399.00** of the \$53,099.00 in attorneys' fees.

20 The Court requests that defense counsel prepare and process a Notice of Entry
21 with regard to this Order.

22 Because this matter has been decided on the pleadings, the hearing scheduled
23 for 2/18/22 will be taken off calendar, and consequently, there is no need for any
24 parties or attorneys to appear.

25 Dated this 15th day of February, 2022

26 

27 0E9 B8C C91E 008A
28 Jerry A. Wiese
District Court Judge

1 CSERV

2 DISTRICT COURT
3 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**

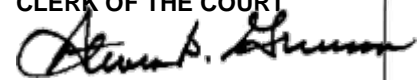
12
13 This automated certificate of service was generated by the Eighth Judicial District
14 Court. The foregoing Order was served via the court's electronic eFile system to all
recipients registered for e-Service on the above entitled case as listed below:

15 Service Date: 2/15/2022

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 Brad Shipley	bshipley@jhcottonlaw.com
22 Tony Abbatangelo	Tony@thevegaslawyers.com
23 Adam Garth	Adam.Garth@lewisbrisbois.com
24 Paul Padda	civil@paulpaddalaw.com
25 Diana Escobedo	diana@paulpaddalaw.com

26
27
28

1	Srilata Shah	sri@paulpaddalaw.com
2	Shady Sirsy	Shady.Sirsy@lewisbrisbois.com
3		
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
10		
11		
12		
13		
14		
15		
16		
17		
18		
19		
20		
21		
22		
23		
24		
25		
26		
27		
28		



ASTA
PAUL S. PADDA, ESQ.
Nevada Bar No. 10417
Email: psp@paulpaddalaw.com
SRILATA R. SHAH, ESQ.
Nevada Bar No. 6820
Email: sri@paulpaddalaw.com
PAUL PADDA LAW, PLLC
4560 South Decatur Boulevard, Suite 300
Las Vegas, Nevada 89103
Tele: (702) 366-1888

Attorneys for Plaintiffs/Appellants

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' CASE APPEAL
STATEMENT**

Plaintiffs, by and through their undersigned counsel of record, hereby submit this Case
Appeal Statement as follows:

Estate of Rebecca Powell, et al. v. Valley Health System, LLC, et al.
District Court Case No. A-19-788787-C, Dept. 30
Plaintiffs' Case Appeal Statement
PPL #201297

1. Name of appellants filing this case appeal statement:

Estate of Rebecca Powell, Darci Creecy, Taryn Creecy, Isaiah Khosrof and Lloyd Creecy.

2. Identify the judge issuing the decision, judgment or order appealed from:

The Honorable Jerry A. Wiese, Eighth Judicial District Court of the State of Nevada (Clark County).

3. Identify each appellant and the name and address of counsel for each appellant:

Appellants are Estate of Rebecca Powell, Darci Creecy, Taryn Creecy, Isaiah Khosrof And Lloyd Creecy. Counsel for Appellants are Paul S. Padda, Esq. and Srilata Shah, Esq. of Paul Padda Law, 4560 South Decatur Blvd., Suite 300, Las Vegas, Nevada 89103.

4. Identify each respondent and the name and address of appellate counsel, if known, for each respondent (if the name of a respondent's appellate counsel is unknown, indicate as much and provide the name and address of that respondent's trial counsel):

Respondent's are Dr. Conrado C.D. Concio, M.D. and Dr. Vishal S. Shah, M.D. Trial counsel for these parties were John H. Cotton, Esq. and Brad Shipley, Esq. of John H. Cotton & Associates, Ltd., 7900 West Sahara Avenue, Suite 200, Las Vegas, Nevada 89117.

5. Indicate whether any attorney identified above in response to question 3 or 4 is not licensed to practice law in Nevada and, if so, whether the district court granted that attorney permission to appear under SCR 42 (attach a copy of any district court order granting such permission):

All attorneys identified in response to questions 3 and 4 are licensed to practice in the State of Nevada.

Each appellant was represented by retained counsel in the district court action.

7. Indicate whether appellant is represented by appointed or retained counsel on appeal:

Appellants are represented by retained counsel.

8. Indicate whether appellant was granted leave to proceed in forma pauperis, and the date of entry of the district court order granting such leave:

No.

9. Indicate the date the proceedings commenced in the district court (e.g. date complaint, indictment, information or petition was filed):

The Complaint was filed on February 4, 2019.

10. Provide a brief description of the nature of the action and result in district court, including the type of judgment or order being appealed and the relief granted by the district court:

This case arises from an alleged wrongful death. Plaintiffs contend that Rebecca Powell died on account of medical malpractice.

Following a remand from the Nevada Supreme Court which granted a writ of mandamus, the district court awarded fees and costs to Defendant Drs. Shah and Concio by Order filed February 15, 2022. Notice of Entry of the Order was filed and served the next day, February 16, 2022.

• • •

• • •

See Valley Health System, LLC, et. al. v. The Eighth Judicial District Court, et. al., Case No. 82250 (NV Supreme Court).

No.

This case is appropriate for a settlement conference.

Dated: March 17, 2022

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

CERTIFICATE OF SERVICE

Pursuant to Nevada Rule of Civil Procedure 5, I certify that I am an employee of Paul Padda Law and that on this 17th day of March 2022, I filed and served a true and correct copy of **PLAINTIFFS' CASE APPEAL STATEMENT** on all parties/counsel of record in the above entitled matter through the Court's electronic filing system - 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' Case Appeal Statement
PPL #201297

CASE SUMMARY**CASE NO. A-19-788787-C**

Estate of Rebecca Powell, Plaintiff(s)
 vs.
 Valley Health System, LLC, Defendant(s)

§
 §
 §
 §
 §
 §

Location: **Department 30**
 Judicial Officer: **Wiese, Jerry A.**
 Filed on: **02/04/2019**
 Case Number History:
 Cross-Reference Case **A788787**
 Number:
 Supreme Court No.: **84402**

CASE INFORMATION**Statistical Closures**

11/19/2021 Other Manner of Disposition

Case Type: **Malpractice - Medical/Dental**

Case
 Status: **11/19/2021 Closed**

DATE**CASE ASSIGNMENT****Current Case Assignment**












Case Number A-19-788787-C
 Court Department 30
 Date Assigned 06/28/2019
 Judicial Officer Wiese, Jerry A.

PARTY INFORMATION

		<i>Lead Attorneys</i>
Plaintiff	Creecy, Darci	Padda, Paul S. <i>Retained</i> 702-366-1888(W)
	Creecy, Lloyd	Padda, Paul S. <i>Retained</i> 702-366-1888(W)
	Creecy, Taryn	Padda, Paul S. <i>Retained</i> 702-366-1888(W)
	Estate of Rebecca Powell	Padda, Paul S. <i>Retained</i> 702-366-1888(W)
	Khosrof, Isaiah	Padda, Paul S. <i>Retained</i> 702-366-1888(W)
Defendant	Concio, Conrado C.D., M.D.	Cotton, John H <i>Retained</i> 702-832-5909(W)
	Juliano, Dionice S., M.D. Removed: 10/29/2020 Dismissed	Cotton, John H <i>Retained</i> 702-832-5909(W)
	Shah, Vishal S., M.D.	Cotton, John H <i>Retained</i> 702-832-5909(W)
	Universal Health Services, Inc. Removed: 12/05/2019 Dismissed	Prangle, Michael E. <i>Retained</i> 7028896400(W)
	Valley Health System, LLC	Vogel, Stephen B.















CASE SUMMARY**CASE NO. A-19-788787-C**Retained
702-893-3383(W)Special
Administrator

Powell, Brian

DATE	EVENTS & ORDERS OF THE COURT	INDEX
	<u>EVENTS</u>	
02/04/2019	 Initial Appearance Fee Disclosure Filed By: Plaintiff Khosrof, Isaiah; Plaintiff Creecy, Lloyd; Plaintiff Creecy, Taryn; Plaintiff Creecy, Darci <i>[1] Initial Appearance Fee Disclosure</i>	
02/04/2019	 Complaint Filed By: Plaintiff Estate of Rebecca Powell; Plaintiff Khosrof, Isaiah; Plaintiff Creecy, Lloyd; Plaintiff Creecy, Taryn; Plaintiff Creecy, Darci <i>[2] Complaint</i>	
05/30/2019	 Summons Electronically Issued - Service Pending Party: Plaintiff Estate of Rebecca Powell <i>[3] Summons - Valley Health System, LLC</i>	
05/30/2019	 Summons Electronically Issued - Service Pending Party: Plaintiff Estate of Rebecca Powell <i>[4] Summons - Valley Health System, LLC (1)</i>	
05/30/2019	 Summons Electronically Issued - Service Pending Party: Plaintiff Estate of Rebecca Powell <i>[5] Summons - Dr. Dionice S. Juliano, M.D.</i>	
05/30/2019	 Summons Electronically Issued - Service Pending Party: Plaintiff Estate of Rebecca Powell <i>[6] Summons- Dr. Conrad C.D. Concio, M.D.</i>	
05/30/2019	 Summons Electronically Issued - Service Pending <i>[7] Summons- Dr. Vishal S. Shah M.D.</i>	
06/03/2019	 Ex Parte Motion Filed By: Plaintiff Estate of Rebecca Powell; Plaintiff Khosrof, Isaiah; Plaintiff Creecy, Lloyd; Plaintiff Creecy, Taryn; Plaintiff Creecy, Darci; Special Administrator Powell, Brian <i>[8] Plaintiffs' ExParte Motion To Extend Time To Serve</i>	
06/04/2019	 Affidavit of Service Filed By: Plaintiff Estate of Rebecca Powell <i>[9] Affidavit of Service - Universal Health Services, Inc.</i>	
06/04/2019	 Affidavit of Service Filed By: Plaintiff Estate of Rebecca Powell <i>[10] AOS - Dr. Canrado C.D. Concio, MD</i>	
06/04/2019	 Affidavit of Service Filed By: Plaintiff Estate of Rebecca Powell <i>[11] AOS -Valley Health System, LLC</i>	












CASE SUMMARY

CASE NO. A-19-788787-C

06/11/2019	 Order Filed By: Plaintiff Estate of Rebecca Powell <i>[12] Order Granting Plaintiffs' Exparte Motion to Extend Time For Service</i>
06/11/2019	 Notice of Entry of Order Filed By: Plaintiff Estate of Rebecca Powell <i>[13] Notice of Entry of Order Granting Plaintiffs' Exparte Motion to Extend Time For Service</i>
06/12/2019	 Motion to Dismiss Filed By: Defendant Juliano, Dionice S., M.D.; Defendant Concio, Conrado C.D., M.D. <i>[14] Defendant Conrado Concio, M.D. and Dionice Juliano, M.D's Motion to Dismiss</i>
06/12/2019	 Initial Appearance Fee Disclosure Filed By: Defendant Juliano, Dionice S., M.D.; Defendant Concio, Conrado C.D., M.D. <i>[15] Initial Appearance Fee Disclosure</i>
06/12/2019	 Clerk's Notice of Hearing <i>[16] Notice of Hearing</i>
06/13/2019	 Joinder Filed By: Defendant Shah, Vishal S., M.D. <i>[17] Defendant Vishal Shah, M.D.'s Joinder to Defendants Concio and Juliano's Motion to Dismiss</i>
06/13/2019	 Initial Appearance Fee Disclosure Filed By: Defendant Shah, Vishal S., M.D. <i>[18] Initial Appearance Fee Disclosure</i>
06/19/2019	 Motion to Dismiss Filed By: Defendant Valley Health System, LLC <i>[19] Defendant Centennial Hills Hospital's Motion to Dismiss Plaintiffs' Complaint</i>
06/19/2019	 Initial Appearance Fee Disclosure <i>[20] Defendant Centennial Hills Hospital's Initial Appearance Fee Disclosure</i>
06/20/2019	 Clerk's Notice of Hearing <i>[21] Notice of Hearing</i>
06/25/2019	 Waiver Filed by: Plaintiff Estate of Rebecca Powell <i>[22] Waiver of Service of Summons Under Rule 4.1 of the Nevada Rules of Civil Procedure As To Dr. Dionice S. Juliano, M.D.</i>
06/25/2019	 Waiver <i>[23] Waiver of Service of Summons Under Rule 4.1 of the Nevada Rules of Civil Procedure As To Dr. Vishal S. Shah, M.D.</i>
06/26/2019	 Joinder Filed By: Defendant Valley Health System, LLC <i>[24] DEFENDANT CENTENNIAL HILLS HOSPITAL S JOINDER TO DEFENDANTS CONRADO CONCIO, MD, AND DIONICE JULIANO, MD S MOTION TO DISMISS</i>
06/28/2019	 Notice of Department Reassignment <i>[25] Notice of Department Reassignment</i>














CASE SUMMARY

CASE NO. A-19-788787-C

07/08/2019	 Stipulation and Order Filed by: Plaintiff Estate of Rebecca Powell <i>[26] Stipulation and Order To Reset Hearing And Briefing Schedule For Defendants' Motions To Dismiss</i>
07/08/2019	 Notice of Entry of Order Filed By: Plaintiff Estate of Rebecca Powell <i>[27] Notice of Entry of Order re Stipulation and Order to Reset Hearing and Briefing Schedule For Defendants Motions To Dismiss</i>
07/22/2019	 Stipulation and Order Filed by: Plaintiff Estate of Rebecca Powell <i>[28] Stipulation and Order to Reset Hearing and Briefing Schedule for Defendants' Motion to Dismiss and Related Joinders</i>
07/22/2019	 Notice of Entry of Order Filed By: Plaintiff Estate of Rebecca Powell <i>[29] Notice of Entry of Order - Stipulation and Order to Reset Hearing and Briefing Schedule for Defendants' Motion to Dismiss and Related Joinders</i>
08/13/2019	 Notice of Appearance Party: Plaintiff Estate of Rebecca Powell <i>[30] Notice of Appearance</i>
08/13/2019	 Opposition to Motion to Dismiss Filed By: Plaintiff Estate of Rebecca Powell; Plaintiff Khosrof, Isaiah; Plaintiff Creecy, Lloyd; Plaintiff Creecy, Taryn; Plaintiff Creecy, Darci <i>[31] Plaintiffs' Opposition to Motion to Dismiss Filed by Defendants Dr. Conrado C.D. Concio, M.D. and Dr. Dionice S. Juliano, M.D.</i>
09/17/2019	 Reply Filed by: Defendant Juliano, Dionice S., M.D.; Defendant Concio, Conrado C.D., M.D.; Defendant Shah, Vishal S., M.D. <i>[32] Defendant Conrado Concio, MD, Vishal Shah, MD, and Dionice Juliano, MD's Reply in Support of Motion to Dismiss and Joinder thereto</i>
09/18/2019	 Reply in Support Filed By: Defendant Juliano, Dionice S., M.D.; Defendant Concio, Conrado C.D., M.D.; Defendant Shah, Vishal S., M.D. <i>[33] Defendant Centennial Hills Hospital's Reply in Support of Motion to Dismiss Plaintiffs' Complaint</i>
09/23/2019	 Motion to Dismiss Filed By: Defendant Universal Health Services, Inc. <i>[34] Defendant Universal Health Services, Inc.'s Motion to Dismiss or, Alternatively, Motion for Summary Judgment for Lack of Jurisdiction</i>
09/23/2019	 Joinder To Motion Filed By: Defendant Universal Health Services, Inc. <i>[35] Defendant Universal Health Services, Inc.'s Joinder to Defendant Centennial Hills Hospital's Motion to Dismiss Plaintiffs' Complaint and Joinder to Defendants Conrado Concio, MD, and Dionice Juliano, MD's Motion to Dismiss</i>
09/24/2019	 Clerk's Notice of Hearing <i>[36] Notice of Hearing</i>














CASE SUMMARY

CASE NO. A-19-788787-C

10/01/2019	 Notice of Change of Address <i>[37] Notice of Change of Address</i>
10/02/2019	 Answer to Complaint Filed by: Defendant Juliano, Dionice S., M.D.; Defendant Concio, Conrado C.D., M.D.; Defendant Shah, Vishal S., M.D. <i>[38] Defendants Conrado Concio, MD, Dionice Juliano, MD, and Vishal Shah, MD's Answer to Plaintiffs' Complaint</i>
10/02/2019	 Demand for Jury Trial Filed By: Defendant Juliano, Dionice S., M.D.; Defendant Concio, Conrado C.D., M.D.; Defendant Shah, Vishal S., M.D. <i>[39] Defendants Donice S. Juliano, MD, Contrado Concio, MD and Vishal Shah, MD's Demand for Jury Trial</i>
10/30/2019	 Opposition to Motion to Dismiss <i>[40] Plaintiffs' Opposition To Defendant Universal Health Services, INC.'s, Motion to Dismiss Or, In The Alternative, For Summary Judgment</i>
10/30/2019	 Motion to Withdraw As Counsel <i>[41] Plaintiffs' Motion For Withdrawal of Suneel Nelson, Esq., Joshua Y. Ang, Esq., And Michael Lafia, Esq., As Retained Counsel</i>
10/31/2019	 Clerk's Notice of Nonconforming Document <i>[42] Clerk's Notice of Nonconforming Document</i>
11/18/2019	 Disclosure Statement <i>[43] DEFENDANT VALLEY HEALTH SYSTEM, LLC, dba CENTENNIAL HILLS HOSPITAL MEDICAL CENTER S NRCP 7.1 DISCLOSURE STATEMENT</i>
12/05/2019	 Stipulation and Order <i>[44] Stipulation and Order to Dismiss Universal Health Services, Inc. without Prejudice</i>
12/05/2019	 Notice of Entry <i>[45] Notice of Entry of Stipulation and Order to Dismiss Universal Health Services, Inc. without Prejudice</i>
02/21/2020	 Notice of Appearance Party: Plaintiff Estate of Rebecca Powell; Plaintiff Khosrof, Isaiah; Plaintiff Creecy, Lloyd; Plaintiff Creecy, Taryn; Plaintiff Creecy, Darci; Special Administrator Powell, Brian <i>[46] Notice of Appearance By Brandon C. Verde, Esq.</i>
03/10/2020	 Substitution of Attorney Filed by: Defendant Valley Health System, LLC <i>[47] Substitution of Counsel</i>
03/16/2020	 Order to Show Cause <i>[48] Order to Show Cause</i>
03/16/2020	 Notice of Early Case Conference Filed By: Plaintiff Estate of Rebecca Powell <i>[49] Notice of NRCP 16.1(b) (1) Early Case Conference_Estate of Rebecca Powell, et. al., v. Valley Health System, et. al.</i>











CASE SUMMARY

CASE NO. A-19-788787-C

03/20/2020	 Joint Case Conference Report Filed By: Attorney Padda, Paul S.; Plaintiff Estate of Rebecca Powell; Plaintiff Khosrof, Isaiah; Plaintiff Creecy, Lloyd; Plaintiff Creecy, Taryn; Plaintiff Creecy, Darci <i>[50] Joint Case Conference Report</i>
03/23/2020	 Mandatory Rule 16 Conference Order <i>[51] Mandatory Rule 16 Conference Order</i>
04/13/2020	 Notice of Association of Counsel Filed By: Defendant Valley Health System, LLC; Defendant Universal Health Services, Inc. <i>[52] Notice of Association of Counsel</i>
04/15/2020	 Answer to Complaint Filed by: Defendant Valley Health System, LLC <i>[53] Defendant Valley Health System, Llc, Db a Centennial Hills Hospital Medical Center s Answer To Plaintiffs Complaint</i>
04/15/2020	 Demand for Jury Trial Filed By: Defendant Valley Health System, LLC <i>[54] Demand for Jury Trial</i>
04/29/2020	 Motion to Associate Counsel Filed By: Defendant Valley Health System, LLC <i>[55] Defendant Valley Health System, Llc Db a Centennial Hills Hospital Medical Center's Motion to Associate Richard Douglas Carroll as Counsel</i>
04/29/2020	 Clerk's Notice of Hearing <i>[56] Notice of Hearing</i>
05/05/2020	 Substitution of Attorney Filed by: Plaintiff Khosrof, Isaiah; Plaintiff Creecy, Lloyd; Plaintiff Creecy, Taryn; Plaintiff Creecy, Darci <i>[57] Substitution of Attorneys</i>
05/06/2020	 Scheduling and Trial Order <i>[58] Scheduling Order and Order Setting</i>
06/02/2020	 Order Admitting to Practice <i>[59] Order Admitting to Practice</i>
06/08/2020	 Substitution of Attorney Filed by: Defendant Valley Health System, LLC <i>[60] Substitution Of Attorney For Defendant Valley Health System, LLC db a Centennial Hills Hospital Medical Center</i>
08/07/2020	 Motion for Summary Judgment Filed By: Defendant Juliano, Dionice S., M.D.; Defendant Concio, Conrado C.D., M.D.; Defendant Shah, Vishal S., M.D. <i>[61] Defendant Juliano's Motion for Summary Judgment, and Defendant Concio and Shah's Motion for Partial Summary Judgment on Emotional Distress Claims</i>
08/10/2020	 Non Opposition Filed By: Defendant Valley Health System, LLC <i>[62] Defendants Valley Health Systems' Non-Opposition to Defendant Juliano's Motion for</i>

CASE SUMMARY

CASE NO. A-19-788787-C

	<i>Summary Judgment and Joinder to Defendant Concio and Shah's Motion for Partial Summary Judgment</i>
08/24/2020	 Clerk's Notice of Hearing <i>[63] Notice of Hearing</i>
08/24/2020	 Stipulation and Order Filed by: Plaintiff Estate of Rebecca Powell; Plaintiff Khosrof, Isaiah; Plaintiff Creecy, Lloyd; Plaintiff Creecy, Taryn; Plaintiff Creecy, Darci <i>[64] Stipulation and Order Regarding Plaintiffs' Responses to Defendants Juliano, Concio and Shah's Interrogatories and Requests for Production</i>
08/24/2020	 Stipulation and Order Filed by: Plaintiff Estate of Rebecca Powell; Plaintiff Khosrof, Isaiah; Plaintiff Creecy, Lloyd; Plaintiff Creecy, Taryn; Plaintiff Creecy, Darci <i>[65] Stipulation and Order Regarding Defendant Juliano's Motion for Summary Judgment and Defendant Concio And Shah's Motion for Partial Summary Judgment on Emotional Distress Claims</i>
09/02/2020	Motion for Summary Judgment Filed By: Defendant Valley Health System, LLC <i>[66] Valley Health System, LLC and Universal Health Services, Inc.'s Motion for Summary Judgment Based Upon the Expiration of The Statute of Limitations</i>
09/02/2020	 Clerk's Notice of Hearing <i>[67] Notice of Hearing</i>
09/02/2020	 Redacted Version <i>[83] Redacted version of Motion for Summary Judgment per Order 10/28/20</i>
09/03/2020	 Joinder to Motion For Summary Judgment Filed By: Defendant Juliano, Dionice S., M.D.; Defendant Concio, Conrado C.D., M.D.; Defendant Shah, Vishal S., M.D. <i>[68] Defendants Dionice Juliano, MD, Conrado Concio, MD and Vishal Shah, MD's Joinder to Defendant's Motion for Summary Judgment on the Statute of Limitations</i>
09/04/2020	 Filing Fee Remittance Filed By: Defendant Juliano, Dionice S., M.D.; Defendant Concio, Conrado C.D., M.D.; Defendant Shah, Vishal S., M.D. <i>[69] Filing Fee Remittance</i>
09/16/2020	 Opposition to Motion For Summary Judgment Filed By: Plaintiff Estate of Rebecca Powell <i>[70] Plaintiffs Opposition to Valley Health System, LLC s Motion For Summary Judgment Seeking Dismissal on Statute of Limitations Grounds</i>
10/13/2020	 Opposition and Countermotion Filed By: Plaintiff Estate of Rebecca Powell; Plaintiff Khosrof, Isaiah; Plaintiff Creecy, Lloyd; Plaintiff Creecy, Taryn; Plaintiff Creecy, Darci; Special Administrator Powell, Brian <i>[71] Plaintiffs' Opposition to Defendant Juliano's Motion for Summary Judgment, And Defendants' Concio and Shah's Motion for Partial Summary Judgment on Emotional Distress Claims and Counter-Motion to Amend or Withdraw Plaintiffs' Responses to Defendants' Request for Admissions</i>
10/21/2020	 Reply to Opposition Filed by: Defendant Valley Health System, LLC

CASE SUMMARY

CASE NO. A-19-788787-C

[72] Defendants Valley Health System, LLC and Universal Health Services, Inc. s Reply To Plaintiffs Opposition To Defendants Motion For Summary Judgment Based Upon The Expiration Of The Statute Of Limitations

10/21/2020



Reply in Support

Filed By: Defendant Valley Health System, LLC

[73] Defendants Valley Health Systems, LLC d/b/a Centennial Hills Hospital Medical Center and Universal Health Systems, Inc. s Reply To Plaintiffs Opposition To Defendant Juliano s Motion For Summary Judgment, Reply To Plaintiffs Opposition To Valley Health s Joinder Of Defendants Concio and Shah s Motion For Partial Summary Judgment On Emotional Distress Claims, and Opposition To Plaintiffs Countermotion To Amend Or Withdraw Plaintiffs Responses To Defendants Requests For Admission

10/21/2020



Joinder

Filed By: Defendant Juliano, Dionice S., M.D.; Defendant Concio, Conrado C.D., M.D.; Defendant Shah, Vishal S., M.D.

[74] Joinder to Defendants Valley Health System, LLC and Universal Health Services, Inc.'s Reply to Plaintiffs' Opposition to Defendants' Motion for Summary Judgment Based Upon the Expiration of the Statute of Limitations

10/21/2020



Joinder

Filed By: Defendant Juliano, Dionice S., M.D.; Defendant Concio, Conrado C.D., M.D.; Defendant Shah, Vishal S., M.D.

[75] Joinder to Defendant Valley Health System's Reply in Support of Defendant Juliano's Motion for Summary Judgment, and Defendant Concio and Shah's Motion for Partial Summary Judgment on Emotion Distress Claims

10/21/2020



Reply in Support

[76] Reply in Support of Defendant Julano's Motion for Summary Judgment, and Defendant Concio and Shah's Motion for Partial Summary Judgment on Emotional Distress Claims

10/26/2020



Ex Parte Application

Party: Defendant Valley Health System, LLC

[77] 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

10/26/2020



Ex Parte

Filed By: Defendant Valley Health System, LLC

[78] 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 With Conforming Document On Defendants Motion For Summary Judgment Based Upon Expiration Of Statute Of Limitations

10/28/2020



Order

Filed By: Defendant Valley Health System, LLC

[79] ORDER GRANTING DEFENDANTS VALLEY HEALTH SYSTEM, LLC AND UNIVERSAL HEALTH SERVICES, INC.'S EX PARTE APPLICATION TO STRIKE NON-CONFORMING DOCUMENT PURSUANT TO EDCR 8.03 AND REPLACE NON CONFORMING PAGES WITH CONFORMING DOCUMENT ON DEFENDANTS' MOTION FOR SUMMARY JUDGMENT BASED UPON EXPIRATION OF STATUTE OF LIMITATIONS

10/28/2020



Notice of Entry of Order

Filed By: Defendant Valley Health System, LLC

[80] Notice of Entry of Order














10/29/2020



Order




CASE SUMMARY

CASE NO. A-19-788787-C

	<i>[81] Order</i>
11/02/2020	 Notice of Entry of Order Filed By: Defendant Valley Health System, LLC <i>[82] Notice of Entry of Order</i>
11/03/2020	 Order Shortening Time <i>[84] Powell v Valley - Motion for Stay Pending Writ (continued revisions #2)</i>
11/05/2020	 Motion Filed By: Defendant Valley Health System, LLC <i>[85] Defendant Valley Health System LLC's Motion for Stay on Order Shortening Time</i>
11/19/2020	 Opposition to Motion Filed By: Plaintiff Estate of Rebecca Powell <i>[86] Plaintiffs' Opposition to Defendant Valley Health System LLC's Motion for Stay of Proceedings</i>
11/20/2020	 Reply to Opposition Filed by: Defendant Valley Health System, LLC <i>[87] Defendant Valley Health System LLC s Reply To Plaintiff s Opposition To Motion For Stay On Order Shortening Time</i>
12/17/2020	 Order Filed By: Attorney Padda, Paul S.; Plaintiff Estate of Rebecca Powell; Plaintiff Khosrof, Isaiah; Plaintiff Creecy, Lloyd; Plaintiff Creecy, Taryn; Plaintiff Creecy, Darci <i>[88] Order Denying Defendant Valley Health System, LLC's Motion to Stay on Order Shortening Time</i>
12/17/2020	 Notice of Entry of Order Filed By: Defendant Valley Health System, LLC <i>[89] Notice of Entry of Order</i>
01/01/2021	 Recorders Transcript of Hearing <i>[90] Recorders Transcript of Hearing: All Pending Motions</i>
01/21/2021	 Stipulation and Order Filed by: Defendant Valley Health System, LLC <i>[91] Stipulation and Order to Continue Status Check Hearing</i>
01/21/2021	 Notice of Entry of Order Filed By: Defendant Valley Health System, LLC <i>[92] Notice of Entry of Order</i>
02/04/2021	 Order <i>[93] ORDER RESETTING STATUS CHECK HEARING AS TELECONFERENCE</i>
02/06/2021	 Order Filed By: Plaintiff Estate of Rebecca Powell; Plaintiff Khosrof, Isaiah; Plaintiff Creecy, Lloyd; Plaintiff Creecy, Taryn; Plaintiff Creecy, Darci <i>[94] Order Denying Defendants Conrado Concio, M.D. and Dionice Juliano, M.D.'s Motion to Dismiss Plaintiff's Complaint</i>
02/06/2021	 Order













CASE SUMMARY

CASE NO. A-19-788787-C

	<p>Filed By: Plaintiff Estate of Rebecca Powell; Plaintiff Khosrof, Isaiah; Plaintiff Creecy, Lloyd; Plaintiff Creecy, Taryn; Plaintiff Creecy, Darci <i>[95] Order Denying Defendant Centennial Hills Hospital Medical Center's Motion to Dismiss Plaintiff's Complaint</i></p>
03/10/2021	<p> Notice</p> <p>Filed By: Plaintiff Estate of Rebecca Powell; Plaintiff Khosrof, Isaiah; Plaintiff Creecy, Lloyd; Plaintiff Creecy, Taryn; Plaintiff Creecy, Darci; Special Administrator Powell, Brian <i>[96] Notice of Appearance</i></p>
04/06/2021	<p> Motion to Reconsider</p> <p>Filed By: Defendant Valley Health System, LLC <i>[97] Defendant Valley Health System LLC's Motion to Reconsider Motion for Stay Pending Petition for Writ of Mandamus</i></p>
04/06/2021	<p> Exhibits</p> <p>Filed By: Defendant Valley Health System, LLC <i>[98] Exhibits G-M to Defendant Valley Health System LLC's Motion to Reconsider Motion for Stay Pending Petition for Writ of Mandamus</i></p>
04/06/2021	<p> Clerk's Notice of Hearing</p> <p><i>[99] Notice of Hearing</i></p>
04/07/2021	<p> Notice of Entry</p> <p>Filed By: Plaintiff Estate of Rebecca Powell; Plaintiff Khosrof, Isaiah; Plaintiff Creecy, Lloyd; Plaintiff Creecy, Taryn; Plaintiff Creecy, Darci; Special Administrator Powell, Brian <i>[100] Notice of Entry of Order Denying Defendant Centennial Hills Hospital Medical Center's Motion to Dismiss Plaintiffs' Complaint</i></p>
04/07/2021	<p> Notice of Entry of Order</p> <p>Filed By: Plaintiff Estate of Rebecca Powell; Plaintiff Khosrof, Isaiah; Plaintiff Creecy, Lloyd; Plaintiff Creecy, Taryn; Plaintiff Creecy, Darci; Special Administrator Powell, Brian <i>[101] Notice of Entry of Order Denying Defendants Conrado Concio M.D. and Dionice Juilano, M.D.'s Motion to Dismiss Plaintiffs' Complaint</i></p>
04/09/2021	<p> Order Shortening Time</p> <p><i>[102] Order Shortening Time to Hear Motion to Reconsider Stay Pending Writ of Mandamus</i></p>
04/09/2021	<p> Notice of Entry of Order</p> <p>Filed By: Defendant Valley Health System, LLC <i>[103] Notice of Entry of Order</i></p>
04/15/2021	<p> Opposition</p> <p>Filed By: Plaintiff Estate of Rebecca Powell <i>[104] Plaintiffs' Opposition to Defendant Valley Health System LLC's Motion to Reconsider Motion for Stay Pending Petition for Writ of Mandamus</i></p>
04/16/2021	<p> Reply in Support</p> <p>Filed By: Defendant Valley Health System, LLC <i>[105] 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</i></p>
04/28/2021	

CASE SUMMARY













CASE NO. A-19-788787-C

	 Order Filed By: Plaintiff Estate of Rebecca Powell; Plaintiff Khosrof, Isaiah; Plaintiff Creecy, Lloyd; Plaintiff Creecy, Taryn; Plaintiff Creecy, Darci <i>[106] Order Denying Defendant Valley Health System, LLC's Motion to Reconsider Motion to Stay Pending Petition for Writ of Mandamus on Order Shortening Time</i>
04/28/2021	 Notice of Entry Filed By: Plaintiff Estate of Rebecca Powell; Plaintiff Khosrof, Isaiah; Plaintiff Creecy, Lloyd; Plaintiff Creecy, Taryn; Plaintiff Creecy, Darci; Special Administrator Powell, Brian <i>[107] Notice of Entry of Order Denying Defendant Valley Health System, Llc's Motion to Stay Pending Petition for Writ of Mandamus on Order Shortening Time</i>
06/04/2021	 Order Filed By: Defendant Valley Health System, LLC <i>[108] Confidentiality Agreement and Protective Order</i>
06/04/2021	 Notice of Entry of Order Filed By: Defendant Valley Health System, LLC <i>[109] Notice of Entry of Order</i>
06/18/2021	 Initial Expert Disclosure Filed By: Defendant Valley Health System, LLC <i>[110] Defendant Valley Health System, LLC dba Centennial Hills Hospital Medical Center s Initial Expert Disclosure</i>
08/18/2021	 Status Report Filed By: Plaintiff Estate of Rebecca Powell; Plaintiff Khosrof, Isaiah; Plaintiff Creecy, Lloyd; Plaintiff Creecy, Taryn; Plaintiff Creecy, Darci; Special Administrator Powell, Brian <i>[111] Joint Status Report</i>
10/05/2021	 Notice Filed By: Defendant Valley Health System, LLC <i>[112] Defendant Valley Health System, LLC dba Centennial Hills Hospital Medical Center's Notice of Trial Conflict</i>
11/03/2021	 Order <i>[113] Order Setting Further Proceedings Re: Supreme Court Order</i>
11/19/2021	 Order <i>[114] Order Vacating Prior Order Denying 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</i>
11/19/2021	 Notice of Entry of Order Filed By: Defendant Valley Health System, LLC <i>[115] Notice of Entry of Order</i>
11/22/2021	 Memorandum Filed By: Defendant Valley Health System, LLC <i>[116] Defendant Valley Health System LLC's Verified Memorandum of Costs</i>
11/22/2021	 Motion for Attorney Fees Filed By: Defendant Valley Health System, LLC <i>[117] Defendant Valley Health System, LLC DBA Centennial Hills Hospital Medical Center's</i>

CASE SUMMARY

CASE NO. A-19-788787-C

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

11/23/2021	 Clerk's Notice of Hearing <i>[118] Notice of Hearing</i>
11/23/2021	 Memorandum of Costs and Disbursements Filed By: Defendant Concio, Conrado C.D., M.D.; Defendant Shah, Vishal S., M.D. <i>[119] Defendants Conrado Concio, MD and Vishal Shah, MD's Memorandum of Costs and Disbursements</i>
12/03/2021	 Motion to Extend Party: Plaintiff Estate of Rebecca Powell <i>[120] Plaintiffs' 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</i>
12/06/2021	 Clerk's Notice of Hearing <i>[121] Notice of Hearing</i>
12/06/2021	 Application Filed By: Plaintiff Estate of Rebecca Powell; Plaintiff Khosrof, Isaiah; Plaintiff Creecy, Lloyd; Plaintiff Creecy, Taryn; Special Administrator Powell, Brian <i>[122] Plaintiffs Application for Order Shortening Time on Plaintiffs Motion to Extend Time to Respond to Defendant's Memorandum for Costs</i>
12/10/2021	 Order <i>[123] Order Shortening Time Regarding Plaintiff's Motion to Extend Time to Respond to Defendant's Memorandums of Costs</i>
12/10/2021	 Motion for Attorney Fees and Costs Filed By: Defendant Concio, Conrado C.D., M.D.; Defendant Shah, Vishal S., M.D. <i>[124] Defendants Conrado Concio, MD and Vishal Shah, MD's Motion for Attorneys' Fees and Costs</i>
12/11/2021	 Order Setting Medical/Dental Malpractice Status Check <i>[125] Order Setting Medical/Dental Malpractice Status Check and Trial Setting Conference</i>
12/13/2021	 Clerk's Notice of Hearing <i>[126] Notice of Hearing</i>
12/16/2021	 Opposition Filed By: Plaintiff Estate of Rebecca Powell; Plaintiff Khosrof, Isaiah; Plaintiff Creecy, Lloyd; Plaintiff Creecy, Taryn; Plaintiff Creecy, Darci; Special Administrator Powell, Brian <i>[127] Plaintiff's Opposition to Defendant Valley Health System LLC'S Motion for Attorney's Fees</i>
12/20/2021	 Opposition and Countermotion Filed By: Defendant Valley Health System, LLC <i>[128] Defendant Valley Health System, LLC dba Centennial Hills Hospital's Opposition to Plaintiff's Motion to Retax Costs and Countermotion for Costs and Fees Pursuant to EDCR 7.60</i>
12/21/2021	 Opposition to Motion Filed By: Defendant Concio, Conrado C.D., M.D.; Defendant Shah, Vishal S., M.D. <i>[129] Defendants Conrado Concio, MD and Vishal Shah, MD's Opposition to Plaintiff's</i>

CASE SUMMARY

CASE NO. A-19-788787-C

Motion to Extend Time

12/23/2021



Opposition to Motion

Filed By: Plaintiff Estate of Rebecca Powell

[130] Plaintiffs' Opposition to Defendants aConrado Concio, M.D. and Vishal Sha, M.D.'s Motion for Attorneys' Fee and Costs

12/27/2021



Reply to Opposition

Filed by: Plaintiff Estate of Rebecca Powell

[131] Plaintiffs' Reply to Defendant Valley Health System, LLC DBA Centennial Hills Hospital's Opposition to Plaintiffs' Motion to Extend Time to Retax Costs and Opposition to Countermotion for Costs and Fees Pursuant to EDCR 7.60

12/27/2021



Reply to Opposition

Filed by: Plaintiff Estate of Rebecca Powell

[132] Plaintiffs Reply to Defendant Conrado Concio, M.D. and Vishal Shah, M.D.'s Opposition to Plaintiffs Motion to Extend Time to Retax Cost

01/24/2022



Order

[133] 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

01/25/2022



Notice of Entry

Filed By: Defendant Valley Health System, LLC

[134] NOTICE OF ENTRY OF ORDER

02/02/2022



Reply in Support

Filed By: Defendant Valley Health System, LLC

[135] 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

02/02/2022



Reply in Support

Filed By: Defendant Concio, Conrado C.D., M.D.; Defendant Shah, Vishal S., M.D.

[136] Defendants Conrado Concio, MD and Vishal Shah, MD's Reply in Support of Their Motion for Fees and Costs

02/15/2022



Order

[137] ORDER RE: CONCIO'S AND SHAH'S MOTION FOR FEES AND COSTS

02/15/2022



Order

[138] ORDER RE: VALLEY HEALTH SYSTEM'S MOTION FOR FEES AND COUNTERMOTION FOR FEES AND COSTS

02/16/2022



Notice of Entry of Decision and Order

Filed By: Plaintiff Estate of Rebecca Powell

[139] Notice of Entry of Order and Decision Regarding Valley Health System's Motion for Fees and Countermotion for Fees and Costs

02/16/2022



Notice of Entry of Order

Filed By: Defendant Concio, Conrado C.D., M.D.; Defendant Shah, Vishal S., M.D.

[140] Notice of Entry of Order Re: Concio's and Shah's Motion for Fees and Costs

02/23/2022



Motion to Reconsider

CASE SUMMARY

CASE NO. A-19-788787-C

Filed By: Defendant Valley Health System, LLC

[141] 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. 6, N.R.S. 17.117, 7.085, 18.010(2), and EDCR 7.60

02/23/2022



Clerk's Notice of Hearing

[142] Notice of Hearing

03/09/2022



Opposition to Motion

Filed By: Plaintiff Estate of Rebecca Powell

[143] Plaintiffs' Opposition to Defendant Valley Health System LLC's Motion For Reconsideration of the Court's Denial of its Application for Fees and Costs

03/14/2022



Notice of Appeal

Filed By: Defendant Valley Health System, LLC

[144] Defendant Valley Health System LLC DBA Centennial Hills Hospital Medical Center's Notice of Appeal

03/14/2022



Case Appeal Statement

Filed By: Defendant Valley Health System, LLC

[145] DEFENDANT VALLEY HEALTH SYSTEM, LLC DBA CENTENNIAL HILLS HOSPITAL MEDICAL CENTER S CASE APPEAL STATEMENT

03/17/2022



Notice of Appeal

Filed By: Plaintiff Estate of Rebecca Powell

[146] Plaintiff's Notice of Appeal

03/17/2022



Case Appeal Statement

Filed By: Plaintiff Estate of Rebecca Powell

[147] Plaintiffs Case Appeal Statement

DISPOSITIONS

12/05/2019

Order of Dismissal Without Prejudice (Judicial Officer: Wiese, Jerry A.)

Debtors: Estate of Rebecca Powell (Plaintiff), Isaiah Khosrof (Plaintiff), Lloyd Creecy (Plaintiff), Taryn Creecy (Plaintiff), Darci Creecy (Plaintiff)

Creditors: Universal Health Services, Inc. (Defendant)

Judgment: 12/05/2019, Docketed: 12/05/2019

10/29/2020

Summary Judgment (Judicial Officer: Wiese, Jerry A.)

Debtors: Estate of Rebecca Powell (Plaintiff), Isaiah Khosrof (Plaintiff), Lloyd Creecy (Plaintiff), Taryn Creecy (Plaintiff), Darci Creecy (Plaintiff)

Creditors: Dr. Dionice S. Juliano, MD. (Defendant)

Judgment: 10/29/2020, Docketed: 11/04/2020

10/29/2020

Order of Dismissal Without Prejudice (Judicial Officer: Wiese, Jerry A.)

Debtors: Estate of Rebecca Powell (Plaintiff), Isaiah Khosrof (Plaintiff), Lloyd Creecy (Plaintiff), Taryn Creecy (Plaintiff), Darci Creecy (Plaintiff)

Creditors: Dr. Dionice S. Juliano, MD. (Defendant)

Judgment: 10/29/2020, Docketed: 11/04/2020

02/15/2022

Order (Judicial Officer: Wiese, Jerry A.)

Debtors: Estate of Rebecca Powell (Plaintiff), Isaiah Khosrof (Plaintiff), Lloyd Creecy (Plaintiff), Taryn Creecy (Plaintiff), Darci Creecy (Plaintiff)

Creditors: Dr. Conrado C.D. Concio, MD. (Defendant), Dr. Vishal S. Shah, MD. (Defendant)

Judgment: 02/15/2022, Docketed: 02/16/2022

Total Judgment: 21,057.28

CASE SUMMARY

CASE NO. A-19-788787-C

HEARINGS

06/28/2019	 Minute Order (7:30 AM) (Judicial Officer: Escobar, Adriana) <i>Recusal</i> Recused; Journal Entry Details: <i>-No Parties present. Pursuant to NCIC Canon 2.11(A), to avoid the appearance of impropriety and implied bias as to VALLEY HEALTH SYSTEM, LLC d/b/a CENTENIAL HILLS HOSPITAL MEDICAL CENTER only, this Court hereby disqualifies itself and ORDERS, this case to be REASSIGNED at random. Defendant Centennial Hills Hospital's Motion to Dismiss, Joinder(s), and Defendant Conrado Concio, MD and Dionice Juliano, MD's Motion to Dismiss, set for July 30, 2019 and August 1, 2019, will be vacated and reset in the new department. CLERK'S NOTE: Counsel notified via e-mail: Paul S. Padda (psp@paulpaddalaw.com) Joshua Y. Ang (ja@paulpaddalaw.com) John H. Cotton (JHCotton@jhcottonlaw.com) Brad Shipley (BShipley@jhcottonlaw.com) Michael E. Prangle (mprangle@hpslaw.com) Zachary J. Thompson (zthompson@hpslaw.com) Hall Prangle & Schoonveld, LLC (efile@hpslaw.com) ;</i>
09/25/2019	Motion to Dismiss (9:00 AM) (Judicial Officer: Wiese, Jerry A.) <i>Defendant Conrado Concio, MD, and Dionice Juliano, MD's Motion to Dismiss</i> Minute Order Dated 06-28-19 Denied;
09/25/2019	Joinder (9:00 AM) (Judicial Officer: Wiese, Jerry A.) <i>Defendant Vishal Shah, M.D. Joinder to Defendant's Concio and Juliano's Motion to dismiss</i> Minute Order Dated 06-28-19 Denied;
09/25/2019	Motion to Dismiss (9:00 AM) (Judicial Officer: Wiese, Jerry A.) <i>Defendant Centennial Hills Hospital's Motion to Dismiss Plaintiffs' Complaint</i> Minute Order Dated 06-28-19 Denied;
09/25/2019	Joinder (9:00 AM) (Judicial Officer: Wiese, Jerry A.) <i>Defendant Centennial Hills Hospital's Joinder to Defendants Conrado Concio, MD and Dionice Juliano, MD's Motion to Dismiss</i> Minute Order Dated 06-28-19 Denied;
09/25/2019	Joinder (9:00 AM) (Judicial Officer: Wiese, Jerry A.) <i>Defendant Universal Health Services, Inc.'s Joinder to Defendant Centennial Hills Hospital's Motion to Dismiss Plaintiffs' Complaint and Joinder to Defendants Conrado Concio, MD, and Dionice Juliano, MD's Motion to Dismiss</i> Denied;
09/25/2019	Joinder (9:00 AM) (Judicial Officer: Wiese, Jerry A.) <i>Defendant Universal Health Services, Inc.'s Joinder to Defendant Centennial Hills Hospital's Motion to Dismiss Plaintiffs' Complaint and Joinder to Defendants Conrado Concio, MD, and Dionice Juliano, MD's Motion to Dismiss</i> Denied;
09/25/2019	 All Pending Motions (9:00 AM) (Judicial Officer: Wiese, Jerry A.) Matter Heard; Journal Entry Details: <i>Zachary Thompson, Esq. present on behalf of Valley Health System. DEFENDANT CENTENNIAL HILLS HOSPITAL'S JOINDER TO DEFENDANTS CONRADO CONCIO, MD AND DIONICE JULIANO, MD'S MOTION TO DISMISS...DEFENDANT CONRADO CONCIO, MD, AND DIONICE JULIANO, MD'S MOTION TO DISMISS... DEFENDANT VISHAL SHAH, M.D. JOINDER TO DEFENDANT'S CONCIO AND JULIANO'S MOTION TO DISMISS...DEFENDANT CENTENNIAL HILLS HOSPITAL'S MOTION TO DISMISS PLAINTIFFS' COMPLAINT...DEFENDANT UNIVERSAL HEALTH SERVICES, INC.'S JOINDER TO DEFENDANT CENTENNIAL HILLS HOSPITAL'S MOTION TO DISMISS</i>

CASE SUMMARY**CASE NO. A-19-788787-C**

PLAINTIFFS' COMPLAINT AND JOINDER TO DEFENDANTS CONRADO CONCIO, MD, AND DIONICE JULIANO, MD'S MOTION TO DISMISS...DEFENDANT UNIVERSAL HEALTH SERVICES, INC.'S JOINDER TO DEFENDANT CENTENNIAL HILLS HOSPITAL'S MOTION TO DISMISS PLAINTIFFS' COMPLAINT AND JOINDER TO DEFENDANTS CONRADO CONCIO, MD, AND DIONICE JULIANO, MD'S MOTION TO DISMISS... Mr. Shipley argued the Statute of Limitations has passed with respect to all three physicians, and the complaint was filed approximately 8 months too late. Mr. Shipley further argued there aren't any allegations these Doctors were in possession of the records or that these physicians did anything to conceal. Further arguments by Mr. Shipley. Mr. Thompson agreed with Mr. Shipley in regards to the Statute of Limitations and argued the one year Statute is applicable to all claims because all claims arise out of the alleged professional negligence which are related to medical decision making, judgment, and diagnosis of the subject providers. Mr. Thompson further argued in regards to tolling, Plaintiff is required to show that documents were intentionally withheld, however; plaintiff has not pled any documents were intentionally withheld and has not offered any evidence at this point. Further, Plaintiff would have to show the withholding would have precluded a reasonably prudent person from pursuing and being able to offer an expert affidavit, however; in Dr. Hashim's statements where he stated the additional records had reinforced it he clearly had enough information to offer some opinion of breaches of the standard of care. Further arguments by Mr. Thompson. Mr. Suneel argued in regards to Rule 12 (b)(5) evidence is not the standard now. Further, the complaint and Dr. Hashim's affidavit adequately plead the issue that they are taking exception to which is the Statue of Limitations and Plaintiff has shown several instances where concealment is stated and alleged explicitly. Further, in Dr. Hashim's affidavit he has identified all three doctors and to the things that they failed to do and with respect to Dr. Juliano; that is sufficient. Further arguments by Mr. Suneel. Mr. Shipley argued in rebuttal and stated there is no concealment alleged with respect to all three defendants and therefore the Statute of Limitations cannot be tolled. Further arguments by Mr. Shipley. Mr. Thompson indicated he is only moving on the pleadings based on the information Plaintiff's pled and what was included in the expert affidavit. Further statements by Mr. Thompson. Court stated in regards tot he Statute of Limitations the Supreme Court has been clear that knew or reasonably should have known is generally an issue of fact or for the Jury to decide, however; in this case it does seem like it is substantially after the date of death therefore some arguments can be brought up in a motion for Summary Judgment the Court may consider. Court further stated there is at least an insinuation that there was concealment and the Court understands the argument that you cant hold a Defendant responsible for another Defendants concealment, however; if there is concealment, it arguably prevents the plaintiff from having the inquiry notice they need in order for the Statue of Limitations to run. Court further stated the issue of fact is determining when that inquiry notice starts and arguably the inquiry notice may not start until they receive records. Court further stated its findings and **ORDERED**, motions **DENIED**. Plaintiff's counsel to prepare and submit order to counsel for approval of form and content. **CLERK'S NOTE: This minute order was updated. (10-27-20 np).;**

10/30/2019

**Motion to Dismiss (9:00 AM) (Judicial Officer: Wiese, Jerry A.)****10/30/2019, 12/04/2019**

Defendant Universal Health Services, Inc.'s Motion to Dismiss or, Alternatively, Motion for Summary Judgment for Lack of Jurisdiction

Matter Continued;

Vacate;

Journal Entry Details:

No parties present. Court indicated the Court received a Stipulation and Order to dismiss the present motion; therefore, COURT ORDERED hearing VACATED.;

Matter Continued;

Vacate;

Journal Entry Details:

Plaintiff's counsel not present. Mr. Thompson noted the Motion to Dismiss was unopposed until this morning. Mr. Thompson advised he spoke with opposing counsel and parties requested the matter be continued for 30 days to allow them to file a Stipulation and Order to Dismiss Without Prejudice in alternative to granting the subject motion. COURT SO ORDERED. In the event the Stipulation and Order is filed prior to the hearing, the same will be vacated. CONTINUED TO: 12/4/19 9:00 AM CLERK'S NOTE: Subsequent to the hearing the date continuance date was changed to accommodate the Court's calendar. The correct date is reflected in the above minutes which were distributed to: Paul Padda, Esq. (psp@paulpaddalaw.com), John Cotton, Esq. (jhcotton@jhcottonlaw.com) and Zachary Thompson, Esq. (efile@hpslaw.com)./lk;

CASE SUMMARY

CASE NO. A-19-788787-C

03/24/2020



Minute Order (3:00 AM) (Judicial Officer: Wiese, Jerry A.)

Minute Order - No Hearing Held;

Journal Entry Details:

The Court notes that a Joint Case Conference Report was filed in the above case on 3/20/20. Thereafter, a Mandatory Rule 16 Conference Order issued scheduling the Rule 16 Conference for 05/05/20 at 12:00 p.m. Accordingly, the Show Cause Hearing scheduled for 4/1/20 at 9:00 a.m. shall be vacated. CLERK'S NOTE: A copy of the above minute order was distributed to Paul Padda, Esq. (psp@paulpaddalaw.com); John Cotton, Esq. (jhcotton@jhcottonlaw.com); and Michael Prangle, Esq. (mprangle@hpslaw.com)./03-24-20.lk;

04/01/2020

CANCELED Show Cause Hearing (9:00 AM) (Judicial Officer: Wiese, Jerry A.)

Vacated

Show Cause Hearing - Failure to Conduct Rule 16.1 ECC and/or file JCCR

05/05/2020



Mandatory Rule 16 Conference (12:00 PM) (Judicial Officer: Wiese, Jerry A.)

Trial Date Set;

Journal Entry Details:

This Mandatory Rule 16 Conference was conducted via teleconference, in light of COVID-19 measures taken by the Court. Present via teleconference: Paul S. Padda, Esq. for Plaintiffs; Brad Shipley, Esq. for Defendants Drs. Shah, Concio and Dionice; and Chelsea R. Hueth, Esq. for Defendant Valley Health System, LLC. The Court explained the goal of the Rule 16 Conference being the maintenance of the calendar and the participation in a meaningful settlement conference and/or mediation to move the cases forward; and, should the settlement fail, the setting of realistic discovery deadlines to avoid the submission of stipulation and order to continue trial later, which the Court stated, it will not be inclined to sign. The Court acknowledged concern regarding the ability to conduct business amidst directives associated with the COVID-19 virus and agreed with the discovery dates set forth in the Joint Case Conference Report filed in this matter. The parties agreed upon conducting a Private Mediation in this case. Counsel for Plaintiff suggested the trial of the matter could take 4-6 weeks despite the fact the JCCR approximated a 3-4 week jury trial. Thereafter, the Court ORDERED the following: Parties agree to conduct a Private Mediation in July, 2021. A Status Check: Settlement/Trial Setting is set for June 2, 2021, at 9:00 AM in Dept. 30. Final Day to Amend Pleadings/Add Parties: 6/18/2021 Initial Expert Disclosure Deadline: 6/18/2021 Rebuttal Expert Disclosure Deadline: 8/27/2021 Final Day to Complete Discovery: 10/28/2021 Deadline for filing Dispositive Motion: 11/30/2021 The Malpractice Medical/Dental case is set for a FIRM 5-week JURY TRIAL commencing on 5/23/22 through 6/24/2022. Scheduling Order and Order Setting Civil Jury Trial to follow. THERAFTER, Counsel brought to the attention of the Court a pending unopposed Motion to Associate Counsel scheduled on the Court's docket for 6/3/2020 at 9AM. All parties stated NO OPPOSITION to the pending motion. The Court ORDERED Defendant Valley Health System, LLC dba Centennial Hills Hospital Medical Center's Motion to Associate Richard Douglas Carroll as Counsel advanced without hearing and GRANTED and the matter taken off calendar for 6/3/2020. Counsel to submit an appropriate Order within ten (10) days pursuant to EDCR 7.21.;

06/03/2020

CANCELED Motion to Associate Counsel (9:00 AM) (Judicial Officer: Wiese, Jerry A.)

Vacated

Defendant Valley Health System, Llc Db a Centennial Hills Hospital Medical Center's Motion to Associate Richard Douglas Carroll as Counsel

10/21/2020



Minute Order (3:00 AM) (Judicial Officer: Wiese, Jerry A.)

Minute Order - No Hearing Held;

Journal Entry Details:

Upon further review of the instant case, it has come to the Court's attention that an Order was not submitted regarding the hearing on Defendants' Motions to Dismiss from September 25, 2019. Therefore, COURT ORDERED, matter SET for Status Check regarding submission and filing of the Order. Should the Order be received prior to the hearing, the same will be vacated. 12/09/20 9:00 AM STATUS CHECK: SUBMISSION/FILING OF ORDER CLERK'S NOTE: A copy of the above minute order was distributed to all parties 10-21-20./lk;

10/26/2020



Minute Order (3:00 AM) (Judicial Officer: Wiese, Jerry A.)

Minute Order - No Hearing Held;

CASE SUMMARY**CASE NO. A-19-788787-C****Journal Entry Details:**

For purposes of judicial economy, the Court hereby ORDERS the hearings currently scheduled on October 28, 2020, at 9:00 AM on Defendant Juliano's Motion for Summary Judgment, and Defendant Concio and Shah's Motion for Partial Summary Judgment on Emotional Distress Claims; Valley Health System, LLC and Universal Health Services, Inc.'s Motion for Summary Judgment Based Upon the Expiration of The Statute of Limitations; Defendants Dionice Juliano, MD, Conrado Concio, MD and Vishal Shah, MD's Joinder to Defendant's Motion for Summary Judgment on the Statute of Limitations; and Plaintiffs' Opposition to Defendant Juliano's Motion for Summary Judgment, And Defendants' Concio and Shah's Motion for Partial Summary Judgment on Emotional Distress Claims and Counter-Motion to Amend or Withdraw Plaintiffs' Responses to Defendants' Request for Admissions RESCHEDULED to November 4, 2020, at 9:00AM. CLERK'S NOTE: A copy of the above minute order was distributed to all parties 10-26-20./lk;

- 11/04/2020 **CANCELED Motion for Summary Judgment (9:00 AM)** (Judicial Officer: Wiese, Jerry A.)
Vacated
Defendant Juliano's Motion for Summary Judgment, and Defendant Concio and Shah's Motion for Partial Summary Judgment on Emotional Distress Claims
- 11/04/2020 **CANCELED Motion for Summary Judgment (9:00 AM)** (Judicial Officer: Wiese, Jerry A.)
Vacated
Valley Health System, LLC and Universal Health Services, Inc.'s Motion for Summary Judgment Based Upon the Expiration of The Statute of Limitations
- 11/04/2020 **CANCELED Joinder (9:00 AM)** (Judicial Officer: Wiese, Jerry A.)
Vacated
Defendants Dionice Juliano, MD, Conrado Concio, MD and Vishal Shah, MD's Joinder to Defendant's Motion for Summary Judgment on the Statute of Limitations
- 11/04/2020 **CANCELED Opposition and Countermotion (9:00 AM)** (Judicial Officer: Wiese, Jerry A.)
Vacated
Plaintiffs' Opposition to Defendant Juliano's Motion for Summary Judgment, And Defendants' Concio and Shah's Motion for Partial Summary Judgment on Emotional Distress Claims and Counter-Motion to Amend or Withdraw Plaintiffs' Responses to Defendants' Request for Admissions
- 11/23/2020  **Minute Order (3:00 AM)** (Judicial Officer: Wiese, Jerry A.)
 Minute Order - No Hearing Held;
Journal Entry Details:
The above-referenced matter is scheduled for a hearing on 11/25/20 with regard to the Defendant, Valley Health System's Motion for Stay. Pursuant to A.O. 20-01 and subsequent administrative orders, this matter is deemed "non-essential," and may be decided after a hearing, decided on the papers, or continued. This Court has determined that it would be appropriate to decide this matter on the papers, and consequently, this minute order issues. On May 3, 2017, Plaintiff was found by EMS at her home. She was unconscious, labored in her breathing, and had vomit on her face. EMS provided emergency care and transported her to Defendant Hospital, and she was admitted. Plaintiff continued to improve while she was admitted. However, on May 10, 2017 Plaintiff complained of shortness of breath, weakness, and a "drowning feeling." One of her doctors ordered Ativan to be administered via an IV push. On May 11, another doctor 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 Plaintiff's inability to remain still during the test. She was returned to her room where she was monitored by a camera to ensure she kept her oxygen mask on. Plaintiffs, in their complaint, alleged the monitoring was substandard and Defendant should have used a better camera or in person monitoring, among other theories of substandard care. Another dose of Ativan was ordered at 3:27 AM and Plaintiff entered into acute respiratory failure, which resulted in her death. The other named Plaintiffs claimed they were in Decedent's hospital room and observed Defendant's negligence. Plaintiffs ordered Decedent's medical records on May 25, 2017; however, there were issues with delivery, and it is unclear exactly when Plaintiffs received them. Decedent's husband, a named Plaintiff, filed a complaint with the State of Nevada Department of Health and Human Services ("HHS") sometime before May 23, 2017. Approximately six weeks after the death of Decedent, Plaintiffs received the death certificate which listed the cause of death as a suicide from Cymbalta Intoxication. On February 5, 2018 HHS responded to Plaintiffs complaint. The letter said that after an investigation, HHS

CASE SUMMARY

CASE NO. A-19-788787-C

concluded that the facility had committed violations by not following rules and/or regulations as well as finding there were deficiencies in the medical care provided to Decedent. On February 4, 2019, Plaintiff's filed suit alleging negligence/medical malpractice, wrongful death pursuant to NRS 41.085, and negligent infliction of emotional distress. Defendant did not file an answer but filed a Motion to Dismiss on June 19, 2020 alleging the statute of limitations had tolled. Plaintiff answered the motion. The court denied the Motion to Dismiss on September 25, 2019. Defendant filed an Answer to Plaintiff's complaint on April 15, 2020. Defendants Valley Health System, LLC and Universal Health Services, Inc. then filed a 'Motion for Summary Judgment Based Upon the Expiration of the 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 filed a Motion for Summary Judgment, and Defendants Concio and Shaw filed a Motion for Partial Summary Judgment on Emotional Distress Claims. Plaintiffs filed a Counter-Motion to Amend or Withdraw Plaintiffs Responses to Defendants Requests for Admissions. All of these items were on the November 04, 2020 calendar. An Order deciding these motions was filed on October 29, 2020. The Order denied Defendants, Valley Health System and Universal's Motion for Summary Judgment and related Joinders; granted Defendant Juliano's Motion for Summary Judgment, and dismissed Dr. Juliano from the case without prejudice; and denied Defendants Concio and Shah's Motion for Partial Summary Judgment on the Emotional Distress Claims. Now, Defendant Valley Health System, LLC (VHS) seeks an order staying the case pending an appeal of the October 29, 2020, Order denying its Motion for Summary Judgment Based Upon the Expiration of the Statute of Limitations. Defendant VHS alleges that it may be irreparably prejudiced by having to continue defending this action and potentially being forced to try all issues when the matter raised by the aforesaid Motion is case dispositive. This matter has been pending since February, 2019. It is currently set for trial on May 23, 2022. Initial expert disclosures are to be made on or before June 18, 2021, rebuttal expert disclosures are due on August 27, 2021, and discovery is to be completed on or before October 28, 2021. Valley argues that it is currently preparing a Petition for Writ of Mandamus, and is first seeking a stay with the district Court pursuant to NRAP 8(a)(1)(A). The decision whether to grant a motion for a stay in proceedings is left to the sound discretion of the Court. Nevada Tax Commission v. Brent Mackie, 74 Nev. 273, 276 (1958). The factors to be considered by the Court when considering whether to issue a stay in the proceedings when an appellate issue is pending before the Nevada Supreme Court are (1) whether the object of the writ petition will be defeated if the stay is denied; (2) whether the petitioner will suffer irreparable or serious injury if the stay is denied; (3) whether the real party in interest will suffer irreparable or serious injury if the stay is granted; and (4) whether petitioner is likely to prevail on the merits in the writ petition. NRAP 8(c); Fritz Hansen A/S v. Eighth Judicial District Court, 116 Nev. 650, 657 (2000). Defendant, VHS argues that each of the 4 factors weigh in favor of granting a stay. The Plaintiffs, on the other hand, argue that none of the factors weigh in favor of the Defendant. This Court finds and concludes as follows: 1) Trial is currently not scheduled until May of 2022, and consequently, even if a stay is denied, it is likely that the Supreme Court would rule on the "potential" Writ of Mandamus, prior to the parties going to Trial. Consequently, the Court does not find that the purpose of the writ petition would be defeated if the stay were denied. 2) The only injury or damage that the Petitioner would suffer if the stay were denied, would be continued litigations and the costs associated therewith. The Court has consistently held that ongoing litigation and the expenses associated therewith do not cause "irreparable harm." Consequently, the Court does not find that the Petitioner would suffer irreparable harm or serious injury if the stay were denied. 3) Although the Plaintiffs are correct that memories dim as time passes, such a fact applies to all witnesses equally Plaintiff's witnesses as well as Defendants' witnesses. Consequently, the Court does not find that the Plaintiffs would suffer irreparable or serious injury if the stay were granted. 4) The Court cannot find that the Petitioners 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. 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. Another issue which is important in this Court's analysis, is the fact that a Writ has apparently not yet been filed. If the Court were to grant the Stay as requested, it is possible that 6 months, or even a year from now, the Writ may still not be filed, so the Court would have stayed the case for no reason. Based upon all these reasons, considering the relevant factors set forth above, finding that they weigh in favor of the non-moving party, and good cause appearing, IT IS HEREBY ORDERED that the Defendant's Motion for Stay is hereby DENIED. The Court requests that Plaintiff's counsel prepare an Order consistent with the foregoing,

CASE SUMMARY

CASE NO. A-19-788787-C

have it approved as to form and content by opposing counsel, and submit it to the Court within 10 days. Because this matter has been decided on the papers, the hearing scheduled for 11/25/20 will be taken off calendar, and consequently, there is no need for any parties or attorneys to appear. CLERK'S NOTE: A copy of the above minute order was distributed to all parties 11-24-20./lk ;



11/25/2020 CANCELED **Motion to Stay** (9:00 AM) (Judicial Officer: Wiese, Jerry A.)
Vacated - Previously Decided
Defendant VHS's Motion for Stay on OST

02/10/2021 CANCELED **Status Check** (9:00 AM) (Judicial Officer: Wiese, Jerry A.)
Vacated
Status Check: Submission/Filing of Order from 09/25/19 hearing

04/20/2021  **Minute Order** (3:00 AM) (Judicial Officer: Wiese, Jerry A.)
Minute Order - No Hearing Held;
Journal Entry Details:
The above-referenced matter is scheduled for a hearing on 4/21/21 with regard to Defendant, Valley Health System LLC's Motion to Reconsider Motion for Stay Pending Petition for Writ of Mandamus. Pursuant to the administrative orders of the Court, including A.O. 21-03, this matter may be decided after a hearing, decided on the pleadings, or continued. Additionally, EDCR 2.23 provides that any matter may be decided with or without oral argument. This Court has determined that this matter may be decided on the pleadings, and consequently, this minute order issues. This matter has been pending since February, 2019. It is currently set for trial on May 23, 2022. Initial expert disclosures are to be made on or before June 18, 2021, rebuttal expert disclosures are due on August 27, 2021, and discovery is to be completed on or before October 28, 2021. Defendant Valley Health System LLC (aka CHH; doing business as "Centennial Hills Hospital Medical Center") moved this Court for summary judgment based upon an alleged expiration of the statute of limitations. CHH argued that Plaintiffs sought and received Ms. Powell's complete medical records from CHH just weeks after her death demonstrating their suspicion of alleged malpractice, and that Plaintiffs were therefore on inquiry notice when they received the medical records in June, 2017 since their own expert testified that he had sufficient evidence therein to allege malpractice. CHH also argued that Plaintiffs failed to submit any admissible evidence whatsoever in opposition to that motion. The Court issued an order denying CHH's motion on October 29, 2020. CHH then moved this Court for a stay of all proceedings prior to filing a Petition for a Writ of Mandamus. On December 17, 2020, this Court issued an order denying CHH's motion for a stay, due in part to the lack of likelihood that CHH would prevail on the merits, and the fact that a writ petition had not been filed. CHH has since filed its petition with the Nevada Supreme Court. In an order dated March 9, 2021, the Nevada Supreme Court issued an order directing an answer to CHH's writ petition, setting a briefing schedule of Plaintiffs' opposition by March 30, 2021 and CHH's reply by April 13, 2021. In its order, the Court stated "Having reviewed the petition, it appears that an answer may assist this court in resolving this matter." Defendant Valley Health System LLC's instant Motion to Reconsider the decision on the Motion for Stay Pending PWM was filed on 04/06/21 on OST. Defendant CHH now argues that the Supreme Court's request for an Answer suggests a likelihood of success on the merits, and the Writ Petition has now been filed, so the Court should now grant the stay that was previously requested. In opposition, the Plaintiff argues that the Motion is procedurally defective because a Motion for Reconsideration needs to be filed within 14 days from the 12/17/20 Notice of Entry of Order, which was filed by the Defendant. (See EDCR 2.24) EDCR 2.24 states in pertinent part as follows: EDCR 2.24 Rehearing of motions. . . . (b) A party seeking reconsideration of a ruling of the court, other than any order that may be addressed by motion pursuant to NRCP 50(b), 52(b), 59 or 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. A motion for rehearing or reconsideration must be served, noticed, filed and heard as is any other motion. A motion for reconsideration does not toll the period for filing a notice of appeal from a final order or judgment. Based on the foregoing, and good cause appearing, IT IS HEREBY ORDERED that Defendant's Motion for Reconsideration is hereby DENIED as untimely. The Court notes that this decision does not preclude the filing of a Motion to Stay with the Supreme Court. The Court requests that counsel for the Plaintiff prepare an Order consistent with the foregoing, have it approved as to form and content by opposing counsel, and submit it to the Court for signature within 10 days. Because this matter has been decided on the pleadings, the hearing scheduled for 4/21/21 will be taken off calendar, and consequently, there is no need for any parties or attorneys to appear. CLERK'S NOTE: A copy of the above minute order was distributed to all parties 4-20-21./lk;

CASE SUMMARY

CASE NO. A-19-788787-C

04/21/2021	<p>CANCELED Motion to Reconsider (9:00 AM) (Judicial Officer: Wiese, Jerry A.)</p> <p><i>Vacated - Previously Decided</i></p> <p><i>Defendant Valley Health System LLC's Motion to Reconsider Motion for Stay Pending Petition for Writ of Mandamus</i></p>
09/07/2021	<p> Minute Order (3:00 AM) (Judicial Officer: Wiese, Jerry A.)</p> <p>Minute Order - No Hearing Held;</p> <p>Journal Entry Details:</p> <p><i>The above-referenced matter is scheduled for a Status Check: Settlement/Trial Setting hearing on 9/8/21. The Court notes the Joint Status Report filed 8/18/21, indicates that a Petition for Writ of Mandamus is pending decision by the Supreme Court and accordingly the parties believe a sixty (60) day extension of discovery will be necessary. However, the extension of discovery should not impact the FIRM Jury Trial setting in this matter. The Court further notes that a Mediation has been scheduled to take place on November 16, 2021. The Court appreciates the parties filing the Joint Status Report and keeping the court apprised of the progress of the case. There have been no subsequent filings in this matter and based on the foregoing, and good cause appearing, IT IS HEREBY ORDERED that the Status Check: Settlement/Trial Setting in this case is hereby CONTINUED to December 1, 2021 at 9:00 a.m. IT IS FURTHER ORDERED that Counsel shall submit an appropriate Stipulation and Order to Extend Discovery Deadlines, consistent with the dates indicated in the Joint Status Report, for the Court's consideration. If the Mediation is successful in resolving the matter, Counsel are FURTHER ORDERED to immediately advise the Court of the change of status. As a result of the continuance, there is no need for any parties or attorneys to appear on 9/8/21 with regard to this matter. CLERK'S NOTE: A copy of the above minute order was distributed to all parties 09-07-21./lk ;</i></p>
11/18/2021	<p> Further Proceedings (10:00 AM) (Judicial Officer: Wiese, Jerry A.)</p> <p><i>Further Proceedings: Writ of Mandamus</i></p> <p>Matter Heard;</p> <p>Journal Entry Details:</p> <p><i>Brad Shipley, Esq. and Counsel on behalf of Centennial Hills Hospital present via Bluejeans video conference. Court noted the instant matter came back on a Writ Of Mandamus and counsel submitted a proposed Order; however, it didn't know if it was approved. Counsel indicated Mr. Padda had not approved the Order and was still waiting on a hearing. Following colloquy, Court advised parties it would sign the Order and the instant matter would be done. Parties concurred. CLERK'S NOTE: Minute Order prepared using JAVS recording. // 3-10-22/dy CLERK'S NOTE: Counsel present on behalf of Centennial Hills Hospital announcement of appearance was unclear due to being present via Bluejeans video conference. // 3-10-22/dy ;</i></p>
12/01/2021	<p>CANCELED Status Check: Settlement/Trial Setting (9:00 AM) (Judicial Officer: Wiese, Jerry A.)</p> <p><i>Vacated - Case Closed</i></p>
01/11/2022	<p>CANCELED Status Check: Medical/Dental Malpractice (8:00 AM) (Judicial Officer: Wiese, Jerry A.)</p> <p><i>Vacated - Case Closed</i></p>
01/26/2022	<p>CANCELED Motion (3:00 AM) (Judicial Officer: Wiese, Jerry A.)</p> <p><i>Vacated</i></p> <p><i>Plaintiffs' 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</i></p>
02/09/2022	<p>CANCELED Opposition and Countermotion (9:00 AM) (Judicial Officer: Wiese, Jerry A.)</p> <p><i>Vacated - per Order</i></p> <p><i>Defendant Valley Health System, LLC dba Centennial Hills Hospital's Opposition to Plaintiff's Motion to Retax Costs and Countermotion for Costs and Fees Pursuant to EDCR 7.60</i></p>
02/18/2022	<p>CANCELED Motion for Attorney Fees (9:00 AM) (Judicial Officer: Wiese, Jerry A.)</p> <p><i>Vacated - per Order</i></p> <p><i>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</i></p>

EIGHTH JUDICIAL DISTRICT COURT

CASE SUMMARY

CASE NO. A-19-788787-C

	<i>EDCR 7.60</i>	
02/18/2022	CANCELED Motion for Attorney Fees and Costs (9:00 AM) (Judicial Officer: Wiese, Jerry A.) <i>Vacated - per Order</i> <i>Defendants Conrado Concio, MD and Vishal Shah, MD's Motion for Attorneys' Fees and Costs</i>	
03/30/2022	Motion For Reconsideration (9:00 AM) (Judicial Officer: Wiese, Jerry A.) <i>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. 6, N.R.S. 17.117, 7.085, 18.010(2), and EDCR 7.60</i>	
04/25/2022	CANCELED Pre Trial Conference (9:00 AM) (Judicial Officer: Wiese, Jerry A.) <i>Vacated - Case Closed</i>	
05/16/2022	CANCELED Calendar Call (9:00 AM) (Judicial Officer: Wiese, Jerry A.) <i>Vacated - Case Closed</i>	
05/23/2022	CANCELED Jury Trial - FIRM (10:30 AM) (Judicial Officer: Wiese, Jerry A.) <i>Vacated - Case Closed</i>	

DATE	FINANCIAL INFORMATION
	Defendant Juliano, Dionice S., M.D. Total Charges 200.00 Total Payments and Credits 200.00 Balance Due as of 3/21/2022 0.00
	Defendant Universal Health Services, Inc. Total Charges 423.00 Total Payments and Credits 423.00 Balance Due as of 3/21/2022 0.00
	Defendant Concio, Conrado C.D., M.D. Total Charges 453.00 Total Payments and Credits 453.00 Balance Due as of 3/21/2022 0.00
	Defendant Shah, Vishal S., M.D. Total Charges 223.00 Total Payments and Credits 223.00 Balance Due as of 3/21/2022 0.00
	Defendant Valley Health System, LLC Total Charges 694.00 Total Payments and Credits 694.00 Balance Due as of 3/21/2022 0.00
	Plaintiff Estate of Rebecca Powell Total Charges 414.00 Total Payments and Credits 414.00 Balance Due as of 3/21/2022 0.00

DISTRICT COURT CIVIL COVER SHEET

A-19-788787-C

County, Nevada

Department 14

Case No. _____

(Assigned by Clerk's Office)

I. Party Information (provide both home and mailing addresses if different)

Plaintiff(s) (name/address/phone): Estate of Rebecca Powell (through Brian Powell, Special Administrator); Darci Creecy; Taryn Creecy; Isaiah Khosrof; Lloyd Creecy	Defendant(s) (name/address/phone): VALLEY HEALTH SYSTEM, LLC; UNIVERSAL HEALTH SERVICES, INC.; DR. DIONICE S. JULIANO, M.D.; CONRADO C.D. CONCIO, M.D.; DR. VISHAL S. SHAH, M.D.; Defendants
Attorney (name/address/phone): Paul S. Padda, Esq./Joshua Y. Ang, Esq. Paul Padda Law, PLLC 4560 South Decatur Road, Suite 300, Las Vegas, Nevada 89103 (702) 366-1888	Attorney (name/address/phone): N/A

II. Nature of Controversy (please select the one most applicable filing type below)**Civil Case Filing Types**

Real Property Landlord/Tenant <input type="checkbox"/> Unlawful Detainer <input type="checkbox"/> Other Landlord/Tenant Title to Property <input type="checkbox"/> Judicial Foreclosure <input type="checkbox"/> Other Title to Property Other Real Property <input type="checkbox"/> Condemnation/Eminent Domain <input type="checkbox"/> Other Real Property	Negligence <input type="checkbox"/> Auto <input type="checkbox"/> Premises Liability <input type="checkbox"/> Other Negligence Malpractice <input checked="" type="checkbox"/> Medical/Dental <input type="checkbox"/> Legal <input type="checkbox"/> Accounting <input type="checkbox"/> Other Malpractice	Torts Other Torts <input type="checkbox"/> Product Liability <input type="checkbox"/> Intentional Misconduct <input type="checkbox"/> Employment Tort <input type="checkbox"/> Insurance Tort <input type="checkbox"/> Other Tort
Probate Probate (select case type and estate value) <input type="checkbox"/> Summary Administration <input type="checkbox"/> General Administration <input type="checkbox"/> Special Administration <input type="checkbox"/> Set Aside <input type="checkbox"/> Trust/Conservatorship <input type="checkbox"/> Other Probate Estate Value <input type="checkbox"/> Over \$200,000 <input type="checkbox"/> Between \$100,000 and \$200,000 <input type="checkbox"/> Under \$100,000 or Unknown <input type="checkbox"/> Under \$2,500	Construction Defect & Contract Construction Defect <input type="checkbox"/> Chapter 40 <input type="checkbox"/> Other Construction Defect Contract Case <input type="checkbox"/> Uniform Commercial Code <input type="checkbox"/> Building and Construction <input type="checkbox"/> Insurance Carrier <input type="checkbox"/> Commercial Instrument <input type="checkbox"/> Collection of Accounts <input type="checkbox"/> Employment Contract <input type="checkbox"/> Other Contract	Judicial Review/Appeal Judicial Review <input type="checkbox"/> Foreclosure Mediation Case <input type="checkbox"/> Petition to Seal Records <input type="checkbox"/> Mental Competency Nevada State Agency Appeal <input type="checkbox"/> Department of Motor Vehicle <input type="checkbox"/> Worker's Compensation <input type="checkbox"/> Other Nevada State Agency Appeal Other <input type="checkbox"/> Appeal from Lower Court <input type="checkbox"/> Other Judicial Review/Appeal
Civil Writ Civil Writ <input type="checkbox"/> Writ of Habeas Corpus <input type="checkbox"/> Writ of Mandamus <input type="checkbox"/> Writ of Quo Warrant <input type="checkbox"/> Writ of Prohibition <input type="checkbox"/> Other Civil Writ		Other Civil Filing Other Civil Filing <input type="checkbox"/> Compromise of Minor's Claim <input type="checkbox"/> Foreign Judgment <input type="checkbox"/> Other Civil Matters

Business Court filings should be filed using the Business Court civil coversheet.

02/04/2019

Date

Signature of initiating party or representative

See other side for family-related case filings.

Heaven S. Shinn

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. SHAH, M.D., an individual;)
DOES 1-10; and ROES A-Z,)

Defendants.)

CASE NO.: A-19-788787-C
DEPT. NO.: XXX

**ORDER RE: CONCIO'S
AND SHAH'S MOTION
FOR FEES AND COSTS**

INTRODUCTION

The above-referenced matter is scheduled for a hearing on 2/18/22, with regard to Defendants, Conrado Concio, M.D., and Vishal Shah, M.D.'s Motion for Attorneys' Fees and Costs. Pursuant to the Administrative Orders of the Court, as well as EDCR 2.23, 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 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. However, on May 10, 2017, Plaintiff complained of shortness of breath, weakness, and

1 a drowning feeling. In response to these complaints, Defendant Doctor Vishal Shah
2 ordered Ativan to be administered via IV push. Plaintiff's condition did not improve.
3 Defendant, Doctor Conrado Concio twice more ordered Ativan to be administered via
4 IV push, and Plaintiff was put in a room with a camera in order to better monitor her
5 condition. At 3:27 AM on May 11, 2017, another dose of Ativan was ordered. Plaintiff
6 then entered into acute respiratory failure, resulting in her death.

7 Plaintiffs brought suit on February 4, 2019 alleging negligence/medical
8 malpractice, wrongful death pursuant to NRS 41.085, and negligent infliction of
9 emotional distress. Defendants filed Motions to Dismiss and for Summary Judgment,
10 which this Court denied. After a recent remand from the Nevada Supreme Court, on
11 11/19/21, the Court entered an Order Vacating Prior Order Denying Defendant Valley
12 Health System, LLC DBA Centennial Hills Hospital Medical Center's Motion for
13 Summary Judgment and Granting Said Defendant's Motion for Summary Judgment
14 Per Mandamus of Nevada Supreme Court. A Notice of Entry of Order was entered that
15 same day. On 11/22/21, Defendant Valley Health Systems filed a Motion for Attorneys
16 Fee and Verified Memorandum of Costs. Defendants Conrado Concio, MD and Vishal
17 Shah, MD filed a Verified Memorandum of Costs and Disbursements on 11/23/21, and
18 a Motion for Attorney's Fees and Costs on 12/10/21.

19 On 12/3/21, Plaintiffs filed a Motion to Extend Time to Respond to Defendants'
20 Valley Health Systems, Dr. Dionice S. Juliano, Dr. Conrado Concio, and Dr. Vishal
21 Shah's Memorandums of Costs. Plaintiffs received an Order Shortening Time on
22 12/10/21. Following briefing, the Court entered an Order denying Plaintiffs' Motion to
23 Extend Time to Respond, because of a lack of diligence on part of the Plaintiffs.

24 **SUMMARY OF LEGAL AND FACTUAL ARGUMENTS**

25 Defendants Conrado Concio, MD and Vishal Shah, MD (the "Doctors" or "Doctor
26 Defendants") seek an award of fees and costs pursuant to NRCP 68, NRS 17.117, NRS
27 18.010(2)(b), and NRS 7.085. The Doctors state they have incurred \$53,099.00 in
28 attorneys' fees in successfully defending this action, and \$18,399.00 after the rejection
of their offers of judgment to Plaintiffs. The Doctors claim they incurred \$9,149.76 in
costs, and an additional \$3,049.10 since Plaintiffs rejected their offers.

1 The Doctors state that on 9/22/20, as Plaintiffs disclosed clear and irrefutable
2 evidence that the claims were barred by the statute of limitations, the Doctors each
3 individually served offers of judgment on Plaintiffs, “generously agreeing to waive any
4 fees and costs to which they would be entitled as a prevailing party, which was now a
5 foregone conclusion.” Plaintiffs did not respond to the offers of judgment and instead
6 allowed them to expire.

7 Thereafter, on 6/18/21, the parties exchanged initial expert disclosures. The
8 Doctors disclosed James Leo, MD, who opined that each of the Doctor Defendants met
9 the standard of care. Dr. Leo further opined that while Plaintiffs' expert Dr. Hashim
10 was critical of the lack of a differential diagnosis and the administration of Ativan, Dr.
11 Hashim apparently did not sufficiently review the records, as he failed to notice that the
12 Doctor Defendants sought the intervention of specialized consulting for that purpose.
13 The Doctor Defendants sought consulting from Dr. Skankey, an infectious disease
14 specialist, and Dr. Breeden, a pulmonologist. The records are clear that these two
15 physicians developed a differential diagnosis on May 10, and the records furthermore
16 demonstrate that Dr. Breeden, the pulmonologist, was aware of and ratified the
17 administration of Ativan to the decedent.

18 Plaintiffs did not disclose Dr. Hashim as an expert, but disclosed expert reports
19 from James Lineback, MD, Thomas Cumbo, MD, Kenny Stein, MD, Michael Griffith,
20 RN, and Terence Clauretie. Only Dr. Stein acknowledged Dr. Skankey and Dr. Breeden,
21 and his opinions of these two physicians do not appear to be favorable. Dr. Stein
22 offered no criticisms of Dr. Shah, and only a single criticism of Dr. Concio. However,
23 Dr. Stein spent the bulk of his report discussing the alleged errors and omissions of the
24 consulting specialists, Dr. Breeden and Dr. Skankey. In that respect, while he disagreed
25 with Dr. Leo's assessment regarding the appropriateness and effect of Ativan in this
26 case, he clearly agreed that Dr. Breeden is the one who bore responsibility for the
27 administration of Ativan as the consulting pulmonologist who ratified the decision. The
28 Defendant Doctors further note that Plaintiffs never served any written discovery on
the Moving Defendants and never sought to take their depositions.

The Doctors cite to *Schouweiler v. Yancey Co.*, for the proposition that a Court
must consider the following factors in exercising its discretion to award fees: (1)
whether the offeree brought his claims in good faith; (2) whether the offeror's offer of

1 judgment was also brought in good faith in both timing and amount; (3) whether the
2 offeree's decision to reject the offer of judgment was in bad faith or grossly
3 unreasonable; and (4) whether the amount of offeror's requested fees is reasonable and
4 justified. *Schouweiler*, 101 Nev. 827, 833, 917 P.2d 786 (1985).

5 Additionally, NRS 18.010(2)(b) provides that "the court may make an allowance
6 of attorney's fees to a prevailing party ... when the court finds that the claim ... was ...
7 maintained without reasonable ground to harass the prevailing party. The court shall
8 liberally construe the provisions of this paragraph in favor of awarding attorney's fees
in all appropriate situations."

9 EDCR 7.60(b) provides that the "court may ... impose upon an attorney or a
10 party any and all sanctions which may, under the facts of the case, be reasonable,
11 including ... costs or attorney's fees when an attorney or a party without 'just cause ... so
12 multiplies the proceedings in a case as to increase costs unreasonably and vexatiously."

13 The Doctors argue they are entitled to an award of attorneys' fees and costs for
14 the entirety of this action. Although the Doctors served an offer of judgment for a
15 waiver of their fees and costs after Plaintiffs disclosed documents, which unequivocally
16 proved that the Doctors were entitled to summary judgment, Plaintiffs and their
17 counsel were clearly in possession of these documents before then. Thus, while the
18 timing and amount of offer is clearly reasonable, and the rejection of the offer was
19 grossly unreasonable and in bad faith, it is likewise clear that Plaintiffs and their
20 counsel knew or should have known from the very outset of the litigation that the
claims were time-barred. Despite, this knowledge, Plaintiffs chose to persist.

21 Moreover, Plaintiffs' reviewing experts either overlooked or purposely ignored
22 the important role played by specialist Dr. Breeden, both to the extent that it
23 exonerates the Doctor Defendants and to the extent that it possibly implicates Dr.
24 Breeden. To the extent that this case was brought against the Doctors, it was not done
25 so in good faith. Additionally, the Doctors contend that Plaintiffs' refusal to stay the
26 case during the pendency of the petition for writ of mandamus was manifestly
27 unreasonable, especially when viewed in light of the aforementioned failures. The
28 decision to refuse a stay, even after the Supreme Court ordered Plaintiffs to answer the
petition for writ, was calculated to leverage the costs of defense against Defendants in

1 order to salvage some settlement value from a case that was headed for almost certain
2 dismissal.

3 Finally, the Doctors filed an attached affidavit of counsel, which addresses the
4 *Brunzell* factors. Counsel indicates that the billing records are available for in camera
5 review should the Court find it necessary to examine them. Such fees are comprised of
6 services billed by attorneys John H. Cotton, Esq., Brad J. Shipley Esq., and paralegal
7 Jody Foote. Mr. Cotton billed a total of 17 hours at a rate of \$250.00 per hour. Ms.
8 Foote billed a total of 9.2 hours at a rate of \$90 per hour. Mr. Shipley was responsible
9 for the remaining 252.7 hours at a rate of \$190 per hour.

10 With regard to the qualities and skills of the advocate, Mr. Cotton has practiced
11 law in the State of Nevada since 1976, while maintaining an AV rating with Martindale
12 Hubble since 1981. Mr. Shipley has practiced as an attorney for over three years, and
13 spent several years as a law clerk to both Judge Joanna S. Kishner and Justice (then
14 Judge) Abbi Silver. Counsel states that character of the work done was complex, as this
15 was a professional negligence/wrongful death claim, involving multiple defendants. As
16 to the work actually performed, counsel suggests that the court can take judicial notice
17 of the extensive motion practice involved in this case. The result obtained in this matter
18 was judgment in favor of the defendants on all causes of action.

19 In Opposition, Plaintiffs argue that the medical malpractice, wrongful death, and
20 negligent infliction of emotional distress complaint on behalf of the estate and
21 surviving children of Rebecca Powell was not frivolous, and the claims for wrongful
22 death/medical malpractice and negligent infliction of emotional distress were brought
23 in good faith. Because this Court denied several dispositive motions before the Nevada
24 Supreme Court ultimately directed this Court to vacate its Order denying CHH's
25 Motion for Summary Judgment and enter judgment in favor of all the Defendants,
26 Defendants did not "win" this matter on the merits.

27 Plaintiffs argue that the dismissal of the case on an incorrect interpretation of
28 the facts and application of inquiry notice to all the named Plaintiffs by the Supreme
Court does not make the claims of Plaintiffs any less meritorious. Further, pursuant to
NRCPP 68, and NRS 17.117(10), a party is not entitled to attorney's fees simply because it
served an offer of judgment on the opposing party and that party failed to achieve a
more favorable verdict. The purpose of NRCPP 68 is to encourage settlement; it is not to

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

3 Plaintiffs argue that their claims were brought in good faith, as HHS determined
4 that there were deficiencies in Ms. Powell's care and the death certificate was
5 inaccurate. Plaintiffs argue that the Doctors incorrectly dissect a few statements made
6 by the Plaintiffs' experts to argue that the Complaint was not brought in good faith.
7 Plaintiffs' expert reports were disclosed in June of 2021. Plaintiffs' expert rebuttal
8 reports were disclosed in August of 2021. No depositions have been conducted nor any
9 motions filed contesting Plaintiffs' expert reports. Additionally, this Court repeatedly
10 found merit in Plaintiffs' Complaint and their causes of action for wrongful death,
11 medical malpractice, and negligent infliction of emotional harm.

12 Further, Plaintiffs argue that Doctors' Offer of Judgment of \$0.00 was not
13 reasonable and nor was it in good faith considering Plaintiffs' causes of action for
14 medical malpractice, wrongful death, and negligent infliction of emotional harm.
15 Plaintiffs lost their mother, who was only 41 years old at the time of her death. It was
16 reasonable for Plaintiffs to reject Defendants' Offer of Judgment, as the terms of the
17 Offer of Judgment did not provide for any monetary recovery to Plaintiffs to
18 compensate them for the loss of their mother. Moreover, this Court denied the Motion
19 for Summary Judgment. Therefore, the Doctors incorrectly state that given the
20 likelihood of losing on this issue, the offered waiver of the right to seek reimbursement
21 of costs was reasonable in both timing and amount.

22 Plaintiffs contend that their decision to reject the Offer of Judgment was not
23 grossly unreasonable nor in bad faith because no amount was being offered in damages
24 to the Plaintiffs. The Doctors merely agreed to waive their fees and costs to which they
25 would be entitled to by statute or rule. Plaintiffs were not even in a position to verify
26 the accuracy of the alleged fees and costs since the Doctors did not provide
27 documentation in support of their Offer.

28 With regard to the fees sought, Plaintiffs notes that a jury did not render a
verdict in favor of Defendants. Plaintiffs argue that the Doctors incurred so many fees
because it continued filing of motions based on the same statute of limitations theory.
Thus, the Doctors' fees are unreasonable and unjustified. Plaintiffs argue that the

Doctors did not provide an itemization of fees requested. Further, Plaintiffs argue that sanctions under NRS 7.085 and/or NRS 18.010 (2) are unwarranted and unsupported.

FINDINGS OF FACT AND CONCLUSIONS OF LAW

NRCP 68 provides in pertinent part as follows:

Rule 68. Offers of Judgment

(a) The Offer. At any time more than 21 days before trial, any party may serve an offer in writing to allow judgment to be taken in accordance with its terms and conditions. Unless otherwise specified, an offer made under this rule is an offer to resolve all claims in the action between the parties to the date of the offer, including costs, expenses, interest, and if attorney fees are permitted by law or contract, attorney fees.

....

(d) Acceptance of the Offer and Dismissal or Entry of Judgment.

(1) Within 14 days after service of the offer, the offeree may accept the offer by serving written notice that the offer is accepted.

(2) Within 21 days after service of written notice that the offer is accepted, the obligated party may pay the amount of the offer and obtain 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.

....

1 NRCP 68.

2 NRCP 68 provides that the Defendant would be entitled to “reasonable attorney
3 fees, if any be allowed.” The language of the Rule specifically provides that Court with
4 “discretion,” as it relates to attorney’s fees, and the Court’s discretion will not be
5 disturbed absent a clear abuse of such discretion. *Armstrong v. Riggi*, 92 Nev. 280,
6 549 P.2d 753 (1976); *Schouweiler v. Yancey Co.*, 101 Nev. 827, 712 P.2d 786 (1985);
7 *Bidart v. American Title Ins. Co.*, 103 Nev. 175, 734 P.3d 732 (1987).

8 In evaluating whether to grant an award of attorney’s fees, pursuant to
9 *Schouweiler v. Yancey Co.*, 101 Nev. 827, 712 P.2d 786 (1985), the Court must
10 consider: “(1) whether plaintiff’s claim was brought in good faith; (2) whether
11 defendant’s offer of judgment was brought in good faith in both its timing and amount;
12 (3) whether plaintiff’s decision to reject the offer and proceed to trial was grossly
13 unreasonable or in bad faith; and (4) whether fees sought by the offeror are reasonable
14 and justified in amount.” *Schouweiler* at 833, citing *Beattie v. Thomas*, 99 Nev. 579,
15 588, 668 P.2d 268 (1983)(the “Beattie Factors”).

16 Any costs awarded need to be itemized and documented. The Nevada Supreme
17 Court has stated that without “itemization or justifying documentation,” the Court is
18 “unable to ascertain whether such costs were accurately assessed.” *Bobby Berosini,*
19 *Ltd. V. People for the Ethical Treatment of Animals*, 114 Nev. 1348, 1353, 971 P.2d 383
20 (1998). Further, when the “memorandum of costs is completely void of any specific
21 itemization,” and a “lack of supporting documentation,” it is an abuse of discretion on
22 the part of the Court if it awards the requested costs. *Id.* The Supreme Court has
23 further indicated that “‘justifying documentation’ must mean something more than a
24 memorandum of costs.” *Cadle Co. v. Woods & Erickson, LLP*, 131 Nev. 114, 121, 345
25 P.3d 1049 (2015). The Court has further indicated that “Without evidence to determine
26 whether a cost was reasonable and necessary, a district court may not award costs.”
27 *Id.*, citing *Peta*, 114 Nev. at 1353, 97 1 P.2d at 386.

28 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

1 when they affect the importance of the litigation; (3) the work actually performed by
2 the lawyer: the skill, time and attention given to the work; and (4) the result: whether
3 the attorney was successful and what benefits were derived. *Schouweiler* at 833-834,
4 citing to *Brunzell v. Golden Gate Nat'l Bank*, 85 Nev. 345, 349, 455 P.2d 31 (1969)
5 (quoting *Schwartz v. Schwerin*, 85 Ariz. 242, 336 P.2d 144, 146 (1959)).

6 In considering the costs submitted by Defendants, the Court finds pursuant to
7 the Cadle case, that sufficient documentation was provided for the Court to determine
8 that the following costs were reasonably and necessarily incurred in the case:

Clerks Fees	\$ 933.28
Expert Witness Fees	\$1,500.00
Mediation Fees	<u>\$ 225.00</u>
Total:	\$2,658.28

11 The Court finds insufficient documentation regarding the postage and
12 photocopies requested.

13 In *Frazier v. Drake*, 131 Nev. 632, 357 P.3d 365 (NV.Ct.of App., 2015), the Court
14 noted that NRS 18.005(5) provides for the recovery of “reasonable fees of not more
15 than five expert witnesses in an amount of not more than \$1,500 for each witness
16 unless the court allows a larger fee after determining that the circumstances
17 surrounding the expert’s testimony were of such necessity as to require the larger fee.”
18 *Id.*, at 644. The Court went on to state the following:

19 we conclude that any award of expert witness fees in excess of \$1,500
20 per expert under NRS 18.005(5) must be supported by an express,
21 careful, and preferably written explanation of the court's analysis of
22 factors pertinent to determining the reasonableness of the requested fees
23 and whether “the circumstances surrounding the expert's testimony were
24 of such necessity as to require the larger fee.” See NRS 18.005(5); cf.
25 *Young v. Johnny Ribeiro Bldg., Inc.*, 106 Nev. 88, 93, 787 P.2d 777, 780
26 (1990) (requiring an “express, careful and preferably written explanation”
27 of the district court's analysis of factors pertinent to determining whether
28 a dismissal with prejudice is an appropriate discovery sanction). ***In
evaluating requests for such awards, district courts should
consider the importance of the expert's testimony to the
party's case; the degree to which the expert's opinion aided
the trier of fact in deciding the case; whether the expert's
reports or testimony were repetitive of other expert witnesses;
the extent and nature of the work performed by the expert;
whether the expert had to conduct independent investigations
or testing; the amount of time the expert spent in court,
preparing a report, and preparing for trial; the expert's area***

of expertise; the expert's education and training; the fee actually charged to the party who retained the expert; the fees traditionally charged by the expert on related matters; comparable experts' fees charged in similar cases; and, if an expert is retained from outside the area where the trial is held, the fees and costs that would have been incurred to hire a comparable expert where the trial was held.

Id., at 650-651.

The Defendant provided evidence through Dr. Leo's CV of his area of expertise and of his education and training, as well as evidence of the fee he actually charged. None of the other factors set forth in *Frazier*, however, were addressed. Consequently, the Court can allow the expert fee of \$1,500.00, as the Court finds that Dr. Leo's testimony was relevant and the fees incurred were reasonable, but the Court cannot allow expert fees in excess of \$1,500.00 without a *Frazier* analysis.

In considering the attorneys' fees requested by Defendants, the Court notes that Defendants incurred a total of \$53,099 in attorneys' fees, with \$18,399 being incurred after rejection of their Offer of Judgment. In considering the Beattie factors, the Court finds and concludes that the plaintiff's claim was brought in good faith. The Court finds and concludes that Defendant's offer of judgment, in the amount of \$0.00, was brought in good faith in both its timing and amount. The Court acknowledges that the parties disagree about this issue, but as much as the Plaintiffs believed they had a valid case, the Defendants disputed any liability. The Court further finds and concludes that Plaintiff's decision to reject the offer and proceed to trial was not grossly unreasonable or in bad faith. Plaintiffs believed they had a valid claim, and the Court cannot find that wanting some recovery, as opposed to \$0.00, to be "grossly unreasonable" or in "bad faith. Finally, the Court finds and concludes that the fees sought by the Defendants, at least subsequent to the Offer of Judgment, appear to be reasonable and justified in amount. *Beattie v. Thomas*, 99 Nev. 579, 588, 668 P.2d 268 (1983).

In determining the reasonableness of the fees requested, the Court has analyzed the *Brunzell* factors, as follows: The Court finds that the qualities of defense counsel, his ability, training, education, experience, professional standing and skill, favor an award of fees. When considering the character of the work to be done - its difficulty, intricacy, importance, the time and skill required, (when dealing with a professional negligence/medical malpractice case), and finding that the character or prominence of

1 the parties was unremarkable, the complexity of the case warrants an award of fees.
2 When considering the work actually performed by the lawyer, and the skill, time and
3 attention given to the work, even without a detailed billing statement, the Court can
4 take judicial notice of the amount of time reasonably spent in preparation and litigation
5 of the various motions and appeal in this matter, and finds that the fees requested
6 appear to be reasonable for such work. Finally, in considering the result, the Court
7 notes that although the Court found insufficient evidence to establish irrefutably that
8 the statute of limitations had expired, Defense counsel was successful in convincing the
9 Supreme Court of that, and consequently, Defendants prevailed. *Brunzell v. Golden*
10 *Gate Nat'l Bank*, 85 Nev. 345, 349, 455 P.2d 31 (1969). Based upon this NRCP 68
11 analysis, the Court finds that the fees requested by Defendants, in the amount of
12 \$18,399.00 after rejection of the Offer of Judgment, were reasonably and necessarily
13 incurred, and are justified in this case.

14 **CONCLUSION/ORDER**


15 Based upon the foregoing, and good cause appearing,

16 **IT IS HEREBY ORDERED** that the Defendants' Motion for Fees and Costs is
17 **GRANTED IN PART and DENIED IN PART**, consistent with the foregoing.
18 Defendants are awarded **\$2,658.28** of the \$9,149.76 requested costs, and
19 **\$18,399.00** of the \$53,099.00 in attorneys' fees.

20 The Court requests that defense counsel prepare and process a Notice of Entry
21 with regard to this Order.

22 Because this matter has been decided on the pleadings, the hearing scheduled
23 for 2/18/22 will be taken off calendar, and consequently, there is no need for any
24 parties or attorneys to appear.

25 Dated this 15th day of February, 2022

26 

27 0E9 B8C C91E 008A
28 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:

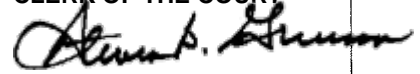
15 Service Date: 2/15/2022

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 Brad Shipley	bshipley@jhcottonlaw.com
22 Tony Abbatangelo	Tony@thevegaslawyers.com
23 Adam Garth	Adam.Garth@lewisbrisbois.com
24 Paul Padda	civil@paulpaddalaw.com
25 Diana Escobedo	diana@paulpaddalaw.com

26
27
28

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28

Srilata Shah	sri@paulpaddalaw.com
Shady Sirsy	Shady.Sirsy@lewisbrisbois.com
Maria San Juan	maria.sanjuan@lewisbrisbois.com
Karen Cormier	karen@paulpaddalaw.com
Kimberly DeSario	kimberly.desario@lewisbrisbois.com
Heidi Brown	Heidi.Brown@lewisbrisbois.com
Tiffany Dube	tiffany.dube@lewisbrisbois.com
Shelbi Schram	shelbi@paulpaddalaw.com



1 **NEO**
2 JOHN H. COTTON, ESQ.
3 Nevada Bar Number 5268
4 JHCotton@jhcottonlaw.com
5 BRAD SHIPLEY, ESQ.
6 Nevada Bar Number 12639
7 BShipley@jhcottonlaw.com
8 **JOHN H. COTTON & ASSOCIATES, LTD.**
9 7900 West Sahara Avenue, Suite 200
10 Las Vegas, Nevada 89117
11 Telephone: (702) 832-5909
12 Facsimile: (702) 832-5910
13 *Attorneys for Defendants Conrado Concio, M.D.*
14 *and Vishal S. Shah, M.D.*

9 **DISTRICT COURT**
10 * * *
11 **CLARK COUNTY, NEVADA**

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

15 Plaintiffs,

16 vs.

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

22 Defendants.

CASE NO.: A-19-788787-C
DEPT. NO.: XXX

NOTICE OF ENTRY OF ORDER RE:
CONCIO'S AND SHAH'S MOTION
FOR FEES AND COSTS

23 PLEASE TAKE NOTICE that an Order was entered on the 15th day of February 2022 in
24 the above-captioned matter, a copy of which is attached.

25 //

26 //

27 //

28

1 Dated this 16th day of February 2022.

2 **JOHN H. COTTON & ASSOCIATES, LTD.**
3 7900 West Sahara Avenue, Suite 200
4 Las Vegas, Nevada 89117

5 */s/ Brad Shipley*

6 _____
7 JOHN H. COTTON, ESQ.
8 BRAD SHIPLEY, ESQ.

9 *Attorneys for Defendants Conrado Concio, M.D. and*
10 *Vishal S. Shah, M.D*
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28

CERTIFICATE OF ELECTRONIC SERVICE

I hereby certify that on the 16th day of February 2022, I served a true and correct copy of the foregoing ***NOTICE OF ENTRY OF ORDER RE: CONCIO'S AND SHAH'S MOTION FOR FEES AND COSTS*** by electronic means was submitted electronically for filing and/or service with the Eighth Judicial District Court, made in accordance with the E-Service List, to the following individuals:

Paul S. Padda, Esq.
Suneel J. Nelson, Esq.,
PAUL PADDA LAW, PLLC
4560 South Decatur Boulevard, Ste. 300
Las Vegas, NV 89103
Attorneys for Plaintiffs

S. Brent Vogel
Adam Garth
LEWIS BRISBOIS BISGAARD & SMITH LLP
6385 S. Rainbow Blvd., Ste. 600
Las Vegas, NV 89118
*Attorneys for Defendant Valley Health System, LLC dba
Centennial Hills Hospital Medical Center*

/s/ Jody Foote

An Employee of John H. Cotton & Associates

**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 RE: CONCIO'S
AND SHAH'S MOTION
FOR FEES AND COSTS**

INTRODUCTION

The above-referenced matter is scheduled for a hearing on 2/18/22, with regard to Defendants, Conrado Concio, M.D., and Vishal Shah, M.D.'s Motion for Attorneys' Fees and Costs. Pursuant to the Administrative Orders of the Court, as well as EDCR 2.23, 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 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. However, on May 10, 2017, Plaintiff complained of shortness of breath, weakness, and

1 a drowning feeling. In response to these complaints, Defendant Doctor Vishal Shah
2 ordered Ativan to be administered via IV push. Plaintiff's condition did not improve.
3 Defendant, Doctor Conrado Concio twice more ordered Ativan to be administered via
4 IV push, and Plaintiff was put in a room with a camera in order to better monitor her
5 condition. At 3:27 AM on May 11, 2017, another dose of Ativan was ordered. Plaintiff
6 then entered into acute respiratory failure, resulting in her death.

7 Plaintiffs brought suit on February 4, 2019 alleging negligence/medical
8 malpractice, wrongful death pursuant to NRS 41.085, and negligent infliction of
9 emotional distress. Defendants filed Motions to Dismiss and for Summary Judgment,
10 which this Court denied. After a recent remand from the Nevada Supreme Court, on
11 11/19/21, the Court entered an Order Vacating Prior Order Denying Defendant Valley
12 Health System, LLC DBA Centennial Hills Hospital Medical Center's Motion for
13 Summary Judgment and Granting Said Defendant's Motion for Summary Judgment
14 Per Mandamus of Nevada Supreme Court. A Notice of Entry of Order was entered that
15 same day. On 11/22/21, Defendant Valley Health Systems filed a Motion for Attorneys
16 Fee and Verified Memorandum of Costs. Defendants Conrado Concio, MD and Vishal
17 Shah, MD filed a Verified Memorandum of Costs and Disbursements on 11/23/21, and
18 a Motion for Attorney's Fees and Costs on 12/10/21.

19 On 12/3/21, Plaintiffs filed a Motion to Extend Time to Respond to Defendants'
20 Valley Health Systems, Dr. Dionice S. Juliano, Dr. Conrado Concio, and Dr. Vishal
21 Shah's Memorandums of Costs. Plaintiffs received an Order Shortening Time on
22 12/10/21. Following briefing, the Court entered an Order denying Plaintiffs' Motion to
23 Extend Time to Respond, because of a lack of diligence on part of the Plaintiffs.

24 **SUMMARY OF LEGAL AND FACTUAL ARGUMENTS**

25 Defendants Conrado Concio, MD and Vishal Shah, MD (the "Doctors" or "Doctor
26 Defendants") seek an award of fees and costs pursuant to NRCP 68, NRS 17.117, NRS
27 18.010(2)(b), and NRS 7.085. The Doctors state they have incurred \$53,099.00 in
28 attorneys' fees in successfully defending this action, and \$18,399.00 after the rejection
of their offers of judgment to Plaintiffs. The Doctors claim they incurred \$9,149.76 in
costs, and an additional \$3,049.10 since Plaintiffs rejected their offers.

1 The Doctors state that on 9/22/20, as Plaintiffs disclosed clear and irrefutable
2 evidence that the claims were barred by the statute of limitations, the Doctors each
3 individually served offers of judgment on Plaintiffs, “generously agreeing to waive any
4 fees and costs to which they would be entitled as a prevailing party, which was now a
5 foregone conclusion.” Plaintiffs did not respond to the offers of judgment and instead
6 allowed them to expire.

7 Thereafter, on 6/18/21, the parties exchanged initial expert disclosures. The
8 Doctors disclosed James Leo, MD, who opined that each of the Doctor Defendants met
9 the standard of care. Dr. Leo further opined that while Plaintiffs' expert Dr. Hashim
10 was critical of the lack of a differential diagnosis and the administration of Ativan, Dr.
11 Hashim apparently did not sufficiently review the records, as he failed to notice that the
12 Doctor Defendants sought the intervention of specialized consulting for that purpose.
13 The Doctor Defendants sought consulting from Dr. Skankey, an infectious disease
14 specialist, and Dr. Breeden, a pulmonologist. The records are clear that these two
15 physicians developed a differential diagnosis on May 10, and the records furthermore
16 demonstrate that Dr. Breeden, the pulmonologist, was aware of and ratified the
17 administration of Ativan to the decedent.

18 Plaintiffs did not disclose Dr. Hashim as an expert, but disclosed expert reports
19 from James Lineback, MD, Thomas Cumbo, MD, Kenny Stein, MD, Michael Griffith,
20 RN, and Terence Clauretie. Only Dr. Stein acknowledged Dr. Skankey and Dr. Breeden,
21 and his opinions of these two physicians do not appear to be favorable. Dr. Stein
22 offered no criticisms of Dr. Shah, and only a single criticism of Dr. Concio. However,
23 Dr. Stein spent the bulk of his report discussing the alleged errors and omissions of the
24 consulting specialists, Dr. Breeden and Dr. Skankey. In that respect, while he disagreed
25 with Dr. Leo's assessment regarding the appropriateness and effect of Ativan in this
26 case, he clearly agreed that Dr. Breeden is the one who bore responsibility for the
27 administration of Ativan as the consulting pulmonologist who ratified the decision. The
28 Defendant Doctors further note that Plaintiffs never served any written discovery on
the Moving Defendants and never sought to take their depositions.

The Doctors cite to *Schouweiler v. Yancey Co.*, for the proposition that a Court
must consider the following factors in exercising its discretion to award fees: (1)
whether the offeree brought his claims in good faith; (2) whether the offeror's offer of

1 judgment was also brought in good faith in both timing and amount; (3) whether the
2 offeree's decision to reject the offer of judgment was in bad faith or grossly
3 unreasonable; and (4) whether the amount of offeror's requested fees is reasonable and
4 justified. *Schouweiler*, 101 Nev. 827, 833, 917 P.2d 786 (1985).

5 Additionally, NRS 18.010(2)(b) provides that "the court may make an allowance
6 of attorney's fees to a prevailing party ... when the court finds that the claim ... was ...
7 maintained without reasonable ground to harass the prevailing party. The court shall
8 liberally construe the provisions of this paragraph in favor of awarding attorney's fees
in all appropriate situations."

9 EDCR 7.60(b) provides that the "court may ... impose upon an attorney or a
10 party any and all sanctions which may, under the facts of the case, be reasonable,
11 including ... costs or attorney's fees when an attorney or a party without 'just cause ... so
12 multiplies the proceedings in a case as to increase costs unreasonably and vexatiously."

13 The Doctors argue they are entitled to an award of attorneys' fees and costs for
14 the entirety of this action. Although the Doctors served an offer of judgment for a
15 waiver of their fees and costs after Plaintiffs disclosed documents, which unequivocally
16 proved that the Doctors were entitled to summary judgment, Plaintiffs and their
17 counsel were clearly in possession of these documents before then. Thus, while the
18 timing and amount of offer is clearly reasonable, and the rejection of the offer was
19 grossly unreasonable and in bad faith, it is likewise clear that Plaintiffs and their
20 counsel knew or should have known from the very outset of the litigation that the
claims were time-barred. Despite, this knowledge, Plaintiffs chose to persist.

21 Moreover, Plaintiffs' reviewing experts either overlooked or purposely ignored
22 the important role played by specialist Dr. Breeden, both to the extent that it
23 exonerates the Doctor Defendants and to the extent that it possibly implicates Dr.
24 Breeden. To the extent that this case was brought against the Doctors, it was not done
25 so in good faith. Additionally, the Doctors contend that Plaintiffs' refusal to stay the
26 case during the pendency of the petition for writ of mandamus was manifestly
27 unreasonable, especially when viewed in light of the aforementioned failures. The
28 decision to refuse a stay, even after the Supreme Court ordered Plaintiffs to answer the
petition for writ, was calculated to leverage the costs of defense against Defendants in

1 order to salvage some settlement value from a case that was headed for almost certain
2 dismissal.

3 Finally, the Doctors filed an attached affidavit of counsel, which addresses the
4 *Brunzell* factors. Counsel indicates that the billing records are available for in camera
5 review should the Court find it necessary to examine them. Such fees are comprised of
6 services billed by attorneys John H. Cotton, Esq., Brad J. Shipley Esq., and paralegal
7 Jody Foote. Mr. Cotton billed a total of 17 hours at a rate of \$250.00 per hour. Ms.
8 Foote billed a total of 9.2 hours at a rate of \$90 per hour. Mr. Shipley was responsible
9 for the remaining 252.7 hours at a rate of \$190 per hour.

10 With regard to the qualities and skills of the advocate, Mr. Cotton has practiced
11 law in the State of Nevada since 1976, while maintaining an AV rating with Martindale
12 Hubble since 1981. Mr. Shipley has practiced as an attorney for over three years, and
13 spent several years as a law clerk to both Judge Joanna S. Kishner and Justice (then
14 Judge) Abbi Silver. Counsel states that character of the work done was complex, as this
15 was a professional negligence/wrongful death claim, involving multiple defendants. As
16 to the work actually performed, counsel suggests that the court can take judicial notice
17 of the extensive motion practice involved in this case. The result obtained in this matter
18 was judgment in favor of the defendants on all causes of action.

19 In Opposition, Plaintiffs argue that the medical malpractice, wrongful death, and
20 negligent infliction of emotional distress complaint on behalf of the estate and
21 surviving children of Rebecca Powell was not frivolous, and the claims for wrongful
22 death/medical malpractice and negligent infliction of emotional distress were brought
23 in good faith. Because this Court denied several dispositive motions before the Nevada
24 Supreme Court ultimately directed this Court to vacate its Order denying CHH's
25 Motion for Summary Judgment and enter judgment in favor of all the Defendants,
26 Defendants did not "win" this matter on the merits.

27 Plaintiffs argue that the dismissal of the case on an incorrect interpretation of
28 the facts and application of inquiry notice to all the named Plaintiffs by the Supreme
Court does not make the claims of Plaintiffs any less meritorious. Further, pursuant to
NRCp 68, and NRS 17.117(10), a party is not entitled to attorney's fees simply because it
served an offer of judgment on the opposing party and that party failed to achieve a
more favorable verdict. The purpose of NRCp 68 is to encourage settlement; it is not to

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

3 Plaintiffs argue that their claims were brought in good faith, as HHS determined
4 that there were deficiencies in Ms. Powell's care and the death certificate was
5 inaccurate. Plaintiffs argue that the Doctors incorrectly dissect a few statements made
6 by the Plaintiffs' experts to argue that the Complaint was not brought in good faith.
7 Plaintiffs' expert reports were disclosed in June of 2021. Plaintiffs' expert rebuttal
8 reports were disclosed in August of 2021. No depositions have been conducted nor any
9 motions filed contesting Plaintiffs' expert reports. Additionally, this Court repeatedly
10 found merit in Plaintiffs' Complaint and their causes of action for wrongful death,
11 medical malpractice, and negligent infliction of emotional harm.

12 Further, Plaintiffs argue that Doctors' Offer of Judgment of \$0.00 was not
13 reasonable and nor was it in good faith considering Plaintiffs' causes of action for
14 medical malpractice, wrongful death, and negligent infliction of emotional harm.
15 Plaintiffs lost their mother, who was only 41 years old at the time of her death. It was
16 reasonable for Plaintiffs to reject Defendants' Offer of Judgment, as the terms of the
17 Offer of Judgment did not provide for any monetary recovery to Plaintiffs to
18 compensate them for the loss of their mother. Moreover, this Court denied the Motion
19 for Summary Judgment. Therefore, the Doctors incorrectly state that given the
20 likelihood of losing on this issue, the offered waiver of the right to seek reimbursement
21 of costs was reasonable in both timing and amount.

22 Plaintiffs contend that their decision to reject the Offer of Judgment was not
23 grossly unreasonable nor in bad faith because no amount was being offered in damages
24 to the Plaintiffs. The Doctors merely agreed to waive their fees and costs to which they
25 would be entitled to by statute or rule. Plaintiffs were not even in a position to verify
26 the accuracy of the alleged fees and costs since the Doctors did not provide
27 documentation in support of their Offer.

28 With regard to the fees sought, Plaintiffs notes that a jury did not render a
verdict in favor of Defendants. Plaintiffs argue that the Doctors incurred so many fees
because it continued filing of motions based on the same statute of limitations theory.
Thus, the Doctors' fees are unreasonable and unjustified. Plaintiffs argue that the

Doctors did not provide an itemization of fees requested. Further, Plaintiffs argue that sanctions under NRS 7.085 and/or NRS 18.010 (2) are unwarranted and unsupported.

FINDINGS OF FACT AND CONCLUSIONS OF LAW

NRCP 68 provides in pertinent part as follows:

Rule 68. Offers of Judgment

(a) The Offer. At any time more than 21 days before trial, any party may serve an offer in writing to allow judgment to be taken in accordance with its terms and conditions. Unless otherwise specified, an offer made under this rule is an offer to resolve all claims in the action between the parties to the date of the offer, including costs, expenses, interest, and if attorney fees are permitted by law or contract, attorney fees.

....

(d) Acceptance of the Offer and Dismissal or Entry of Judgment.

(1) Within 14 days after service of the offer, the offeree may accept the offer by serving written notice that the offer is accepted.

(2) Within 21 days after service of written notice that the offer is accepted, the obligated party may pay the amount of the offer and obtain 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.

....

1 NRCP 68.

2 NRCP 68 provides that the Defendant would be entitled to “reasonable attorney
3 fees, if any be allowed.” The language of the Rule specifically provides that Court with
4 “discretion,” as it relates to attorney’s fees, and the Court’s discretion will not be
5 disturbed absent a clear abuse of such discretion. *Armstrong v. Riggi*, 92 Nev. 280,
6 549 P.2d 753 (1976); *Schouweiler v. Yancey Co.*, 101 Nev. 827, 712 P.2d 786 (1985);
7 *Bidart v. American Title Ins. Co.*, 103 Nev. 175, 734 P.3d 732 (1987).

8 In evaluating whether to grant an award of attorney’s fees, pursuant to
9 *Schouweiler v. Yancey Co.*, 101 Nev. 827, 712 P.2d 786 (1985), the Court must
10 consider: “(1) whether plaintiff’s claim was brought in good faith; (2) whether
11 defendant’s offer of judgment was brought in good faith in both its timing and amount;
12 (3) whether plaintiff’s decision to reject the offer and proceed to trial was grossly
13 unreasonable or in bad faith; and (4) whether fees sought by the offeror are reasonable
14 and justified in amount.” *Schouweiler* at 833, citing *Beattie v. Thomas*, 99 Nev. 579,
15 588, 668 P.2d 268 (1983)(the “Beattie Factors”).

16 Any costs awarded need to be itemized and documented. The Nevada Supreme
17 Court has stated that without “itemization or justifying documentation,” the Court is
18 “unable to ascertain whether such costs were accurately assessed.” *Bobby Berosini,*
19 *Ltd. V. People for the Ethical Treatment of Animals*, 114 Nev. 1348, 1353, 971 P.2d 383
20 (1998). Further, when the “memorandum of costs is completely void of any specific
21 itemization,” and a “lack of supporting documentation,” it is an abuse of discretion on
22 the part of the Court if it awards the requested costs. *Id.* The Supreme Court has
23 further indicated that “[j]ustifying documentation’ must mean something more than a
24 memorandum of costs.” *Cadle Co. v. Woods & Erickson, LLP*, 131 Nev. 114, 121, 345
25 P.3d 1049 (2015). The Court has further indicated that “Without evidence to determine
26 whether a cost was reasonable and necessary, a district court may not award costs.”
27 *Id.*, citing *Peta*, 114 Nev. at 1353, 97 1 P.2d at 386.

28 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

1 when they affect the importance of the litigation; (3) the work actually performed by
2 the lawyer: the skill, time and attention given to the work; and (4) the result: whether
3 the attorney was successful and what benefits were derived. *Schouweiler* at 833-834,
4 citing to *Brunzell v. Golden Gate Nat'l Bank*, 85 Nev. 345, 349, 455 P.2d 31 (1969)
5 (quoting *Schwartz v. Schwerin*, 85 Ariz. 242, 336 P.2d 144, 146 (1959)).

6 In considering the costs submitted by Defendants, the Court finds pursuant to
7 the Cadle case, that sufficient documentation was provided for the Court to determine
8 that the following costs were reasonably and necessarily incurred in the case:

Clerks Fees	\$ 933.28
Expert Witness Fees	\$1,500.00
Mediation Fees	<u>\$ 225.00</u>
Total:	\$2,658.28

11 The Court finds insufficient documentation regarding the postage and
12 photocopies requested.

13 In *Frazier v. Drake*, 131 Nev. 632, 357 P.3d 365 (NV.Ct.of App., 2015), the Court
14 noted that NRS 18.005(5) provides for the recovery of “reasonable fees of not more
15 than five expert witnesses in an amount of not more than \$1,500 for each witness
16 unless the court allows a larger fee after determining that the circumstances
17 surrounding the expert’s testimony were of such necessity as to require the larger fee.”
18 *Id.*, at 644. The Court went on to state the following:

19 we conclude that any award of expert witness fees in excess of \$1,500
20 per expert under NRS 18.005(5) must be supported by an express,
21 careful, and preferably written explanation of the court's analysis of
22 factors pertinent to determining the reasonableness of the requested fees
23 and whether “the circumstances surrounding the expert's testimony were
24 of such necessity as to require the larger fee.” See NRS 18.005(5); cf.
25 *Young v. Johnny Ribeiro Bldg., Inc.*, 106 Nev. 88, 93, 787 P.2d 777, 780
26 (1990) (requiring an “express, careful and preferably written explanation”
27 of the district court's analysis of factors pertinent to determining whether
28 a dismissal with prejudice is an appropriate discovery sanction). ***In
evaluating requests for such awards, district courts should
consider the importance of the expert's testimony to the
party's case; the degree to which the expert's opinion aided
the trier of fact in deciding the case; whether the expert's
reports or testimony were repetitive of other expert witnesses;
the extent and nature of the work performed by the expert;
whether the expert had to conduct independent investigations
or testing; the amount of time the expert spent in court,
preparing a report, and preparing for trial; the expert's area***

of expertise; the expert's education and training; the fee actually charged to the party who retained the expert; the fees traditionally charged by the expert on related matters; comparable experts' fees charged in similar cases; and, if an expert is retained from outside the area where the trial is held, the fees and costs that would have been incurred to hire a comparable expert where the trial was held.

Id., at 650-651.

The Defendant provided evidence through Dr. Leo's CV of his area of expertise and of his education and training, as well as evidence of the fee he actually charged. None of the other factors set forth in *Frazier*, however, were addressed. Consequently, the Court can allow the expert fee of \$1,500.00, as the Court finds that Dr. Leo's testimony was relevant and the fees incurred were reasonable, but the Court cannot allow expert fees in excess of \$1,500.00 without a *Frazier* analysis.

In considering the attorneys' fees requested by Defendants, the Court notes that Defendants incurred a total of \$53,099 in attorneys' fees, with \$18,399 being incurred after rejection of their Offer of Judgment. In considering the Beattie factors, the Court finds and concludes that the plaintiff's claim was brought in good faith. The Court finds and concludes that Defendant's offer of judgment, in the amount of \$0.00, was brought in good faith in both its timing and amount. The Court acknowledges that the parties disagree about this issue, but as much as the Plaintiffs believed they had a valid case, the Defendants disputed any liability. The Court further finds and concludes that Plaintiff's decision to reject the offer and proceed to trial was not grossly unreasonable or in bad faith. Plaintiffs believed they had a valid claim, and the Court cannot find that wanting some recovery, as opposed to \$0.00, to be "grossly unreasonable" or in "bad faith. Finally, the Court finds and concludes that the fees sought by the Defendants, at least subsequent to the Offer of Judgment, appear to be reasonable and justified in amount. *Beattie v. Thomas*, 99 Nev. 579, 588, 668 P.2d 268 (1983).

In determining the reasonableness of the fees requested, the Court has analyzed the *Brunzell* factors, as follows: The Court finds that the qualities of defense counsel, his ability, training, education, experience, professional standing and skill, favor an award of fees. When considering the character of the work to be done - its difficulty, intricacy, importance, the time and skill required, (when dealing with a professional negligence/medical malpractice case), and finding that the character or prominence of

1 the parties was unremarkable, the complexity of the case warrants an award of fees.
2 When considering the work actually performed by the lawyer, and the skill, time and
3 attention given to the work, even without a detailed billing statement, the Court can
4 take judicial notice of the amount of time reasonably spent in preparation and litigation
5 of the various motions and appeal in this matter, and finds that the fees requested
6 appear to be reasonable for such work. Finally, in considering the result, the Court
7 notes that although the Court found insufficient evidence to establish irrefutably that
8 the statute of limitations had expired, Defense counsel was successful in convincing the
9 Supreme Court of that, and consequently, Defendants prevailed. *Brunzell v. Golden*
10 *Gate Nat'l Bank*, 85 Nev. 345, 349, 455 P.2d 31 (1969). Based upon this NRCP 68
11 analysis, the Court finds that the fees requested by Defendants, in the amount of
12 \$18,399.00 after rejection of the Offer of Judgment, were reasonably and necessarily
incurred, and are justified in this case.

13 **CONCLUSION/ORDER**

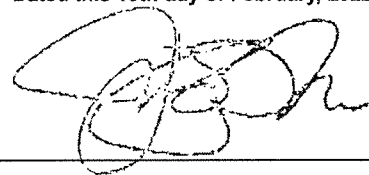
14 Based upon the foregoing, and good cause appearing,

15 **IT IS HEREBY ORDERED** that the Defendants' Motion for Fees and Costs is
16 **GRANTED IN PART and DENIED IN PART**, consistent with the foregoing.
17 Defendants are awarded **\$2,658.28** of the \$9,149.76 requested costs, and
18 **\$18,399.00** of the \$53,099.00 in attorneys' fees.

19 The Court requests that defense counsel prepare and process a Notice of Entry
with regard to this Order.

20 Because this matter has been decided on the pleadings, the hearing scheduled
21 for 2/18/22 will be taken off calendar, and consequently, there is no need for any
22 parties or attorneys to appear.

23 Dated this 15th day of February, 2022

24 

25
26
27 **0E9 B8C C91E 008A**
Jerry A. Wiese
District Court Judge
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 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 Brad Shipley	bshipley@jhcottonlaw.com
22 Tony Abbatangelo	Tony@thevegaslawyers.com
23 Adam Garth	Adam.Garth@lewisbrisbois.com
24 Paul Padda	civil@paulpaddalaw.com
25 Diana Escobedo	diana@paulpaddalaw.com

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
10		
11		
12		
13		
14		
15		
16		
17		
18		
19		
20		
21		
22		
23		
24		
25		
26		
27		
28		

**DISTRICT COURT
CLARK COUNTY, NEVADA**

Malpractice - Medical/Dental

COURT MINUTES

June 28, 2019

A-19-788787-C	Estate of Rebecca Powell, Plaintiff(s)
	vs.
	Valley Health System, LLC, Defendant(s)

June 28, 2019	7:30 AM	Minute Order
----------------------	----------------	---------------------

HEARD BY: Escobar, Adriana	COURTROOM: RJC Courtroom 14C
-----------------------------------	-------------------------------------

COURT CLERK: Denise Husted

RECORDER:

REPORTER:

**PARTIES
PRESENT:**

JOURNAL ENTRIES

--No Parties present. Pursuant to NCIC Canon 2.11(A), to avoid the appearance of impropriety and implied bias as to VALLEY HEALTH SYSTEM, LLC d/b/a CENTENIAL HILLS HOSPITAL MEDICAL CENTER only, this Court hereby disqualifies itself and ORDERS, this case to be REASSIGNED at random. Defendant Centennial Hills Hospital s Motion to Dismiss, Joinder(s), and Defendant Conrado Concio, MD and Dionice Juliano, MD s Motion to Dismiss, set for July 30, 2019 and August 1, 2019, will be vacated and reset in the new department.

CLERK'S NOTE: Counsel notified via e-mail:

Paul S. Padda (psp@paulpaddalaw.com)
Joshua Y. Ang (ja@paulpaddalaw.com)
John H. Cotton (JHCotton@jhcottonlaw.com)
Brad Shipley (BShipley@jhcottonlaw.com)
Michael E. Prangle (mprangle@hpslaw.com)
Zachary J. Thompson (zthompson@hpslaw.com)
Hall Prangle & Schoonveld, LLC (efile@hpslaw.com)

**DISTRICT COURT
CLARK COUNTY, NEVADA**

Malpractice - Medical/Dental

COURT MINUTES

September 25, 2019

A-19-788787-C Estate of Rebecca Powell, Plaintiff(s)
vs.
Valley Health System, LLC, Defendant(s)

September 25, 2019 9:00 AM All Pending Motions

HEARD BY: Wiese, Jerry A. **COURTROOM:** RJC Courtroom 14A

COURT CLERK: Nylasia Packer

RECORDER: Vanessa Medina

REPORTER:

PARTIES

PRESENT:	Nelson, Suneel J, ESQ	Attorney
	Padma, Paul S.	Attorney
	Shipley, Brad J	Attorney
	Thompson, Zachary J.	Attorney

JOURNAL ENTRIES

- Zachary Thompson, Esq. present on behalf of Valley Health System.

DEFENDANT CENTENNIAL HILLS HOSPITAL'S JOINDER TO DEFENDANTS CONRADO CONCIO, MD AND DIONICE JULIANO, MD'S MOTION TO DISMISS...DEFENDANT CONRADO CONCIO, MD, AND DIONICE JULIANO, MD'S MOTION TO DISMISS... DEFENDANT VISHAL SHAH, M.D. JOINDER TO DEFENDANT'S CONCIO AND JULIANO'S MOTION TO DISMISS...DEFENDANT CENTENNIAL HILLS HOSPITAL'S MOTION TO DISMISS PLAINTIFFS' COMPLAINT...DEFENDANT UNIVERSAL HEALTH SERVICES, INC.'S JOINDER TO DEFENDANT CENTENNIAL HILLS HOSPITAL'S MOTION TO DISMISS PLAINTIFFS' COMPLAINT AND JOINDER TO DEFENDANTS CONRADO CONCIO, MD, AND DIONICE JULIANO, MD'S MOTION TO DISMISS...DEFENDANT UNIVERSAL HEALTH SERVICES, INC.'S JOINDER TO DEFENDANT CENTENNIAL HILLS HOSPITAL'S MOTION TO DISMISS PLAINTIFFS' COMPLAINT AND JOINDER TO DEFENDANTS CONRADO CONCIO, MD, AND DIONICE JULIANO, MD'S MOTION TO DISMISS...

Mr. Shipley argued the Statute of Limitations has passed with respect to all three physicians, and the complaint was filed approximately 8 months too late. Mr. Shipley further argued there aren't any allegations these Doctors were in possession of the records or that these physicians did anything to conceal. Further arguments by Mr. Shipley. Mr. Thompson agreed with Mr. Shipley in regards to the Statute of Limitations and argued the one year Statute is applicable to all claims because all claims arise out of the alleged professional negligence which are related to medical decision making, judgment, and diagnosis of the subject providers. Mr. Thompson further argued in regards to tolling, Plaintiff is required to show that documents were intentionally withheld, however; plaintiff has not pled any documents were intentionally withheld and has not offered any evidence at this point. Further, Plaintiff would have to show the withholding would have precluded a reasonably prudent person from pursuing and being able to offer an expert affidavit, however; in Dr. Hashim's statements where he stated the additional records had reinforced it he clearly had enough information to offer some opinion of breaches of the standard of care. Further arguments by Mr. Thompson. Mr. Suneel argued in regards to Rule 12 (b)(5) evidence is not the standard now. Further, the complaint and Dr. Hashim's affidavit adequately plead the issue that they are taking exception to which is the Statue of Limitations and Plaintiff has shown several instances where concealment is stated and alleged explicitly. Further, in Dr. Hashim's affidavit he has identified all three doctors and to the things that they failed to do and with respect to Dr. Juliano; that is sufficient. Further arguments by Mr. Suneel. Mr. Shipley argued in rebuttal and stated there is no concealment alleged with respect to all three defendants and therefore the Statute of Limitations cannot be tolled. Further arguments by Mr. Shipley. Mr. Thompson indicated he is only moving on the pleadings based on the information Plaintiff's pled and what was included in the expert affidavit. Further statements by Mr. Thompson. Court stated in regards tot he Statute of Limitations the Supreme Court has been clear that knew or reasonably should have known is generally an issue of fact or for the Jury to decide, however; in this case it does seem like it is substantially after the date of death therefore some arguments can be brought up in a motion for Summary Judgment the Court may consider. Court further stated there is at least an insinuation that there was concealment and the Court understands the argument that you cant hold a Defendant responsible for another Defendants concealment, however; if there is concealment, it arguably prevents the plaintiff from having the inquiry notice they need in order for the Statue of Limitations to run. Court further stated the issue of fact is determining when that inquiry notice starts and arguably the inquiry notice may not start until they receive records. Court further stated its findings and ORDERED, motions DENIED. Plaintiff's counsel to prepare and submit order to counsel for approval of form and content.

CLERK'S NOTE: This minute order was updated. (10-27-20 np).

**DISTRICT COURT
CLARK COUNTY, NEVADA**

Malpractice - Medical/Dental

COURT MINUTES

October 30, 2019

A-19-788787-C	Estate of Rebecca Powell, Plaintiff(s)
	vs.
	Valley Health System, LLC, Defendant(s)

October 30, 2019 9:00 AM Motion to Dismiss

HEARD BY: Wiese, Jerry A. **COURTROOM:** RJC Courtroom 14A

COURT CLERK: Lauren Kidd

RECORDER: Vanessa Medina

REPORTER:

PARTIES

PRESENT: Thompson, Zachary J. Attorney

JOURNAL ENTRIES

- Plaintiff's counsel not present.

Mr. Thompson noted the Motion to Dismiss was unopposed until this morning. Mr. Thompson advised he spoke with opposing counsel and parties requested the matter be continued for 30 days to allow them to file a Stipulation and Order to Dismiss Without Prejudice in alternative to granting the subject motion. COURT SO ORDERED. In the event the Stipulation and Order is filed prior to the hearing, the same will be vacated.

CONTINUED TO: 12/4/19 9:00 AM

CLERK'S NOTE: Subsequent to the hearing the date continuance date was changed to accommodate the Court's calendar. The correct date is reflected in the above minutes which were distributed to: Paul Padda, Esq.(psp@paulpaddalaw.com), John Cotton, Esq. (jhcotton@jhcottonlaw.com) and Zachary Thompson, Esq. (efile@hpslaw.com).//lk

**DISTRICT COURT
CLARK COUNTY, NEVADA**

Malpractice - Medical/Dental

COURT MINUTES

December 04, 2019

A-19-788787-C Estate of Rebecca Powell, Plaintiff(s)
vs.
Valley Health System, LLC, Defendant(s)

December 04, 2019 9:00 AM Motion to Dismiss

HEARD BY: Wiese, Jerry A. **COURTROOM:** RJC Courtroom 14A

COURT CLERK: Lauren Kidd

RECORDER: Patti Slattery

REPORTER:

**PARTIES
PRESENT:**

JOURNAL ENTRIES

- No parties present.

Court indicated the Court received a Stipulation and Order to dismiss the present motion; therefore,
COURT ORDERED hearing VACATED.

**DISTRICT COURT
CLARK COUNTY, NEVADA**

Malpractice - Medical/Dental

COURT MINUTES

March 24, 2020

A-19-788787-C	Estate of Rebecca Powell, Plaintiff(s) vs. Valley Health System, LLC, Defendant(s)
---------------	--

March 24, 2020	3:00 AM	Minute Order
-----------------------	----------------	---------------------

HEARD BY: Wiese, Jerry A.	COURTROOM: Chambers
----------------------------------	----------------------------

COURT CLERK: Lauren Kidd

RECORDER:

REPORTER:

**PARTIES
PRESENT:**

JOURNAL ENTRIES

- The Court notes that a Joint Case Conference Report was filed in the above case on 3/20/20. Thereafter, a Mandatory Rule 16 Conference Order issued scheduling the Rule 16 Conference for 05/05/20 at 12:00 p.m. Accordingly, the Show Cause Hearing scheduled for 4/1/20 at 9:00 a.m. shall be vacated.

CLERK'S NOTE: A copy of the above minute order was distributed to Paul Padda, Esq. (psp@paulpaddalaw.com); John Cotton, Esq. (jhcotton@jhcottonlaw.com); and Michael Prangle, Esq. (mprangle@hpslaw.com). / 03-24-20.lk

**DISTRICT COURT
CLARK COUNTY, NEVADA**

Malpractice - Medical/Dental

COURT MINUTES

May 05, 2020

A-19-788787-C	Estate of Rebecca Powell, Plaintiff(s) vs. Valley Health System, LLC, Defendant(s)
---------------	--

May 05, 2020	12:00 AM	Mandatory Rule 16 Conference
--------------	----------	---

HEARD BY: Wiese, Jerry A.

COURTROOM: RJC Courtroom 14A

COURT CLERK: Lauren Kidd

RECORDER:

REPORTER:

**PARTIES
PRESENT:**

JOURNAL ENTRIES

- This Mandatory Rule 16 Conference was conducted via teleconference, in light of COVID-19 measures taken by the Court. Present via teleconference: Paul S. Padda, Esq. for Plaintiffs; Brad Shipley, Esq. for Defendants Drs. Shah, Concio and Dionice; and Chelsea R. Hueth, Esq. for Defendant Valley Health System, LLC.

The Court explained the goal of the Rule 16 Conference being the maintenance of the calendar and the participation in a meaningful settlement conference and/or mediation to move the cases forward; and, should the settlement fail, the setting of realistic discovery deadlines to avoid the submission of stipulation and order to continue trial later, which the Court stated, it will not be inclined to sign. The Court acknowledged concern regarding the ability to conduct business amidst directives associated with the COVID-19 virus and agreed with the discovery dates set forth in the Joint Case Conference Report filed in this matter. The parties agreed upon conducting a Private Mediation in this case. Counsel for Plaintiff suggested the trial of the matter could take 4-6 weeks despite the fact the JCCR approximated a 3-4 week jury trial. Thereafter, the Court ORDERED the following:

Parties agree to conduct a Private Mediation in July, 2021.

A Status Check: Settlement/Trial Setting is set for June 2, 2021, at 9:00 AM in Dept. 30.

Final Day to Amend Pleadings/Add Parties: 6/18/2021

Initial Expert Disclosure Deadline: 6/18/2021

Rebuttal Expert Disclosure Deadline: 8/27/2021

Final Day to Complete Discovery: 10/28/2021

Deadline for filing Dispositive Motion: 11/30/2021

The Malpractice Medical/Dental case is set for a FIRM 5-week JURY TRIAL commencing on 5/23/22 through 6/24/2022. Scheduling Order and Order Setting Civil Jury Trial to follow.

THERAFTER, Counsel brought to the attention of the Court a pending unopposed Motion to Associate Counsel scheduled on the Court's docket for 6/3/2020 at 9AM. All parties stated NO OPPOSITION to the pending motion. The Court ORDERED Defendant Valley Health System, LLC dba Centennial Hills Hospital Medical Center's Motion to Associate Richard Douglas Carroll as Counsel advanced without hearing and GRANTED and the matter taken off calendar for 6/3/2020. Counsel to submit an appropriate Order within ten (10) days pursuant to EDCR 7.21.

**DISTRICT COURT
CLARK COUNTY, NEVADA**

Malpractice - Medical/Dental

COURT MINUTES

October 21, 2020

A-19-788787-C Estate of Rebecca Powell, Plaintiff(s)
vs.
Valley Health System, LLC, Defendant(s)

October 21, 2020 3:00 AM Minute Order

HEARD BY: Wiese, Jerry A. **COURTROOM:** No Location

COURT CLERK: Lauren Kidd

RECORDER:

REPORTER:

**PARTIES
PRESENT:**

JOURNAL ENTRIES

- Upon further review of the instant case, it has come to the Court's attention that an Order was not submitted regarding the hearing on Defendants' Motions to Dismiss from September 25, 2019. Therefore, COURT ORDERED, matter SET for Status Check regarding submission and filing of the Order. Should the Order be received prior to the hearing, the same will be vacated.

12/09/20 9:00 AM STATUS CHECK: SUBMISSION/FILING OF ORDER

CLERK'S NOTE: A copy of the above minute order was distributed to all parties 10-21-20./lk

**DISTRICT COURT
CLARK COUNTY, NEVADA**

Malpractice - Medical/Dental

COURT MINUTES

October 26, 2020

A-19-788787-C	Estate of Rebecca Powell, Plaintiff(s)
	vs.
	Valley Health System, LLC, Defendant(s)

October 26, 2020	3:00 AM	Minute Order
------------------	---------	--------------

HEARD BY: Wiese, Jerry A.	COURTROOM: Chambers
---------------------------	---------------------

COURT CLERK: Lauren Kidd

RECORDER:

REPORTER:

**PARTIES
PRESENT:**

JOURNAL ENTRIES

- For purposes of judicial economy, the Court hereby ORDERS the hearings currently scheduled on October 28, 2020, at 9:00 AM on Defendant Juliano's Motion for Summary Judgment, and Defendant Concio and Shah's Motion for Partial Summary Judgment on Emotional Distress Claims; Valley Health System, LLC and Universal Health Services, Inc.'s Motion for Summary Judgment Based Upon the Expiration of The Statute of Limitations; Defendants Dionice Juliano, MD, Conrado Concio, MD and Vishal Shah, MD's Joinder to Defendant's Motion for Summary Judgment on the Statute of Limitations; and Plaintiffs' Opposition to Defendant Juliano's Motion for Summary Judgment, And Defendants' Concio and Shah's Motion for Partial Summary Judgment on Emotional Distress Claims and Counter-Motion to Amend or Withdraw Plaintiffs' Responses to Defendants' Request for Admissions RESCHEDULED to November 4, 2020, at 9:00AM.

CLERK'S NOTE: A copy of the above minute order was distributed to all parties 10-26-20./ /lk

**DISTRICT COURT
CLARK COUNTY, NEVADA**

Malpractice - Medical/Dental

COURT MINUTES

November 23, 2020

A-19-788787-C Estate of Rebecca Powell, Plaintiff(s)
vs.
Valley Health System, LLC, Defendant(s)

November 23, 2020 3:00 AM Minute Order

HEARD BY: Wiese, Jerry A. **COURTROOM:** Chambers

COURT CLERK: Lauren Kidd

RECORDER:

REPORTER:

**PARTIES
PRESENT:**

JOURNAL ENTRIES

- The above-referenced matter is scheduled for a hearing on 11/25/20 with regard to the Defendant, Valley Health System's Motion for Stay. Pursuant to A.O. 20-01 and subsequent administrative orders, this matter is deemed "non-essential," and may be decided after a hearing, decided on the papers, or continued. This Court has determined that it would be appropriate to decide this matter on the papers, and consequently, this minute order issues.

On May 3, 2017, Plaintiff was found by EMS at her home. She was unconscious, labored in her breathing, and had vomit on her face. EMS provided emergency care and transported her to Defendant Hospital, and she was admitted. Plaintiff continued to improve while she was admitted. However, on May 10, 2017 Plaintiff complained of shortness of breath, weakness, and a "drowning feeling." One of her doctors ordered Ativan to be administered via an IV push. On May 11, another doctor 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 Plaintiff's inability to remain still during the test. She was returned to her room where she was monitored by a camera to ensure she kept her oxygen mask on. Plaintiffs, in their complaint, alleged the monitoring was substandard and Defendant should have used a better camera or in person monitoring, among other theories of substandard care. Another dose of Ativan was ordered at 3:27 AM and Plaintiff entered into acute respiratory failure, which resulted in her death. The other named Plaintiffs claimed they were in

Decedent's hospital room and observed Defendant's negligence.

Plaintiffs ordered Decedent's medical records on May 25, 2017; however, there were issues with delivery, and it is unclear exactly when Plaintiffs received them. Decedent's husband, a named Plaintiff, filed a complaint with the State of Nevada Department of Health and Human Services ("HHS") sometime before May 23, 2017. Approximately six weeks after the death of Decedent, Plaintiffs received the death certificate which listed the cause of death as a suicide from Cymbalta Intoxication. On February 5, 2018 HHS responded to Plaintiff's complaint. The letter said that after an investigation, HHS concluded that the facility had committed violations by not following rules and/or regulations as well as finding there were deficiencies in the medical care provided to Decedent.

On February 4, 2019, Plaintiff's filed suit alleging negligence/medical malpractice, wrongful death pursuant to NRS 41.085, and negligent infliction of emotional distress. Defendant did not file an answer but filed a Motion to Dismiss on June 19, 2020 alleging the statute of limitations had tolled. Plaintiff answered the motion. The court denied the Motion to Dismiss on September 25, 2019. Defendant filed an Answer to Plaintiff's complaint on April 15, 2020.

Defendants Valley Health System, LLC and Universal Health Services, Inc. then filed a 'Motion for Summary Judgment Based Upon the Expiration of the 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 filed a Motion for Summary Judgment, and Defendants Concio and Shaw filed a Motion for Partial Summary Judgment on Emotional Distress Claims. Plaintiffs filed a Counter-Motion to Amend or Withdraw Plaintiffs' Responses to Defendants' Requests for Admissions. All of these items were on the November 04, 2020 calendar. An Order deciding these motions was filed on October 29, 2020. The Order denied Defendants, Valley Health System and Universal's Motion for Summary Judgment and related Joinders; granted Defendant Juliano's Motion for Summary Judgment, and dismissed Dr. Juliano from the case without prejudice; and denied Defendants Concio and Shah's Motion for Partial Summary Judgment on the Emotional Distress Claims.

Now, Defendant Valley Health System, LLC (VHS) seeks an order staying the case pending an appeal of the October 29, 2020, Order denying its Motion for Summary Judgment Based Upon the Expiration of the Statute of Limitations. Defendant VHS alleges that it may be irreparably prejudiced by having to continue defending this action and potentially being forced to try all issues when the matter raised by the aforesaid Motion is case dispositive.

This matter has been pending since February, 2019. It is currently set for trial on May 23, 2022. Initial expert disclosures are to be made on or before June 18, 2021, rebuttal expert disclosures are due on August 27, 2021, and discovery is to be completed on or before October 28, 2021. Valley argues that it is currently preparing a Petition for Writ of Mandamus, and is first seeking a stay with the district Court pursuant to NRAP 8(a)(1)(A). The decision whether to grant a motion for a stay in proceedings is left to the sound discretion of the Court. Nevada Tax Commission v. Brent Mackie, 74

Nev. 273, 276 (1958). The factors to be considered by the Court when considering whether to issue a stay in the proceedings when an appellate issue is pending before the Nevada Supreme Court are (1) whether the object of the writ petition will be defeated if the stay is denied; (2) whether the petitioner will suffer irreparable or serious injury if the stay is denied; (3) whether the real party in interest will suffer irreparable or serious injury if the stay is granted; and (4) whether petitioner is likely to prevail on the merits in the writ petition. NRAP 8(c); Fritz Hansen A/S v. Eighth Judicial District Court, 116 Nev. 650, 657 (2000).

Defendant, VHS argues that each of the 4 factors weigh in favor of granting a stay. The Plaintiffs, on the other hand, argue that none of the factors weigh in favor of the Defendant. This Court finds and concludes as follows: 1) Trial is currently not scheduled until May of 2022, and consequently, even if a stay is denied, it is likely that the Supreme Court would rule on the "potential" Writ of Mandamus, prior to the parties going to Trial. Consequently, the Court does not find that the purpose of the writ petition would be defeated if the stay were denied. 2) The only injury or damage that the Petitioner would suffer if the stay were denied, would be continued litigations and the costs associated therewith. The Court has consistently held that ongoing litigation and the expenses associated therewith do not cause "irreparable harm." Consequently, the Court does not find that the Petitioner would suffer irreparable harm or serious injury if the stay were denied. 3) Although the Plaintiffs are correct that memories dim as time passes, such a fact applies to all witnesses equally Plaintiff's witnesses as well as Defendants' witnesses. Consequently, the Court does not find that the Plaintiffs would suffer irreparable or serious injury if the stay were granted. 4) The Court cannot find that the Petitioners 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. 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.

Another issue which is important in this Court's analysis, is the fact that a Writ has apparently not yet been filed. If the Court were to grant the Stay as requested, it is possible that 6 months, or even a year from now, the Writ may still not be filed, so the Court would have stayed the case for no reason.

Based upon all these reasons, considering the relevant factors set forth above, finding that they weigh in favor of the non-moving party, and good cause appearing, IT IS HEREBY ORDERED that the Defendant's Motion for Stay is hereby DENIED.

The Court requests that Plaintiff's counsel prepare an Order consistent with the foregoing, have it approved as to form and content by opposing counsel, and submit it to the Court within 10 days.

Because this matter has been decided on the papers, the hearing scheduled for 11/25/20 will be taken off calendar, and consequently, there is no need for any parties or attorneys to appear.

CLERK'S NOTE: A copy of the above minute order was distributed to all parties 11-24-20./ /lk

**DISTRICT COURT
CLARK COUNTY, NEVADA**

Malpractice - Medical/Dental

COURT MINUTES

April 20, 2021

A-19-788787-C	Estate of Rebecca Powell, Plaintiff(s)
	vs.
	Valley Health System, LLC, Defendant(s)

April 20, 2021	3:00 AM	Minute Order
-----------------------	----------------	---------------------

HEARD BY: Wiese, Jerry A.	COURTROOM: Chambers
----------------------------------	----------------------------

COURT CLERK: Lauren Kidd

RECORDER:

REPORTER:

**PARTIES
PRESENT:**

JOURNAL ENTRIES

- The above-referenced matter is scheduled for a hearing on 4/21/21 with regard to Defendant, Valley Health System LLC's Motion to Reconsider Motion for Stay Pending Petition for Writ of Mandamus. Pursuant to the administrative orders of the Court, including A.O. 21-03, this matter may be decided after a hearing, decided on the pleadings, or continued. Additionally, EDCR 2.23 provides that any matter may be decided with or without oral argument. This Court has determined that this matter may be decided on the pleadings, and consequently, this minute order issues.

This matter has been pending since February, 2019. It is currently set for trial on May 23, 2022. Initial expert disclosures are to be made on or before June 18, 2021, rebuttal expert disclosures are due on August 27, 2021, and discovery is to be completed on or before October 28, 2021.

Defendant Valley Health System LLC (aka CHH; doing business as "Centennial Hills Hospital Medical Center") moved this Court for summary judgment based upon an alleged expiration of the statute of limitations. CHH argued that Plaintiffs sought and received Ms. Powell's complete medical records from CHH just weeks after her death demonstrating their suspicion of alleged malpractice, and that Plaintiffs were therefore on inquiry notice when they received the medical records in June, 2017 since their own expert testified that he had sufficient evidence therein to allege malpractice. CHH also argued that Plaintiffs failed to submit any admissible evidence whatsoever in opposition to

that motion.

The Court issued an order denying CHH's motion on October 29, 2020. CHH then moved this Court for a stay of all proceedings prior to filing a Petition for a Writ of Mandamus. On December 17, 2020, this Court issued an order denying CHH's motion for a stay, due in part to the lack of likelihood that CHH would prevail on the merits, and the fact that a writ petition had not been filed. CHH has since filed its petition with the Nevada Supreme Court. In an order dated March 9, 2021, the Nevada Supreme Court issued an order directing an answer to CHH's writ petition, setting a briefing schedule of Plaintiffs' opposition by March 30, 2021 and CHH's reply by April 13, 2021. In its order, the Court stated "Having reviewed the petition, it appears that an answer may assist this court in resolving this matter." Defendant Valley Health System LLC's instant Motion to Reconsider the decision on the Motion for Stay Pending PWM was filed on 04/06/21 on OST.

Defendant CHH now argues that the Supreme Court's request for an Answer suggests a likelihood of success on the merits, and the Writ Petition has now been filed, so the Court should now grant the stay that was previously requested.

In opposition, the Plaintiff argues that the Motion is procedurally defective because a Motion for Reconsideration needs to be filed within 14 days from the 12/17/20 Notice of Entry of Order, which was filed by the Defendant. (See EDCR 2.24)

EDCR 2.24 states in pertinent part as follows:

EDCR 2.24 Rehearing of motions.

....

(b) A party seeking reconsideration of a ruling of the court, other than any order that may be addressed by motion pursuant to NRCP 50(b), 52(b), 59 or 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. A motion for rehearing or reconsideration must be served, noticed, filed and heard as is any other motion. A motion for reconsideration does not toll the period for filing a notice of appeal from a final order or judgment.

Based on the foregoing, and good cause appearing, IT IS HEREBY ORDERED that Defendant's Motion for Reconsideration is hereby DENIED as untimely. The Court notes that this decision does not preclude the filing of a Motion to Stay with the Supreme Court.

The Court requests that counsel for the Plaintiff prepare an Order consistent with the foregoing, have it approved as to form and content by opposing counsel, and submit it to the Court for signature within 10 days.

Because this matter has been decided on the pleadings, the hearing scheduled for 4/21/21 will be taken off calendar, and consequently, there is no need for any parties or attorneys to appear.

CLERK'S NOTE: A copy of the above minute order was distributed to all parties 4-20-21./lk

**DISTRICT COURT
CLARK COUNTY, NEVADA**

Malpractice - Medical/Dental

COURT MINUTES

September 07, 2021

A-19-788787-C Estate of Rebecca Powell, Plaintiff(s)
vs.
Valley Health System, LLC, Defendant(s)

September 07, 2021 3:00 AM Minute Order

HEARD BY: Wiese, Jerry A. **COURTROOM:** Chambers

COURT CLERK: Lauren Kidd

RECORDER:

REPORTER:

**PARTIES
PRESENT:**

JOURNAL ENTRIES

- The above-referenced matter is scheduled for a Status Check: Settlement/Trial Setting hearing on 9/8/21. The Court notes the Joint Status Report filed 8/18/21, indicates that a Petition for Writ of Mandamus is pending decision by the Supreme Court and accordingly the parties believe a sixty (60) day extension of discovery will be necessary. However, the extension of discovery should not impact the FIRM Jury Trial setting in this matter. The Court further notes that a Mediation has been scheduled to take place on November 16, 2021. The Court appreciates the parties filing the Joint Status Report and keeping the court apprised of the progress of the case.

There have been no subsequent filings in this matter and based on the foregoing, and good cause appearing, IT IS HEREBY ORDERED that the Status Check: Settlement/Trial Setting in this case is hereby CONTINUED to December 1, 2021 at 9:00 a.m.

IT IS FURTHER ORDERED that Counsel shall submit an appropriate Stipulation and Order to Extend Discovery Deadlines, consistent with the dates indicated in the Joint Status Report, for the Court's consideration. If the Mediation is successful in resolving the matter, Counsel are FURTHER ORDERED to immediately advise the Court of the change of status.

As a result of the continuance, there is no need for any parties or attorneys to appear on 9/8/21 with

regard to this matter.

CLERK'S NOTE: A copy of the above minute order was distributed to all parties 09-07-21./ /lk

**DISTRICT COURT
CLARK COUNTY, NEVADA**

Malpractice - Medical/Dental

COURT MINUTES

November 18, 2021

A-19-788787-C Estate of Rebecca Powell, Plaintiff(s)
vs.
Valley Health System, LLC, Defendant(s)

November 18, 2021 10:00 AM Further Proceedings

HEARD BY: Wiese, Jerry A. **COURTROOM:** RJC Courtroom 14A

COURT CLERK: Lauren Kidd
Dara Yorke

RECORDER: Vanessa Medina

REPORTER:

PARTIES

PRESENT: Shipley, Brad J Attorney

JOURNAL ENTRIES

- Brad Shipley, Esq. and Counsel on behalf of Centennial Hills Hospital present via Bluejeans video conference.

Court noted the instant matter came back on a Writ Of Mandamus and counsel submitted a proposed Order; however, it didn't know if it was approved. Counsel indicated Mr. Padda had not approved the Order and was still waiting on a hearing. Following colloquy, Court advised parties it would sign the Order and the instant matter would be done. Parties concurred.

CLERK'S NOTE: Minute Order prepared using JAVS recording. // 3-10-22/ dy

CLERK'S NOTE: Counsel present on behalf of Centennial Hills Hospital announcement of appearance was unclear due to being present via Bluejeans video conference. // 3-10-22/ dy



EIGHTH JUDICIAL DISTRICT COURT CLERK'S OFFICE
NOTICE OF DEFICIENCY
ON APPEAL TO NEVADA SUPREME COURT

PAUL S. PADDA, ESQ.
4560 S. DECATUR BLVD., SUITE 300
LAS VEGAS, NV 89103

DATE: March 21, 2022
CASE: A-19-788787-C

RE CASE: ESTATE OF REBECCA POWELL, through BRIAN POWELL, as special administrator; DARCI CREECY; TARYN CREECY ISIAH KHOSROF; LLOYD CREECY vs. VALLEY HEALTH SYSTEM, LLC dba CENTENNIAL HILLS HOSPITAL MEDICAL CENTER; DR. CONRADO C.D. CONCIO, M.D.; DR. VISHAL S. SHAH, M.D.

NOTICE OF APPEAL FILED: March 17, 2022

YOUR APPEAL HAS BEEN SENT TO THE SUPREME COURT.

PLEASE NOTE: DOCUMENTS NOT TRANSMITTED HAVE BEEN MARKED:

- ☒ \$250 – Supreme Court Filing Fee (Make Check Payable to the Supreme Court)**
 - If the \$250 Supreme Court Filing Fee was not submitted along with the original Notice of Appeal, it must be mailed directly to the Supreme Court. The Supreme Court Filing Fee will not be forwarded by this office if submitted after the Notice of Appeal has been filed.
- ☐ \$24 – District Court Filing Fee (Make Check Payable to the District Court)**
- ☒ \$500 – Cost Bond on Appeal (Make Check Payable to the District Court)**
 - NRAP 7: Bond For Costs On Appeal in Civil Cases
 - *Previously paid Bonds are not transferable between appeals without an order of the District Court.*
- ☐ Case Appeal Statement
 - NRAP 3 (a)(1), Form 2
- ☐ Order
- ☐ Notice of Entry of Order

NEVADA RULES OF APPELLATE PROCEDURE 3 (a) (3) states:

"The district court clerk must file appellant's notice of appeal despite perceived deficiencies in the notice, including the failure to pay the district court or Supreme Court filing fee. The district court clerk shall apprise appellant of the deficiencies in writing, and shall transmit the notice of appeal to the Supreme Court in accordance with subdivision (g) of this Rule with a notation to the clerk of the Supreme Court setting forth the deficiencies. Despite any deficiencies in the notice of appeal, the clerk of the Supreme Court shall docket the appeal in accordance with Rule 12."

Please refer to Rule 3 for an explanation of any possible deficiencies.

*****Per District Court Administrative Order 2012-01, in regards to civil litigants, "...all Orders to Appear in Forma Pauperis expire one year from the date of issuance." You must reapply for in Forma Pauperis status.***

Certification of Copy

State of Nevada }
County of Clark } SS:

I, Steven D. Grierson, the Clerk of the Court of the Eighth Judicial District Court, Clark County, State of Nevada, does hereby certify that the foregoing is a true, full and correct copy of the hereinafter stated original document(s):

PLAINTIFFS' NOTICE OF APPEAL; PLAINTIFFS' CASE APPEAL STATEMENT; DISTRICT COURT DOCKET ENTRIES; CIVIL COVER SHEET; ORDER RE: CONCIO'S AND SHAH'S MOTION FOR FEES AND COSTS; NOTICE OF ENTRY OF ORDER RE: CONCIO'S AND SHAH'S MOTION FOR FEES AND COSTS; DISTRICT COURT MINUTES; NOTICE OF DEFICIENCY

ESTATE OF REBECCA POWELL, through
BRIAN POWELL, as special administrator;
DARCI CREECY; TARYN CREECY ISAIAH
KHOSROF; LLOYD CREECY,

Plaintiff(s),

vs.

VALLEY HEALTH SYSTEM, LLC dba
CENTENNIAL HILLS HOSPITAL MEDICAL
CENTER; DR. CONRADO C.D. CONCIO,
M.D.; DR. VISHAL S. SHAH, M.D.,

Defendant(s),

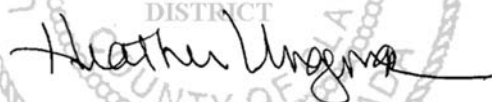
Case No: A-19-788787-C

Dept No: XXX

now on file and of record in this office.

IN WITNESS THEREOF, I have hereunto
Set my hand and Affixed the seal of the
Court at my office, Las Vegas, Nevada
This 21 day of March 2022.

Steven D. Grierson, Clerk of the Court



Heather Ungermann, Deputy Clerk

