IN THE SUPREME COURT OF THE STATE OF NEVADA

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

Appellants,

vs.

VALLEY HEALTH SYSTEM, LLC (doing business as "Centennial Hills Hospital Medical Center"),

Respondent.

Electronically Filed
Feb 03 2023 04:54 PM
Elizabeth A. Brown
Clerk of Supreme Court

Appeal No. 84861

APPELLANTS' APPENDIX

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Respectfully submitted,

/s/ *Paul S. Padda*

Paul S. Padda, Esq.

Dated: January 30, 2023

CERTIFICATE OF SERVICE

Pursuant to the Nevada Rules of Appellate Procedure, I hereby certify that on this day, January 30, 2023, the foregoing document entitled **APPELLANTS' APPENDIX VOLUME 3** was filed with the Supreme Court of Nevada through its electronic filing system. Service of the foregoing document shall be made in accordance with the Master Service List upon all registered parties and/or participants and their counsel.

/s/ Shelbi Schram

Shelbi Schram, Paralegal
PAUL PADDA LAW

IN THE SUPREME COURT OF THE STATE OF NEVADA

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

v.

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

and

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

Real Parties In Interest,

and

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,
Additional Parties In Interest.

Supreme Court No.:

District Court No. A-19-788787-C

PETITION FOR WRIT OF MANDAMUS

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NRAP 26.1 DISCLOSURE

The undersigned counsel of record certifies that the following are persons and entities as described in NRAP 26.1(a), and must be disclosed. These representations are made in order that the justices of this court may evaluate possible disqualification or recusal.

1. All parent corporations and publicly-held companies owning 10 percent or more of the party's stock: None

2. Names of all law firms whose attorneys have appeared for the party or amicus in this case (including proceedings in the district court or before an administrative agency) or are expected to appear in this court: Lewis Brisbois Bisgaard & Smith LLP; Paul Padda Law, PLLC; John. H. Cotton & Associates

3. If litigant is using a pseudonym, the litigant's true name: N/A

DATED: December 22, 2020.

LEWIS BRISBOIS BISGAARD & SMITH LLP

/s/ Adam Garth

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RELIEF SOUGHT

Petitioner hereby petitions for a writ of mandamus requiring the district court to vacate its order of December 17, 2020, in the case of Estate of Rebecca Powell, et al. v. Valley Health System, LLC, et al, Clark County Case No. A-19-788787-C. The order denied Petitioner an award of summary judgment against the Real Parties in Interest (Plaintiffs) based upon the expiration of the statute of limitations contained in NRS 41A.097 (2)(a) and (c).

This petition is based upon the ground that the district court's order is without legal and factual bases, and Respondent manifestly abused his discretion by denying Petitioner's motion for summary judgment on a case dispositive issue when all admissible evidence demonstrated contrary to Respondent's findings. This petition is also based upon the ground that Petitioner does not have a plain, speedy and adequate remedy in the ordinary course of law.

ROUTING STATEMENT

This matter is presumptively retained by the Nevada Supreme Court pursuant NRAP 17(a)(12). The Petition for Writ of Mandamus ("Petition") raises as a principal issue a question of statewide public importance.

The Petition raises the issues of (1) what constitutes irrefutable evidence of inquiry notice in a professional negligence case for purposes of the commencement of the running of the statute of limitations as defined in NRS 41A.097 and whether such notice may thereafter be tolled, and (2) the obligations of an opponent of a

motion for summary judgment to come forth with admissible evidence to properly oppose said motion when a prima case for summary judgment has been made by the moving party. These issues have been raised throughout this Petition.

ISSUES PRESENTED

1. At what point does a plaintiff receive irrefutable evidence of inquiry notice for purposes of the commencement of the statute of limitations in a professional negligence case and once received, can it be tolled?

2. In opposing a motion for summary judgment, must a party provide admissible evidence?

INTRODUCTION

Petitioner Valley Health System, LLC (doing business as "Centennial Hills Hospital Medical Center") (hereinafter "CHH"), a foreign limited liability company, hereby respectfully petitions this Court for the issuance of a Writ of Mandamus pursuant to Nev. Rev. Stat. § 34.150 et seq., Nev. R. App. P. 21 and Nev. Const. art. VI, § 4, directing Respondent to issue an Order granting Petitioner's Motion for Summary Judgment Based upon the Expiration of the Statute of Limitations due to Respondent's failure to recognize irrefutable evidence of inquiry notice supplied by the Plaintiffs which commenced the running of the statute of limitations, and by extension, the expiration of the statute of limitations 8 months prior to the commencement of this action.

A. Procedural History

Petitioner is a Defendant in a case entitled ESTATE OF REBECCA POWELL, through BRIAN POWELL, as Special Administrator; DARCI CREECY, individually and as Heir; TARYN CREECY, individually and as an Heir; ISAIAH KHOSROF, individually and as an Heir; LLOYD CREECY, individually;, 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

(Nevada Eighth Judicial District Court Case No. A-19-788787-C).

The Complaint in this matter was filed February 4, 2019 by Real Parties in Interest ESTATE OF REBECCA POWELL, through BRIAN POWELL, as Special Administrator; DARCI CREECY, individually and as Heir; TARYN CREECY, individually and as an Heir; ISAIAH KHOSROF, individually and as an Heir; LLOYD CREECY, individually (collectively "Plaintiffs"). All Plaintiffs, except Plaintiff Lloyd Creecy, alleged the following causes of action against CHH and the remaining co-defendants in their Complaint: (1) negligence/medical malpractice and (2) wrongful death. Plaintiffs Darci Creecy, Taryn Creecy and Isaiah Khosrof alleged a separate cause of action for negligent infliction of emotional distress against all Defendants, and Plaintiff Lloyd Creecy alleged his own cause of action for negligent infliction of emotional distress against all Defendants.

On September 2, 2020, CHH filed its Motion for Summary Judgment Based Upon the Expiration of the Statute of Limitations. Petitioners' Appendix Vol. I, No. 1, pp. 2-165.

On September 3, 2020, co-defendants filed their joinder in support of CHH's aforesaid Motion. Petitioners' Appendix Vol. I, No. 2, pp. 167-169.

Plaintiffs filed their opposition to CHH's Motion for Summary Judgment on September 16, 2020. Petitioners' Appendix Vol. II, No. 3, pp. 171-270.

On October 21, 2020, CHH filed its reply to Plaintiffs' Opposition to CHH's Motion for Summary Judgment after Respondent continued the originally scheduled

hearing on said motion until October 28, 2020. Petitioners' Appendix Vol. II, No. 4, pp. 272-344.

Co-defendants filed their joinder to CHH's aforesaid reply on October 21, 2020. Petitioners' Appendix Vol. III, No. 5, pp. 346-349.

On October 26, 2020, Respondent sua sponte issued a minute order continuing the hearing on all pending motions for summary judgment, including CHH's Motion, until November 4, 2020. Petitioner's Appendix Vol. III, No. 6, p. 351.

Without conducting the scheduled hearing on November 4, 2020, Respondent issued an order on October 29, 2020 denying CHH's Motion for Summary Judgment, the Notice of Entry of which was served and filed on November 2, 2020. Petitioners' Appendix Vol. III, No. 7, pp. 353-364.

Plaintiffs' claims all derive from an incident which occurred at CHH's hospital on May 11, 2017 when Plaintiffs' decedent, Rebecca Powell, passed away from acute respiratory failure. Ms. Powell was brought to CHH's emergency room on May 3, 2017 following an attempted suicide by prescription drug overdose. Plaintiffs allege Defendants were responsible for administration of Ativan to Ms. Powell during her stay at CHH, and thereafter failed to adequately monitor her, which Plaintiff claim resulted in her acute respiratory failure and the inability to revive her leading to her death. Petitioners' Appendix Vol I, No. 1, pp. 26-49.

Petitioner CHH's Motion for Summary Judgment asked the Respondent District Court to grant summary judgment in its favor because irrefutable evidence

demonstrated that Plaintiffs filed their Complaint eight (8) months after the expiration of the statute of limitations which commenced running twenty (20) months earlier, when Plaintiffs were on inquiry notice of their claims. Petitioners' Appendix Vol. I, No. 1, pp. 2-165 and Vol. II, No. 4, pp. 272-344.

The uncontroverted evidence demonstrated that Plaintiffs initiated two (2) separate State investigations alleging the very misconduct by CHH and its personnel which form the basis of the allegations contained in their Complaint. Plaintiffs' first complaint and request for investigation was initiated with the Nevada Department of Health and Human Services (sometime before May 23, 2017) (Petitioner's Appendix Vol II, No. 4, pp. 298, 327). Plaintiffs' second complaint and investigation request was initiated with the Nevada State Board of Nursing Board on June 11, 2017 Petitioner's Appendix Vol II, No. 4, pp. 298, 325-326).

Moreover, in May, 2017, shortly after Ms. Powell's death, Plaintiffs petitioned the Probate Court and obtained an order permitting them to obtain Ms. Powell's complete CHH medical record (Petitioners' Appendix Vol I., No. 1, pp. 152-155) upon which Plaintiffs' medical expert based his opinions that Defendants were negligent in their care and treatment of Ms. Powell. Petitioners' Appendix Vol. I, No. 1, p. 44, ¶6(B).

B. Respondent's Order Giving Rise to Petition

Respondent incorrectly found that a question of fact existed as whether the Plaintiffs were on inquiry notice of their claims in May and June of 2017 after

requesting and receiving Ms. Powell's medical records and initiating the two State investigations in which they alleged professional negligence against CHH and its personnel. Petitioners' Appendix Vol. III, No. 7, pp. 358-359.

Respondent based its decision on Plaintiffs' counsel's mere representation that the Plaintiffs themselves were confused by a death certificate and coroner's report as to Ms. Powell's cause of death. Petitioners' Appendix Vol. III, No. 7, pp. 358-359.

Plaintiffs submitted not one shred of admissible evidence to contradict their own reports irrefutably demonstrating their inquiry notice. Likewise, Respondent failed to identify one shred of admissible evidence supplied by Plaintiffs to support the presence of a factual issue. Respondent failed to properly consider that once inquiry notice is obtained there is no mechanism for tolling that notice. There is no sworn statement from any Plaintiff nor anyone with personal knowledge asserting that they never received the records, another factor which Respondent ignored.

Petitioners thereafter filed a motion for a stay with Respondent to permit this writ to be submitted. Said motion was scheduled to be heard on November 25, 2020, but the Court below issued a written decision on November 24, 2020 without a hearing, denying the request for a stay, the final order having been signed on December 17, 2020. Petitioners' Appendix Vol. III, No. 8, pp. 366-375.

Respondent manifestly abused its discretion by finding that "Although the Complaints filed by Brian Powell, suggest that Plaintiff may have at least been on

inquiry notice in 2017, the fact that the family was notified shortly after the decedent's death that the cause of death was determined to be a 'suicide,' causes this Court some doubt or concern about what the family knew at that time period" (Petitioners' Appendix, Vol. III, No. 7, p. 358), especially since the finding was not based upon any admissible evidence, but rather Plaintiffs' counsel's personal opinion and argument as to the alleged "confusion" that lacks any evidentiary value whatsoever.

Respondent further manifestly abused its discretion by finding that a State agency report making findings of deficiency was required for Plaintiffs to be on inquiry notice despite the report to said agency by Plaintiffs which alleged the very deficiencies forming the basis for the allegations in Plaintiffs' Complaint. Petitioners' Appendix, Vol. III, No. 7, p. 359.

Petitioner has suffered significant damages and will suffer future significant damages as a result of the actions of the Respondent as it is now forced to proceed to trial under the erroneous ruling. If Respondent had decided the Motion for Summary Judgment in accordance with Nevada law, it would have been completely case dispositive, eliminating the need to proceed with any further discovery and dispensing with the need to incur enormous additional expenses associated with the defense of a case which was dead on arrival.

A Writ of Mandamus is proper to compel the performance of acts by Respondent from the office held by Respondent.

Petitioner has no plain, speedy, or adequate remedy at law to compel the Respondent to perform its duty.

Petitioner's request for a Writ of Mandamus is necessary in order to compel Respondent to comply with the dictates of its office, to prevent further harm and injury to Petitioner and to compensate Petitioner for his damages.

Petitioner requests the issuance of a Writ of Mandamus directing Respondent to issue an Order granting his Motion for Summary Judgment.

This Petition is made and based upon the Affidavit following this Petition, the Petitioner's Appendix filed herewith and the Memorandum of Points and Authorities filed herewith.

STATEMENT OF FACTS

Plaintiffs commenced this action on February 4, 2019 by the filing of the Complaint. Based upon the Complaint and the accompanying medical affidavit, Rebecca Powell overdosed on Benadryl, Cymbalta, and Ambien on May 3, 2017.[1] Plaintiffs' further allege that EMS was called and came to Ms. Powell's aid, discovering her with labored breathing and vomit on her face.[2] Plaintiffs further allege that Ms. Powell was transported to CHH where she was admitted.[3]

Plaintiffs claim on May 10, 2017, Ms. Powell complained of shortness of breath, weakness, and a drowning feeling, and Defendant Vishal Shah, MD, ordered Ativan to be administered via IV push.[4] Plaintiffs assert that on May 11, 2017, Defendant Conrado Concio, MD, ordered two doses of Ativan via IV push.[5]

To assess her complaints, Plaintiffs alleged that a chest CT was ordered, but chest CT was not performed due to Ms. Powell's anxiety, and she was returned to her room.[6] Plaintiffs further alleged that Ms. Powell was placed in a room with a

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[1] Petitioner's Appendix Vol. I, No. 1, p. 26, ¶ 18

[2] Petitioner's Appendix Vol. I, No. 1, p. 26, ¶ 18

[3] Petitioner's Appendix Vol. I, No. 1, p. 26, ¶ 18

[4] Petitioner's Appendix Vol. I, No. 1, p. 27, ¶ 21

[5] Petitioner's Appendix Vol. I, No. 1, pp. 27-28, ¶ 22

[6] Petitioner's Appendix Vol. I, No. 1, pp. 27-28, ¶ 22; see also Petitioner's Appendix Vol. I, No. 1, p. 45

(footnote continued)

camera monitor.[7]

Plaintiffs' expert stated in his affidavit used to support the Complaint that pursuant to the doctor's orders, a dose of Ativan was administered at 03:27.[8] Thereafter, Ms. Powell allegedly suffered acute respiratory failure, which resulted in her death on May 11, 2017.[9]

On May 25, 2017, MRO, a medical records retrieval service responsible for supplying medical records to those requesting same on behalf of CHH, received a request for medical records from Plaintiff Taryn Creecy along with a copy of a court order requiring that Centennial Hills Hospital provide a complete copy of Rebecca Powell's medical chart.[10]

On June 2, 2017, the request for the medical records for Mrs. Powell was processed by MRO personnel.[11] On June 5, 2017, MRO determined that the records for Mrs. Powell were requested by Taryn Creecy, her daughter, that the records were requested to be sent to a post office box, and verified the court order for same.[12] On

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[7] Petitioner's Appendix Vol. I, No. 1, pp. 27-28, ¶ 22

[8] Petitioner's Appendix Vol. I, No. 1, p. 45

[9] Petitioner's Appendix Vol. I, No. 1, pp. 27-28, ¶ 22

[10] *See* Petitioner's Appendix Vol. I, No. 1, pp. 146-161, specifically ¶ 6 on pp. 147-148

[11] Petitioner's Appendix Vol. I, No. 1, p. 148, ¶ 7

[12] Petitioner's Appendix Vol. I, No. 1, p. 148, ¶ 8, and pp. 151-155

(footnote continued)

June 7, 2017, MRO invoiced Ms. Creecy which included all fees associated with the provision of 1165 pages of Mrs. Powell's medical records from CHH. The 1165 pages invoiced represented the entirety of medical records for Mrs. Powell with no exclusions.[13] [14] On June 12, 2017, MRO received payment for the 1165 pages of records and the next day, June 13, 2017, MRO sent out the complete 1165 pages to Ms. Creecy to the address provided on the request.[15]

MRO received the package back from the United States Postal Service due to undeliverability to the addressee on June 23, 2017.[16] MRO contacted Ms. Creecy on June 28, 2017 regarding the returned records, and she advised MRO that the post office box to which she requested the records be sent was in the name of her father, Brian Powell, and that the Post Office likely returned them since she was an unknown recipient at the post office box. She thereafter requested that MRO resend the records to him at that post office box address.[17] On June 29, 2017, MRO re-sent the records addressed to Mr. Powell at the post office box previously provided, and

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[13] Petitioner's Appendix Vol. I, No. 1, p. 148, ¶ 9 and p. 157

[14] Petitioner's Appendix Vol. I, No. 1, p. 164-165, ¶ 4

[15] Petitioner's Appendix Vol. I, No. 1, p. 148, ¶ 10 and p. 159

[16] Petitioner's Appendix Vol. I, No. 1, p. 148, ¶ 11 and p. 161

[17] Petitioner's Appendix Vol. I, No. 1, p. 148, ¶ 12

(footnote continued)

MRO never received the records back thereafter.[18]

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

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

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[18] Petitioner's Appendix Vol. I, No. 1, p. 149, ¶ 13

[19] Petitioner's Appendix Vol. I, No. 1, p. 149, ¶ 14

[20] Petitioner's Appendix Vol. I, No. 1, p. 164-165, ¶ 4

[21] Petitioner's Appendix Vol. I, No. 1, p. 164-165, ¶ 4

[22] Petitioner's Appendix Vol. II, No. 4, p. 327

(footnote continued)

Powell, that her care was "abandoned by the nursing staff", and that she passed away as a result of these alleged failures. Moreover, Mr. Powell stated "Now I ask that you advocate for her, investigate, and ensure that this doesn't happen again."[23]

On February 4, 2019, which was one year, eight months, and twenty-four days after Ms. Powell's death, Plaintiffs filed the subject Complaint.[24] Plaintiffs included the Affidavit of Sami Hashim, MD, which sets forth alleged breaches of the standard of care.[25]

NRS 41A.097 (2)(a) and (c) requires that an action based upon professional negligence of a provider of health be commenced the earlier of one year from discovery of the alleged negligence, but no more than three years after alleged negligence. An action which is dismissed and not refiled within the time required by NRS 41A.097 (2)(a) and (c) is time barred as a matter of law.

Plaintiffs' claims sound in professional negligence, which subjects the claims to NRS 41A.097(2)'s one-year statute of limitations requirement. Since Plaintiffs failed to file their Complaint within one-year after they discovered or through the use of reasonable diligence should have discovered the injury, CHH's Motion for Summary Judgment should have been granted by Respondent.

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[23] Petitioner's Appendix Vol. II, No. 4, pp. 325-326

[24] Petitioner's Appendix Vol. I, No. 1, pp. 21-41

[25] Petitioner's Appendix Vol. I, No. 1, pp. 43-49

STATEMENT OF REASONS THE WRIT SHOULD ISSUE

A. Writ of Mandamus Standard

A writ of mandamus is an extraordinary remedy that may be issued to compel an act that the law requires. *Cote H. v. Eighth Judicial Dist. Court,* 175 P.3d 906, 907-08, 124 (Nev. 2008). A writ of mandamus may also issue to control or correct a manifest abuse of discretion. *Id.* . A writ shall issue when there is no plain, speedy and adequate remedy in the ordinary course of law. Nev. Rev. Stat. § 34.170; *Sims v. Eighth Judicial Dist. Court,* 206 P.3d 980, 982 (Nev. 2009). This Court has complete discretion to determine whether a writ will be considered. *Halverson v. Miller,* 186 P.3d 893 (Nev. 2008) ("the determination of whether to consider a petition is solely within this court's discretion."); *Sims*, 206 P.3d at 982 ("it is within the discretion of this court to determine whether these petitions will be considered.").

This Court should exercise its discretion to consider and issue a Writ of Mandamus in this case directing Respondent to grant Petitioner's Motion for Summary Judgment. The Respondent manifestly abused its discretion when it denied their Motion. This clear error of law will cause Petitioner to proceed through extensive discovery and the extraordinary expenses associated therewith as well as to trial on a case which was filed well beyond the expiration of the statute of limitations. There is no adequate, speedy remedy available at law to address this continuing injury to Petitioner.

Petitioner is aware that this Court may exercise its discretion to decline to hear

these issues unless they are brought before it on appeal. However, these issues are better addressed at the current time. This issue is appropriate for interlocutory review because it involves (1) an issue, if decided in favor of Petitioner, that is entirely case dispositive, (2) clarifies the standard of irrefutable evidence of inquiry notice articulated in *Winn v. Sunrise Hosp. & Med. Ctr.*, 128 Nev. 246, 258, 277 P.3d 458, 466 (2012) by assessing evidence in which the Plaintiffs admit to possessing the very notice they now claim to lack, (3) determining whether after acquiring inquiry notice, said notice can be later tolled, and (4) setting the standard on those opposing motions for summary judgment that requires the submission of admissible evidence. Additionally, it addresses a recurring and important issue of the statutory scheme regarding professional negligence as well as pressing public policy issues regarding the protection of medical providers in this state. This Court has repeatedly stated that a writ of mandamus is an appropriate remedy for important issues of law that need clarification or that implicate important public policies. *Lowe Enters. Residential Ptnrs., L.P. v. Eighth Judicial Dist. Court,* 118 Nev. 92, 97 (2002) ("We have previously stated that where an important issue of law needs clarification and public policy is served by this court's invocation of its original jurisdiction, our consideration of a petition for extraordinary relief may be justified."); *Business Comput. Rentals v. State Treasurer,* 114 Nev. 63, 67 (1998) ("Additionally, where an important issue of law needs clarification and public policy is served by this court's invocation of its original jurisdiction, our consideration of a petition for

extraordinary relief may be justified.").

Thus, in accordance with the above authorities, Petitioner respectfully requests that this Court choose to accept this Petition for Writ of Mandamus for review.

B. Respondent Manifestly Abused its Discretion by Denying Petitioner's Motion for Summary Judgment Based Upon the Expiration of the Statute of Limitations

NRS 41A.097 (2)(a) and (c) requires that an action based upon professional negligence of a provider of health be commenced the earlier of one year from discovery of the alleged negligence, but no more than three years after alleged negligence.

There is no question that this matter involves a provider of health care as defined by NRS 41A.017. Petitioner, therefore, falls within the protections afforded by NRS Chapter 41A, including the one year discovery rule contained in NRS 41A.097(2)'s statute of limitations.

As expressed in *Massey v. Litton*, 99 Nev. 723, 669 P.2d 248 (1983), the one year discovery period within which a plaintiff has to file an action commences when the plaintiff ". . . knows or, through the use of reasonable diligence, should have known of facts that would put a reasonable person on inquiry notice of his cause of action." *Id.* at 728, 669 P.2d at 252; *See, also Eamon v. Martin,* 2016 Nev. App. Unpub. LEXIS 137 at 3-4 (Nev. App. Mar. 4, 2016).

"This does not mean that the accrual period begins when the plaintiff

discovers the precise facts pertaining to his legal theory, but only to the general belief that someone's negligence may have caused the injury." (citing *Massey*, 99 Nev. at 728, 669 P.2d at 252). Thus, the plaintiff "discovers" the injury when 'he had facts before him that would have led an ordinarily prudent person **to investigate further** into whether [the] injury may have been caused by someone's negligence.'" *Eamon* at 4 (quoting *Winn v. Sunrise Hosp. & Med. Ctr.,* 128 Nev 246, 252, 277 P.3d 458, 462) (emphasis supplied). "The plaintiff need not be aware of the precise causes of action he or she may ultimately pursue. *Winn*, 128 Nev. at 252-53, 277 P.3d at 462. Rather, **the statute begins to run once the plaintiff knows or should have known facts giving rise to a 'general belief that someone's negligence may have caused his or her injury.'** *Id.*" *Golden v. Forage,* 2017 Nev. App. Unpub. LEXIS 745 at 3 (Nev. App. October 13, 2017) (emphasis supplied).

The date on which the one-year statute of limitation begins to run may be decided as a matter of law where uncontroverted facts establish the accrual date. *See Golden, supra.* at *2 (Nev. App. Oct. 13, 2017) ("The date on which the one-year statute of limitation began to run is ordinarily a question of fact for the jury, and may be decided as a matter of law only where the uncontroverted facts establish the accrual date.") (citing *Winn v. Sunrise Hosp. & Med. Ctr.*, 128 Nev. 246, 251, 277 P.3d 458, 462 (2012) (recognizing that the district court may determine the accrual date as a matter of law where the accrual date is properly demonstrated)); *see also*

Dignity Health v. Eighth Judicial Dist. Court of State, ex rel. Cty. of Clark, No. 66084, 2014 WL 4804275, at *2 (Nev. Sept. 24, 2014).

If the Court finds that the plaintiff failed to commence an action against a provider of health care before the expiration of the statute of limitations under NRS 41A.097, the Court may properly dismiss the Complaint pursuant to NRCP 12(b)(5). *See, e.g., Egan v. Adashek,* 2015 Nev. App. Unpub. LEXIS 634, at *2 (Nev. App. Dec. 16, 2015) (affirming district court's dismissal of action under NRCP 12(b)(5) where the plaintiff failed to file within the statute of limitations set forth in NRS 41A.087); *Rodrigues v. Washinsky*, 127 Nev. 1171, 373 P.3d 956 (2011) (affirming district court's decision granting motion to dismiss the plaintiffs' claims for failure to comply with NRS 41A.097); *Domnitz v. Reese*, 126 Nev. 706, 367 P.3d 764 (2010) (affirming district court's decision dismissing plaintiff's claim after finding that plaintiff had been placed on inquiry notice prior to one year before his complaint was filed and that the statute of limitations had expired pursuant to NRS 41A.97(2)).

While this is a motion for summary judgment (unlike a motion to dismiss when the averments in the Complaint need to be taken as true), the standard is more favorable to the moving party since once a prima facie case that no genuine issue of material fact exist, the non-moving party is obligated to come forth with sufficient **and** admissible evidence demonstrating the presence of a material issue of fact. Petitioner presented its prima facie case, and Plaintiffs failed to submit any admissible evidence in opposition which relates to the issue before the Court.

In this case, NRS 41A.097(2)'s one-year statute of limitations began to run on the date of Ms. Powell's death (May 11, 2017). Per the Complaint, most of the individually named Plaintiffs contemporaneously observed the alleged negligence and Ms. Powell's rapid deterioration leading up to her death on May 11, 2017.[26]

Since Plaintiffs allege that they contemporaneously observed the alleged negligence and deterioration of Ms. Powell leading up to her death, the Plaintiffs knew, or should have known, of facts that would put a reasonably person on inquiry notice by May 11, 2017. Plaintiffs were aware of facts that would lead an ordinarily prudent person to investigate the matter further at that time.

In fact, Taryn Creecy specifically requested copies of Ms. Powell's complete medical records from CHH on May 25, 2017, two weeks after Ms. Powell's death.[27] Ms. Creecy went to Probate Court to and obtained a court order directing the production of Ms. Powell's records from CHH.[28] Plaintiffs obtained all of Ms. Powell's medical records as late as June, 2017. The declarations of both Gina Arroyo and Melanie Thompson[29] conclusively establish that Plaintiffs received a

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[26] *See* Petitioner's Appendix Vol. I, No. 1, p. 27, ¶ 20 (died on May 11, 2017); *see also* Petitioner's Appendix Vol. I, No. 1, p. 37 ¶¶ 45-46 and p. 39, ¶¶ 52-53 (allegedly contemporaneously observing Ms. Powell rapidly deteriorate and die).

[27] *See* Petitioner's Appendix Vol. I, No. 1, pp. 146-161

[28] Petitioner's Appendix Vol. I, No. 1, pp. 151-155

[29] Petitioner's Appendix Vol. I, No. 1, pp. 146-165

complete copy of Ms. Powell's medical records from CHH in June, 2017 and Plaintiffs sought them in May, 2017.

In fact, the affidavit of Plaintiffs' expert, Dr. Sami Hashim, states in clear terms the following:

> **Based upon the medical records**, the patient did not and with high probability could not have died from the cause of death stated in the Death Certificate. The patient died as a direct consequence of respiratory failure directly **due to below standard of care violations as indicated by her medical records and reinforced** by the Department of Health and Human Services – Division of Health Quality and Compliance Investigative Report.[30]

(Emphasis supplied).

Dr. Hashim noted that he primarily relied upon the very medical records which Plaintiffs obtained in May/June, 2017, and the HHS Report was only a "reinforcement" of what was contained in the medical records.

Furthermore, as the Nevada Court of Appeals held in *Callahan v. Johnson*, 2018 Nev. App. Unpub. LEXIS 950, 3-5:

> Under Nevada law, the one-year statute of limitations begins to run when the plaintiff "knows or, through the use of reasonable diligence, should have known of facts that would put a reasonable person on inquiry notice of his cause of action." *Massey v. Litton*, 99 Nev. 723, 728, 669 P.2d 248, 252 (1983). Our supreme court has clarified that the plaintiff need not know the "precise legal theories" underlying her claim, so long as the plaintiff has a "general belief that someone's negligence may have caused his or

[30] Petitioner's Appendix Vol. I, No. 1, p. 44, ¶6(B)

> her injury." *Winn*, 128 Nev. at 252-53; 277 P.3d at 462. Thus, at its core the one-year statute of limitation requires the "plaintiff to be aware of the cause of his or her injury." *Libby*, 130 Nev. at 365, 325 P.3d at 1279 (addressing the rule from Massey and Winn). The district court may determine the accrual date as a matter of law if the evidence irrefutably demonstrates that date. *Winn*, 128 Nev. at 253, 277 P.3d at 463.

This case is predicated on Plaintiffs' claim of improper patient monitoring. Plaintiffs' received the complete copy of Ms. Powell's medical records in June, 2017.[31] They went to Probate Court to obtain a Court order to obtain them in May, 2017.[32] Plaintiff Brian Powell specifically wrote a complaint to the Nevada Nursing Board accusing CHH personnel of malpractice and requesting an investigation on June 11, 2017.[33] The Nevada Department of Health and Human Services specifically acknowledged Mr. Powell's separate complaint of patient neglect on May 23, 2017 with a promise to investigate same.[34]

Respondent's finding that Plaintiffs were somehow misled by the death certificate and the coroner's report defies the evidence. Furthermore, Respondent's conclusion that the February 5, 2018 HHS report created an issue of fact as to when

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[31] Petitioner's Appendix Vol. I, No. 1, pp. 146-165

[32] Petitioner's Appendix Vol. I, No. 1, pp. 151-155

[33] Petitioner's Appendix Vol. II, No. 4, pp. 325-326

[34] Petitioner's Appendix Vol. II, No. 4, p. 327

(footnote continued)

Plaintiffs were first on inquiry notice is equally erroneous. Once inquiry notice was received, the clock started running. **Plaintiffs' own documents demonstrate they possessed that very notice as late as June 11, 2017, but other documents show they knew as early as either Mrs. Powell's date of death on May 11, 2017, or on May 23, 2017, when the State acknowledged their complaint of patient neglect.[35] At the latest, they had until June 11, 2018 to file their Complaint. However, it was not filed until almost eight months later.**

In *Green v. Frey*, 2014 Nev. Dist. LEXIS 1401 at 3 (CV12-01530, Washoe County), the decedent's date of death was determined to be sufficient to place the plaintiff on inquiry notice. In this case, the statute of limitations began to run on May 11, 2017, Ms. Powell's date of death. In *Barcelona v. Eighth Judicial Dist. Court*, 448 P.3d 544, this Court, in an unpublished decision, held that death following surgery would lead an ordinarily prudent person to investigate further into possible negligence, especially since their Complaint included a medical affidavit demonstrating that the plaintiffs had sufficient information to make out a malpractice case.

In the instant case, Dr. Hashim's own affidavit stated that he possessed

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[35] Interestingly, Plaintiffs failed to disclose the date Mr. Powell filed his complaint with HHS alleging patient neglect and possible malpractice, but clearly it was sent earlier than HHS's May 23, 2017 acknowledgement letter.

(footnote continued)

sufficient information from the CHH medical records themselves, which Plaintiffs had in their possession in May/June, 2017.[36] The statute of limitations began running as late as when they received the CHH records in May/June, 2017. Moreover, Plaintiffs themselves initiated two State investigations concerning the care of Ms. Powell, and alleged in both requests that they suspected negligence. This definitively proves they possessed inquiry notice long before they claim, because they were aware of facts that would lead an ordinarily prudent person to investigate the matter further. Plaintiffs obtained all they needed to investigate the claims immediately after Ms. Powell's death and were in possession of all they needed and admittedly were on inquiry notice as late as June 11, 2017. Plaintiffs did nothing for **20 months after being placed on inquiry notice**, and they failed to timely file their lawsuit.

C. A Party Opposing a Motion for Summary Judgment Must Do So With Admissible Evidence and Declarations By Those With Personal Knowledge of the Facts

As expressed by the California Second District Court of Appeal:

> When a defendant moves for summary judgment, "'its declarations and evidence must either establish a complete defense to plaintiff's action or demonstrate the absence of an essential element of plaintiff's case. If plaintiff does not counter with opposing declarations showing there are triable issues of fact with respect to that defense or an essential element of its case, the summary judgment must be granted.'" (*Saldana v. Globe-Weis Systems Co.* (1991) 233 Cal. App. 3d 1505, 1510–1511 [285 Cal. Rptr. 385],

[36] Petitioners' Appendix Vol. I, No. 1, p. 44, ¶6(B)

> quoting *Gray v. America West Airlines, Inc.* (1989) 209 Cal. App. 3d 76, 81 [256 Cal. Rptr. 877].)

Taylor v. Trimble, 13 Cal. App. 5th 934, 939, 220 Cal. Rptr. 3d 741, 745 (2017).

In the milestone case *Wood v. Safeway, Inc.*, 121 Nev. 724, 731 (2005), this Court held that "[t]he substantive law controls which factual disputes are material" to preclude summary judgment, and that "[a] factual dispute is genuine when the evidence is such that a rational trier of fact could return a verdict for the nonmoving party." *Id.* .

When applying the above standard, the pleadings and other proof must be construed in a light most favorable to the nonmoving party. *Id.* at 732. However, the nonmoving parties, in this case, Plaintiffs, "may not rest upon general allegations and conclusions," but shall "by affidavit or otherwise, set forth specific facts demonstrating the existence of a genuine issue for trial." *Id.* at 731-32. The nonmoving party "bears the burden to 'do more than simply show that there is some metaphysical doubt' as to the operative facts in order to avoid summary judgment being entered in the moving party's favor." *Id.* at 732. "The nonmoving party 'is not entitled to build a case on the gossamer threads of whimsy, speculation and conjecture.'" *Id.* . But, "the nonmoving party is entitled to have the evidence and all reasonable inferences accepted as true." *LeasePartners Corp. v. Robert L. Brooks Tr. Dated Nov. 12, 1975*, 113 Nev. 747, 752 (1997). "Evidence introduced in support of or opposition to a motion for summary judgment must be admissible evidence.

See NRCP 56(e)." *Collins v. Union Fed. Sav. & Loan Ass'n*, 99 Nev. 284, 302, 662 P.2d 610, 621 (1983).

Plaintiffs' counsel's opinions and assertions, which were all that was submitted by Plaintiffs (except for an inadmissible copy of the HHS report) should have been disregarded by Respondent, since counsel is not a competent affiant regarding admissible facts at trial on the subject of the relatedness of damages to the case at issue. *See, Schafer v. Manufacturers Bank*, 104 Cal. App. 3d 70, 76 (1980); *see also, Nini v. Culberg*, 183 Cal. App. 2d 657, 661-662 (1960); *Weir v. Snow*, 210 Cal. App. 2d 283, 294-295 (1962). Respondent's denial of the motion was an abuse of discretion because after Petitioner demonstrated a prima facie case for summary judgment, it was incumbent upon Plaintiffs to come forth with their own declarations concerning inquiry notice, and explain why their complaints to the State agencies did not commence the running of the statute of limitations. This they failed to do, thus dooming Plaintiffs' prospects for opposing Petitioner's motion. By Respondent ignoring this glaring deficiency, it was a manifest abuse of discretion. A Writ of Mandamus is the proper remedy to address it.

CONCLUSION

In accordance with the above, Petitioner respectfully requests that this Court grant its Petition for Writ of Mandamus and order the Respondent to grant Petitioners' Motion for Summary Judgment.

Dated this 22nd day of December, 2020.

LEWIS BRISBOIS BISGAARD & SMITH LLP

By */s/ Adam Garth*

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AFFIDAVIT OF VERIFICATION IN SUPPORT OF PETITION FOR WRIT OF MANDAMUS

STATE OF NEVADA)
) ss:
COUNTY OF CLARK)

Adam Garth, Esq., being first duly sworn, deposes and states:

1. I am an attorney of record for Petitioner and make this Affidavit pursuant to Nev. R. App. P. 21(a)(5).
2. The facts and procedural history contained in the foregoing Petition for Writ of Mandamus and the following Memorandum of Points and Authorities are based upon my own personal knowledge as counsel for Petitioner. This Affidavit is not made by Petitioner personally because the salient issues involve procedural developments and legal analysis.
3. The contents of the foregoing Petition for Writ of Mandamus and the following Memorandum of Points and Authorities are true and based upon my personal knowledge, except as to those matters stated on information and belief.
4. All documents contained in the Petitioner's Appendix, filed herewith, are true and correct copies of the pleadings and documents they are represented to be in the Petitioner's Appendix and as cited herein.
5. This Petition complies with Nev. R. App. P. 21(d) and Nev. R. App. P.

32(c)(2).

FURTHER YOUR AFFIANT SAYETH NAUGHT.

ADAM GARTH, ESQ.

Subscribed and sworn before me
This 22nd day of December, 2020.

Notary Public, in and for said County and State

JODI LYNN MORALES
NOTARY PUBLIC
STATE OF NEVADA
APPOINTMENT NO. 20-5266-01
MY APPT. EXPIRES MARCH 13, 2024

CERTIFICATE OF COMPLIANCE

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

This brief has been prepared in a proportionally spaced typeface using Microsoft Word 2010 in Times New Roman 14 point type

2. I further certify that this brief complies with the page- or type-volume limitations of NRAP 21(d) because, excluding the parts of the brief exempted by NRAP 32(a)(7)(C), it is either:

Proportionately spaced, has a typeface of 14 points or more, and contains 6,305 words.

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

DATED this 22nd day of December, 2020.

LEWIS BRISBOIS BISGAARD & SMITH LLP

By */s/ Adam Garth*

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CERTIFICATE OF MAILING

I hereby certify that on this 22nd day of December, 2020, I served the forego **PETITION FOR WRIT OF MANDAMUS REGARDING LACK OF EXPERT OR EVIDENTIARY SUPPORT IN OPPOSITION TO MOTION FOR PARTIAL SUMMARY JUDGMENT** upon the following parties by placing a true and correct copy thereof in the United States Mail in Las Vegas, Nevada with first class postage fully prepaid:

The Honorable Jerry A. Wiese II
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IN THE SUPREME COURT OF THE STATE OF NEVADA

VALLEY HEALTH SYSTEM, LLC, D/B/A CENTENNIAL HILLS HOSPITAL MEDICAL CENTER, A FOREIGN LIMITED LIABILITY COMPANY; DR. DIONICE S. JULIANO, M.D., AN INDIVIDUAL; DR. CONRADO C.D. CONCIO, M.D., AN INDIVIDUAL; AND DR. VISHAL S. SHAH, M.D., AN INDIVIDUAL,
Petitioners,
vs.
THE EIGHTH JUDICIAL DISTRICT COURT OF THE STATE OF NEVADA, IN AND FOR THE COUNTY OF CLARK; AND THE HONORABLE JERRY A. WIESE, DISTRICT JUDGE,
Respondents,
and
ESTATE OF REBECCA POWELL THROUGH BRIAN POWELL, AS SPECIAL ADMINISTRATOR; DARCI CREECY, INDIVIDUALLY AND AS HEIR; TARYN CREECY, INDIVIDUALLY AND AS AN HEIR; ISAIAH KHOSROF, INDIVIDUALLY AND AS AN HEIR; LLOYD CREECY, INDIVIDUALLY,
Real Parties in Interest.

No. 82250

FILED

OCT 18 2021

ELIZABETH A. BROWN
CLERK OF SUPREME COURT
BY
DEPUTY CLERK

ORDER GRANTING PETITION

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

Cadish, J.

Pickering, J.

Herndon, J.

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

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

IN THE SUPREME COURT OF THE STATE OF NEVADA

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

Petitioners,

vs.

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

Respondents,

and

ESTATE OF REBECCA POWELL THROUGH BRIAN POWELL, AS SPECIAL ADMINISTRATOR; DARCI CREECY, INDIVIDUALLY AND AS HEIR; TARYN CREECY, INDIVIDUALLY AND AS HEIR; ISAIAH KHOSROF, INDIVIDUALLY AND AS HEIR; LLOYD CREECY, INDIVIDUALLY,

Real Parties in Interest.

PETITION FOR REHEARING BY REAL PARTIES IN INTEREST

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I. INTRODUCTION

Real Parties in Interest, Darci Creecy, Taryn Creecy and Isaiah Creecy ("the Creecy Children"),[1] petition this Court pursuant to Nevada Rule of Appellate Procedure ("NRAP") 40 to rehear its October 18, 2021 Order issuing a Writ of Mandamus directing the Eighth Judicial District Court (the Honorable Jerry A. Wiese) to vacate its order denying Petitioner's motion for summary judgment and directing the entry of summary judgment in favor of Petitioners. *See* **Exhibit 1** (Court's Order filed October 18, 2021).

In these appellate proceedings, the Petitioners' argued that the district court erred in denying them summary judgment and by failing to dismiss the Real Parties in Interest's lawsuit based upon statute of limitations grounds. While Petitioners advanced several arguments in support of their position, the Court granted Petitioners' Writ of Mandamus by homing in on, and accepting, the argument that Brian Powell's complaint to the State Board of Nursing constituted "inquiry notice" thereby triggering the one-year limitation period made applicable to medical malpractice claims by Nevada Revised Statute ("NRS") 41A.097. Indeed, in

[1] The Estate of Rebecca Powell is not a party to this Petition. Brian Powell was not an individual plaintiff in the proceedings below except that he served as the Special Administrator of the Estate. Darci, Taryn and Isaiah Creecy are the children of Rebecca Powell. Brian Powell is not their father.

granting Petitioners' Writ of Mandamus, the Court based the entirety of its decision upon its conclusion that "irrefutable evidence demonstrates that the real parties in interest were on inquiry notice by June 11, 2017 at the latest, when real party in interest Brian Powell, special administrator for the estate, filed a complaint with the State Board of Nursing." *See* Exhibit 1, p. 3-4. From this conclusion, the Court foreclosed the Creecy Children's claims by imputing Brian Powell's "inquiry notice" to them and thereby denied their ability to pursue their individual and separate claims against Petitioners. It is axiomatic that the Creecy Children are separate and unique claimants for purposes of NRS 41.085 (distinguishing between heirs and personal representative of an estate).

Based upon the NRAP 40(c)(2) standards, the Creecy Children respectfully request this Court rehear this matter with respect to their claims. The Court overlooked and/or misapprehended a key and crucial fact, namely that there is no evidence, nor has any been provided by Petitioners, that the Creecy Children knew what Brian Powell is alleged to have known on June 11, 2017 (the complaint to the State Board of Nursing does not even mention the Creecy Children let alone indicate they were copied on that correspondence). Additionally, through its ruling, the Court has created a new legal standard in cases of this kind that would impute the inquiry notice of one plaintiff to all other plaintiffs irrespective of any proof demonstrating a special relationship between them.

To avoid a manifest injustice, the Creecy Children respectfully request the Court rehear its October 18, 2021 Order granting the Writ of Mandamus.

II. LEGAL ARGUMENT

A. STANDARD FOR PETITIONS FOR REHEARING.

Pursuant to NRAP 40(c)(2) this Court may consider rehearing in the following circumstances: (A) When the court has overlooked or misapprehended a material fact in the record or a material question of law in the case, or (B) When the court has overlooked, misapplied, or failed to consider a statute, procedural rule, regulation, or decision directly controlling a dispositive issue in the case. *See, e.g.,* Am. Cas. Co. of Rehearing, Pa. v. Hotel and Rest. Employees and Bartenders Intern. Union Welfare Fund, 113 Nev. 764, 766, 942 P.2d 172, 174 (1997). In this case, the Court should consider the overlooked and/or misapprehended facts and law to grant rehearing.

B. THE COURT OVERLOOKS OR MISAPPREHENDS THAT THERE IS NO RECORD EVIDENCE SUPPORTING THE CONCLUSION THAT THE CREECY CHILDREN WERE ON INQUIRY NOTICE ON THE SAME DAY AS BRIAN POWELL

The Court, while acknowledging that "the accrual date for NRS 41A.097(2)'s one-year period is generally a question for the trier of fact,"[2] erroneously concludes

[2] Exhibit 1, p. 3.

in this case that "irrefutable evidence demonstrates that the real parties in interest were on inquiry notice by June 11, 2017 at the latest, when real party in interest Brian Powell, special administrator for the estate, filed a complaint with the State Board of Nursing." Exhibit 1, pp. 3-4. Respectfully, there is no "irrefutable" record evidence, let alone any evidence, to support this conclusion that the Creecy Children knew what Brian Powell is concluded to have known on June 11, 2017. Indeed, the sole evidence relied upon by the Court to grant the Writ of Mandamus, namely Brian Powell's complaint to the State Board of Nursing, is devoid of any reference to the Creecy Children and is signed only by Brian Powell. *See* II PA 325-326.[3] To characterize this evidence as "irrefutable" in the absence of any record evidence demonstrating that the Creecy Children joined in the complaint or even had knowledge of its contents is simply erroneous.[4] The Court itself characterizes and

[3] "___ PA ___" refers to the volume and page numbers of Petitioner's Appendix filed on December 22, 2020.

[4] Petitioners have argued that "Plaintiffs' own documents demonstrate they possessed that very notice as late of June 11, 2017, but other documents show they knew as early as either Ms. Powell's date of death on May 11, 2017 or on May 23, 2017 when the State acknowledged their complaint of patient neglect." *See* Petition p. 23. Petitioners use of "they" is not supported by any facts in the record. Both the complaint to the Nursing Board (II PA 325-326) and the letter from the State of Nevada Department of Health and Human Services (II PA 327), including its subsequent findings (II PA 186-198) pertain only to Brian Powell. The Creecy Children are not even referenced in any of those communications. The Court erred by accepting, wholesale, Petitioners' representation suggesting the Creecy Children

limits the complaint to the Nursing Board as "Brian alleged" or "Brian's own allegations" thereby demonstrating that it was only his complaint and not that of the Creecy Children. Similarly, the other complaint by Brian Powell referenced in footnote 3 of the Court's Order was filed solely by him, a fact acknowledged by the Court.

Given that there is no record evidence whatsoever demonstrating that the Creecy Children were aware of the complaints to the Nursing Board or to the State's Department of Health and Human Services, it's simply error to impute Brian Powell's notice to them and thereby bar them from pursuing their individual and separate claims. Brian Powell, as the Court can take note, is a resident of Nevada while the Creecy Children are residents of Ohio and Massachusetts. See II PA 201. Each of the Creecy Children is an individual plaintiff separate and apart from the Estate. II PA 199-219.

There are genuine issues of material fact regarding what the Creecy Children knew and when they knew it. Petitioners have succeeded in improperly conflating the inquiry notice attributable to Brian Powell to the Creecy Children by falsely representing through suggestion that they had knowledge of the Nursing Board

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had knowledge of any of these communications. Cursory review of the documents cited in the Court's Order of October 18, 2021 demonstrates this is clearly erroneous.

complaint. Yet, there is no actual evidence to support this suggestion which the Court has unfortunately adopted as a "fact." Were this matter to be remanded for further discovery or an evidentiary hearing, the allegations in the Complaint would be corroborated including the fact that the Creecy Children do not even live in the same state as Brian Powell. Further, discovery or a hearing would also reveal that the Creecy Children had limited communications with Brian Powell and that, while he was married to their mother Rebecca Powell, he is not their biological father. Further, even though Brian and Rebecca Powell divorced well before she was admitted to the hospital, further discovery or a hearing would reveal they remained on good terms and that his (Brian Powell) complaints to state agencies were motivated by his prior relationship and concern for his former wife whom he considered a friend. These are all issues that need resolution before any conclusion can be reached regarding what the Creecy Children knew for purposes of inquiry notice.

The Court should rehear its Order and limit is ruling to simply the Estate. It should reconsider the Order's application as it pertains to the rights of the Creecy Children. The factual assumptions forming the basis for imputing Brian Powell's notice and knowledge are simply not supported by the evidentiary record before the Court.

C. THE COURT OVERLOOKS OR MISAPPREHENDS THAT THE STATUTE OF LIMITATIONS APPLICABLE TO MEDICAL MALPRACTICE CASES IN NEVADA DOES NOT PERMIT THE IMPUTATION OF NOTICE BY ONE PLAINTIFF TO ANOTHER PLAINTIFF

Under NRS 41A.097(2), an action seeking recovery for injury or death caused by a provider of healthcare cannot be commenced more than 1 year after the plaintiff discovers, or through the use of reasonable diligence should have discovered, the injury. The plain language of the law makes no accommodation for inquiry notice being transferred from one plaintiff to another except in situations where there may be a special relationship such as that between a parent, guardian or legal custodian and a child. *See* NRS 41A.097(4). Notably, none of those factors exist in this case. Thus, in rendering its ruling and imputing Brian Powell's inquiry notice and purported knowledge to the Creecy Children (all of whom were adults – *see* II PA 201) the Court has created a new legal standard that did not otherwise exist under Nevada law. Presumably, this is why Petitioners are eager to have the Court publish its decision.

Counsel for the Creecy Children have attempted to find, but have been unable to locate, any case authority in Nevada for the proposition that, in the absence of a special relationship, one plaintiff's knowledge is automatically imputed to another plaintiff in a medical malpractice case. To permit such a result would be to countenance a regrettable judicial policy in which the loved ones of medical

malpractice victims are punished because someone else (e.g. a friend) who subsequently becomes the Special Administrator for the Estate asked questions somewhere along the way.

Given the complete lack of clarity regarding what the Creecy Children knew in relation to Brian Powell's inquiry notice, it would be regrettable and dangerous to create legal precedent imputing and transferring notice from one party to another without any facts supporting such a result. Under such a policy, an unsuspecting claimant could be foreclosed from pursuing justice because someone else (e.g. a friend), unbeknownst to the claimant, raised questions pertaining to medical care of a decedent/victim in a medical malpractice case. As recognized in another jurisdiction (Florida), knowledge of an injury and that there is a reasonable possibility that the injury was caused by medical malpractice as to trigger the statute of limitations for a civil action may not be imputed to an adult who has no ability to be consciously aware of such injury. *See* Barrier v. JFK Medical Center Ltd. Partnership, 169 So.3d 185 (2015). While the facts of that case involved an incapacitated and medically unconscious person, the issue of transferring inquiry notice to a claimant lacking awareness or figurative consciousness has currency in this matter.

There is nothing in the plain language of NRS 41A.097 that permits imputation of inquiry notice between one party and another in the absence of a

special relationship or evidence that the party to whom notice is being transferred was aware of the possible medical malpractice. The Court's ruling creates a new and ill-advised standard that should concern the Court and cause it to rehear its October 18, 2021 Order.

III. CONCLUSION

For the reasons set forth herein, the Court should rehear its Order that is the subject of this petition. While the Real Parties in Interest are not seeking to have the Court alter its ruling with respect to the Estate, the Creecy Children are respectfully requesting the Court rehear its decision and remand to permit their claims to proceed.

DATED this 5th day of November 2021.

PAUL PADDA LAW, PLLC

By */s/ Paul S. Padda and Srilata Shah*
Paul S. Padda, Esq.
Nevada Bar No. 10417
Srilata R. Shah, Esq.
Nevada Bar No. 6820
Attorneys for Real Parties in Interest

CERTIFICATE OF COMPLIANCE

1. I hereby certify that this petition complies with the formatting requirements of NRAP 32(a)(4), the typeface requirements of NRAP 32(a)(5) and the type style requirements of NRAP 32(a)(6) because this brief has been prepared in a proportionally spaced typeface using Microsoft Word 2016 in 14-point Times New Roman font.

2. I further certify that this petition complies with the page- or type-volume limitations of NRAP 40 or 40A because, it is either:

☒ proportionally spaced, has a typeface of 14 points or more and contains 2,336 words; and/or

☒ does not exceed 10 pages.

DATED this 5th day of November 2021.

PAUL PADDA LAW, PLLC

By /s/ Paul S. Padda
Paul S. Padda, Esq.
Nevada Bar No. 10417
Attorneys for Real Parties in Interest

CERTIFICATE OF SERVICE

I hereby certify that the foregoing **PETITION FOR REHEARING BY REAL PARTIES IN INTEREST** was filed electronically with the Supreme Court of Nevada on the 5th day of November 2021. Electronic service of the foregoing document shall be made in accordance with the Master Service List as follows:

S. Brent Vogel, Esq.
Adam Garth, Esq.
John H. Cotton, Esq.
Brad J. Shipley, Esq.

/s/ Diana Escobar
Diana Escobar, an employee of
Paul Padda Law

EXHIBIT 1

EXHIBIT 1

IN THE SUPREME COURT OF THE STATE OF NEVADA

VALLEY HEALTH SYSTEM, LLC, D/B/A CENTENNIAL HILLS HOSPITAL MEDICAL CENTER, A FOREIGN LIMITED LIABILITY COMPANY; DR. DIONICE S. JULIANO, M.D., AN INDIVIDUAL; DR. CONRADO C.D. CONCIO, M.D., AN INDIVIDUAL; AND DR. VISHAL S. SHAH, M.D., AN INDIVIDUAL,
Petitioners,
vs.
THE EIGHTH JUDICIAL DISTRICT COURT OF THE STATE OF NEVADA, IN AND FOR THE COUNTY OF CLARK; AND THE HONORABLE JERRY A. WIESE, DISTRICT JUDGE,
Respondents,
and
ESTATE OF REBECCA POWELL THROUGH BRIAN POWELL, AS SPECIAL ADMINISTRATOR; DARCI CREECY, INDIVIDUALLY AND AS HEIR; TARYN CREECY, INDIVIDUALLY AND AS AN HEIR; ISAIAH KHOSROF, INDIVIDUALLY AND AS AN HEIR; LLOYD CREECY, INDIVIDUALLY,
Real Parties in Interest.

No. 82250

FILED

OCT 18 2021

ELIZABETH A. BROWN
CLERK OF SUPREME COURT
BY
DEPUTY CLERK

ORDER GRANTING PETITION

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

SUPREME COURT
OF
NEVADA

(O) 1947A

21-29784

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

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

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

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

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

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

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

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

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

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

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

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

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

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

Cadish, J.

Pickering, J.

Herndon, J.

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

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

IN THE SUPREME COURT OF THE STATE OF NEVADA

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

Petitioners,

vs.

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

Respondents,

and

ESTATE OF REBECCA POWELL THROUGH BRIAN POWELL, AS SPECIAL ADMINISTRATOR; DARCI CREECY, INDIVIDUALLY AND AS HEIR; TARYN CREECY, INDIVIDUALLY AND AS HEIR; ISAIAH KHOSROF, INDIVIDUALLY AND AS HEIR; LLOYD CREECY, INDIVIDUALLY,

Real Parties in Interest.

Supreme Court No. 82250

NOTICE OF ERRATUM

Notice or erratum is hereby provided by real party in interest Isaiah Khosrof that his name was mistakenly listed as "Isaiah Creecy" in real parties in interest's November 5, 2021 Petition for Rehearing. While Mr. Khosrof is the son of decedent Rebecca Powell and the grandson of Lloyd Creecy, his proper surname is "Khosrof." The petition is accurate in all other respects.

Docket 82250 Document 2021-32642

DATED this 15th day of November 2021.

PAUL PADDA LAW, PLLC

By */s/ Paul S. Padda and Srilata Shah*
Paul S. Padda, Esq.
Nevada Bar No. 10417
Srilata R. Shah, Esq.
Nevada Bar No. 6820
Attorneys for Real Parties in Interest

CERTIFICATE OF SERVICE

I hereby certify that the foregoing **NOTICE OF ERRATUM** was filed electronically with the Supreme Court of Nevada on this day, November 15, 2021, and that service was made electronically and in accordance with the Master Service List as follows:

S. Brent Vogel, Esq.
Adam Garth, Esq.
John H. Cotton, Esq.
Brad J. Shipley, Esq.

/s/ Jennifer C. Greening
Jennifer C. Greening, an employee of
Paul Padda Law

IN THE SUPREME COURT OF THE STATE OF NEVADA

VALLEY HEALTH SYSTEM, LLC, D/B/A CENTENNIAL HILLS HOSPITAL MEDICAL CENTER, A FOREIGN LIMITED LIABILITY COMPANY; DR. CONRADO C.D. CONCIO, M.D., AN INDIVIDUAL; AND DR. VISHAL S. SHAH, M.D., AN INDIVIDUAL,
Petitioners,
vs.
THE EIGHTH JUDICIAL DISTRICT COURT OF THE STATE OF NEVADA, IN AND FOR THE COUNTY OF CLARK; AND THE HONORABLE JERRY A. WIESE, DISTRICT JUDGE,
Respondents,
and
ESTATE OF REBECCA POWELL THROUGH BRIAN POWELL, AS SPECIAL ADMINISTRATOR; DARCI CREECY, INDIVIDUALLY AND AS HEIR; TARYN CREECY, INDIVIDUALLY AND AS AN HEIR; ISAIAH KHOSROF, INDIVIDUALLY AND AS AN HEIR; LLOYD CREECY, INDIVIDUALLY,
Real Parties in Interest.

No. 82250

FILED

NOV 15 2021

ELIZABETH A. BROWN
CLERK OF SUPREME COURT
BY S. Young
DEPUTY CLERK

ORDER DENYING REHEARING

Rehearing denied. NRAP 40(c).

It is so ORDERED.

Cadish, J.

Pickering, J.

Herndon, J.

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

IN THE SUPREME COURT OF THE STATE OF NEVADA

VALLEY HEALTH SYSTEM, LLC, D/B/A CENTENNIAL HILLS HOSPITAL MEDICAL CENTER, A FOREIGN LIMITED LIABILITY COMPANY; DR. CONRADO C.D. CONCIO, M.D., AN INDIVIDUAL; AND DR. VISHAL S. SHAH, M.D., AN INDIVIDUAL,
Petitioners,
vs.
THE EIGHTH JUDICIAL DISTRICT COURT OF THE STATE OF NEVADA, IN AND FOR THE COUNTY OF CLARK; AND THE HONORABLE JERRY A. WIESE, DISTRICT JUDGE,
Respondents,
and
ESTATE OF REBECCA POWELL THROUGH BRIAN POWELL, AS SPECIAL ADMINISTRATOR; DARCI CREECY, INDIVIDUALLY AND AS HEIR; TARYN CREECY, INDIVIDUALLY AND AS AN HEIR; ISAIAH KHOSROF, INDIVIDUALLY AND AS AN HEIR; LLOYD CREECY, INDIVIDUALLY,
Real Parties in Interest.

No. 82250

WRIT OF MANDAMUS

TO: The Honorable Jerry Wiese, Judge of the 8th Judicial District Court:

WHEREAS, this Court having made and filed its written decision that a writ of mandamus issue,

NOW, THEREFORE, you are directed, in case number A-19-788787-C, entitled Estate of Rebecca Powell, through Brian Powell, as Special

21-33576

Administrator; Darci Creecy, individually and as an Heir; Taryn Creecy, individually and as an Heir; Isiah Khosrof, individually and as an Heir; Lloyd Creecy, individually, 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, to vacate its order denying petitioners' motion for summary judgment and enter summary judgment in favor of petitioners.

WITNESS The Honorables Elissa Cadish, Kristina Pickering, and Douglas Herndon, Associate Justices of the Supreme Court of the State of Nevada, and attested by my hand and seal this 19th day of October, 2021.

Clerk

IN THE SUPREME COURT OF THE STATE OF NEVADA

VALLEY HEALTH SYSTEM, LLC (doing business as "Centennial Hills Hospital Medical Center"), a foreign limited liability company,
Petitioner,
v.
THE EIGHTH JUDICIAL DISTRICT COURT OF THE STATE OF NEVADA ex rel. THE COUNTY OF CLARK, AND THE HONORABLE JUDGE JERRY A. WIESE II,
Respondent,
and
ESTATE OF REBECCA POWELL, through BRIAN POWELL, as Special Administrator; DARCI CREECY, individually and as Heir; TARYN CREECY, individually and as an Heir; ISAIAH KHOSROF, individually and as an Heir; LLOYD CREECY, individually,
Real Parties In Interest,
and
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,
Additional Parties In Interest.

Supreme Court No.: 82250

District Court No.: A-19-788787-C

FILED
NOV 03 2021
ELIZABETH A. BROWN
CLERK OF SUPREME COURT
BY
DEPUTY CLERK

CERTIFICATE OF SERVICE RE WRIT OF MANDAMUS AND ORDER GRANTING PETITION

S. BRENT VOGEL
Nevada Bar No. 6858
ADAM GARTH
Nevada Bar No. 15045
Lewis Brisbois Bisgaard & Smith LLP
6385 South Rainbow Boulevard, Suite 600
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Attorneys for Petitioner

RECEIVED
OCT 28 2021
ELIZABETH A. BROWN
CLERK OF SUPREME COURT
DEPUTY CLERK

4859-0431-9200.1

21-31647

CERTIFICATE OF SERVICE

I hereby certify that on this 25th day of October, 2021, a true and correct copy of **WRIT OF MANDAMUS and ORDER GRANTING PETITION** was served upon the following parties by electronic mail and also by placing a true and correct copy thereof in the United States Mail in Las Vegas, Nevada with first class postage fully prepaid:.

The Honorable Jerry A. Wiese II
The Eighth Judicial District Court
Regional Justice Center
200 Lewis Avenue
Las Vegas, Nevada 89101
Email: McBrideA@clarkcountycourts.us
Respondent

Aaron Ford
Attorney General
Nevada Department of Justice
100 North Carson Street
Carson City, Nevada 89701
Counsel for Respondent

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Attorneys for Additional Parties in Interest Dionice S. Juliano, M.D., Conrado Concio, M.D And Vishal S. Shah, M.D.

By */s/ Roya Rokni*
An Employee of
LEWIS BRISBOIS BISGAARD & SMITH LLP

Rokni, Roya

From:	Rokni, Roya
Sent:	Monday, October 25, 2021 12:27 PM
To:	McBride, Angela; psp@paulpaddalaw.com; jhcotton@jhcottonlaw.com
Cc:	Vogel, Brent; Garth, Adam; Sirsy, Shady; San Juan, Maria
Subject:	RE: Powell v. Valley Health System, LLC - District Court Case No.: A-19-788787-C; Supreme Court Case No.: 82250
Attachments:	Powell - Cert. of Service re Writ of Mandamus and Order Granting Petition 4856-9441-9200 v.2.pdf
Importance:	High

All,

Please see attached copy of the Certificate of Service, including both the signed Writ and the Order Granting Petition for your records. I had not included the Writ in the previous email. Sorry for the inconvenience. A copy will also be sent by mail
Thank you.

Roya Rokni
Legal Assistant
Las Vegas Rainbow
702.693.4318 or x7024318

From: Rokni, Roya
Sent: Monday, October 25, 2021 10:54 AM
To: 'McBride, Angela' <McBrideA@clarkcountycourts.us>; 'psp@paulpaddalaw.com' <psp@paulpaddalaw.com>; jhcotton@jhcottonlaw.com
Cc: Vogel, Brent <Brent.Vogel@lewisbrisbois.com>; Garth, Adam <Adam.Garth@lewisbrisbois.com>; Sirsy, Shady <Shady.Sirsy@lewisbrisbois.com>; San Juan, Maria <Maria.SanJuan@lewisbrisbois.com>
Subject: Powell v. Valley Health System, LLC - District Court Case No.: A-19-788787-C; Supreme Court Case No.: 82250

Please find attached a copy of the Order Granting Petition for your records. A copy of the same will follow by U.S. Mail.
Thank you.

Roya Rokni
Legal Assistant to
Adam Garth, Esq.
John Orr, Esq.
Shady Sirsy, Esq.
Roya.Rokni@lewisbrisbois.com
Tel: (702) 693-4318 Fax: 702.893.3789

IN THE SUPREME COURT OF THE STATE OF NEVADA

VALLEY HEALTH SYSTEM, LLC, D/B/A CENTENNIAL HILLS HOSPITAL MEDICAL CENTER, A FOREIGN LIMITED LIABILITY COMPANY; DR. CONRADO C.D. CONCIO, M.D., AN INDIVIDUAL; AND DR. VISHAL S. SHAH, M.D., AN INDIVIDUAL,
Petitioners,
vs.
THE EIGHTH JUDICIAL DISTRICT COURT OF THE STATE OF NEVADA, IN AND FOR THE COUNTY OF CLARK; AND THE HONORABLE JERRY A. WIESE, DISTRICT JUDGE,
Respondents,
and
ESTATE OF REBECCA POWELL THROUGH BRIAN POWELL, AS SPECIAL ADMINISTRATOR; DARCI CREECY, INDIVIDUALLY AND AS HEIR; TARYN CREECY, INDIVIDUALLY AND AS AN HEIR; ISAIAH KHOSROF, INDIVIDUALLY AND AS AN HEIR; LLOYD CREECY, INDIVIDUALLY,
Real Parties in Interest.

No. 82250

WRIT OF MANDAMUS

TO: The Honorable Jerry Wiese, Judge of the 8th Judicial District Court:

WHEREAS, this Court having made and filed its written decision that a writ of mandamus issue,

NOW, THEREFORE, you are directed, in case number A-19-788787-C, entitled Estate of Rebecca Powell, through Brian Powell, as Special

Administrator; Darci Creecy, individually and as an Heir; Taryn Creecy, individually and as an Heir; Isiah Khosrof, individually and as an Heir; Lloyd Creecy, individually, 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, to vacate its order denying petitioners' motion for summary judgment and enter summary judgment in favor of petitioners.

WITNESS The Honorables Elissa Cadish, Kristina Pickering, and Douglas Herndon, Associate Justices of the Supreme Court of the State of Nevada, and attested by my hand and seal this 19th day of October, 2021.

Clerk

IN THE SUPREME COURT OF THE STATE OF NEVADA

VALLEY HEALTH SYSTEM, LLC, D/B/A CENTENNIAL HILLS HOSPITAL MEDICAL CENTER, A FOREIGN LIMITED LIABILITY COMPANY; DR. CONRADO C.D. CONCIO, M.D., AN INDIVIDUAL; AND DR. VISHAL S. SHAH, M.D., AN INDIVIDUAL,
Petitioners,
vs.
THE EIGHTH JUDICIAL DISTRICT COURT OF THE STATE OF NEVADA, IN AND FOR THE COUNTY OF CLARK; AND THE HONORABLE JERRY A. WIESE, DISTRICT JUDGE,
Respondents,
and
ESTATE OF REBECCA POWELL THROUGH BRIAN POWELL, AS SPECIAL ADMINISTRATOR; DARCI CREECY, INDIVIDUALLY AND AS HEIR; TARYN CREECY, INDIVIDUALLY AND AS AN HEIR; ISAIAH KHOSROF, INDIVIDUALLY AND AS AN HEIR; LLOYD CREECY, INDIVIDUALLY,
Real Parties in Interest.

No. 82250

FILED

JAN 10 2022

ELIZABETH A. BROWN
CLERK OF SUPREME COURT
BY
DEPUTY CLERK

ORDER DENYING EN BANC RECONSIDERATION

SUPREME COURT
OF
NEVADA

(O) 1947A

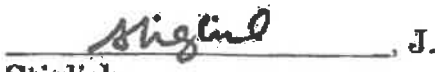
22-00922

Having considered the petition on file herein, we have concluded that en banc reconsideration is not warranted. NRAP 40A. Accordingly, we

ORDER the petition DENIED.

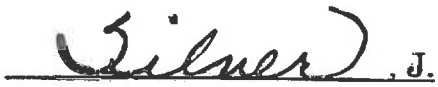
Parraguirre, C.J.

Hardesty, J.



Stiglich, J.

Cadish, J.



Silver, J.

Pickering, J.

Herndon, J.

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